

①

**RESTRICTIVE COVENANTS**  
**OF**  
**DIAMOND COVE, SECTIONS 3 and 4**

John E. Hall and John A. Daum, as Owners and Developers of Diamond Cove, Sections 3 and 4, a subdivision located in Guilford Township, Hendricks County, Indiana and more particularly described on the plats thereof recorded August 27, 2004 in Plat Cabinet 5, Slide 186, Page 2; and Plat Cabinet 5, Slide 187, Page 1, both in the office of the Recorder of Hendricks County, Indiana, do hereby restrict and covenant the lots and all other areas within the boundary of said subdivision as to themselves, their grantees, assigns, successors, legal representatives, and to any person, persons, corporations, banks, and association and/or anyone who may acquire title to any of said lots or other areas, as to the following terms, stipulations, conditions, restrictions, and covenants which shall apply in their entirety to all of said subdivision:

I. Definitions.

A. "Committee" shall mean the Architectural and Environmental Control Committee composed of John E. Hall and John A. Daum, or their duly authorized representatives, all of whom shall serve without compensation for services performed as committee members. In the event of the death or resignation of any member of said committee, the remaining member or members shall have full authority to perform the duties of the committee, or to designate a representative with like authority. All Committee members shall be either a Developer or an Owner as herein defined.

B. "Owner" shall mean the person or collection of persons who has acquired or is acquiring any right, title, or interest, legal or equitable, in and to a lot or other area in this subdivision, but excluding those persons having such interest merely as security for the performance of an obligation.

C. "Developer" shall mean John E. Hall and John A. Daum, or their successors and/or assigns.

D. "Plat", "Development", and "Subdivision" shall all mean the subdivision of Diamond Cove, Sections 3 and 4, as per plats thereof recorded August 27, 2004 in Plat Cabinet 5, Slide 186, Page 2; and Plat Cabinet 5, Slide 187, Page 1, both in the office of the Recorder of Hendricks County, Indiana.

- E. "Development Period" shall mean and refer to the period of time during which Developer owns any one (1) lot within the Development.
- G. "Easements" shall mean and refer to any and all easements, which are referenced on the Plat.
- H. "Lot" shall mean any numbered parcel of real estate shown and identified as a Lot on the Plat.
- I. "Association" shall mean the Diamond Cove Sections 3 and 4 Property Owners Association, which Association may be either incorporated or unincorporated.
- J. "Pond" and "Pond Area" shall mean that area reserved on portions of Lots 10, 12, 13 and depicted on the Plat as a "Variable Drainage Easement" and "Pond Access Easement", which areas are hereby created and reserved:

- 1. solely for the common use and recreation, visual and aesthetic enjoyment of the Owners;
- 2. for use by the Developer during the Development Period for the installation of drainage and nature areas,;
- 3. for the use as nature areas and recreation areas by the Owners; and
- 4. for the use of the Association for the management and control of the drainage ways, nature area, and recreation area, and the installation, maintenance and repair of improvements thereto. The Association shall govern this area.

2. Land Use. Lots shall be used only for single-family residential purposes.

3. Dwelling Size, Materials, and Garages. No dwelling shall be erected, altered, placed, or permitted to remain on any lot other than a single-family residence not to exceed two (2) stories in height. Any one-story structure, exclusive of porches, decks and garages, shall not be less than 1,800 square feet. Any two-story dwelling shall not be less than 2,000 square feet, with the ground floor area of any two-story structure, exclusive of porches, decks and garages being not less than 1,100 square feet. Basements, either finished or unfinished, shall not be counted towards the minimum square foot requirements. All exterior walls of dwellings must be constructed of at least fifty percent (50%) brick or stone veneer, unless otherwise approved by the Committee in writing. Dwellings on all lots shall have a garage with no less than 440 square feet of floor space.

Garages shall be in conforming finish and design to the residential structure. Garages may be attached to, or detached from, the residential structure.

4. Building Lines. All dwellings and garages must be erected in accordance with the building set back lines as designated on the plat.

5. Temporary Structures. No trailer, tent, shack, basement, garage, barn, above ground storage tank, or other outbuilding, or temporary structure shall be used for temporary residential purposes on the property.

6. Businesses. No structure or any kind in the Subdivision shall be used for the purpose of carrying on a business, trade or profession.

7. Architectural Design. No home, building, wall, fence, landscaping, or any other structure or improvement shall be constructed, erected, placed, or altered in the Subdivision until the location plan, building plans, and specifications have been first submitted to, and approved by, the Committee as to harmony with the exterior design, quality, and aesthetic appearance of structures already existing, and as to conformity with grading plans, elevations, destruction of trees and other vegetation, and any other such matter as may affect the environment or ecology of the Development. Any Committee approval shall be in writing. All exterior walls of dwellings must be constructed of at least fifty percent (50%) brick or stone veneer, unless otherwise approved by the Committee in writing.

8. Animals. No animals, livestock, or poultry shall be raised, bred or kept upon any Lot except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes, and provided that they do not create a nuisance.

9. Utility Building and/or Barn. One (1) storage or utility building may be constructed on each Lot. No utility building shall exceed 1,800 square feet of floor space. Any utility building shall be a maximum of one-story and less than 18 feet in height. Any utility building shall be located behind the residence and shall be at least 25 feet from any side property line. Approval must be obtained from the Architectural Control Committee before construction.

10. Signs. The only signs permitted to be erected or displayed by lot Owners on their respective lots are those required by law, a single sign placed by a builder or financial institution to advertise a property during the construction and sales period, a single yard sale or garage sale sign placed by the Owner no more frequently than two days twice each year, or a single sign (not to exceed five square feet) placed by an Owner to advertise the property for sale.

11. Storage Tanks. Any gas or oil storage tanks used in connection with a Lot shall comply with the laws, rules and regulations of the Indiana State Fire Marshall, the Environmental Protection Agency, and all other relevant governmental bodies. Tanks shall be located so that they are completely concealed from public view.
12. Hunting and Trapping. Hunting and trapping are prohibited in this subdivision for all persons.
13. Fences. No fence shall be erected on any Lot for the purpose or result of limiting or obstructing reasonable vision, light or air. All fences shall be kept in good repair and erected reasonable so as to avoid hindrance or obstruction to any other Lot. No fence shall be erected between the front property line and the front of the dwelling on any Lot, other than a decorative fence not exceeding two (2) feet in height. Any fence shall be approved by the Committee before construction.
14. Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') 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 (25') from the intersection of the street line. The same sight line limitations shall apply on any Lot within ten feet (10') from the intersection of a street's property line with edge of driveway. No trees shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at such height to prevent obstruction of such sight lines.
15. Water Supply and Sewage Disposal. No private water supply or sewage disposal system shall be located upon any Lot unless such system is designed, located, constructed and otherwise in compliance with regulations or procedures as provided by the Indiana State Board of Health, Hendricks County Board of Health, or other civil authority having jurisdiction. Approval of such systems shall be obtained from said authority. If, in the future, public water and/or sewage disposal facilities are made available to the lot owners in this subdivision, each owner therein shall attach to such facilities within two (2) years of the availability date. Right of enforcement of this covenant is hereby granted to the Hendricks County Plan Commission, Hendricks County Health Department, and their collective successors or assigns.
16. Vehicle Regulations. No vehicle of more than one (1) ton hauling capacity or equivalent vehicle shall be parked in the subdivision except while making a delivery or pickup. No car, boat, truck, motor home or trailer that is not in operational condition and bearing the current year's license plate shall be permitted to remain on any homesite unless kept within a garage. No boat, trailer, recreational vehicle, truck larger than 3/4 ton pickup, or camper of any kind (including, but not in limitation thereof, house trailers or mobile homes, camping trailers and boat trailers) shall be kept or parked upon said Lot except within a garage.

17. Landscaping. The landscaping design on all Lots shall be submitted to, and approved by, the Committee. Initial landscape must be completed within one (1) year after completion of dwelling. Any non-wooded Lot must be improved with at least three (3) deciduous-type shade trees.
18. Maintenance of Lots and Improvements. The Owner of a Lot shall maintain the private yard, landscaping, residence, garage, utility building, and all other improvements on their Lot in the Development to prevent the same from becoming unsightly in manner that reasonably tends to detract from or diminish the aesthetic appearance of the subdivision, and by keeping the exterior of all improvements in a good state or repair. All Lots shall be mowed by the respective Owner at least twice per month during the months of April through September. No Lots 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 out of view from the Street, except on days of collection. In the event the Owner fails to meet this provision, then the Developer or Association may make the necessary arrangements for compliance; the Developer or Association may file a lien upon the respective Lot for the expense of such compliance and for costs associated with the lien; any action to foreclose the lien shall include attorney fees and the costs thereof.
19. Nuisances. No noxious or offensive activity shall be carried out or allowed to be carried out on any lot, nor shall anything be done or allowed to be done thereon which may become or be an annoyance or nuisance to the residents of the Development.
20. Swimming Pools. No swimming pools where the water level is either partially or completely above ground level shall be permitted. Any in-ground swimming pool shall be properly fenced so as to protect the safety of others. Any such pool and fence shall be approved by the Committee prior to installation.
21. Sidewalks. Concrete sidewalks with a minimum of four feet (4') shall be constructed on each side of the street. Lot Owners shall be responsible for the cost of constructing and maintaining the sidewalks on their respective Lots. Sidewalks shall be installed prior to issuance of Certificate of Occupancy. Lot Owners shall keep sidewalks on their respective Lots free of snow and cleared of debris.
22. Mailboxes. Size, location, lighting, height, color, and composition of every mailbox shall be approved by the Committee prior to installation and shall conform to specifications set forth by the United States Postal Service and/or Postmaster General.
23. Clothes Lines. Permanent clotheslines are not permitted.
24. Trash Receptacles. Every outdoor can or container for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street within the Development, except at the times when refuse

collections are being made. Every such can or container shall be secured so as to prevent entry by insects and animals.

25. Gardens. No garden shall extend in front of the back of the house.

26. Ditches and Swales. It shall be the duty of the Lot Owner to keep drainage ditches and swales on their Lot continuously unobstructed and in good repair. It is the obligation of the Owner to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this subsection.

27. Driveways. All driveways shall be constructed of either cement or asphalt and shall be so improved within one (1) year after occupancy of the dwelling.

28. Rules Governing Building and 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 the said Lots as a site for a single-dwelling residential structure, such Lot Owner 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 a one-single dwelling residential structure. Where an owner acquires adjoining lots for the purpose of building one dwelling across the common lot line, any side boundary line, set back restrictions or regulations shall not apply to said common lot line. No structure shall be built across lot lines coinciding with sanitary sewer easements, drainage easements, and utility easements.

29. Blanket Easement. Each Lot shall henceforth be encumbered by a blanket temporary easement for the purpose of installation, maintenance and upkeep of the drainage ways and sub-surface drains of the drive, with this blanket temporary easement being supplementary to the easements depicted on the Plat.

30. Dedicated Easements. Each Owner of a lot in the Development will take his title subject to the rights of utility companies, the Developer, Hendricks County, the Association, and the other lot Owners in those certain strips or areas of ground designated as an easement on the Plat. No permanent or other structures may occupy said easements excepting fences and the facilities for which the easements are reserved. Any structure erected within such an easement may be removed by the easement holder (at the lot Owners' expense) in necessary to the proper operation and maintenance of the facilities for which the easement is reserved. No facility shall occupy any easement in a position that will obstruct a property line or corner.

31. Improvement Location Permit. In addition to the approval of the Committee prior to construction of a dwelling, lot Owners must obtain an Improvement Location Permit from the Hendricks County Planning and Building Department before any structure, improvement, or land use may be altered, changed, placed, erected, or located in the Development.

32. Covenants for maintenance assessments through the Association.

- A. Creation of the Lien and Personal Obligation of Assessments. The Developer, being the owner of Diamond Cove, Sections 3 and 4 hereby covenants, and each subsequent owner of all Lots, by acceptance of a deed of conveyance, shall be deemed to covenant and agree to pay to the Association: (1) Annual assessments or charges; (2) Special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.
- B. Purposes of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners of all Lots and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Pond Area and street lights situated in the subdivision including, but not limited to, the payment of utilities and insurance thereof and repair, replacement, maintenance, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.
- C. Basis and Amount of Annual Assessments. The original assessment shall be in the amount One Hundred Dollars (\$100.00) per each Lot sold by the Developer, its representatives or assigns, by land contract or deed and assessment shall be distributed evenly against each Lot. All such assessments shall be paid to the Treasurer of the Association. From all such assessments, the Association shall pay for the cost of maintenance repair, upkeep, management and operation of the Pond Area and street lights. In no event shall any assessment or charge or special assessment as provided below be levied against or be due from Developer for any Lots owned by them or otherwise.

- D. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section C hereof, the Association may levy in any assessment year on each Lot sold by the Developer, its representatives or assigns, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of capital improvements. Provided any such assessment shall have the affirmative vote of two-thirds (2/3) of the votes of all voting members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.
- E. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section C hereof, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section C hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the voting members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.
- F. Quorum for Any Action Authorized under Sections D and E. The quorum required for any action authorized by Sections D and E hereof shall be as follows: At the first meeting called as provided in Sections D and E hereof, the presence at the meeting of Members or of proxies entitled to cast sixty percent (60%) of all votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement as set forth in Sections D and E, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- G. Date of Commencement of Annual Assessments. Due Dates. The initial annual assessments, provided for herein, shall commence on the first day of the month following conveyance of a Lot to an owner. The Assessment for each succeeding year shall become due and payable on the first day of April of each year. The Association shall make no adjustments or prorations of assessments. For the purposes of levying the assessment, assessments shall be considered as paid in advance and shall be levied against any Lot that is subject to these Restrictions. The due date of any special assessment under Section D hereof shall be fixed in the Resolution authorizing such assessment.



- H. Duties of the Board of Directors. The management, affairs and policies of the Association shall be vested in the Board of Directors. The Board of Directors of the Association shall prepare a roster of the properties and assessments applicable thereto at least thirty (30) days in advance of such assessment due date. Such assessment roster shall be kept in the office of the Association. Written notice of the assessment shall thereupon be sent to every owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Said certificates shall be conclusive evidence of payment or any assessment therein stated to have been paid.
- I. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner, the Lien, Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section G hereof), then the assessments and costs of collection thereof as hereinafter provided, shall thereupon become a continuing lien of the property which shall bind such property in the hands of the Owner, his heirs, devisees, personal representatives and assigns. If the assessment is not paid thirty (30) days after the delinquency date, a penalty fee not to exceed ten dollars (\$10.00) shall be added thereto and from the date interest at the rate of eighteen percent (18%) per annum may be added to the delinquent balance and penalty and the Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property. There shall be added to such assessment, delinquent fee and interest the cost of preparing and filing a Complaint in such action; and in the event of Judgment, such Judgment shall include interest on the total amount as above provided and reasonable attorney's fee to be fixed by the Court, together with the costs of the action.
- J. Subordination of the Lien to Mortgages. The lien of the assessments provided for therein shall be subordinate to the lien of any mortgage or mortgages now or hereinafter placed upon the properties subject to assessments; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien or any such subsequent assessment.
- K. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein; (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to the public use; (b) all properties exempted from taxation by the laws of the State of Indiana upon the

terms and to the extent of such legal exemption; (c) all properties owned by the Developer, its successor and assigns, and held by them or any of them for sale or resale, including any Lots which may have been reacquired by the Developer. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges and liens.

- L. Voting and Board. Each owner of a Lot in the Development shall be a member of said Association and shall have one (1) vote for all matters coming before the Association including the selection of a Board of Directors, which Board shall consist of not less than three (3) or more than five (5) members and which shall assume their duties upon expiration of the term of the Initial Board of Directors.
- M. Initial Board. The Initial Board of Directors shall consist of two (2) members appointed by the Developer. The Initial Board shall serve until the Developer has sold seventy-five percent (75%) of the lots in the Development, at which time the Association shall be turned over to the homeowners, and a Board of Directors elected.

33. Carriage Lights. Dusk-to-dawn carriage lights are required on all lots. Individual Lot Owners shall be responsible for the cost and installation of their light prior to occupancy of their home. The style of light shall be predetermined by the Developer and shall be standard throughout the subdivision. The Committee shall approve the location of the light on each Lot.

34. Enforcement. The Developer, Committee, Association, or any Owner of any Lot in this subdivision may initiate any proceeding at law or equity against any person or persons violating or attempting to violate any covenant herein. The successful party to any such action shall recover attorney fees and costs incurred in such action. A violation of any restriction herein will not result in reversion or forfeiture of title.

If any Owner of a Lot in this subdivision shall fail to perform his or her obligations required herein, the Developer, Association or Committee shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and perform such duties as may be reasonable or necessary to make said Lot, and/or any improvements situated thereon, conform to the requirements of these restrictions. The cost thereof to the Developer, Association, or Committee shall be collected in any reasonable manner from the Owner. Neither the Developer, Association, or Committee nor any of its agents, employees, or contractors shall be liable for any damage that may result from any maintenance or other work performed hereunder. 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 subordinate only to the lien of a first mortgage 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 eighteen percent (18%) per annum until paid in full. If, in the opinion of the Developer, Association, or Committee, such charge has remained due and payable for an unreasonable long period of time, the Developer, Association, or Committee may institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owed, 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 due at the time legal action is instituted, be obligated to pay any expenses or costs, including attorney's fees, incurred by the committee in collecting the same. Every Owner of a Lot in this subdivision, 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 this subdivision 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 all fines that shall be made pursuant to this paragraph.

33. Term. These covenants will run with the land and shall be binding on all parties, and all persons claiming under them, for a period of twenty-five (25) years from the date these covenants are recorded, after which twenty-five (25) years they shall be automatically extended for successive ten (10) year periods, unless at any time after the Development Period has expired an instrument signed by a majority of the Lot Owners has been Recorded agreeing to change said covenants in whole or in part. Developer hereby reserves the right, from time to time and at any time during the Development Period, to modify, supplement or amend this Declaration, without the consent of any Owner or Party in Interest; provided that Developer records the modification in the Office of the Recorder of Hendricks County, Indiana, and the modification is for any one or more of the following purposes: (i) to clarify one (1) or more covenants, conditions, terms or provisions in this Declaration, without materially changing the substance thereof; or (ii) to change the substance of one (1) or more covenants, conditions, terms or provisions of this Declaration; provided that such change shall not materially increase the obligation(s) of any Owner (other than Developer) under any covenant, condition, term or provision without such Owner's consent, unless such change is necessary to comply with a bona fide governmental requirement, including applicable laws, ordinances, regulations or orders of any Municipality or court having jurisdiction.

33. Severability. Invalidation of any one of these covenants by court order shall not affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Owners and Developers of the Diamond Cove, Sections 3 and 4, have hereunto set their hand and seal this 24 day of September 2004.

John E. Hall  
John E. Hall

John A. Daum  
John A. Daum

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public, in and for said County and State, personally appeared John E. Hall and John A. Daum, who acknowledged the execution of the foregoing to be their voluntary act and deed for the uses and purposes contained therein.

WITNESS my hand and seal this 7th day of September, 2004.

My Commission Expires: \_\_\_\_\_

M. Russann Pence  
Notary Public - Signature

Resident of \_\_\_\_\_ County

\_\_\_\_\_  
Notary Public - Printed Name

This instrument was prepared by Ben Comer, Attorney-at-Law, Comer Law Office, P.O. Box 207, Danville, IN 46122, (317-745-4300).

