

# Covenants

For

*Fishers Farm*

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*16 pages*

## Hamilton County

Instrument  
9709753492

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR FISHERS FARM

THIS DECLARATION, dated November 20, 1997, is by ARBOR INVESTMENTS, LLC, an Indiana limited liability company ("Developer").

9709753492  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 12-11-1997 At 12:07 pm.  
DEC COV RES 39.00

Recitals:

A. Developer is the purchaser and owner of all of the lands contained in the area shown on Exhibit "A", attached hereto and made a part hereof, which lands will be subdivided for development of Fishers Farm, a single family housing development in Hamilton County, Indiana (the "Development"), and will be more particularly described on the plats of the various sections thereof recorded and to be recorded in the Office of the Recorder of Hamilton County, Indiana (the "Plats").

B. Developer is about to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges contained herein and as set forth in the Plats (the "Declaration" or "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and future owners thereof.

Terms:

NOW, THEREFORE, Developer hereby declares that all of the platted lots and lands located within the Development are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to the Restrictions, and shall inure to the benefit of Developer's successors in title to any real estate in the Development. Developer specifically reserves unto itself the right and privilege to exclude any real estate from the Development, or to include additional real estate in the Development including real estate adjacent to the Development.

1. Definitions. The following are the definitions of the terms as they are used in this Declaration:

A. "Assessment" shall mean the share of the Common Expenses imposed on each Lot or other special assessments, as determined and levied pursuant to the provisions of Section 5 hereof.

B. "Association" shall mean the Fishers Farm Homeowners' Association, Inc., an Indiana nonprofit corporation formed or to be formed under the Indiana Nonprofit Corporation Act of 1991, as amended.

C. "Board" shall mean the Board of Directors of the Association.

D. "Committee" shall mean the Development Control Committee, composed of three (3) members of the Association appointed by the Board. The members of the Committee shall serve for one (1) year terms, but are subject to removal by the Board at any time with or without cause. Any vacancies on the Committee from time to time existing shall be filled by appointment by the Board. Notwithstanding anything herein to the contrary, Developer shall have the powers and authority of the Committee during the Development Period.

E. "Common Area(s)" shall mean those areas and all improvements located thereon set aside for recreation areas, theme structures or landscaped areas or mounds at street entrances, lights, park areas, street landscaping, the Lakes, and any other areas so designated on the Plats.

F. "Common Expenses" shall mean the actual and estimated cost to the Association of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association.

G. "Development Period" shall mean the period of time during which Developer owns at least one (1) Lot.

H. "Lake" or "Lakes" shall mean and refer to the water detention pond(s) or lake(s) and common area portion of the shoreline area as shown on the Plats which serves or shall serve as part of the storm and surface water drainage system serving the Development, as such are or in the future shall be more particularly described on the Plats.

I. "Lot" or "Lots" shall mean any parcel(s) of real estate, whether residential or otherwise, described by one of the Plats.

J. "Member" shall mean any person or entity holding membership in the Association as provided in this Declaration.

K. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

## 2. Organization and Duties of Association.

A. Organization of Association. The Association shall be organized as a nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by Developer, and the Code of By-Laws of the Association. The membership of the Association shall consist of one class of voting members, with each Member having equal voting rights. In the event that any one Lot

shall be owned by more than one person, partnership, trust, corporation, or other entity, they shall be treated collectively as one Member for voting purposes, so that as to any matter being considered by the Association, only one vote appertains to each Lot. Notwithstanding anything herein to the contrary, during the Development Period, all actions of the Association shall require the prior written approval of the Developer.

B. General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Restrictions. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

C. Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, in accordance with Section 10 of this Declaration.

D. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association may, but need not, maintain in force adequate officers and directors insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Developer, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Association may maintain a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) years' assessment on all Lots in the Development, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

E. Condemnation, Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to their Pro-rata Shares (as hereinafter defined), whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.

F. Transfer of Control of the Association. Developer shall transfer control of the Association (subject to its rights under Section 2.A. hereof) as soon as is practical upon the transfer of a number of Lots equal to eighty percent (80%) of the Lots in the Development; provided, however, that Developer may transfer control of the Association at an earlier date in its sole discretion.

G. Mortgagees' Rights. Any mortgagees of any Owners shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. In addition, neither the Owners nor the Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

### 3. Powers of Committee.

A. In General. No dwelling, building structure, fencing, exterior painting (excluding repainting in the same color) or exterior improvement of any type or kind (except landscaping), including but not limited to basketball goals or backboards, awnings, patios, decks, porches, gazebos, shall be constructed or placed on any Lot without the prior written approval of the Committee. Such approval shall be obtained only after written application requesting authorization has been made to the Committee by the Owner of the Lot. Such written application shall be in the manner and form prescribed from time to time by the Committee, and the Committee may require a set of plans and specifications for any such proposed construction or improvement. The Committee may require that such plans include plot plans showing the location of all improvements existing upon the Lot and the location of the

~~improvements proposed to be constructed or placed upon the Lot, each property and clearly~~ designated. The Committee may also require that such plans and specifications set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. Notwithstanding anything herein to the contrary, approval of the Committee will not be required for improvements, fencing or structures placed on a Lot by the Developer.

B. Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

(1) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of the Restrictions;

(2) The design, proposed material or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, siding, roof and brick colors, or with the Development in general;

(3) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any other Owners.

C. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been received. A copy of submitted materials shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor. The Committee shall further affix its signature of approval upon two (2) site plans for purposes of obtaining an Improvement Location Permit, or similar permit, from the Permits Section of the Department of Metropolitan Development, or other applicable governmental authority, if such are required.

D. Liability of Committee. Neither the Committee nor any agent or member thereof, nor Developer during the Development Period or thereafter, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

E. Inspection. The Committee or its designated agent may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

F. Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same Owner, and such Owner shall desire to use two or more of said Lots as a site for a single dwelling, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single dwelling shall be treated as a single Lot for the purpose of determining the Assessment and for applying these Restrictions to said Lots, so long as such Lots remain improved with one single dwelling.

#### **4. Remedies.**

A. In General. Any party to whose benefit the Restrictions inure, including Developer, any Owner, the Association, or any applicable governmental authority, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but Developer or the Association shall not be liable for damages of any kind to any person for failing either to enforce or carry out any of the Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of the Restrictions.

#### **5. Covenants for Maintenance Assessments.**

A. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Development and promoting the health, safety, and welfare of the Owners, users, and occupants of the Development and, in particular, for the Association's obligations relating to the improvement, repairing, operating, and maintenance of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner (except the Developer) hereby covenants and agrees to pay to the Association:

(a) A Pro-rata Share (as hereinafter defined) of the annual Assessment fixed, established, and determined from time to time, as hereinafter provided.

(b) A Pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

The Developer hereby covenants and agrees to pay to the Association during the Development Period an amount equal to the difference, if any, between the expenditures of the Association made pursuant to this Section 5.A and the aggregate amount of the annual Assessments collected by the Association.

B. Liability for Assessment. Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot other than Lots owned by the Developer and shall constitute a lien from and after the due date thereof in favor of the Association upon each such Lot. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each such Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any

Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

C. Pro-rata Share. The Pro-rata Share of each Owner for purposes of this Section 5 shall be the percentage obtained by dividing one by the total number of Lots shown on the Plats of the Development ("Pro-rata Share"), except, as provided in Section 3F herein.

D. Basis of Annual Assessments. The Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Association.

E. Basis of Special Assessments. Should the Board at any time during the fiscal year determine that the Assessment levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time, and from time to time levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

F. Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. At the election of the Developer, the annual Assessments of each Lot in each section of the Development shall commence on the first day of the second month following the month in which Developer first conveys ownership of any Lot in such section to an Owner. The first annual Assessment within each section of the Development shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

G. Duties of the Association.

(i) The Board shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as



promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

(ii) The Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

(iii) The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

#### H. Non-payment of Assessments; Remedies of Association.

(i) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in paragraph ii hereof; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(ii) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at an annual rate which is two times the rate in effect for ninety-day U.S. Treasury Bills at the time such Assessment is due, but in no event greater than the maximum rate allowable under any applicable usury laws, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

I. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

6. Effect of Becoming an Owner. The Owners of any Lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of Developer with respect to these Restrictions and also for themselves, their heirs, personal representatives, successors and assigns. Such Owners covenant and agree and consent to and with Developer and to and with the Owners and subsequent owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

7. Control of the Common Areas.

A. Control by the Board. The Board shall regulate the Common Areas and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Common Areas.

B. Conditions. No improvements, excavation, changes in grade or other work shall be done upon the Common Areas by any Owner, nor shall the Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Board.

8. Restrictions, Covenants and Regulations.

A. Restrictions on Use. The following covenants and restrictions on the use and enjoyment of the Lots and the Common Areas, and shall be in addition to any other covenants or restrictions contained herein or in the Plats. All such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any of such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) Use of Common Areas. No one other than Owners who are Members in good standing with the Association, or such an Owner's occupant, tenants, guests or invitees, may use the Common Areas; provided, however, that certain schools located within the vicinity of the Development and which are parties to an agreement with the Association or Developer may utilize the Lakes, subject to the terms of such agreements. All such persons shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas. No person shall be allowed to plant trees, landscape or do any gardening in any part of the Lakes or the Common Areas, except with express permission from the Board. The Lakes and the Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the Lakes are and will be an integral part of the storm water drainage system serving the Development, and are intended to be used for such purpose and primarily as a visual and aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, swimming, diving, skiing, ice skating or other recreational activity shall be permitted in or on the Lakes. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into the Lakes, except the Association may take steps to clean and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. Fishing from the shoreline area of the Lakes by an Owner, his occupants, his invited guests and family, shall be permitted subject to rules determined by the Association and obedience and compliance with all applicable fishing and game laws, ordinances, rules and regulations. No Owner or other person shall take or remove any water from or out of the Lakes, or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No piers, docks, retaining walls, rafts or other improvements shall be built, constructed or located on any Lot or on the Properties, except by Developer and/or the Association, which extend into, or to within twenty-five (25) feet from the shoreline of the Lakes.

(b) Nuisance. No nuisance shall be permitted to exist on any Lot and no waste shall be committed on any Lot which shall or might damage or cause injury to the Common Areas.

(c) Setback Lines. The front setback from any right-of-way will be a minimum of twenty-five (25) feet from the right-of-way line of any street. A minimum rear yard of twenty-five (25) feet will be provided for each Lot. There will be no less than fifteen (15) feet between buildings.

(d) Utility Easements and Drainage. "Utility Easements" as shown on the Plat shall be reserved for the use of public utilities for the installation of water, sewer, gas, tile and/or electric lines, poles, ducts, pipes, etc., on, over, under, and to said easement for local public use. These easements are not for the use of, and shall not be used for, high voltage electric transmission lines or high pressure liquid transmission pipe lines, except by written permission of the Association. "Drainage Easements" shall be reserved as drainage swales, and said swales are to be maintained by the Owner of any Lot affected. All easements shown as "Utility Easements" are also to be considered drainage easements and are subject to all restrictions of drainage easements. No permanent or other structures are to be erected or maintained upon any easements shown upon the Plat and Owners of Lots shall take their titles subject to the rights of the above-described easements.

(e) Land Use and Building Type. No Lot shall be used except for residential purposes, nor shall any Lot be subdivided. No buildings shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling. All dwellings shall have and maintain house number identifications and mail boxes which are uniform throughout the Development.

(f) Building Location. No building shall be located on any Lot nearer to the front line, nor nearer to the side street lines than the minimum set back lines referenced herein. For the purpose of this covenant, eaves, steps and open porches shall not be considered a part of the building, provided that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

(g) Pools. No above-ground pools shall be permitted in the Development. In-ground swimming pools or associated structures shall not be erected or placed on any Lot until the construction plans, including a plot plan, have been approved by the Committee.

(h) Temporary and Outbuilding Structures. No structures of a temporary character, trailer, basement, tent, or garage, shall be used on any Lot as a residence, or for any other purpose, either temporarily or permanently. No outbuildings of any type, including mini-barns, sheds or barns, shall be located anywhere on a Lot. For the purpose of this covenant, structures needed and used by the Developer shall be allowed to remain during the Development Period and for a reasonable time thereafter.

(i) Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot except family pets, which may be kept, provided they are not kept, bred or maintained for commercial purposes and do not to create or constitute a nuisance.

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(j) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, garbage or other waste, and same shall not be kept except in sanitary containers.

(k) Sight Distance At Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet and six feet above the roadways 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 them at points twenty-five feet from the intersection of the street

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(k) Sight Distance At Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet and six feet above the roadways 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 them at points twenty-five feet from the intersection of the street line, or in the case of a property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten feet from the intersection of a street's property line with the edge of a driveway. No trees shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at such height to prevent obstruction of such sight lines.

(l) Fences. Ornamental fences or continuous shrub plantings which would in any way serve the purpose of a fence shall not be erected until approved by the Committee.

(m) Signs. No sign of any kind shall be displayed to the public view on any Lot, except one sign of not more than five square feet, advertising the property for sale or for rent, or signs used by the Developer to advertise, market, sell, or otherwise in connection with the Development, the Lots or other related purposed during the Development Period.

(n) Satellite Dishes/Antennae. No antennae, satellite dishes, or other signal receiving devices, shall be placed or erected on any Lot; provided, however, one (1) satellite dish with a diameter two (2) feet or less shall be permitted on a Lot if such is not visible from the street.

(o) Vehicles. No boats, campers, trailers of any kind, buses, mobile homes, trucks (other than light-duty trucks), or other vehicles other than passenger automobiles and sport/utility vehicles, shall be parked or stored anywhere within the Development, other than in the permanent and enclosed garage of a Lot. No repair work shall be done on any vehicle within the Development, except that minor repairs and maintenance of vehicles owned by an Owner may be performed within a driveway area.

B. Non-applicability to Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in subsection A of this Section 8 shall not apply to or be binding upon the Association in its management, administration, operation, maintenance, repair, replacement and upkeep of the Lakes and Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Lakes and Common Areas.

9. **Duration.** The foregoing covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period commencing on the date this Declaration is recorded and expiring December 31, 2017, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years. Changes or amendments in these covenants, conditions and restrictions may be made by Owners in accordance with paragraph 10 hereof.

10. **Amendment of Declaration.**

A. **Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(ii) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws of the Association.

(iv) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners; provided, however, that during the Development Period, any amendment to this Declaration shall require the prior written approval of Developer. In the event any Lot is subject to a first mortgage, the mortgagee thereunder shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the mortgagee has given prior written notice of its mortgage interest to the Association.

(v) **Special Amendments.** No amendment to this Declaration shall be adopted which changes the applicable share of an Owner's liability for assessments, or the method of determining the same, without, in each and any of such circumstances, the unanimous approval of all Owners and all mortgagees whose mortgage interests have been made known to the Association.

(vi) **Recording.** Each amendment to this Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

B. Amendments by Developer Alone. Notwithstanding the foregoing or anything elsewhere contained herein, the Developer shall have and hereby reserves the right and power acting alone, and without the consent or approval of any other of the Owners, the Association, the Board of Directors, any mortgagees or any other person, except as provided below, to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots, (c) to bring this Declaration into compliance with any statutory requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, (e) to annex additional real estate to the Development, or (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by, and granted by each Owner to the Developer to vote in favor of, make, or consent to any amendments described in this subsection B on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record any such amendments. The right of the Developer to act pursuant to rights reserved or granted under this subsection B shall terminate upon the completion of the Development Period.

11. 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.

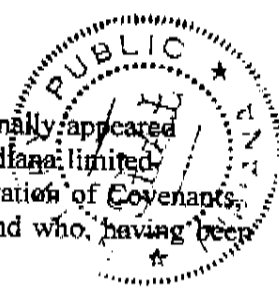
IN WITNESS WHEREOF, the Developer has caused this Declaration of Covenants, Conditions and Restrictions for Fishers Farm to be executed as of the date written above.

ARBOR INVESTMENTS, LLC

By:   
Curtis A. Rector, Managing Member

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Curtis A. Rector, the Managing Member of Arbor Investments, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for Fishers Farm on behalf of such company, and who, having been duly sworn, stated that the representations therein contained are true.



Witness my hand and Notarial Seal this 20th day of November, 1997.

Richard W. Bryan  
( Richard W. Bryan ) Notary Public

My Commission Expires: 10-1-2001

My County of Residence is: Hamilton

This Instrument was prepared by Lewis E. Willis, Jr., Attorney at Law.

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**PARCEL A****LAND DESCRIPTION**

Part of the Southeast Quarter of Section 19, Township 18 North, Range 5 East of the Second Principal Meridian in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said Quarter Section; thence South  $00^{\circ} 23' 37''$  West along the East line of said Quarter Section a distance of 300.01 feet to the POINT OF BEGINNING; thence South  $89^{\circ} 54' 26''$  West parallel with the North line of said Quarter Section a distance of 382.91 feet; thence South  $67^{\circ} 49' 44''$  West a distance of 168.50 feet; thence South  $49^{\circ} 57' 14''$  West a distance of 199.18 feet; thence South  $18^{\circ} 32' 19''$  West a distance of 217.94 feet; thence South  $00^{\circ} 52' 40''$  West a distance of 593.28 feet; thence South  $07^{\circ} 51' 44''$  West a distance of 123.48 feet; thence South  $15^{\circ} 35' 43''$  West a distance of 115.19 feet; thence South  $59^{\circ} 36' 25''$  East a distance of 120.67 feet to a non-tangent curve concave Northwesterly having a central angle of  $08^{\circ} 49' 24''$  and a radius of 260.00 feet; thence Southwesterly along said curve an arc length of 40.04 feet (said arc being subtended by a chord bearing South  $30^{\circ} 23' 35''$  West a distance of 40.00 feet); thence North  $59^{\circ} 36' 25''$  West a distance of 120.67 feet; thence South  $57^{\circ} 54' 09''$  West a distance of 93.92 feet; thence South  $83^{\circ} 12' 04''$  West a distance of 115.32 feet; thence North  $61^{\circ} 33' 13''$  West a distance of 131.66 feet; thence South  $74^{\circ} 27' 37''$  West a distance of 201.94 feet to the West line of the Southeast Quarter of said Quarter Section; thence South  $00^{\circ} 23' 21''$  West along said West line a distance of 299.99 feet; thence North  $89^{\circ} 48' 49''$  East parallel with the South line of said Quarter Section a distance parallel with the South line of said Quarter Section a distance of 1135.44 feet to the West line of a tract of land described in a deed to Cinda Ann Bartley recorded as Instrument No. 9535531 in the Office of the Recorder of Hamilton County, Indiana; thence North  $01^{\circ} 11' 23''$  West along the West line of said Cinda Ann Bartley tract a distance of 3.00 feet to the Northwest corner thereof; thence South  $89^{\circ} 17' 23''$  East along the North line of said Cinda Ann Bartley tract a distance of 197.90 feet to the East line of said Quarter Section; thence North  $00^{\circ} 23' 37''$  East along the East line of said Quarter Section a distance of 1610.69 feet to the Point of Beginning. Containing 31.384 Acres (1,367,102 Square Feet), more or less.

**EXHIBIT "A"**