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## Subdivision Covenants and Restrictions

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**Instrument**  
**9809804137**

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Filed for Record in  
HAMILTON COUNTY, INDIANA  
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PC 1 SL 211  
PC 1 SL 224

**DECLARATION  
OF  
AMENDED COVENANTS AND RESTRICTIONS**

**WOODGATE SUBDIVISION  
CARMEL, INDIANA**

This Declaration, made on the 15<sup>th</sup> day of September, 1997, by the **WOODGATE HOME OWNERS ASSOCIATION, INC.**, an Indiana Nonprofit Corporation, and **LANGSTON DEVELOPMENT COMPANY, INC.**, ("Declarant") an Indiana Corporation.

**WITNESSETH:**

WHEREAS, the following facts are true,

1. Declarant and the Consenting Owners are the owners of the real estate located in Hamilton County, Indiana, upon which Declarant has developed a residential subdivision known as "Woodgate".
2. Declarant and the Consenting Owners desire to provide for the preservation and enhancement of the property values, amenities and opportunities in Woodgate and for the maintenance of the Tract and the improvements thereon, and to this end desire to subject the Tract to the covenants, restrictions, easements, and charges hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the owners and future owners thereof.
3. Declarant deems it desirable, for the efficient preservation of the values and amenities in Woodgate, to create an agency to which may be delegated and assigned the powers of maintaining, administering and enforcing the Covenants, collecting and disbursing the Assessments and charges hereinafter created, and promoting the health, safety and welfare of the Owners of Lots.
4. The Woodgate Homeowners have incorporated under the laws of the State of Indiana a nonprofit corporation known as the Woodgate Homeowners' Association, Inc., (a.k.a. WHOA) for the purpose of exercising such functions.
5. **NOW THEREFORE**, Declarant hereby declares that all of the Lots and lands in the Tract, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and of each of the Residences, Lots and lands situated therein. The Covenants and Restrictions shall run with the land and shall be binding upon the Declarant, the Consenting Owners and their respective successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Covenants and Restrictions, and shall inure to the benefit of Declarant and its successors in title to the Tract or any part or parts thereof.

## DEFINITIONS

The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

**Applicable Date** - July 12, 1995, the date of incorporation of WHOA.

**Architectural Approval Committee** - the entity established by the Declarant, to include representatives of WHOA, to review all Lot development Plans for all future construction proposed to be built in the Tract.

**Articles** - The Articles of Incorporation of the Woodgate Homeowners' Association, Inc.

**Assessments and Dues** - all sums lawfully assessed against Members of the Corporation or as declared by this Declaration, the Articles or the Bylaws.

**Bylaws** - The Code of Bylaws of the Woodgate Homeowners' Association, Inc.

**Board of Directors** - the governing body of the Corporation elected by the Members in accordance with the Bylaws.

**Common Areas** - areas and easements defined as part of the Tract but not otherwise deeded to an Owner.

**Corporation** - Woodgate Homeowners' Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

**Declarant** - Langston Construction Company, Inc., (the Developer), its successors and assigns to its interest in the Tract other than Owners purchasing lots or residences by deed from the Declarant (unless the conveyance indicated an intent that grantee assume the rights and obligations of Declarant).

**Drainage System** - the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention equipment and facilities located in the Tract and designed for the purposes of controlling, retaining or expediting the drainage of surface and sub-surface waters from, over and across the Tract as shown on the Plat.

**Entry Ways** - the structures constructed as an entrance to Woodgate (exclusive of the street pavement, curbs and drainage structures and tiles), and the Landscape Easement surrounding such structures, whether located within or without of the Tract.

**Initial Capital Assessment** - the initial assessment for the Reserve for Replacements Fund.

**Landscape Easement** - area on the Plat to be landscaped and maintained by the Corporation.

**Lot** - platted lot as shown on the Plat.

**Lot Development Plan** - (I) a site plan prepared by a licensed engineer or architect, (II) foundation plan and proposed finished floor elevation, (III) building plans, including elevation and floor plans, (IV) material plans and specifications, (V) landscaping plans, and (VI) all other data or information that the Corporation may request

pertaining to the improvement or alteration of a Lot or the construction or alteration of an existing residence or other structure or within the Tract.

**Member** - a Class A or Class B member of the Corporation as defined in the Articles and Bylaws.

**Owner** - a Person, including Declarant, who at the time has or is acquiring any interest in a Lot, except a person who has or is acquiring such interest merely as security for the performance of an obligation.

**Person** - an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

**Plat** - the final plat of the Tract recorded in the Office of the Recorder of Hamilton County, Indiana, which is referred to herein as if attached to and made a part thereof.

**Reserve for Replacements** - a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Areas, at such time as Woodgate Homeowners' Association, Inc., assumes responsibility for said areas.

**Residence** - any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and out buildings and recreational usual and incidental to the use of a single family residential lot as governed by the Amended Woodgate Covenants and Restrictions.

**Tract** - the land described in Exhibit A and commonly known as Woodgate Subdivision.

## **A. CONSTRUCTION AND DESIGN**

- I. No building shall be erected, placed or altered on any building plot in this subdivision until the building plans, specifications, and plot plan showing the location or such building have been approved as to the conformity and harmony of external design with existing structures herein and as to the building with respect to topography and finished ground elevation, by the developer, owner of the herein described real estate, or by their duly authorized representatives.
- II. If the Developer fails to act upon any plans submitted to it for its approval within a period of fifteen (15) days from the submission date of the same, the owner may proceed then with the building according to the plans as approved. Neither Developer nor the designated representatives shall be entitled to any compensation for services performed pursuant to this covenant.
- III. All lots in this subdivision are reserved for residential use, and no building other than a one-family residence or structure or facility accessory in the use thereto shall be erected thereon.
- IV. Not more than one building shall be erected or used for residential purposes on any lot in this subdivision.
- V. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall not be less than Twenty-two hundred (2200) square feet in the case of a one story structure, nor less than Fourteen hundred (1400) square feet in the case of a multiple story structure, provided no structure of more than one story

shall have less than an aggregate of Twenty-four hundred (2400) square feet of finished and livable floor area. All garages shall be attached to the residence dwelling and be a minimum of two car size.

VI. No trailer, tent, shack, attached shed, basement, garage, barn, or other out-building or temporary structure shall be used for temporary or permanent residence on any lot in this subdivision. An attached garage, tool shed or detached storage building erected or used as an accessory to a residence in this subdivision shall be of permanent type of construction and conform to the general architecture and appearance of such residence. No swimming pools shall be constructed in areas reserved as easements.

VII. Front and side yard building setback lines are hereby established as shown on this plat, between which lines and the property lines of the street, there shall be erected or maintained no building or structure.

VIII. No building structure or accessory building shall be erected closer to the side of any lot than ten (10) feet. Where buildings are erected on more than one single lot this restriction shall apply to the side lines of the extreme boundaries of the multiple lots.

IX. No structure in this subdivision, without special approval from the Developer shall exceed two and one-half (2 ½) stories of Twenty-five (25) feet in height measured from finished grade to the underside of the eave line, and no structure other than an open porch shall be erected between the building line as designated on the plat and property line of the street.

## **B. EASEMENTS AND DRAINAGE**

I. There are strips of ground as shown on this plat and marked Drainage and Utility Easement, reserved for the use of public utilities for the installation of water and sewer mains, poles, ducts, lines and wires, subject at all times to the proper authorities and to the easement herein reserved. No permanent or other structures are to be erected or maintained upon said strips of land, but owners of lots in this subdivision shall take their titles subject to the rights of public utilities.

II. Areas shown on this plat and marked as Detention/Retention shall be recorded as drainage easements, reserved for the installation and maintenance of storm sewers structures and subject at all times to proper City and/or County authorities and the easement herein reserved. The areas shall be maintained free of weeds, trash or other obstruction by the homeowner or Homeowner's Association.

III. In the event storm drainage from any lot flows across another lot, provision shall be made to permit such drainage to continue, without restriction or reduction, across the downstream lot and into the natural drainage channel or course, even though no specific drainage easement for such flow of water is provided.

IV. Outlets for sump pump water will be provided for each lot in this subdivision by the Developer or home builder at the time of lot development. If during excavation of the foundation for crawl space or basement, ground water is encountered, or if the house location is in an area of high water table (as per Hamilton County Surveyor or City of Carmel), an outlet will be provided directly to a storm sewer or approved open ditch with plastic pipe. The route of outlet will be via platted easements and approved by proper agencies. Where a storm sewer exists on or directly adjacent to a subject lot, all sump pumps shall tie directly to storm sewer via underground pipe. Lots not located in an area of high water table may outlet sump water in the rear yard, no closer than twenty-five (25) feet from established lot lines or platted easements.

V. Construction of any sump pump outlet will commence only when appropriate construction plans have been submitted and approved by the proper agencies and applicable permits issued from the local building authority. Where construction will be in established drainage and/or utility easements, approval must be obtained from City of Carmel of Hamilton County Surveyor. The maintenance of drainage pipes and facilities for discharging sump pumps shall be the responsibility of the individual homeowner and/or a Homeowners' Association.

VI. Geo-thermal heat pumps shall be of the closed loop type only.

### **C. PROPERTY AND USAGE RESTRICTIONS**

I. No fence shall be erected in his subdivision between the building lines and the property line of the streets as shown on the within plat, except with the approval of the Developer, which fences shall not exceed 42 inches in height and shall be of a decorative nature. No fences shall be constructed in areas designated for Detention/Retention.

II. No boat, trailer, or camper of any kind (including but not in limitation thereof, house trailers, camping trailers or boat trailers), or any disabled vehicle shall be kept or parked on any lot except within a garage or other approved structure.

III. No noxious, unlawful or other offensive activity shall be carried out on any lot in this subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

IV. No animals, livestock, or poultry of any description shall be raised, bred or kept on any lot, except dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes.

V. All lot owners will be required to install, or to have installed, at least one gas or electric "dusk to dawn" yard light in the front yard. All garages opening to the street shall have automatic door controls.

VI. No lot in this subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, and shall not be kept, except in sanitary containers. Trash shall not be burned, except in suitable incinerators.

VII. It shall be the duty of the owner of each lot in the subdivision to keep the grass on the lot properly cut and to keep the lot free from weeds and trash and otherwise neat and attractive in appearance. Should any owner fail to do so then the Developer may take such action as it deems appropriate in order to make the lot neat and attractive and the owner shall upon demand reimburse Developer for the expense incurred in so doing.

### **D. ENFORCEMENT AND RIGHTS**

I. Lot owners, upon taking title, agree to waive all rights to oppose future zoning changes and special permits necessary to complete the Master Plan of WOODGATE.

II. The foregoing covenants (or restrictions) are to run with the land and shall be binding on all parties and persons claiming under them for a period of Twenty-five (25) years from the date of this plat, at which time said covenants, (or restrictions), shall be automatically extended for successive periods of Ten (10) years unless changed by vote of majority of the then owners of the buildings covered by these covenants, or restrictions, in whole or part.



**III. Homeowners Association.** The homeowners in Woodgate shall, with the assistance of the Langstons (Declarant/Developer), form a mandatory Homeowner's Association for all current homeowners who agree to be so enjoined and for all future lot/homeowners (including lot/homeowners of lots 141 and 169 of the new subdivision to be constructed by Developer directly west of Woodgate).

**IV. Architectural Approval Committee.** The Langstons (Developer) shall cause to be created an Architectural Approval Committee. Such Committee shall be entirely controlled by the Langstons (Declarant/Developer) until such time as all of the lots in Woodgate have been sold (at which time the Homeowner's Association shall control the Architectural Approval Committee). Such Architectural Approval Committee shall exercise the right to regulate the external design, appearance, use, location and maintenance of development on the Woodgate lots. Although the Architectural Approval Committee shall, in exercising such right, utilize the criteria set forth herein as minimum requirements for approval, the Committee may where necessary require that such minimum requirements be exceeded in order to maintain conformity and harmony with existing structures of Woodgate.

**V. Enforcement and Rights.** The Langstons (Declarant/Developer) shall provide within two (2) business days of receipt, to the President of the Homeowner's Association or to his/her designee, a copy of all "Lot Development Plans" for all homes proposed to be built in Woodgate (including lots 141 and 169 of the new subdivision). The Association shall have five (5) business days from actual receipt of such plans to report any objections of comments that the Association may have to the Langstons (Declarant/Developer). If the Association does not provide such objections to Langston (Declarant/Developer), it is to be assumed that the Association has no objection to the proposed plans. The Association shall have no vote on approval of the architectural plans until all lots are sold; however, the association shall be entitled to enforce their rights under the Amended Covenants and restrictions, any recorded covenants and the Consent Decree entered into as a resolution to the Lis Pendense filed in Hamilton Superior Court of Indiana under Cause number: 29D02-9310-CO-388.

### **ADDITIONAL AMENDMENTS**

These Amendments are to be considered additions to the above Existing Covenants and Restrictions as well as the Amendments Due to Consent Decree.

**I. Initial Assessment.** The Initial assessment for Operations shall be set at twenty dollars (\$20.00). Such assessment is a one-time initial assessment to defray the cost of organizing and forming the Corporation and to establish the "Reserve for Replacement" fund. This assessment is due from existing homeowners and payable to the Woodgate Homeowners' Association immediately upon incorporation of the Corporation. The assessment is due from all future homeowners at the time of occupancy.

**II. Dues.** The annual dues shall initially be set at twenty dollars (\$20.00) per member. All future dues shall be set by resolution of the Board of Directors.

**III. Ponds.** The Woodgate Homeowners' Association agrees to subordinate its control over the drainage ponds to the actual property owners (per Woodgate Plat) of the drainage pond real estate and/or their specified Pond Homeowners' Association. The Woodgate Homeowners' Association realizes that such property is "Private Property" to be maintained, controlled and utilized solely by those property owners of the ponds (as shown in the Woodgate Plat) within the guidelines of the above Woodgate covenants including but not limited to the EASEMENTS AND DRAINAGE RESTRICTIONS and PROPERTY AND USAGE RESTRICTIONS. The pond property homeowners shall be solely responsible for any and all liability regarding such property as well as all costs for