

Inc. has been formed at which time it shall become the responsibility of the Walnut Creek Property Owners Association, Inc. to maintain this Planting Easement.

8. COMMON AREA NO. 1, VARIABLE P.L.M.E., COMMON AREA NO. 2, AND COMMON AREA NO. 3.

- A. There are identified on the plat of the Development areas to be owned by the Association and designated as Common Area No. 1 which comprises a retention pond designed to accommodate storm water drainage runoff from the development and adjoining real estate. The area identified as Common Area No. 1 shall be conveyed by the Developer to the Association.

There is also identified on the plat of the Development an area to be owned by the Association and designated as Common Area No. 2 which comprises entry retaining walls, trees, natural gas lights and open space. The area identified as Common Area No. 2 shall be conveyed by the Developer to the Association.

There is also identified on the plat of the Development an area to be owned by the Association and designated as Common Area No. 3 which comprises open space and a private concrete drive which serves lots 1 through 5 of the Development. The area identified as Common Area No. 3 shall be conveyed by the Developer to the Association.

B. Certain Obligations and Access Rights to the Common Area No. 1.

- (i) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management, control and maintenance, for the exclusive benefit of the Owners as provided herein, of the Common Area No. 1 in a safe, neat and orderly condition at all times.
- (ii) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area No. 1 across the lots adjoining said lake, at reasonable times and at any time in the case of an emergency, as reasonably required by its officers, directors, employees, and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of the Developer so long as the Developer owns any portion of the development and for so long as the Developer may be responsible for any warranty work.
- (iii) An easement is hereby dedicated and granted for the use, in the case of an emergency, of emergency vehicles, including, but not limited to, fire trucks, police cars and ambulances and of emergency personnel, public and private, over and upon the Common Area No. 1 owned by the Association and the adjoining lots.

C. Use of Common Area No. 1.

- (i) Except as otherwise provided herein, the enjoyment of the Common Area No. 1 shall be limited to the owners of the lots adjoining the Common Area No. 1 as shown on the plat.
- (ii) Except for the rights of the Developer, the Association, and their employees, heirs, successors and assigns, as set forth in this Declaration, no individual shall have the right to

cross a lot other than his own or public right of way for access to the Common Area No. 1.

- (iii) No one shall commit or permit any action or activity which could result in pollution of the lake, diversion of water, elevation of lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper lake management except as provided in this Declaration. The lake may not be used for swimming, fishing, boating or for any other purpose, except for drainage of the Development, unless allowed by law and expressly and specifically approved by the Association and so stated, in writing, by the Board of Directors.

D. Use of Common Area No. 3.

- (i) Except as otherwise provided herein in item (v) below, the use of Common Area No. 3 shall be limited to the owners and their guests of lots 1 through 5 of the Development.
- (ii) The Association will be responsible for the management of Common Area No. 3 to keep such area in good, clean, attractive and safe condition.
- (iii) Each owner of lots 1 through 5 of the Development, by acceptance of a deed thereof, agrees to pay its equal share of the maintenance of Common Area No. 3 to include the maintenance and repair of the private concrete drive which serves lots 1 through 5. Any costs related to the repair of the private concrete drive shall be equally shared by the owners of lots 1 through 5 of the Development.
- (iv) The Association has the same remedies for enforcement of the maintenance of Common Area No. 3, including the private concrete drive, with the owners of lots 1 through 5 as provided in Paragraph 14, "COVENANT FOR MAINTENANCE ASSESSMENT" of these Covenants and Restrictions.
- (v) There is shown on the plat of the Development, within Common Area No. 3, an Ingress and Egress Easement (I.E.E.) for the use of the public utilities, emergency vehicles, Hamilton Southeastern Utilities, the Association for management purposes, etc., to provide access to lots 1 through 5 of the Development.

9. LANDSCAPE MAINTENANCE EASEMENTS (L.M.E.), SIGN LANDSCAPE EASEMENTS (S.L.E.), COMMON AREA NO. 1, AND COMMON AREA NO. 2.

A. The Association, as part of its duties and as part of the Association's expenses, shall provide for:

- (i) Maintenance of the L.M.E.'s, S.L.E.'s, Common Area No. 1 and Common Area No. 2. Maintenance shall include, but shall not be limited to, fertilizing, mowing and replanting, when necessary, of the grass and trees, and maintenance of any other improvement within these areas.
- (ii) Maintenance of the entry signs and walls, including the retaining wall of Common Area No. 2, and the perimeter landscaping installed by the Developer.
- (iii) All manner of erosion control, bank stabilization and chemical treatments with respect to the Common Area No. 1.

5. The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the L.H.B.'s and Common Area No. 1, Common Area No. 2 and Common Area No. 3 as it deems necessary.

10. EXPANSION.

- A. Property Subject to Expansion by the Developer. The Developer reserves the right to expand the amount of property subject to this Declaration, as amended from time to time, without the consent of the Owners, or any other party.

11. ARCHITECTURAL REVIEW COMMITTEE.

- A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements subject to these Restrictions 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 written 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 two (2) 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.
- (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 sole opinion and absolute discretion of the Committee, be contrary to the interests, welfare or rights of all or any portion of 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 liable in any way for the approval or disapproval of 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. At such time that the Developer notifies the Association in writing that it is relinquishing its memberships on the Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.
- F. Builder Approved Plans. Prior to any construction start, any builder who builds in the Development shall submit any and all building plans it proposes to build in the Development to the Developer for written approval. Once the Developer provides written approval to the builder that such plan(s) has (have) been approved, the builder shall be permitted to build such plan(s) throughout the term of its contractual agreement with Developer to purchase lots in the Development without further submission to the Developer and/or Architectural Review Committee.
12. 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-family house.
13. WALNUT CREEK PROPERTY OWNERS' ASSOCIATION, INC.
- A. In General.
- (1) 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 Walnut Creek Property Owners' Association, Inc., which is herein 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 assessment.

- 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 seventy five percent (75%) of the lots in the Development; or
- (b) On January 1, 1999.

- 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, and 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 at the entry and along Cumberland Road and within the landscape easements as shown on the plat(s) and shall keep such areas in a neat, clean and presentable condition at all times.
- (ii) The Association shall govern the use of and maintain the common areas as defined herein.
- (iii) The Association may procure and maintain casualty insurance, liability insurance (including Directors' and officers' liability insurance) and such other insurance as it deems necessary or advisable.
- (iv) 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.

14. COVENANT FOR MAINTENANCE ASSESSMENT.

- A. Creation of Lien and Personal Obligation of Assessments. Each owner of a lot in the Development, except the Developer, by acceptance of a deed therefore, 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 lot and shall be a continuing lien upon the lot 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 Owner of such Lot at the time when the assessment fell due. 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 Development and for the improvement and maintenance of improvements, owned, operated or maintained by the Association that may, from time to time, be construed by the Developers, and the landscape easements within 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 Section C. Written notice of any meeting called for the purpose of taking any action authorized under Section C 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, exclusive of the original builder, by deed or on the date the Owner signs a land contract to purchase a lot. The initial annual assessment shall not exceed One Hundred Fifty and 00/100 Dollars (\$150.00). The Board of Directors shall fix any increase in the amount of the annual 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 expenses or costs, including attorneys' fees, incurred by the Association in collecting the same. Every 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.

- G. Subordination of the Lien to Mortgage. A lien for 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, that 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 property and the facilities of the Association, of any member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the 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 rules and regulations of the Association.

15. 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 of continuation of any violation of these Restrictions, or to force compliance with these Restrictions and Covenants, together with right to collect costs and reasonable attorneys' fees, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing to enforce or carry out any of these Restrictions.
- B. Delay of 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) of any right available to him upon the occurrence, reoccurrence or continuation of such violations of these Restrictions.
- C. Enforcement by Town of Fishers, Municipal Plan Commission. These Restrictions may be enforced by the Plan Commission of the Town of

Fishers, Indiana, or its successors or assigns, pursuant to whatever powers or procedures are statutorily available to it for such purposes.

16. **EFFECT OF BECOMING AN OWNER.** The Owners of any lot subject to these Restrictions by acceptance of a deed conveying title hereto, 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, the Committee and 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, the 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 covenants.
17. **TITLES.** The titles preceding the various paragraphs and subparagraphs of these Restrictions are for convenience of reference only and none of them shall be used as an aid to the construction of any provision of these 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.
18. **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, 2015, 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 seventy-five percent (75%) of the numbered lots in the Development.
19. **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.
20. **AMENDMENT.** These Restrictions may be amended by a vote of seventy-five percent (75%) of the then lot owners of all lots in the Development.

IN WITNESS WHEREOF, witness the Developer has executed these Restrictions this 23rd day of November, 1994.

PINE BLUFF OVERLOOK CORPORATION

By: Larry E. Cronkleton

Printed: Larry E. Cronkleton, President
"DEVELOPER"

EXHIBIT "A"

Legal Description:

Part of the Northeast Quarter of the Southeast Quarter of Section Six (6), Township Seventeen (17) North, Range Five (5) East, Delaware Township, Hamilton County, Indiana, described as follows: Commencing at the Southeast corner of the Southeast Quarter of said Section Six (6), thence on an assumed bearing of North 90 degrees 20 minutes 47 seconds East along the East line of said Southeast Quarter a distance of 1319.68 feet to the Southeast corner of the Northeast Quarter of said Southeast Quarter section being the point of beginning; thence North 89 degrees 17 minutes 56 seconds West along the South line of said Northeast Quarter Quarter a distance of 1316.94 feet to the Southwest corner of said Northeast Quarter Quarter; thence North 00 degrees 15 minutes 18 seconds East along the West line of said Northeast Quarter Quarter a distance of 900.01 feet; thence South 89 degrees 17 minutes 56 seconds East parallel with the South line of said Northeast Quarter Quarter a distance of 1318.37 feet to the East line of said Northeast Quarter Quarter; thence South 00 degrees 20 minutes 47 seconds West along said East line a distance of 900.00 feet to the point of beginning. Containing 27.224 acres, more or less.

This Instrument Recorded 11-29-1994
Sharon K. Cherry, Recorder, Hamilton County, IN

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