

Covenants

For

DAKbay 8910959

Amend. 9346874

(16 pages)

Hamilton County

8810959

DECLARATION OF RESTRICTIONS



THIS DECLARATION made this 6th day of June, 1998, by The Shorewood Corporation, a Pennsylvania corporation (hereinafter referred to as the "Developer" as the term applies solely to Sections One, Three and Four of the subdivision to be known as Oakbay), and James E. Dankert and Ruth N. Dankert, Husband and Wife, of Hamilton County, Indiana (hereinafter referred to as the "Developer" as the term applies solely to Sections One, Three and Four of the subdivision to be known as Oakbay),

WITNESSETH: This instrument Recorded 6-9 1998 Sharon K. Cherry, Recorder, Hamilton County, IN

WHEREAS, The Shorewood Corporation is the owner of the lands contained in the area shown on Exhibit "A", and James E. Dankert and Ruth N. Dankert (Husband and Wife) are the owners of the lands contained in the area shown on Exhibit "B". Said Exhibits "A" and "B" are attached hereto and made a part hereof, which lands will be subdivided and known collectively as "Oakbay" (hereinafter referred to as 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, and

WHEREAS, the 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 (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and the future owners thereof:

NOW, THEREFORE, The Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following 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 the 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 such Restrictions, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the Development. The Developer specifically reserves unto itself the right and privilege, prior to the recording of the plat by the Developer of a particular lot or tract within the Development as shown on Exhibit "A", to exclude any real estate so shown from the Development, or to include additional real estate.

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

A. "Committee" shall mean the Oakbay Development Control Committee, composed of three members appointed by the Developer who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the Developer. The Developer may, at its sole option, at any time hereafter relinquish to the Association the power to appoint and remove one or more members of the Committee.

B. "Association" shall mean the Oakbay Property Owners' Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in Paragraph 12 of this Declaration.

C. "Lot" shall mean any parcel of real estate...

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"Blocks", whether residential or otherwise, described by one of the plats of the Development which is recorded in the Office of the Recorder of Hamilton County, Indiana.

D. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Developer or the Association, by the President or a Vice President thereof, and with respect to the Committee, by two members thereof.

E. "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. CHARACTER OF THE DEVELOPMENT.

A. In General. Every lot in the Development, unless it is otherwise designated by the Developer, is a residential lot and shall be used exclusively for single-family residential purposes. No structures shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house and such outbuildings as are usually accessory to dwelling houses.

B. Residential Use of Accessory Outbuildings Prohibited. No accessory outbuildings shall be erected on any of the residential lots prior to the erection thereon of a single-family dwelling house, and in no event shall any such accessory outbuilding which may be constructed upon a residential lot under these Restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation. Accessory outbuildings shall be limited to 120 square feet, except where noted in the plat of Section 2.

C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties. That the foregoing is subject to the rules, regulations and ordinances of the City of Noblesville and of its building commissioners.

D. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-ways, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of porches, terraces, garages, carports, or accessory buildings shall be as specified in the recorded plats of the various sections of the Development. Basements shall not be included in the computation of the minimum living area except for that portion of a walkout basement which is to be finished as a living area.

B. Residential Set-Back Requirements.

(i) In General. Unless otherwise provided in these Restrictions or on the record plat, no dwelling house or above-grade structure shall be constructed or placed on any residential lot in the Development except as provided herein.

(ii) Definitions. "Side line" means a lot boundary line that extends from the road on which a lot abuts to the rear line of said lot. "Rear line" means the lot boundary line that is farthest from, and

substantially parallel to, the road on which the lot abuts, except that on corner lots, it may be determined from either abutting road.

(iii) Front Yards. The front building set-back lines shall be the designated number of feet from the right-of-way of the road upon which the lot abuts as set forth upon the plats of the Development.

(iv) Side Yards. The side yard set-back lines shall not be less than nine (9) feet from either side line of the lot and the total of both side yards shall be not less than twenty percent (20%) of the entire width of the lot.

(v) Rear Yards. The rear set-back line shall be at least twenty (20) feet from the rear line except for those lots which include a portion of or abuts, joins or are located adjacent to the Marathon Pipeline Company Easement in which case the rear set-back line shall either be the outer boundary line of the easement or a distance of twenty (20) feet from the rear line of the lot, whichever is greater.

(vi) Lots Which Fall Within the Marathon Pipeline Company Easement. For those lots which fall within the Marathon Pipeline Company Easement, the front yard, side yard, and/or rear yard set-back requirements shall be the greater of either the distances and requirements contained in subparagraphs (iii), (iv), and/or (v) of Paragraph B, Item 3 of this Declaration of Restrictions or the width of the Marathon Pipeline Company easement, as measured at right angles.

(vii) Structures, Fences, Excavation, Pools, Etc., Prohibited In Pipeline Easement. Written permission from the Marathon Pipeline Company is required prior to any excavation or improvement above or below ground within the pipeline easement. No lot owner shall permit any excavation or earthmoving of any kind within the easement without first obtaining permits and consents as required from the Marathon Pipeline Company.

C. Fences and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence must be approved by the Committee as to size, location, height and composition before it may be installed. A lot must have at least two (2) trees growing upon it in the front yard by the time the house is completed.

D. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding or any other similar material. All driveways must be paved with asphalt or concrete from their point of connection with the abutting street or road.

E. Heating Plants and Garages. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. Geo-Thermal heat pumps shall be a closed loop system. Every house in the Development must have a garage.

F. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

G. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and used structures shall be relocated or placed on any such lot.

H. Maintenance of Lots and Improvements. The owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly; and, specifically, such owner shall:

(i) Mow the lot at such times as may be reasonably required in order to prevent unsightly growth of vegetation and noxious weeds.

(ii) Remove all debris or rubbish.

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.

(iv) Cut down and remove dead trees.

(v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

(vi) Within sixty (60) days following completion of a house on a lot, the owner shall landscape the lot, weather permitting.

I. Association's Right to Perform Certain Maintenance. In the event that the owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual charge to which said lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

A. Nuisance. No outside toilets shall be permitted on any lot in the Development (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to enter any storm drain or Morse Reservoir. By purchase of a lot, each owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by the Indianapolis Water Company, the Developer or the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorney's fees, shall become a charge or lien upon the lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt.

Neither the Developer, nor the Association, nor the Indianapolis Water Company, nor any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement of this paragraph.

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the Hamilton County Board of Health. No storm water (subsurface or surface) shall be discharged into sanitary sewers. Copies of all permits, plans and designs relating to the construction of a sanitary sewer service line shall be submitted in duplicate to the Committee at the time of the submission of all other plans or documents required for the obtaining from said Committee of a permit to build.

5. INDIVIDUAL YARD LIGHTS REQUIRED ON EACH LOT IN THE DEVELOPMENT.

At the time that the owner of the lot in the Development

completes the construction of a home on his lot, he shall install or cause to have installed a dusk to dawn yard light in the front yard of his lot. The design, type and location of the yard light shall be subject to the approval of the Committee which may require, for the purpose of uniformity and appearance, that said yard light be purchased from the Developer or its designee.

6. MAILBOXES.

Owners of a lot in the Development shall install or cause to have installed a mailbox which shall be in accordance with the design, type and location of a mailbox approved by the Committee. The Committee may require, for the purpose of uniformity and appearance, that the mailbox be purchased from the Developer or its designee.

7. GENERAL PROHIBITIONS.

A. In General. No noxious or offensive activities shall be carried on on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Development.

B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development without the prior written approval of the Committee except for real estate sales signs.

C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

D. Vehicle Parking. No campers, trailers, boats, or similar vehicles shall be parked on any street or lot in the Development. No boat or truck, one (1) ton or larger in size, shall be parked for overnight or longer storage on any lot in the Development, unless the same shall be parked in such a manner that it is not visible to the occupants of other lots in the Development, or the users of any street in the Development.

E. Garbage and Other Refuse. No owner of a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in Subparagraph F below. All houses built in the Development shall be equipped with a garbage disposal unit.

F. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Any receptacle for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

G. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.

H. Temporary Structures. No temporary structure of any kind, such as a house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot.

I. Ditches and Swales. It shall be the duty of the owner on every lot in the Development on which any part of any open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon the lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection. All owners, if necessary, shall install dry culverts between the road rights-of-way and their lots in conformity with specifications and recommendations of the

City of Noblesville, Hamilton County, Indiana, and of the appropriate zoning bodies.

J. Docks and Piers. No pier, dock or other structure may be constructed in such a manner that any portion thereof extends more than twenty-five (25) feet from the shore into Morse Reservoir and in no event shall any pier, dock or other structure be erected that does not conform to the specifications established by the Committee.

K. Beaches. No beach may be constructed on Morse Reservoir unless the plans and specifications for the beach are submitted to and approved by the Committee and the Indianapolis Water Company if required. Beaches shall be constructed of sand only. No spoil materials shall be placed or allowed to collect in Morse Reservoir which result from beach construction.

L. Seawalls. It shall be the responsibility of Purchasers of waterfront lots in the Development who desire to construct seawalls on their lots to obtain any and all permits, consents, licenses, and approvals which may be required by any federal and/or state governmental agency, department, commission, or body.

M. Utility Services. No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring and shall require the approval of the City of Noblesville where the streets are public and by the property owners where there are private drives.

N. Wells and Septic Tanks. No water wells shall be drilled on any of the lots nor shall any septic tanks be installed on any of the lots in the Development, without the approval of the Committee and the Indianapolis Water Company.

O. Prohibition of Antennas. No exposed radio, cable and television antennas and/or dishes shall be permitted within the Development.

B. OAKBAY DEVELOPMENT CONTROL COMMITTEE.

A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner of the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by three (3) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require. There shall also be submitted, where applicable, the permits or reports required under Paragraph 3 of these Restrictions.

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

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

(b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures;

(c) The proposed improvement, or any part hereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of other owners.

(iii) Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Development.

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material 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.

C. Liability of Committee. Neither the Committee nor any agent thereof, nor the Developer, 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. Further, the Committee does not make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

D. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

E. Continuation of Committee. When the Developer notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.

9. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER. Whenever two or more contiguous lots in the Development shall be owned by the same person, and such owner shall desire to use two or more of said lots as a site for a single-dwelling house, 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 house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single-dwelling house.

10. USE OF THE RESERVOIR.

A. All operation of boats upon Morse Reservoir is pursuant to a license that shall be exercised in accordance with the limitations made by the joint committee of the Developer and the Indianapolis Water Company made according to the procedures set out in the License Agreement recorded in Book 121, Instrument No. 4863, in the Office of the Recorder of Hamilton County, Indiana. If legally permissible, this Committee shall have the power to assess fines for the violation of any limitations on boat traffic on Morse Reservoir in accordance with the schedule of fines promulgated by it, and which shall become a charge upon the lot owned by the person against whom the fine is assessed.

B. Any fine so assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain

a lien upon that lot until paid in full, and shall also be a personal obligation of the owner or owners of that lot. Such charge shall bear interest at the rate of ten percent (10%) per annum until paid in full. If, in the opinion of the Developer, such charge has remained due and payable for an unreasonably long period of time, the Developer may, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorneys' fees, incurred by the Developer in collecting the same. Every owner of a lot in the development and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Developer all fines that shall be made pursuant to this Paragraph 8 of the Restrictions.

11. OWNERSHIP, USE AND ENJOYMENT OF COMMONS. "Commons" and "Commons Area" shall mean those areas set aside for conveyance to the Association, as shown on the plat. Any commons depicted on the recorded plats of the Development shall remain private, and neither the Developer's execution of recording of the plats nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as, a dedication to the public of the commons.

A license upon such terms and conditions as the Developer, and the successors, assigns or licensees of the Developer, shall from time to time grant, for the use and enjoyment of the commons, is granted to the persons who are from time to time members of the Association. Ownership of any commons shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as the Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such commons to the Association.

12. OAKBAY PROPERTY OWNERS' ASSOCIATION, INC.

A. In General.

(i) There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "Oakbay Property Owners' Association, Inc.", which is referred to as the "Association". Every owner of a residential lot in the Development shall be a member of the Association and shall be subject to all the requirements and limitations imposed in these Restrictions on other owners of residential lots within the Development and on members of the Association, including those provisions with respect to the payment of an annual charge.

B. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all owners with the exception of the Developer and shall be entitled to one 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 such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B member(s) shall be the Developer, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) On the date the Developer sells the last lot which it owns in the Development, and the Developer no longer owns any lots or land in the Development; or

(b) On January 1, 1995.

C. Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

D. Professional Management. No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

E. Responsibilities of the Association.

(i) The Association shall maintain the landscaping in and along Carrigan Road and the landscape easements shown on the plat(s) and shall keep such areas in a neat, clean and presentable condition at all times.

(ii) The Association shall maintain and repair the Common Areas shown on the plat(s) including improvements thereon.

(iii) The Association shall maintain the landscaping and any signage in and on the islands located in the right-of-way at the entrance on Oak Bay Drive and shall keep such areas in a neat, clean and presentable condition at all times.

(iv) The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance (including directors' and officers' insurance) and such other insurance as it deems necessary or advisable.

(v) The Association may contract for such service as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

13. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot in the subdivision, except the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Area and improvements, operated or maintained by the Association, and the landscape easements on the Development and other purposes as specifically provided herein.

C. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or

replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

D. Notice and Quorum for Any Action Authorized Under Sections C and D. Written notice of any meeting called for the purpose of taking any action authorized under Sec. C or D shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

E. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence for each lot on the date of conveyance to the owner by deed or on the date the owner signs a land contract to purchase a lot. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any lot shall be binding upon the Association as of the date of its issuance.

F. Effect of Non-Payment of Assessments: Remedies of the Association. Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the owner or owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorneys' fees, incurred by the Association in collecting the same. Every owner of a lot in the Development and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to this subparagraph of the Restrictions.

The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specified lot have been paid or that certain assessments against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

G. Subordination of the Lien to Mortgagee. The lien of the

assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

H. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member or associate member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member or associate member remains unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

14. REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these 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 these 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 these Restrictions.

15. 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 the 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 owner acknowledges the rights and powers of the Developer, Committee and of the Association 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 the Developer, Committee and the Association 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.

16. TITLES.

The titles preceding the various paragraphs and subparagraphs of the Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. 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.

17. DURATION.

The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2080, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless

changed in whole or in part by vote of those persons who are then the owners of a majority of the numbered lots in the Development.

18. 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 TESTIMONY WHEREOF, witness the signature of the Declarant this 6th day of June, 1988.

THE SHOREWOOD CORPORATION

By: Stanley E. Hunt
Stanley E. Hunt
President

ATTEST:

Nancy Martikke
Nancy Martikke
Assistant Secretary

James E. Dankert
James E. Dankert

Ruth N. Dankert
Ruth N. Dankert

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Stanley E. Hunt and Nancy Martikke, the President and the Assistant Secretary, respectively of The Shorewood corporation, who acknowledged execution of the foregoing Declaration of Restrictions for and on behalf of said Shorewood Corporation, and who, having been duly sworn, stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 2nd day of June 1988.

Nancy R. Edens
Nancy R. Edens, Notary Public



My Commission Expires: 2-16-91
My County of Residence: Hamilton

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared James E. Dankert and Ruth N. Dankert (Husband and Wife), who acknowledged execution of the foregoing Declaration of Restrictions, and who, having been duly sworn, stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 6th day of June 1988.

Jane Hitch
Notary Public



JANE HITCH
Printed Name of Notary Public

My Commission Expires:
3-23-90

My County of Residence:
MARION

THIS INSTRUMENT WAS PREPARED BY JOHN F. CULP
ATTORNEY AT LAW

EXHIBIT "A"

Primary Plat Description
Oakbay Sections One, Three & Four

Part of the North Half of Section 14, Township 19 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 14; thence South 69 degrees 48 minutes 22 seconds East along the South line thereof 838.80 feet to the Point of Beginning which is the Southeast corner of a 101.49 acre tract of land conveyed to M & S Ranch Inc. by Warranty Deed recorded as Instrument #9125 in Deed Record 229, pages 257 thru 265 in the Office of the Recorder of Hamilton County, Indiana (the next three courses are along the Eastern boundary of said tract); thence North 00 degrees 22 minutes 38 seconds East 1116.95 feet; thence South 88 degrees 51 minutes 12 seconds East 570.39 feet; thence North 00 degrees 42 minutes 28 seconds East parallel with the West line of the said Northwest Quarter Section 1561.02 feet to the North line of the said Northwest Quarter Section; thence South 89 degrees 25 minutes 23 seconds East along the said North line 979.43 feet to the Northwest corner of a 1.23 acre tract of land conveyed to Richard and Deborah Zimmerman by Warranty Deed recorded as Instrument #84-229 in Deed Record 340, pages 764 thru 766 in the said Recorder's Office (the next two courses are along said tract); thence South 02 degrees 00 minutes 00 seconds West 182.84 feet; thence South 89 degrees 25 minutes 23 seconds East parallel with the North line of the said Northwest Quarter Section 315 feet, more or less, to the shoreline of Morse Reservoir, as said shoreline would have been established on December 30, 1960, plus accretion and minus erosion (with the water level thereof at an elevation of 810.0 feet above mean sea level); thence Southerly, Westerly and Easterly along the meanders of said shoreline to the Northwesterly corner of a 5.7 acre tract of land conveyed to Robert J. Walden by Warranty Deed recorded as Instrument #83-6827 in Deed Record 337, pages 282 thru 283 in the said Recorder's Office (the next three courses are along said tract); thence South 06 degrees 47 minutes 18 seconds West 433.59 feet; thence North 89 degrees 26 minutes 08 seconds East 692.68 feet; thence North 10 degrees 43 minutes 52 seconds West 128.28 feet to the said shoreline of Morse Reservoir; thence Southerly and Westerly along the meanders of said shoreline to the Northerly corner of a 3.6 acre tract of land conveyed to James and Ruth Dankert by Warranty Deed recorded as Instrument #84-5367 in Deed Record 342, pages 565 thru 567 in the said Recorder's Office (the next two courses are along said tract); (1) thence North 78 degrees 00 minutes 00 seconds West 155 feet, more or less, to a point on the Northerly line of a 50 foot wide right of way agreement to Marathon Pipe Line Company as set out in Deed recorded May 2, 1973 in Book 138, page 315-B as Instrument #2315 in the said Recorder's Office; (2) thence South 58 degrees 54 minutes 12 seconds West along the said Northerly line 152.09 feet to a Northerly corner of a 5.1 acre tract of land conveyed to James and Ruth Dankert by Warranty Deed recorded as Instrument #84-5368 in Deed Record 342, pages 568 thru 572 in the said Recorder's Office (the next three courses are along said tract); thence continuing South 58 degrees 54 minutes 12 seconds West along the Northerly line of said right of way agreement to Marathon Pipe Line Company 2.91 feet; thence South 69 degrees 06 minutes 34 seconds West along the said Northerly line 84.29 feet; thence South 61 degrees 30 minutes 09 seconds West along the said Northerly line 344.69 feet to the North line of a 10.23 acre tract of land conveyed to F & C Farms by Warranty Deed recorded as Instrument #85-1734 in Deed Record 347, pages 355 thru 368 in the said Recorder's Office (the next three courses are along said tract); thence North 88 degrees 52 minutes 22 seconds West 1033.05 feet; thence South 28 degrees 20 minutes 29 seconds West 49.05 feet; thence South 00 degrees 55 minutes 52 seconds East 577.40 feet to a point on the North right of way line of Carrigan Road, which point is the Southwest corner of said land conveyed to F & C Farms; thence South 00 degrees 11 minutes 30 seconds West 38.67 feet to the South line of the said Northwest Quarter Section; thence North 89 degrees 48 minutes 22 seconds West along the said South line 450.71 feet to the point of beginning, containing 82 acres, more or less.

EXHIBIT "A"

EXHIBIT "B"

Oakbay Section Two
Primary Plat DescriptionThis Instrument Recorded 6-9 1988
Sharon K. Cnerly, Recorder, Hamilton County, IN

Part of the Northwest Quarter and part of the Northeast Quarter of Section 14, Township 19 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the said Northwest Quarter Section; thence South 89 degrees 48 minutes 22 seconds East along the South line thereof 1263.51 feet; thence North 00 degrees 11 minutes 38 seconds East 38.67 feet to a point on the North right of way line of Carrigan Road, which point is the Southwest corner of land conveyed to J. and M. Hart by deed recorded June 20, 1973, in Book 267, pages 16 through 18, as Instrument No. 4169 in the Office of the Recorder of Hamilton County, Indiana (the next three courses are along the boundaries of the said land); thence North 00 degrees 55 minutes 52 seconds West 577.46 feet; thence North 28 degrees 20 minutes 29 seconds East 49.05 feet; thence South 88 degrees 52 minutes 22 seconds East 1033.05 feet to the Point of Beginning, which point is the Northerly line of a 50 foot wide right of way agreement to Marathon Pipe Line Company as set out in deed recorded May 2, 1973, in Book 138, page 315-B as Instrument No. 2315 in the said Recorder's Office; thence North 61 degrees 30 minutes 09 seconds East along the said Northerly line 344.69 feet; thence North 69 degrees 06 minutes 34 seconds East along the said Northerly line 84.29 feet; thence North 58 degrees 54 minutes 12 seconds East along the said Northerly line 155.00 feet; thence South 78 degrees 00 minutes 00 seconds East 155.0 feet, more or less to the shore line of Morse Reservoir, as established when said Reservoir is full (with the water level thereof at an elevation of 810.0 feet above mean sea level); thence Easterly, Southerly and Westerly along the meanders of the said shore line to the Northeastery corner of the aforesaid land conveyed to J. and M. Hart (the next three courses are along the boundaries of the said land); thence North 84 degrees 45 minutes 52 seconds West 166.02 feet; thence North 00 degrees 49 minutes 08 seconds East 298.07 feet; thence North 88 degrees 52 minutes 22 seconds West 306.26 feet to the place of beginning, containing 9.7 acres, more or less.

EXHIBIT "B"

8810959

9346874

The below stated changes made by the Oakbay Homeowners Association Board effective September 1, 1993.

AMENDMENT TO THE DECLARATIONS OF RESTRICTIONS OF OAKBAY INSTRUMENT #8810959 THE FOLLOWING:

Pertaining to the first paragraph of Page 1 now referring to "All Sections" of Oakbay Subdivision.

Pertaining to Section 2, Paragraph A, "and such outbuildings as are usually to dwelling houses" has been eliminated.

Pertaining to Section 2, Paragraph B, "prior to the erection thereon of a single-family dwelling house, and in no event shall any such accessory outbuilding which may be constructed upon a residential lot under these restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation. Accessory outbuildings shall be limited to 120 square feet, except where noted in the plat of Section 2" has been eliminated.

Pertaining to Section 3, Paragraph C "must be approved by the committee as to size, location, height and composition before it may be installed" has been eliminated. "needs to be approved by the Development Control Committee. Fences will be approved in backyards only. Backyard is described as not forward of the rear foundation line of a home. An exception to this is if the fence is to serve a service door into the house or garage and specifically if that fence is of an open material. 48 inches is the maximum height for property line fencing, with six foot privacy fences optional for small patio areas only. Chain link fencing will not be approved. Pool fences must meet the requirements of Noblesville City Ordinance. If a privacy fence is used, it cannot be a perimeter fence. It may only enclose the area around the pool, concrete deck and a landscape or activity area. On waterfront lots no fences will be approved in the 20 foot Indianapolis Water Company easement along the shoreline", has been added.

Jim Mercier
Jim Mercier
President

Matt Warye
Matt Warye
Vice President

Rod Rosiek
Rod Rosiek
Secretary

Bob Neal
Bob Neal
Treasurer

Rick Meyer
Rick Meyer
Assistant Treasurer/Secretary

The Instrument Recorded **SEP 28 1993**
Sharon K. Cherry, Recorder, Hamilton County, IN

RECEIVED FOR RECORD
93 SEP 29 PM 2:31

Notary

John A. Shaddis
John A. Shaddis
Notary Public
1-8-93
Marion Co.

Prepared by Matt Warye