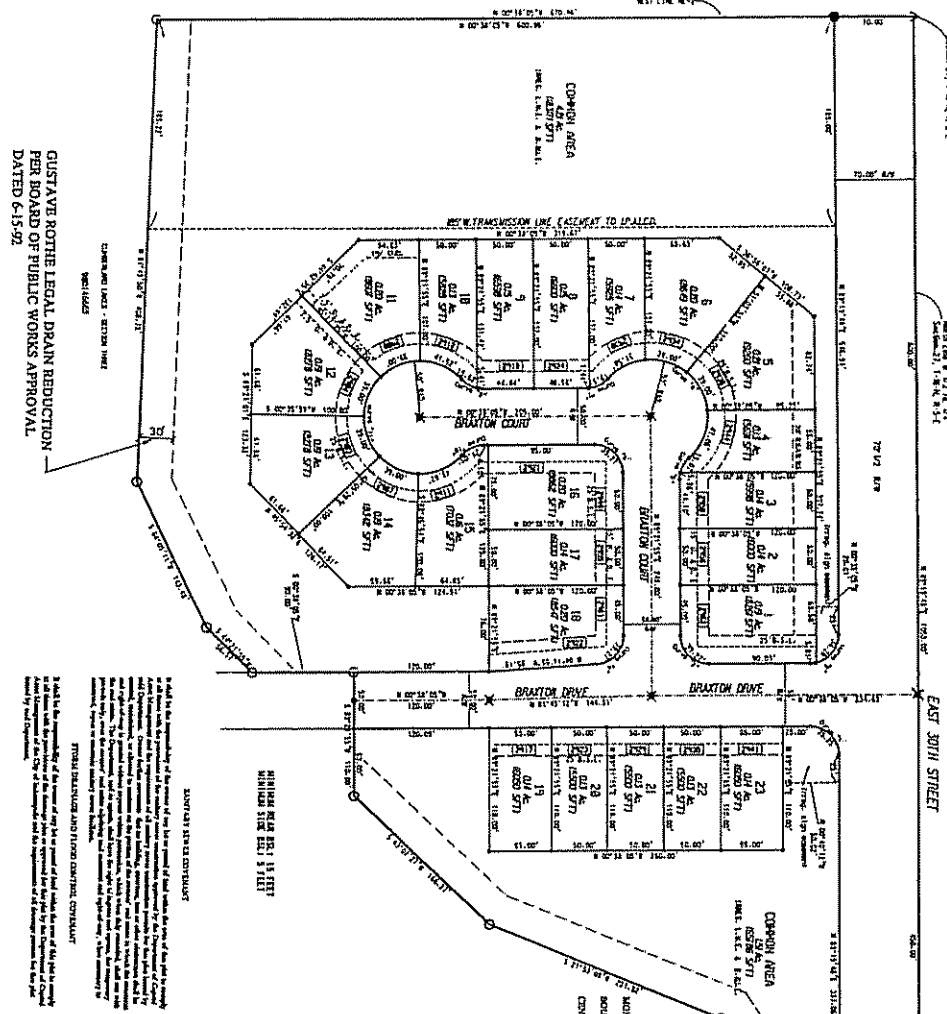


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 SUPERIOR COURT  
 8-9-2002



00082774  
**RECORD PLAT FOR**  
**CUMBERLAND LAKES SECTION ONE**



**CUMBERLAND LAKES SECTION ONE**  
 Lot Area Summary

LOT	AREA	ADJACENT LOTS	TOTAL AREA
1	11,111.11	2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
2	11,111.11	1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
3	11,111.11	1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
4	11,111.11	1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
5	11,111.11	1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
6	11,111.11	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
7	11,111.11	1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
8	11,111.11	1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
9	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
10	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
11	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
12	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
13	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
14	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
15	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23	11,111.11
16	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23	11,111.11
17	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23	11,111.11
18	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23	11,111.11
19	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23	11,111.11
20	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23	11,111.11
21	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23	11,111.11
22	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23	11,111.11
23	11,111.11	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22	11,111.11

**2000.PLT.068**  
 Zoning Code: CT & QL, S-225 (D-5) 10/11/01

APPROVED BY THE BOARD OF SUPERVISORS  
 DATE: APRIL 23, 2002



APPROVED BY THE BOARD OF SUPERVISORS  
 DATE: APRIL 23, 2002  
 COUNTY OF BERNICE



APPROVED BY THE PLANNING COMMISSION  
 DATE: APRIL 23, 2002  
 COUNTY OF BERNICE

APPROVED BY THE COUNTY ENGINEER  
 DATE: APRIL 23, 2002  
 COUNTY OF BERNICE

APPROVED BY THE COUNTY CLERK  
 DATE: APRIL 23, 2002  
 COUNTY OF BERNICE

APPROVED BY THE COUNTY ATTORNEY  
 DATE: APRIL 23, 2002  
 COUNTY OF BERNICE

APPROVED BY THE COUNTY COMMISSIONER  
 DATE: APRIL 23, 2002  
 COUNTY OF BERNICE

APPROVED BY THE COUNTY SHERIFF  
 DATE: APRIL 23, 2002  
 COUNTY OF BERNICE

APPROVED BY THE COUNTY JUDGE  
 DATE: APRIL 23, 2002  
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 COUNTY OF BERNICE

APPROVED BY THE COUNTY JUDGE  
 DATE: APRIL 23, 2002  
 COUNTY OF BERNICE

8-24-98  
RECORDING #

SEC II 98-146664

SEC III 98-146665

(54)

JOHN R. VON ARX  
DIRECTOR

146188 SEP 25 88

SUBJECT TO THE ACCEPTANCE  
FOR TRANSFER

DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
LIENS AND RESERVATIONS OF EASEMENTS  
FOR  
CUMBERLAND LAKES

Prepared by:

E. Richard Oberschmidt, Esq.  
Frost & Jacobs LLP  
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Cincinnati, Ohio 45202

09/28/98 09:16AM JOAN N. ROKERIL MARION CTY RECORDER MEM 117.00 PAGES: 54

Inst # 1998-0166809

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**DECLARATIONS OF COVENANTS, CONDITIONS, RESTRICTIONS, LIENS  
AND RESERVATIONS OF EASEMENTS FOR  
CUMBERLAND LAKES**

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, LIENS AND RESERVATIONS OF EASEMENTS FOR CUMBERLAND LAKES ("Declaration") is made this 25 day of Sept., 1998, by CROOKED CREEK AT GEIST DEVELOPMENT CO., INC., an Indiana corporation ("Developer"), under the following circumstances:**

WHEREAS, Developer is the owner of certain real property located in Marion County, Indiana, more particularly described in Exhibit A attached to this Declaration (the "Property").

WHEREAS, Developer desires to declare that the Property shall be held, sold and conveyed subject to the provisions of this Declaration.

WHEREAS, Developer has formed Cumberland Lakes Homeowners' Association, Inc., which shall be responsible for the administration and enforcement of the provisions of the Declaration.

WHEREAS, Developer owns or may acquire other real property in the vicinity of the Property that may be annexed to the Property and subjected to this Declaration.

NOW, THEREFORE, for the purposes of establishing and assuring a uniform plan for the development of the Property, and enhancing and protecting the value, desirability and attractiveness of the Property, Developer declares that the Property shall be held, occupied, sold and conveyed subject to this Declaration and be binding on all parties having any right, title and interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE 1 – DEFINITIONS**

In addition to any definitions contained elsewhere in this Declaration, the following terms used in this Declaration shall have the meanings set forth in this Article 1.

- 1.1 Additional Property. "Additional Property" means other real property in the vicinity of the Property which is owned and/or acquired by Developer which may be annexed to Cumberland Lakes.
- 1.2 Articles and Articles of Incorporation. "Articles" and "Articles of Incorporation" mean those articles, as the same may be amended from time to time, filed with the Secretary of State of Indiana, incorporating the Association, as a non-profit

corporation under the laws of Indiana. A true copy of the Articles is attached hereto as Exhibit C and made a part hereof.

- 1.3 Assessments. "Assessments" means the charges established by Article 3 of this Declaration.
- 1.4 Association. "Association" means the Cumberland Lakes Homeowners' Association, an Indiana not-for-profit corporation, which will own, operate and/or maintain the Common Property, and any successor organization that owns, operates and/or maintains the Common Property.
- 1.5 Board. "Board" means the Board of Directors of the Association.
- 1.6 Builder. "Builder" means any person or entity, other than the Developer, who, in the ordinary course of business, constructs a Dwelling Unit with or without accessory structures (i) for resale to, or on behalf of, a third party, or (ii) for their own use or the use of their family. A Builder may or may not be an Owner.
- 1.7 By-Laws. "By-Laws" means the By-Laws of the Association, as the same may be amended from time to time. A true copy of the By-Laws is attached hereto as Exhibit B and made a part hereof.
- 1.8 Common Property. "Common Property" means all real and personal property owned by, leased to or under the control of the Association and landscaping, berm mounds, walls or any monumentation located within any easement area or dedicated right of way as set forth on any subdivision plat of the Development for the common use and enjoyment of the Owners. Common Property includes, but is not limited to: playgrounds and associated open areas and entrance walls, private drainage and sewer systems, lakes, ponds, drainage ways, parking areas, pathways, recreational facilities, common utility lines, fences, irrigation systems and other improvements and facilities owned, operated or maintained by the Association.
- 1.9 Declaration. "Declaration" means this instrument as the same may be amended from time to time as hereinafter provided.
- 1.10 Default. "Default" means any violation, breach or any failure to comply with, this Declaration or the By-Laws, or other standards, rules or regulations adopted pursuant to this Declaration.
- 1.11 Development. "Development" shall mean all phases or sections of the record plat for Cumberland Lakes, a subdivision in Marion County, Indiana, and consisting of all the property from time to time made subject to the provisions of this Declaration.

- 1.12 Dwelling Unit. "Dwelling Unit" means any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by persons or a family.
- 1.13 Lot. "Lot" means any parcel of the Property shown as such on the record plat of the Development. Unless the context otherwise requires, the term "Lot" shall be deemed to include both the parcel of Land and the Dwelling Unit on that Land, if any, excluding Common Property.
- 1.14 Member. "Member" means any Owner who is a member of the Association as provided in the Articles of Incorporation.
- 1.15 Owner. "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including purchasers on land installment contracts and including contract sellers on other forms of executory contracts for the sale of a Lot, but excluding those having such interest merely as security for the performance of an obligation.
- 1.16 Phase or Section. "Phase or Section" shall mean all of the land area encompassing a group of Lots as designated on a recorded subdivision plat including streets and Common Property.
- 1.17 Director. "Director" means any person elected or appointed to the Board.

## ARTICLE 2 - ASSOCIATION MEMBERS AND VOTING

- 2.1 Members. Every Owner shall be a member of the Association, and such membership shall be appurtenant to and may not be separated from ownership of a Lot. Developer shall be a member of the Association so long as it qualifies as a Class A or Class B member as defined in Section 2.2.
- 2.2 Classes and Voting Rights. The Association shall have two (2) classes of voting memberships:
  - A. CLASS A – Class A members shall be all the Owners, except the Developer (if the Class B membership exists). Except as provided below, Class A members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, the vote for such Lot shall be exercised as the majority of such persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot notwithstanding the number of persons who may own an interest therein. The Board shall be entitled to suspend voting rights of a Member in the Association during the time period in which the Member has breached the provisions of this Declaration or any of the By-Laws, rules or regulations of the Association.



- B. CLASS B – The Class B member shall be the Developer and such member shall be entitled to such number of votes as will constitute seventy-five percent (75%) of the total voting power of the Association, so long as the Class B membership continues to exist. The Class B membership shall continue to exist to the extent permitted by Indiana law and shall be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:
- (i) Upon the annexation to this Declaration of the Property described in Exhibit A and the Additional Property by Developer and the sale of seventy-five percent (75%) of the Lots included therein to individual Lot owners;
  - (ii) Upon the expiration of seven (7) years after the date this Declaration is filed for record. Provided, further, that nothing herein shall be construed to prohibit the Class B member from converting its Class B membership to Class A membership with the results set forth above at any time earlier by written statement executed by Developer and delivered to the Association.
- 2.3 Administration by Association. Subject to the rights retained by Developer pursuant to this Declaration, the ownership, operation and maintenance of the Common Property and of the administration and enforcement of this Declaration shall be by the Association in accordance with the terms and provisions of this Declaration.
- 2.4 Compliance by Owners. Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, By-Laws, rules and regulations of the Association and the decisions and resolutions of the Association or its representatives, all as lawfully amended from time to time. Failure to comply with any such provisions, rules and regulations, decisions and resolutions shall be grounds for an action to recover sums due and for damages and injunctive and other appropriate relief.

#### ARTICLE 3 – ASSESSMENTS

- 3.1 Covenant of Payment: Creation of Lien. Each Owner of a Lot (other than Developer, except as hereinafter provided), by acceptance of a deed or other instrument of conveyance for a Lot, agrees to pay to the Association the Assessments provided in this Article 3. The Assessments (including late charges and costs of collection, as provided below) shall be a charge and a lien on each Lot and shall be the personal obligation of the Owner of each Lot, to the extent and for the period provided in this Article 3.

- 3.2 Annual Assessment. The Association shall be entitled to collect from all Owners an annual assessment for Common Expenses and other purposes described in Article 3.3 below. The annual assessment or prorated portion thereof for each Lot Owner in each respective Phase or Section of the Development shall commence on the first day of the month following the conveyance of the first Lot from Developer or Builder to an Owner (other than a Builder) in that Phase or Section of the Development. The annual assessment shall be due and payable on such date or dates as determined by the Board. It shall be the duty of the Board to determine the amount of the annual assessment allocated to each Lot, provided, however, that the annual assessment shall not be less than \$135.00. The Board shall make reasonable efforts to determine the assessment amount for the following year, by the first day of December of each year, and shall at that time, prepare a roster of the Lots and the portion of the assessment allocated thereto, which shall be open for inspection by any Owner upon reasonable notice to the Board. Written notice of the assessment shall thereupon be sent to the Owner within seven (7) days after a billing therefor. The Board shall be entitled to change the method of collection of assessments as it may, from time to time, elect.

Failure to act within any time period established in the Declaration shall not affect the rights of the Board to collect assessments as provided herein.

- 3.3 Calculation of Annual Assessment. Each Owner shall be responsible for and shall pay that portion of the annual assessment allocable to the Owner's respective Lot as determined by the Board. The Board shall have the right to require the annual assessment to be paid in periodic installments during the year or in a single installment as determined by the Board. Each calendar year the Board will establish a budget setting forth the estimate by the Board of the Common Expenses for the upcoming year. The annual assessment shall equal the estimate of the Common Expenses for the year, together with a reasonable addition to the reserves of the Association. The Board during any calendar year shall be entitled to increase the annual assessment for that year if it should determine that the estimated or current assessment is insufficient to cover Common Expenses for that year, provided that the Board shall give at least thirty (30) days advance notice thereof to the Owners. In the event that the annual assessment is less than the Common Expenses incurred for said year, the Board shall notify the Owners and furnish the owners with a statement of the additional sums due and owing by the Owners, and the same shall be immediately due and payable.

- 3.4 Interest. Delinquent assessments shall bear interest at such interest rates as are from time to time established by the Board (which interest rate shall not exceed the maximum legal interest rate allowed to be charged to an individual under the laws of Indiana). The Board shall have the right to establish a late charge for delinquent payments in addition to interest charges.

- 3.5 Purpose of Annual Assessment. The annual assessment is established for the benefit and use of the Association and shall be used in covering all of the Common Expenses; the operation, maintenance, and repair of Common Property; other portions of the Property that the Association is obligated to repair under this Declaration; and the performance of all other duties and obligations to be performed by the Association under this Declaration. The Common Expenses may include, but are not limited to, the costs of employees' wages, materials, equipment, supplies, insurance premiums for the insurance of Common Property, officers and Directors liability insurance, rental fees for any Common Property leased to the Association, the cost of reasonable reserves for contingencies, replacements, and working capital, taxes and assessments on the Common Property, management fees, legal and accounting fees, capital improvements and additions for Common Property, and all other costs and liabilities incurred by the Association in the exercise of its powers and duties pursuant to this Declaration or the By-Laws.
- 3.6 Special Assessment (Operating Shortfalls). If in any year the Common Expenses exceed the income from the annual assessment, the amount of any operating deficit may, at the Board's sole option, be charged to the Owners by means of a special assessment.
- 3.7 Individual Assessment. If any portion of the Common Property that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of an Owner or Owner's guest or invitee, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The choice between repair and replacement is in the sole discretion of the Board. The cost so incurred by the Board shall be assessed as an individual assessment against all Lots owned by the Owner responsible for the damage. No such assessment may be levied against Lots owned by the Developer without the Developer's written consent.
- 3.8 Creation of Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed for the Lot, whether or not it shall be so expressed in such deed, shall be deemed to have covenanted and agreed to pay to the Association the Assessments. The Assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a continuing lien upon the property against which each such Assessment is made. Each such Assessment, together with interests, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessment was made. The personal obligation for a delinquent Assessment shall not pass to a successor in title, unless expressly assumed by such successor (although any liens for assessments established hereunder shall run with the land). If the obligation is so assumed by a successor in title, the successor and the former Owner shall be jointly and severally liable for payment of the amount due and payable.

The Association shall also have the authority, through the Board, to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any provisions of this Declaration, which breach shall require the expenditure of time or money, or both, by the Association for the repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each Assessment levied by the Association on his Lot within ten (10) days after receipt of an invoice for the same, and further covenants that if said charge shall not be paid within thirty (30) days from the date that said invoice is deposited, postage prepaid in the United States mail, in an envelope addressed to the Owner at the address of the Lot, the amount of such charge shall become a lien upon said Owner's Lot and shall continue to be such lien, until fully paid. The Association may perfect such lien by recording a notice of lien with the Recorder of Marion County, Indiana. The lien shall be prior to all other liens and encumbrances whatsoever, except real estate taxes and assessments, liens of record in favor of the United States of America, the State of Indiana, or other governmental instrumentalities to the extent made superior by applicable law, and all bona fide recorded first mortgages.

- 3.9 Enforcement of Lien. Any lien established under this Declaration may be enforced by the Association in the same manner and to the same extent (including appointment of a receiver, foreclosure sale and deficiency judgment) and subject to the same procedures as in the case of foreclosure of a real property mortgage. In any enforcement proceeding, the amount that may be recovered by the Association shall include all costs of the proceeding, and, to the extent permitted by law, reasonable attorney's fees. In any foreclosure sale, the Association may purchase the Lot.
- 3.10 Purchaser at Foreclosure Sale. Any purchaser of a Lot at a foreclosure sale shall automatically become a member of the Association and shall be subject to all of the provisions of this Declaration. When the purchaser of a Lot acquires title to the Lot as a result of a foreclosure action, the purchaser shall not be solely liable for the share of the Assessments chargeable to the acquired Lot that became due prior to the acquisition of title to that Lot. Instead, any unpaid share of the Assessments that became due and payable prior to the date of purchase shall be deemed to be part of the Assessments collectible from all of the Lots, including that of the purchaser.

#### ARTICLE 4 - COVENANTS AND RESTRICTIONS

- 4.1 Other Use Restrictions and Zoning Commitments Applicable to the Property. The plat covenants and zoning commitments relating to the Property contain additional restrictions on the use of the Lots within the Property. The plat

restrictions are set forth on the individual plats of the various sections within the Property. The zoning commitments are recorded as Instrument Number 97-0013115 in the Office of the Recorder of Marion County, Indiana.

- 4.2 Real Covenants. The provisions of this Declaration are for the benefit of Developer, Builders and Owners as provided herein, and run with the land and shall be binding on all parties and all persons claiming ownership under them, except as otherwise specifically provided herein.
- 4.3 Residential. All of the Lots shall be used for private residential purposes exclusively, and for no other purpose. No professional or custom home industry shall be conducted in or on any part of any Lot or improvement thereon without the written approval of the Board. These restrictions shall not apply to Developer in connection with model improvements, use and sales offices.
- 4.4 Activity Restrictions. Except for the activities of Developer prior to the date on which the Developer has sold and conveyed all Lots in Development:
- A. No noxious or offensive trade shall be carried on or upon any Lot or within any improvement situated upon the Property, nor shall anything be done thereon which may or may become an annoyance or nuisance to the neighborhood or the Owners.
  - B. The maintenance, keeping, boarding or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot, except that this shall not prohibit the keeping of dogs, cats, caged birds or aquarium fish or other domestic pets provided they are not kept, bred, or maintained for commercial purposes, and provided they are kept according to the rules and regulations of the Association. No Owner shall permit or conduct an activity which may violate any applicable law affecting any Lot.
  - C. No burning of any trash, accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any Lot.
  - D. Except as provided herein, no commercial vehicle, trailer, trucks of more than one ton, motorcycle, camper, camp truck, horse trailer, boat or the like shall be kept or used on the Property unless totally enclosed within an improvement or garage, so as not to be visible from the exterior thereof. No junk vehicle, inoperative or unlicensed motor vehicle, structure of a temporary character, mobile home, tent, shack, barn, or other outbuilding shall be kept or used upon any Lot, nor (except for bona fide emergencies) shall the major repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon.

- E. Trash and garbage containers shall not be permitted to remain in the public view except on days of trash collection.
- F. No signs of any character shall be erected, posted, or displayed upon any Lot, except street and identification signs installed by the Association or the Developer and excepting one (1) temporary real estate sign not to exceed six (6) square feet in area erected upon any Lot which advertises the same upon the market for sale or rent. This restriction shall not apply to Builders who may erect such signs as are authorized by the Developer.
- G. No structure, planting or other material other than driveways or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with an easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction of flow of any drainage channels.
- H. No vegetable garden shall be larger than 300 square feet and must be maintained so as not to be unsightly. No Owner shall be allowed to store more than two cords of firewood on any Lot. Firewood must be neatly stacked and free of unsightly debris.
- I. No oil drilling, quarrying, or mining operation shall be permitted on any Lot.
- J. No above-ground swimming pools shall be permitted on any Lot.
- K. Swingsets, jungle-gyms, playhouses or similar yard equipment, basketball courts or any other recreational facilities may not be placed, installed or maintained on any Lot without prior approval of the Board. Tennis courts shall not be permitted.
- L. Mailboxes shall be black galvanized steel, rural mailbox, medium model 1 - 1 ½, mounted on a 4x4 rough sawn cedar post or such other uniform design as approved by the Board.
- M.
  - (i) No fence or any portion thereof may be installed on that part of any Lot which is closer to the street than the primary rear wall of the Dwelling Unit on the Lot. The "primary rear wall" shall be determined by lineal feet of wall area at the rear of the Dwelling Unit, and garage walls shall not be included in the calculation of the primary rear wall if the garage extends further to the rear of the Dwelling Unit than does the living area of the Dwelling Unit.

- (ii) No fence may be installed on any Lot in the rear yards of any Dwelling Unit unless constructed of wood in a "split rail" or "post and board" design; provided that any fence enclosing a swimming pool and located entirely within thirty (30) feet of such pool may be of a design and construction as is from time to time required by applicable government authorities for enclosure of swimming pools.

N.

- (i) The Association may regulate the location, manner of installation, color and screening of any satellite dish or any television broadcast antenna placed outside a Dwelling Unit (each, a "Reception Device"), as long as such regulation does not (i) unreasonably delay or prevent the installation of an Owner's chosen Reception Device(s), (ii) unreasonably increase the cost of the installation, maintenance or use of an Owner's Reception Device(s), or (iii) preclude reception of an acceptable quality broadcast signal.
- (ii) If an acceptable quality signal can be received by placing Reception Devices inside a Dwelling Unit without unreasonable delay or unreasonable cost increase, then installation outside a Dwelling Unit is prohibited. If not so prohibited, then Reception Devices may be no larger or installed no higher than is absolutely necessary for reception of an acceptable quality signal. Reception Devices may not encroach upon any Common Property.
- (iii) The Association may require an Owner to paint a Reception Device to match the Dwelling Unit with a specific type and color of paint, as long as such paint will not preclude reception of an acceptable quality signal or void a manufacturer's warranty for a Reception Device. The Association may require repainting or replacement if the exterior surface of a Reception Device deteriorates. The Association may require camouflaging of Reception Devices through inexpensive screening or plantings at the Owner's expense if the Reception Device is visible from other Dwelling Units or the Common Property.
- (iv) Prior to the installation of a Reception Device, a Unit Owner must notify the Association in writing of the type of Reception Device and proposed location and provide the Association with a copy of any required permit.

O. There shall be no violation of any rule or regulation for the use of any Common Property which may from time to time be adopted by the Board

and promulgated among the members in writing. The Board is hereby in this Declaration authorized to adopt such rules.

- P. The Owner of a Lot upon which a portion of the Common Property is located shall not alter the Common Property and shall not otherwise adversely affect or interfere with the intended use of the Common Property.
  - Q. There shall be no violation of any additional restrictions which may be, from time to time, reasonably imposed on the Owners by the Association in their use and enjoyment of the Lots.
- 4.5 Right of Association to Remove or Correct Violations. The Association or Developer may, in the interest of the general welfare of the Owners, and after reasonable notice to an Owner, enter upon any Lot within reasonable hours on any day for the purpose of directing Owner to correct any violations or breach or any attempted violation of any of the covenants and restrictions contained in Article 4, or violation of the rules and regulations of the Board, or for the purpose of directing an Owner to abate anything herein defined as a prohibited use or nuisance, provided, however, that no such actions shall be taken without a resolution of the Board. Before any improvements constructed may be altered or demolished pursuant to this Article, judicial proceedings must be brought against the Owner, except any signs may be removed which are prohibited per Article 4.4 (F) and except as set forth above.

#### ARTICLE 5 - COMMON PROPERTY

- 5.1 Rights of Enjoyment in Common Property. Each Owner shall have a right and a nonexclusive easement for the use and enjoyment of the Common Property. This right and easement shall be appurtenant to, and shall pass with the title to the Lot. Each Owner shall have a perpetual right of ingress and egress across the Common Property to that Owner's Lot, which shall be appurtenant to the ownership of the Lot. These rights and privileges shall be subject, however, to the following:
- A. The right of the Board to levy the Assessments.
  - B. The right of the Board to adopt, enforce and amend reasonable rules and regulations pertaining to the use of the Common Property.
  - C. The right of the Board to suspend the right of any Owner to use any of the Common Property that is recreational in nature for any infraction of the rules and regulations relating to the Common Property, which period of suspension shall not exceed 60 days per infraction.



- D. The right of the Board to suspend the right of any Owner to use any of the Common Property that is recreational in nature for the nonpayment or delinquency of any Assessments until paid.
  - E. All other easements, restrictions, and rights to which the Property is subject, including, but not limited to, any easements granted or reserved pursuant to Article 7.
  - F. The right of the Board to convey such Common Property to eliminate any existing setback violation, encroachment or zoning violation created by the original construction of Developer, free, clear and unencumbered from any and all easements and/or licenses granted pursuant to the Declaration.
- 5.2 Subordination to Mortgage or Other Lien. The rights and privileges provided in this Article shall be subordinate to any mortgage or other lien given by the Association for purposes of acquiring, improving or maintaining the Common Property.
- 5.3 Maintenance and Management of Common Property. The Association shall provide for the maintenance, repair, replacement and management of all Common Property as provided in Article 3.6. The Association may fulfill this responsibility and any other duties and obligations of the Association under this Declaration by contracting with any professional management company upon such terms and conditions as shall be agreed upon by the Board and the management company.
- Until such time as the Developer has sold and conveyed all Lots within Development, the design of landscaping and plant, shrub and tree varieties installed on and/or comprising part of the Common Property shall be maintained as initially installed unless otherwise approved by Developer. Thereafter, modifications to landscaping design and plant, shrub and tree varieties shall be approved by the Board.
- 5.4 Use of Common Property by Developer. In addition to the rights described in Article 5.1, Developer shall have the right during the period Developer owns any Lot, to use the Common Property, free of charge, for promotional, construction, management, maintenance, repair, remodeling, rental and sales purposes.

#### ARTICLE 6 - LOT MAINTENANCE

- 6.1 General Maintenance. Subsequent to transfer of a Lot to an Owner, the Owner thereof shall keep the Lot well-landscaped and in a good and well-maintained condition. In the event that a portion of the Common Property encumbers a Lot, the Owner thereof shall be responsible for the maintenance of the Lot occupied or affected by the Common Property to the extent that the Association or Developer does not maintain the same.

- 6.2 Private Sewer Line. The maintenance, repair or replacement of utility distribution lines and connections or private sewer laterals (which connect a Lot to sewer main) and are located on or exclusively service the Lot shall be the responsibility of the Owner using the line, connections or laterals. If more than one Owner is using a line, connection or lateral and the Owners fail to agree on a formula to determine their share of the cost or in the event the Owners fail to agree on the manner in which such maintenance, repair or replacement shall be done, then the Board shall make such determination upon application by an interested Owner. The decision by the Board shall be final and non-appealable.
- 6.3 Private Drainage Easements and Private Storm Sewer Easements. The Association shall be responsible for the care and maintenance of all storm water control improvements located on the Common Property and/or within private drainage easements and/or private storm sewer easements (including detention basin structures, outlet structures, paved channels, headwalls and any and all other storm drainage structures) which are located outside the public right of way and as referred to on any record Plat of Development except for those specifically assumed by governmental authorities. If applicable, all such care and maintenance shall comply with and conform to the requirements, standards and specifications of such governmental authorities.

#### ARTICLE 7 - EASEMENTS AND LICENSES

- 7.1 Utility and Support Easements. Developer hereby grants, conveys, and reserves non-exclusive easements over the Property as indicated on any record plat of Development for the purpose of (i) the construction, reconstruction, alteration, and maintenance of all facilities necessary to provide utility services, including without limitation, telephone, water, gas, sanitary and storm sewer services to each Lot and the Common Property, and (ii) the cutting, grading and maintaining of slopes, retention walls and other supports, both for the benefit of each Lot and the Common Property. Developer further reserves the right to grant easements or modify existing easements over any portion of the Property for any of the purposes set forth in this Article 7.1.
- 7.2 Common Property Easement. Developer hereby grants, conveys, establishes and reserves an exclusive easement for the benefit of the Developer and Association over the Common Property for the purpose of the construction, reconstruction, alteration, maintenance and use thereof by Developer and the Association. Developer further grants, conveys, establishes and reserves a non-exclusive easement over that portion of the property not defined as the Common Property for the temporary occupation thereof in order to facilitate the exercise of any of the foregoing easements by either the Developer or Association.

- 7.3 Owner License. Developer hereby grants, conveys and reserves unto each Owner a non-exclusive license over the Common Property designated by the Developer, or the Association upon the termination of the Class B membership therein, as defined in Article 2, for the use and enjoyment of the individual Owners and of the Lots, including without limitation, utilities, and sidewalks, roadways and similar amenities, if any.
- 7.4 Encroachment Areas. Each Owner is hereby declared, to have an easement, and the same is hereby declared, granted and reserved by the Developer, on behalf of itself, its successors and assigns, over all adjoining Lots, and the Common Property for the purpose of errors, errors in original construction, settlement or shifting of a building, or any other similar cause. There shall be a continuing easement for the maintenance of said encroachment. In no event shall an easement for encroachment be created in favor of an Owner, if said encroachment occurred as part of the construction other than original construction on the Lot by Developer.
- 7.5 Self-Help Easement. In the event that an Owner should violate any of the provisions of the Declaration, the Association and the Developer are hereby granted a non-exclusive easement over the Lot of the violating Owner so as to permit the Association to occupy the same and to rectify such breach as set forth in Articles 4.5 or 12.6 hereof.
- 7.6 Prohibition. No Owner, other than Developer, shall grant an easement, right of way or license over a Lot, without the prior consent of the Association.
- 7.7 Easement to Run with the Land. All easements and rights described in this Declaration shall run with the land, perpetually in full force and effect, and at all times shall insure to the benefit of and be binding on the Developer, the Association, and any Owner, purchaser, mortgage or other person now or in the future having an interest in any part of the Property.

#### ARTICLE 8 - ARCHITECTURAL CONTROL

- 8.1 Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition or change (including any change in color) or alteration thereof be made, until a detailed set of plans and specifications is submitted to and approved by the Board. Notwithstanding the foregoing, initial construction of Dwelling Units and improvements by a Builder or the Developer shall be under the exclusive control of the Developer. Such plans and specifications shall be in such form and shall contain such information as the Board may reasonably require, including but not limited to any or all of the following; a site plan; proposed landscaping; patio and walkway locations; description of materials; location of lighting; architectural plans including cross-sections, floor plans and elevations; evidence of conformity

with building codes; the exterior design, color and the location of the proposed improvements in relation to the surrounding improvements and topography of the surrounding Property. The Board's review of the plans and specifications shall include the following considerations: the continued maintenance of Development as a residential community of high aesthetic quality; the promotion of the health, safety and welfare of all Owners, the preservation, beautification and maintenance of the Property and all structures thereof; the preservation and promotion of environmental quality; and the assurance of adequate water, sewer and drainage facilities and other utilities and services. The Board shall either (i) approve the plans and specifications or (ii) disapprove them or (iii) approve them with conditions of qualifications. The approval of the plans and specifications by the Board shall not constitute a representation or warranty by it as to the quality of the workmanship, materials or architectural or engineering design covered thereunder, or the proposed work's feasibility or compliance with any applicable laws. In the event the Board fails to approve or disapprove such design and location within thirty (30) days after plans and specifications have been submitted to it, approval will not be required and this Article 8 will be deemed to have been fully complied with. Such submission to the Board shall be in person, or by registered or certified mail, with return receipt, directed to the Association manager, or if there is no manager, to its President.

- 8.2 Enforcement. In the event of a violation of the provisions of this Article 8, the Association shall have the right to enforce this Article by any proceedings authorized in this Declaration, the By-Laws, or by law.
- 8.3 Approval of Plans by Developer. Each Builder, prior to initial construction of a Dwelling Unit and/or accessory structures on a Lot, shall secure the approval by Developer of plans and specifications (as defined in paragraph 8.1, above). Such approval of plans and specifications by the Developer shall be conducted in the same manner and in the same time frame as set forth in paragraph 8.1, above. Developer shall have all legal and equitable remedies available under this Declaration to enforce their decision against Builders, Owners, or their successors.

#### ARTICLE 9 - ANNEXATION AND ALTERATIONS TO THE PROPERTY

The provisions of this Declaration are imposed upon the Property and the Dwelling Units thereon. Developer shall have the right at any time to remove any portion of the Property from the scope of this Declaration or to subject the Additional Property to the provisions of the Declaration by the execution and recording a supplement to the Declaration.

The Developer may annex to this Declaration the Additional Property without the consent of the members of the Association, within seven (7) years after the date this Declaration is filed for record. However, the Developer is not bound to annex any of said property to this

Declaration, and until such time as any of said property is annexed, the same shall not be subject to the provisions of this Declaration.

Any annexations made pursuant to this Article 9, or Declaration with the Recorder of Marion County, Indiana, shall extend this Declaration to such annexed property. The Supplementary Declaration may contain additional covenants, conditions, restrictions, easements and liens as the Developer shall deem appropriate for the purpose of completing the development of the Property.

#### ARTICLE 10 - INSURANCE

- 10.1 Maintenance of Liability Insurance. The Association, as a Common Expense, shall insure itself, the Board, Developer, all Owners and members of their respective families and other persons residing with them in the residence, their tenants, and all persons lawfully in possession or control of the Lots, against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from, the Common Property and the portions of the Lots to be maintained by the Association, such insurance to afford protection with limits of not less than \$500,000.00 with respect to bodily injury, disease, illness or death suffered by any one person and of not less than \$1,000,000.00 with respect to bodily injury, disease, illness or death suffered by more than one person in any one occurrence, and not less than \$500,000.00 with respect to damage to or destruction of property arising out of one accident.
- 10.2 Other Insurance. The Association shall have a right to maintain officers and Directors liability insurance and such insurance or extended coverage insurance insuring the Common Property in such amounts, against such perils, for such time periods and under such circumstances as the Association through its Board determines, in their sole discretion, is appropriate and in the best interest of Development.
- 10.3 Insurance Limitation. Except as otherwise provided in Article 10.1, the policies of insurance maintained by the Association pursuant to this Article 10 shall not insure against liability for personal injury or property damage arising out of or relating to the Lots. Each Owner shall be responsible for obtaining insurance with respect to any Lot and improvements thereon and the contents thereof and any personal liability to the extent not covered by insurance provided in this Article 10. All insurance procured by the Association shall have such deductibles as the Board shall, from time to time, determine necessary and appropriate.
- 10.4 Dwelling Unit Insurance. The Association shall have no responsibility or liability to obtain or maintain any type of insurance upon any Dwelling Unit constructed on Lots and such insurance shall be the sole responsibility of the Owner.

- 10.5 Premiums. All premiums paid for any insurance procured by the Association hereunder shall be deemed to be a Common Expense.
- 10.6 Insurance Proceeds. Any and all insurance proceeds received by the Association shall be held by the Association and used for the benefit of the Owners, the Common Property and the Lots as the Board shall, from time to time, determine. No Owner shall have any right in or to the proceeds of any such insurance.
- 10.7 Casualty. In the event that any portion of the Common Property is damaged or destroyed, the Association shall restore the affected portion of the Common Property to substantially its condition existing immediately prior to such damage or destruction to the extent reasonably practicable. If such damage or destruction is not covered by insurance maintained by the Association or the proceeds are insufficient to fully restore the affected portion of the Common Areas as a result thereof, then the Association shall effect the restoration thereof in such a manner as the Association may determine appropriate in its sole judgment and shall levy a special assessment against each Owner for any deficiency in a proportion to its respective share thereof.

ARTICLE 11 - REAL ESTATE TAXES AND ASSESSMENTS

- 11.1 Real Estate Taxes. The Owners shall be responsible for and pay all taxes and assessments, general and special, levied or imposed upon the Lot and its improvements.
- 11.2 Allocation. Prior to the time the taxing authorities of Marion County, Indiana establish separate tax parcels for each Lot, the Developer shall allocate the real estate taxes and assessments upon the Property among and against the Lots and against the remainder of the Property in a fair and equitable manner so as to allocate the real estate taxes and assessments charged in common to the various Lots as well as the remainder of the Property within Development. The allocation made in accordance with the terms hereof shall be binding upon all Owners.
- 11.3 Common Property. Taxes and assessments, general and special, charged against the Common Property of Development shall be deemed a Common Expense. Assessments, general and special, charged against Development shall be paid by the Owners as set forth in Article 3 hereof.

ARTICLE 12 - MISCELLANEOUS

- 12.1 Duration. Except where permanent or perpetual easements or other permanent rights or interests are herein created, the terms and provisions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be

enforceable by the Association or by any of the Lot Owners, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this Declaration, after which the Declaration shall be automatically extended for successive periods of ten (10) years in perpetuity, unless a recorded instrument signed by the Owners of two-thirds (2/3) of the Lots have been recorded, agreeing to terminate the Declaration.

12.2 Assignment by Developer. Developer shall be entitled to assign to any party, by a separate recorded instrument, all or a portion of the rights and benefits contained in this Declaration which are reserved to the Developer. In the event of any assignment, such party shall be deemed to be a "Developer" to the extent of the rights and benefits hereunder which are assigned. Any such rights and benefits of the Developer contained herein shall not be assignable or transferable without an express assignment hereof by Developer. Such assignments may transfer rights and benefits exclusively or non-exclusively.

12.3 Amendment. The Declaration may be amended, from time to time as follows:

A. Class B Members. Developer reserves, for the benefit of the Developer, the right and power, and each Owner by acceptance of a deed to a Lot is deemed to and does grant to the Developer a Power of Attorney coupled with an interest which shall run with the title to the Lot, and shall be irrevocable except by Developer for a period of seven (7) years from the date hereof, to amend this Declaration to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution, (including the U.S. Department of Housing and Urban Development, the U.S. Veteran's Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar agency), without the approval of the Lot Owners, or to the extent necessary to enable Developer to meet any other reasonable need or requirement including those associated with completion of the development of the Property and to facilitate the making and marketing of first mortgages upon any of the Lots. Any amendment must be recorded and shall be effective upon recording.

B. Lot Owners. This Declaration may be amended at any time by an instrument executed by persons or entities able to exercise seventy-five percent (75%) of the voting power of all classes of the Association and approved by eligible first mortgage holders representing Lots having at least fifty-one percent (51%) of the voting power; provided, however, that rights of Developer hereunder may not be amended or altered without the prior written consent of Developer. Any amendment must be recorded and shall be effective upon recording.

- 12.4 Personal Liability. Nothing in this Declaration, the Articles, or By-Laws, of the Association, or any rules or regulations enacted pursuant to any of the aforesaid, shall impose personal liability upon any Director or any officer of the Association acting in their capacity as such, for the maintenance, repair or replacement of any Dwelling Unit or part of the Common Property or give rise to a cause of action against any of them except for damages resulting from their own willful omissions or misconduct and each person who becomes an Owner or Member hereby releases and discharges all persons now or hereafter serving as an officer or Director, or both, from any liability for injury or damages to such Member or Owner or to such Member's or Owner's property and covenants not to initiate any legal proceedings against any such person or persons unless such person is covered by insurance and in such event the amount of recovery shall be limited to the amount of insurance.
- 12.5 Notices. Any notice required to be sent to a Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage prepaid, to the last known address of the person who appears as Member or Owner appearing on the records of the Association at the time of such mailing.
- 12.6 Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, to restrain and/or to enjoin violation and/or to recover damages, and against the Property to enforce any lien created by these covenants; and the failure or forbearance by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event of a violation of the provisions of the Articles or By-Laws, the Association shall have the right to enforce any covenant or restriction by proceedings authorized in this Declaration, the Articles, By-Laws or by law.
- 12.7 Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way effect any other provision hereof, each of which shall remain in full force and effect.
- 12.8 Conflicts. In the case of any conflict between this Declaration and either the Articles or By-Laws of the Association, the Declaration shall control.
- 12.9 Rights of Mortgage Holders. Any mortgagee of a Lot may pay any taxes or other charges which are in default and which may or have become a charge against the Common Property or any part thereof any may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage upon the lapse of a policy, for such Common Property, and such mortgagee making such payments shall be owed immediate reimbursement therefor from the Association.



The holder, insurer or guarantor of the first mortgage on any Lot shall be entitled to timely written notice of the following:

- A. Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage;
- B. Any sixty (60) days delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
- C. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- D. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.
- E. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

A mortgage holder, insurer or guarantor shall send a written request to the Association, stating both its name and address and the Lot number or address upon which it holds a mortgage, in order to obtain the foregoing notices.

12.10 Condemnation.

- A. In the event any Lot or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the net proceeds of any award or settlement shall be the property of the Owner and the holder of the first mortgage, to the extent of their respective interests. Each Owner shall give the holder of a first mortgage on the Owner's Lot timely written notice of such proceeding or proposed acquisition.
- B. In the event any Common Property or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or otherwise sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgages, as their first interests appear.

IN WITNESS WHEREOF, Developer has executed this instrument at the time and place set forth above.

**CROOKED CREEK AT GEIST  
DEVELOPMENT CO., INC.,**  
an Indiana corporation

By: Richard E. Jones  
Print Name: RICHARD E. JONES  
Title: PRES.

STATE OF Indiana )  
                                  ) SS:  
COUNTY OF Hamilton )

The foregoing instrument was acknowledged before me this 25 day of September, 1998 by Richard E. Jones, the President of Crooked Creek at Geist Development Co., Inc., an Indiana corporation, on behalf of such corporation.

Tatueia A. Kenney  
Notary Public

Commission Expires: 7-19-06  
County of Residence: Hamilton

566505.01

APPROVED THIS 25th  
DAY OF SEPT 19 98  
ASSESSOR OF WARREN TOWNSHIP  
Christine Stewart DRAFTSMAN


CUMBERLAND LAKES SECTION TWO  
LAND DESCRIPTION

A part of the Northeast Quarter of Section 27, Township 16 North,  
Range 5 East, being located in the City of Indianapolis, Indiana being  
bounded as follows:

Commencing at the Northwest Corner of the Northeast Quarter of said section 27  
thence North 89°19'48" East (assumed bearing) along the north line thereof 1050.00 feet  
to the POINT OF BEGINNING; thence South 0°40'12" East 70.00 feet; thence South 56°21'44"  
West 193.22 feet; thence South 21°53'09" West 221.92 feet; thence South 43°07'27" West  
166.27 feet; thence South 89°21'55" West 110.00 feet; thence South 00°38'05" East  
90.00 feet; thence South 44°21'55" West 56.57 feet; thence South 64°06'11" West  
88.47 feet; thence South 00°38'05" East 271.71 feet; thence North 89°21'55" East  
580.00 feet; thence South 00°38'05" East 50.00 feet; thence North 89°21'55" East  
285.67 feet; thence North 00°39'10" West 990.00 feet to the Northeast Corner  
of the West half of the Northeast Quarter of Section 27, Twp. 16 North,  
Range 5 East; thence South 89°19'48" West 273.36 feet to the POINT OF BEGINNING  
containing 13.83 acres, more or less, subject to all applicable easements and  
rights-of-way of record.

THIS SUBDIVISION CONSISTS OF 30 LOTS NUMBERED 24-53 BOTH  
INCLUSIVE, AND STREETS AS SHOWN HEREON. THE SIZE OF LOTS AND WIDTHS OF  
STREETS ARE SHOWN ON THIS PLAT BY FIGURES DENOTING FEET AND DECIMAL PARTS  
THEREOF.

CERTIFIED THIS 14<sup>th</sup> DAY OF August, 1998

  
\_\_\_\_\_  
RICHARD L. FIDLER      \*S0257

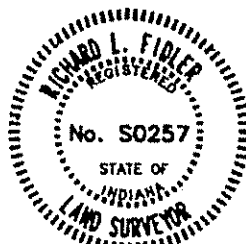


EXHIBIT A

CUMBERLAND LAKES SECTION THREE  
LAND DESCRIPTION

A part of the Northeast Quarter of Section 27, Township 16 North,  
Range 5 East, being located in the City of Indianapolis, Indiana being  
bounded as follows:

Commencing at the Northwest Corner of the Northeast Quarter of said Section 27  
thence South  $00^{\circ}38'05''$  East (assumed bearing) along the west line thereof 670.96 feet  
to the Point of Beginning of this description; thence South  $87^{\circ}49'50''$  East 408.75 feet;  
thence North  $64^{\circ}05'11''$  East 55.01 feet; thence South  $00^{\circ}38'05''$  East 271.71 feet;  
thence North  $89^{\circ}21'55''$  East 290.00 feet; thence South  $00^{\circ}38'05''$  East 285.00 feet;  
thence South  $89^{\circ}21'55''$  West 120.00 feet; thence South  $00^{\circ}38'05''$  East 15.00 feet;  
thence South  $89^{\circ}21'55''$  West 170.00 feet; thence South  $00^{\circ}38'05''$  East 100.00 feet;  
thence South  $89^{\circ}21'55''$  West 450.00 feet; thence North  $00^{\circ}38'05''$  West 668.22 feet  
to the POINT OF BEGINNING containing 8.88 acres, more or less, subject to all  
applicable easements and rights-of-way of record.

THIS SUBDIVISION CONSISTS OF 33 LOTS NUMBERED 54-86  
INCLUSIVE, AND STREETS AS SHOWN HEREON. THE SIZE OF LOTS AND WIDTHS OF  
STREETS ARE SHOWN ON THIS PLAT BY FIGURES DENOTING FEET AND DECIMAL PARTS  
THEREOF.

CERTIFIED THIS 11<sup>th</sup> DAY OF August, 1998

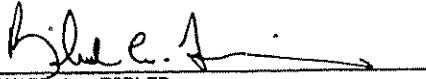
  
RICHARD L. FIDLER      •S0257



EXHIBIT A

CODE OF BY-LAWS  
OF  
CUMBERLAND LAKES HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I  
NAME AND LOCATION

The name of the Corporation is Cumberland Lakes Homeowners' Association, Inc. (hereinafter referred to as the "Corporation"). The principal office of the Corporation shall be located at 9125 East 146th Street, Noblesville, Indiana 46060, until and unless changed in accordance with Indiana state law by the Board of Directors, but meetings of Members and directors may be held at such places either within or without the State of Indiana as may be designated by the Board of Directors

ARTICLE II  
DEFINITIONS

Section 1. "Declarant" shall mean Crooked Creek at Geist Development Co., Inc., an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant under the Declaration, including, but not limited to, any mortgagee acquiring title to any portion of the real estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant

Section 2. "Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions of Cumberland Lakes recorded on \_\_\_\_\_, 1998, as Instrument No. \_\_\_\_\_, in the Office of the Recorder of Marion County, Indiana, as the same may be amended or supplemented from time to time as therein provided, said Declaration being incorporated herein by reference as if set forth at length herein.

Section 3. "Corporation" shall mean and refer to Cumberland Lakes Homeowners' Association, Inc., an Indiana nonprofit corporation

Section 4. "Members" shall mean and include both Class A Members and Class B Members as each of those terms is defined in Article VI of the Articles of Incorporation. Reference to the "Members" shall be to any one of the Class A Members or Class B Members, unless the context indicates otherwise.

Section 5. All of the definitions and terms as defined and used in the Articles of Incorporation shall have the same meanings in this Code of By-Laws and reference is specifically made to Article II of the Articles of Incorporation containing definitions of terms.

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EXHIBIT B

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership, Transfer, Voting Rights. Reference is hereby made to Article VI of the Articles of Incorporation of the Corporation which sets forth terms, provisions and conditions governing and relating to membership in the Corporation, transfer of membership and voting rights of classes of Members, all of which terms, provisions and conditions are incorporated herein by reference

Section 2. Quorum. The presence in person or by proxy at any meeting of the membership of persons entitled to vote twenty-five percent (25%) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in or required by the Articles of Incorporation of the Corporation, the Declaration, this Code of By-Laws, or by statute. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting. until a quorum as aforesaid shall be present or represented

Section 3. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the secretary of the Corporation before the appointed time of each meeting of the Members of the Corporation. Cumulative voting shall not be permitted

Section 4. Majority Required. A majority of the votes of Members present (in person or by proxy) at a meeting at which a quorum is present shall be sufficient for the transaction of all business of the Corporation except on matters where a greater vote is required by the Declaration, the Articles of Incorporation, the Code of By-Laws or by statute.

Section 5. Meetings. Meetings of the Corporation shall be in accordance with the following provisions:

(a) Annual Meetings. The first annual meeting of the Members of the Corporation shall be held within one (1) year from the date of incorporation of the Corporation, the exact date to be decided by the Board of Directors. At such first annual meeting of the Members, the Members may designate a regular day or date for successive annual meetings. If the Members fail to designate such a regular day or date, the Board of Directors may continue to designate the day or date of the next annual meeting until such a designation is made by the Members. If any designated day or date falls upon a legal holiday, it shall be understood that the actual date of the meeting shall be the next business day succeeding such designated day or date.

(b) Special Meetings. A special meeting of the Members shall be held within thirty (30) days after the termination of the Class B membership referred to in Article VI of the Articles of Incorporation of the Corporation, at which time an election shall be had of a full slate of directors who shall collectively replace, for their unexpired

terms, the board in office immediately prior to such election. Furthermore, it shall be the duty of the president to call a special meeting of the Members when requested in writing by a majority of the Board of Directors or upon a petition signed by Members of the Corporation who are entitled to vote twenty-five percent (25%) of all of the votes of the membership. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths (4/5ths) of the votes present in person or by proxy at such meeting

(c) Notice of Meetings. It shall be the duty of the secretary to serve a notice of each annual or special meeting, stating the purposes thereof as well as the time and place where it is to be held, upon each Member of record, not less than ten (10) nor more than thirty (30) days prior to such meeting. The mailing of a notice to each Member at the address shown for such Member on the Corporation's records shall be deemed notice served.

(d) Order of Business. The order of business at all meetings of the Members shall, to the extent applicable, be as follows:

- (1) Roll call;
- (2) Proof of notice of meeting or waiver of notice;
- (3) Reading of minutes of preceding meeting;
- (4) Reports of officers;
- (5) Report of committees;
- (6) Election of directors;
- (7) Unfinished business;
- (8) New business

#### ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board of Directors, and two or more additional Members of the Corporation. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion, but not less than the number of vacancies that are to be filled. Such nominations may be made only from among Members of the Corporation, or persons deemed to be Members thereof in accordance with the Articles of Incorporation.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE V  
BOARD OF DIRECTORS

Section 1. Number and Qualifications. Subject to amendment of this Section, the affairs of the Corporation shall be governed by a Board of Directors composed of three persons. Directors must be or be deemed to be Members of the Corporation.

Section 2. First Board of Directors. The first Board of Directors as named in the Articles of Incorporation shall maintain, manage and administer the affairs, the real estate and other property of the Corporation, until the Applicable Date as defined in Article VI of the Articles of Incorporation and until their successors have been duly elected and qualified, unless said directors sooner resign, be removed or otherwise disqualified to serve.

Section 3. Powers. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties, which powers include, but are not limited to, the power:

(a) To adopt and publish rules and regulations governing the use of the facilities, if any, of the Corporation, and the personal conduct of the Members and their guests thereon, and to establish penalties for the violation and infraction thereof;

(b) To suspend a Member's voting rights and right to use any Corporation facilities, but not a Member's rights of access and easements necessary for the use of his Lot, during any period in which such Member shall be in default for a period of thirty (30) days in the payment of any Assessment levied by the Corporation, or the payment of any other amount or the performance of any other term of the Declaration, Articles of Incorporation or this Code of By-Laws. Such rights shall be suspended after the Lot Owner receives written notice and a hearing shall be held within sixty (60) days from the date of such notice for the Lot Owner's violation or infraction;

(c) To exercise for the Corporation all powers, duties and authority vested in or delegated to this Corporation and not reserved to the membership by other provisions of this Code of By-Laws, the Declaration, the Articles of Incorporation or by statute;



(d) To declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive meetings of the Board of Directors;

(e) To employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties, subject to the limitations set forth in the Declaration; and

(f) To do and take all such action as is or may be necessary, desirable, or appropriate to perform the duties, obligations and responsibilities of the Board of Directors as required by the Declaration, the Code of By-Laws, the Articles of Incorporation or by statute.

Section 4. Duties. The Board of Directors shall have the following duties:

(a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by Members holding one-fourth (1/4) of the total votes of the membership entitled to vote;

(b) To prepare the proposed annual budget, a copy of which shall be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered.

(c) To prepare and deliver annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year

(d) To keep a current, accurate and detailed record of receipts and expenditures affecting the Common Areas, the Common Properties and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours.

(e) To supervise all officers, agents and employees of this Corporation, and to see that their duties are properly performed

(f) To establish the annual Assessment period and fix the amount of the annual Assessment against each Owner for each Lot owned, all in accordance with the terms of the Declaration, the Articles of Incorporation and this Code of By-Laws.

(g) To fix the amount of any special Assessment against each Member for each Lot owned, all in accordance with the terms of the Declaration, the Articles of Incorporation and this Code of By-Laws.

(h) To establish and maintain a roster setting forth the identification of each and every Lot and each Assessment applicable thereto in accordance with the terms of the Declaration, the Articles of Incorporation and this Code of By-Laws.

(i) To send written notice to all Members of any meeting of the Members called for the purpose of voting upon changes in annual Assessments or voting upon a proposed special Assessment, as and to the extent required by the Articles of Incorporation and this Code of By-Laws.

(j) To send written notice of each Assessment to every Owner in accordance with the Declaration, the Articles of Incorporation and this Code of By-Laws.

(k) To foreclose the Corporation's lien for Assessments against any property for which Assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner or other person personally obligated to pay the same.

(l) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board of Directors for issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment.

(m) To procure and maintain liability, fire and other hazard insurance on property owned by the Corporation which shall include fire and extended coverage on insurable Common Areas and Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement only); and to use the proceeds of such hazard insurance solely for the repair, replacement or reconstruction of such insurable Common Areas and Common Properties including insured improvements and to procure and maintain other insurance as required or authorized by the Declaration, the Articles of Incorporation and this Code of By-Laws.

(n) To procure and maintain a fidelity bond and insurance in accordance with the terms of the Declaration, the Articles of Incorporation and this Code of By-Laws.

(o) To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem reasonable and appropriate, and at least as required by the Declaration and the Articles of Incorporation.

(p) To cause all of the Common Areas to be maintained; and

(q) To perform or cause to be performed, all duties and obligations imposed upon the Corporation and the Board of Directors under the Declaration, the Articles of Incorporation and the Code of By-Laws

Section 5. Term of Office. At the first annual meeting after the Applicable Date, and at each annual meeting thereafter, the Members shall elect directors for a term of one (1) year to fill the vacancies created by expiring terms. There shall be no limit on the number of times a director may serve.

Section 6. Vacancies. Any vacancy in the Board of Directors, other than that caused by the expiration of a director's term of office, shall be filled by vote of the majority of remaining directors, even though they may constitute less than a quorum. Each person so elected shall be a director for the unexpired term of his predecessor, or until his successor is elected.

Section 7. Compensation. No director shall receive compensation for any service he may render to the Corporation in his capacity as a director. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties, and any director may be paid and compensated for services to the Corporation in a capacity other than as a director.

Section 8. Removal of Directors. At any regular or special meeting of the Corporation duly called, any director may be removed with or without cause by a majority of the votes of the Members and a successor may then and there be elected to fill the vacancy thus created.

Section 9. Organization Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of its election at such place as shall be fixed by the directors at the meeting at which such directors were elected, and no notice shall be necessary to the newly elected directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present.

Section 10. Regular Meetings. Regular meetings of the Board of Directors shall be held at such regular intervals, without notice, at such place and hour as may be determined from time to time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 11. Special Meetings. Special meetings of the Board of Directors may be called by the president on three (3) days' notice to each director, given personally, by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the president or secretary in like manner and on like notice on the written request of a majority of the directors.

Section 12. Waiver of Notice. Before or at any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall be deemed a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 13. Quorum. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which quorum is present shall be the acts of the Board of Directors except as otherwise provided in or required by the Declaration, the Articles of Incorporation, this Code of By-Laws or by statute. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted at a later date without further notice.

Section 14. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written consent and approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE VI OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Corporation shall be a president, a secretary and a treasurer, all of whom shall be Members of the Board of Directors, and such other officers as the Board of Directors may from time to time, by resolution, create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Corporation shall be elected annually by the Board of Directors and each shall hold office for one (1) year unless they shall sooner resign, be removed or otherwise disqualified to serve, which terms shall coincide with their serving as a member of the Board of Directors.

Section 4. Special Appointments. The Board of Directors may elect such other officers as the affairs of the Corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board of Directors may, from time to time, determine; provided, however, such other officers shall not serve as members of the Board of Directors.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors by a majority of the members of the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

(a) President. The president shall preside at all meetings of the Board of Directors; he shall see that orders and resolutions of the Board of Directors are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes. He shall have the power to appoint committees from among the Members of the Corporation from time to time as he may in his discretion deem appropriate to assist in conducting the affairs of the Corporation. The president shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of an association or a stock corporation organized under the laws of the State of Indiana.

(b) Vice President. The vice president, if any, shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him by the Board of Directors or as are delegated to him by the president.

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; keep the corporate seal of the Corporation (if any is adopted) and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the Members; keep appropriate current records showing the Members of the Corporation together with their addresses, and shall perform such other duties as required by the Board of Directors.

(d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Corporation and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the

Corporation; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular meeting, and deliver a copy of each to the Members.

ARTICLE VII  
COMMITTEES

Section 1. Architectural Review Committee. As a standing committee of the corporation, the Board of Directors shall establish an Architectural Review Committee as follows:

(a) Membership and Renewal. The initial Architectural Review Committee shall consist of three (3) individuals appointed by Declarant, who shall be subject to removal by Declarant at any time without cause. Any vacancies shall be filled by appointment of Declarant until such time as the subdivision known as Cumberland Lakes is completely developed, or such earlier time as Declarant may turn over its responsibilities to the Association, at which time the Association shall appoint the Members to the Architectural Review Committee.

(b) Purposes. The Architectural Review Committee shall regulate the external design, appearance, use, location and maintenance of the real estate and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography

(c) Conditions. No improvements, alterations, repairs, change of colors, excavations, changes in grade or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Committee, except as otherwise expressly provided in the Declaration. No building, fence, wall, dwelling unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Committee.

(d) Procedures. The Architectural Review Committee shall approve or disapprove of proposed improvements within twenty (20) days after all of the required information shall have been submitted to it. In the event the Architectural Review Committee fails to approve, modify or disapprove in writing an application within twenty (20) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval will be deemed granted by the Architectural Review Committee. A decision of the Architectural Review Committee may be appealed to the Board of Directors which may reverse or modify such decision by a majority vote of the directors then serving.

(e) Liability. Neither the Architectural Review Committee nor any agent thereof, nor Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor any defect in any work done according thereto

Section 2. Nominating Committee. The Board of Directors shall appoint a Nominating Committee as provided in this Code of By-Laws. At anytime when a Nominating Committee has not been appointed, the Board of Directors shall itself act as, and be and constitute, such committee.

Section 3. Other Committees. The Board of Directors or the president may appoint other committees as deemed appropriate in carrying out the purposes of the Corporation.

#### ARTICLE VIII BOOKS OF ACCOUNT: FISCAL YEAR

Section 1. Books of Account. The Corporation shall keep detailed books of account showing all expenditures and receipts of administration which shall specify the maintenance and repair expense of the Common Areas and Common Properties, and any other expenses incurred by or on behalf of the Corporation and the Members. Such accounts, books, records, financial statements and other papers of the Corporation shall be open for inspection by the Members and other persons having an interest in any Lot, including any Owner, any lender and any holder, insurer or guarantor of a first mortgage on any Lot, during reasonable business hours or under other reasonable circumstances. The cost of any audits requested by the Members shall be a Common Expense. Any holder, insurer guarantor of a first mortgage on a Lot shall be entitled upon written request and for a nominal charge to the requesting party to receive a financial statement for the immediately preceding fiscal year and within a reasonable time of such request. Current copies of the Declaration, the Articles of Incorporation, the Code of By-Laws of the Corporation, and other rules concerning the real estate, shall be available for inspection by any owner and lender, and by holders, insurers or guarantors of any first mortgage, at the principal office of the Corporation during normal business hours or under other reasonable circumstances, where copies of the same and of audits may be purchased at reasonable costs

Section 2. Fiscal Year. The fiscal year of the Corporation shall commence January 1 and end the following December 31 each year; provided, however, that the fiscal year for purposes of Assessments may be different than the general fiscal year of the Corporation.

ARTICLE IX  
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Purpose of the Assessments. The Assessments levied by the Board of Directors shall be used exclusively for the purpose of preserving the values of the Lots within Cumberland Lakes and promoting the health, safety and welfare of the Owners, users and occupants of Cumberland Lakes and, in particular, for the improvement, repairing, operating and maintenance of the Common Areas and the Common Property, including, but not limited to, the payment of taxes and insurance thereon and for the cost of labor, equipment, material and management furnished with respect to the Common Areas and the Common Property; provided that the Association shall not be responsible for the replacement, repair or maintenance of any of the Common Areas or Common Property which is or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to the Association:

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

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

Section 2. Liability for Assessment. Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien from and after the due date thereof in favor of the Association upon each Lot. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall receive such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor

Section 3. Pro Rata Share. The Pro Rata Share of each Owner for purposes of this Article IX shall be the percentage obtained by dividing the total number of Lots owned by an Owner by the total number of Lots shown on the Plat or Plats of Cumberland Lakes ("Pro Rata Share").

Section 4. Basis of Annual Assessments. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together



with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner prior to the beginning of each fiscal year of the Association

Section 5. Basis of Special Assessments. Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessment levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board of Directors of the Association may, at any time, and from time to time, levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board of Directors of the Association shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

Section 6. Date of Commencement of Assessments: Due Date: The annual Assessments of each Lot in each section of Cumberland Lakes shall commence on the first day of the second month following the month in which Declarant first conveys ownership of any Lot to an Owner. The first annual Assessment shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on a date fixed by the Board of Directors. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessment shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments

Section 7. Duties of the Association

(a) The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots to be mailed to the Owners as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof; provided, however, failure of the Board of Directors to timely mail such notice shall not excuse the Lot Owner's payment of such Assessment

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

(c) The Association shall notify any Mortgagee from which it has received a request for notice of any default in the performance by any Owner of any

obligation under the Code of By-Laws or this Declaration which is not cured within sixty (60) days

Section 8. Nonpayment of Assessments: Remedies of Association.

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

(b) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at an annual rate which is two (2) times the rate in effect for ninety (90) day U.S. Treasury Bills at the time such Assessment is due, but in no event greater than the maximum rate allowable under any applicable usury laws, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys' fees, and in the event a judgment is obtained, such judgment shall include such interest, costs and attorneys fees.

Section 9. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amount budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Board of Directors of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro Rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

ARTICLE X  
AMENDMENTS

Section 1. Amendments. The power to amend, alter, add to and repeal this Code of By-Laws is vested in the Members of the Corporation; provided, however, that no amendment or other change shall be made in this Code of By-Laws which

conflicts with the terms and provisions of the Declaration unless the same is adopted by and approved by two-thirds(2/3) of the Members of the Corporation requesting notice of such action and entitled by the terms of the Articles of Incorporation to vote on amendments to the Declaration, the Articles of Incorporation and the Code of By-Laws as provided therein; provided further, there shall be no amendment of or other change to this Code of By-Laws without the prior written approval of the Declarant so long as the Declarant owns at least six (6) Lots within Cumberland Lakes.

Section 2. Conflicts. In the case of any conflict between the Articles of Incorporation and this Code of By-Laws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and the Articles of Incorporation or this Code of By-Laws, the Declaration shall control

ARTICLES OF INCORPORATION  
OF  
CUMBERLAND LAKES HOMEOWNERS' ASSOCIATION, INC.

The undersigned Incorporator, desiring to form a corporation pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991, as amended (hereinafter referred to as the "Act"), execute the following Articles of Incorporation.

ARTICLE I  
NAME

The name of the Corporation is Cumberland Lakes Homeowners' Association, Inc. (hereinafter referred to as the "Corporation").

ARTICLE II  
DEFINITIONS

The following terms, whenever used in these Articles of Incorporation, shall have the meanings assigned to them by this Article II:

Section 1. Assessment. "Assessment" shall mean the share of the Common Expenses imposed upon the Owner of each Lot, as determined and levied pursuant to the provisions of these Articles of Incorporation and the Code of By-Laws of Cumberland Lakes Homeowners' Association, Inc., as the same may be amended from time to time.

Section 2. Association. "Association" shall mean Cumberland Lakes Homeowners' Association, Inc., an Indiana nonprofit corporation, formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of the Declaration for the benefit of all Lot Owners.

Section 3. Committee. "Committee" shall mean the Cumberland Lakes Architectural Review Committee, composed of three (3) members appointed by Declarant, who shall be subject to removal by Declarant at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the remaining members until such time as Declarant may turn over its responsibilities to Cumberland Lakes Homeowners at which time, from that time forward, the Cumberland Lakes Homeowners shall appoint from its Members to its Committee pursuant to the provisions of the Code of By-Laws of Cumberland Lakes Homeowners' Association, Inc.

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EXHIBIT C

Section 4. Common Area. "Common Areas" shall mean certain areas which may be designated by Declarant as Common Areas on the Plat or Plats of the Cumberland Lakes subdivision as the same may be recorded, amended or supplemented from time to time, and which is intended for the common benefit of all Lots. Common Areas may not be developed nor separated from the Plat.

Section 5. Common Expense. "Common Expense" shall mean the actual and estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Property and any other cost or expense incurred by the Association for the benefit of the Common Property; provided however, that there shall not be included in Common Expenses any costs or expenses incurred in connection with the initial installation or completion of the Streets, utility lines and mains, or other improvements constructed by Declarant.

Section 6. Common Property. "Common Property" shall mean all real and personal property which is in the nature of common or public improvements or areas, and which is located in, upon, or under the Common Areas, Easements or Streets within Cumberland Lakes to the extent that Common Property is not publicly dedicated. Common Property includes, but is not limited to, all private streets, street lights and signs upon the streets, landscaping, lakes, parks, ponds, open spaces and recreational facilities.

Section 7. Declarant. "Declarant" shall mean Crooked Creek at Geist Development Co., Inc., an Indiana corporation, or any other person, firm, corporation or partnership which succeeds to the interest of Crooked Creek at Geist Development Co., Inc., as developer of Cumberland Lakes.

Section 8. Declaration. "Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions of Cumberland Lakes recorded on \_\_\_\_\_, 1998, as Instrument No \_\_\_\_\_, in the Office of the Recorder of Marion County, Indiana, as the same may be amended or supplemented from time to time.

Section 9. Drainage System. "Drainage System" shall mean the storm sewers, subsurface drainage tiles, pipes and structures, and other structures, fixtures, properties, equipment and facilities located in, upon or under the Common Areas, Easements or Streets and designed for the purpose of expediting the drainage of surface and subsurface waters from, over and across Cumberland Lakes.

Section 10. Easements. "Easements" shall refer to those areas reserved as easements on the Plat or Plats of Cumberland Lakes, as the same may be recorded, amended or supplemented from time to time.

Section 11. Lot. "Lot" shall mean any of the separate parcels numbered and identified on the Plat or Plats of Cumberland Lakes, as the same may be recorded, amended or supplemented from time to time, including any additional lots which are identified on any future Plats to be filed by Declarant as part of the Cumberland Lakes development.

Section 12. Members. "Members" shall mean and include both Class A Members and Class B Members as each of those terms is defined in Article VI of these Articles of Incorporation. Reference to the "Members" shall be to any one of the Class A Members or Class B Members, unless the context indicates otherwise.

Section 13. Mortgagee. "Mortgagee" shall mean any holder, insurer or guarantor of any first mortgage on any Lot

Section 14. Cumberland Lakes. "Cumberland Lakes" shall mean and include all portions of the Real Estate, as hereinafter defined, and other real property as may be platted, subdivided and recorded from time to time by Declarant in accordance with the provisions of the Declaration.

Section 15. Owner. "Owner" shall mean any person or persons who acquire, after the date of the Declaration, legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any holder of any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title hereto. Regardless of the number of holders of legal and/or equitable title to any one (1) Lot, for purposes of membership to the Association and voting privileges attendant thereto, there shall be only one (1) Owner as a matter of Association record

Section 16. Sewage System. "Sewage System" shall mean any sanitary sewer lines, lift stations, equipment or facilities located in, upon or under the Common Areas, Easements, Streets or Lots, as the same are or may be constructed at any time, and any replacement thereof or substitute therefor.

Section 17. Streets. "Streets" shall mean all of the public and private roadways to the respective right-of-way lines thereof, as shown on the Plat or Plats of Cumberland Lakes, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any; or all Lots

### ARTICLE III PURPOSES

Section 1. Purposes. The purposes for which the Corporation is formed are:

- (a) This Corporation is a mutual benefit Corporation

(b) To promote and develop the health, safety, common good and social welfare of the Owners and residents and to provide for the operation of the real estate, Common Property and Common Areas of the residential community known as Cumberland Lakes which shall be developed by Declarant, or by its successors, on all or portions of the real estate as described on Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Real Estate").

(c) So long as the same are in furtherance of the purpose of the Corporation described in Section 1 of this Article III and are not contrary to any limitation or restriction imposed by the Act, the Declaration, the Plats, the Code of By-Laws of the Corporation or any other provisions of these Articles of Incorporation:

(i) to exercise all of the rights, privileges, powers and authority, and to perform all of the duties and obligations, of the Association provided for in the Declaration, the Articles of Incorporation and the Code of By-Laws of the Corporation which are applicable to all or portion of the Real Estate, all the aforementioned documents being incorporated by reference as if set forth verbatim and at length;

(ii) to fix, levy, collect and enforce payment by any lawful means of all charges and Assessments pursuant to the terms of the Declaration, the Articles of Incorporation, the Code of By-Laws of the Corporation and the Act; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association including, but not limited to, all licenses, taxes or governmental charges levied or imposed against the real or personal property of the Corporation;

(iii) to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer or otherwise dispose of real or personal property in connection with the affairs of the Association which is held in title by the Corporation;

(iv) to borrow money and pledge, mortgage, deed in trust or hypothecate any or all of the Corporation's real or personal property as security for money borrowed or debts incurred:

(v) to transact any and all lawful business for which corporations may be incorporated under the Act;

(vi) to have the capacity to act possessed by natural person, but to have authority to perform only those acts as are necessary, convenient or expedient to accomplish the purposes for which the Corporation is formed and such as are not repugnant to law;

(vii) to carry out the purposes hereinabove set forth in any state, territory, district or possession of the United States, or any foreign country to the extent

such purposes are not forbidden by the law of any such state, territory, district or possession of the United States or by any such foreign country;

(viii) to dedicate, sell or transfer all or part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members (hereinafter defined). No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of the Members, agreeing to such dedication, sale or transfer; provided, however, that there shall be no dedication, sale or transfer of all or part of the Common Areas without the prior written approval of the Declarant so long as Declarant owns at least six (6) Lots within Cumberland Lakes; and

(ix) to have, possess, exercise and enjoy any and all of the rights, privileges and powers granted to corporations by the Act, as now existing or hereafter amended, and by the common law.

(d) Provided, however, that the Association is and shall at all times be a nonprofit corporation, and its activities shall be conducted for the foregoing purposes in such a manner that no part of its activities shall result in pecuniary remuneration to its Members (except for reasonable compensation to Members for services actually rendered) and no part of its net earnings shall inure to the benefit of any individual Member (Other than earnings caused by acquiring, constructing or providing management services, maintenance services and care of Association property and other than by rebate of excess membership dues, fees, charges and Assessments).

Section 2. Powers. The foregoing clauses shall be construed to constitute powers as well as purposes of the Association, and the enumeration of particular powers or purposes shall not be deemed a limitation upon or exclusion of other powers or purposes not particularly expressed or stated. and which other powers are properly within the general scope of the purposes of the Association, or incidental thereto, or are convenient or appropriate for the accomplishment of such purposes.

#### ARTICLE IV PERIOD OF EXISTENCE

The period during which the Corporation shall continue is perpetual

#### ARTICLE V RESIDENT AGENT AND PRINCIPAL OFFICE

Section 1. Registered Agent and Address. The name and address of the Corporation's Resident Agent for service of process is Richard E. Jones, 9125 E 146th Street, Noblesville, Indiana 46060.



Section 2. Principal Office. The post office address of the principal office of the Corporation is 9125 East 146th Street, Noblesville, Indiana 46060

ARTICLE VI  
MEMBERSHIP

Section 1. Members Defined.

(a) Class A Members. Each Owner of a Lot, other than Declarant, shall, automatically upon becoming an Owner of a Lot, be and become a Member of the Association ("Member") and shall remain a Member until such ownership ceases. In any event, an individual's membership shall terminate when such person ceases to be an Owner. Except as provided in Subsection (b) of Section 1 of this Article VI, membership shall be appurtenant to and run with the Lots and cannot be separated from nor assigned, hypothecated, or transferred in any manner except as an appurtenance to a Lot. For purposes of membership to the Association and for the purposes of voting rights attendant with such membership, there shall only be one (1) Owner of a Lot as a matter of Association record.

(b) Class B Members. Class B Members shall be the Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the registered agent of the Corporation. Each Class B Member shall be entitled to three (3) votes for each Lot or seventy-five percent (75%) of the total voting power of the Association, whichever is greater, so long as the Class B membership continues to exist. The Class B membership shall cease and terminate seven (7) years after the Declaration is filed of record (the "Applicable Date").

Section 2. Rights, Preferences, Limitations and Restrictions of Classes. The Members described in subsection (a) of Section 1 of this Article VI shall have such rights, duties, liabilities and obligations, and shall be subject to such limitations and restrictions, as are provided herein, in the Declaration, in the Code of By-Laws of the Corporation and in the Act

Section 3. Voting Rights of Members.

(a) Class A Members. The Class A Members described in Subsection (a) of Section 1 of this Article VI shall have the same and equal voting rights on all matters submitted to vote of the membership at any annual or special meeting of the Members, the same being one (1) vote for each Lot of which such Member is the Owner; provided, however, in the event that more than one (1) person, partnership, trust, corporation, or other entity constitutes the Owner of a particular Lot, all such persons shall be treated collectively as one (1) Member of the Association, and all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(b) Class B Members. Each Class B Member described in subsection (b) of Section 1 of this Article VI shall be entitled to three (3) votes for each Lot of which it is the Owner and five (5) votes for each single numbered parcel of land shown upon and identified as a Lot on the recorded subdivision Plat or Plats of the Real Estate of which it is the Owner

ARTICLE VII  
DISSOLUTION

In the event of dissolution of the Corporation, all assets remaining after paying or making provisions for the payment of all debts and liabilities of the Corporation shall be transferred and distributed by the Board of Directors to the then Owners of the Lots, pro-rata

ARTICLE VIII  
DIRECTORS

Section 1. Number of Directors. The Initial Board of Directors is composed of three (3) Members, which shall be appointed by the Declarant. If the exact number of directors is not stated, the minimum number shall be three (3) and the maximum number shall be nine (9), provided, however, that the exact number of directors shall be prescribed from time to time in the Code of By-Laws of the Corporation; and provided further that under no circumstances shall the minimum number of directors be less than three (3).

Section 2. Names and Post Office Addresses of the Initial Board of Directors:

Ronald L. Tooley  
9125 East 146th Street  
Noblesville, Indiana 46060

Harold E. Harvey  
9125 East 146th Street  
Noblesville, Indiana 46060

Richard E. Jones  
9125 East 146th Street  
Noblesville, Indiana 46060

(hereinafter referred to as the "Initial Board")

ARTICLE IX  
INCORPORATOR

The name and post office address of the Incorporator of the Corporation is as follows:

Richard E. Jones  
9125 E 146th Street  
Noblesville, Indiana 46060

ARTICLE X  
STATEMENT OF PROPERTY

The Corporation will take over no property at or upon its incorporation.

ARTICLE XI  
ASSESSMENTS

As more fully provided in the Code of By-Laws of the Corporation, each Owner of a Lot(s) is obligated to pay to the Corporation annual and special Assessments which are secured by a continuing lien upon the Lot against which the Assessment is made. Any Assessments which are not paid when due shall be delinquent. Payments of the regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board of Directors or the Corporation and neither the Board of Directors nor the Corporation shall be responsible for providing any notice or statements to Owners for the same. No Owner may waive or otherwise escape liability for the Assessments provided for in the Declaration, the Articles of Incorporation or the Code of By-Laws by non-use of the Common Areas, Common Properties or the abandonment of his Lot.

ARTICLE XII  
PROVISIONS OF REGULATION AND CONDUCT  
OF THE AFFAIRS OF THE CORPORATION

Section 1. Interest of Directors or Officers in Transactions. Any contract or transaction between the Corporation and one or more of its directors or officers, or between this Corporation and any firm of which one or more of its directors or officers are members or employees, or in which they are interested, or between this Corporation and any other corporation or association of which one or more of its directors or officers are shareholders, members, directors, officers or employees, or in which they are interested, shall be valid for all purposes, notwithstanding the presence of such director or directors at the meeting of the Board of Directors which acts upon or in reference to such contract or transaction, and notwithstanding his or their participation in such action, if the fact of such interest shall be disclosed or known to the Board of Directors and the Board of Directors shall authorize, approve and ratify such

contract or transaction by the approving vote of all of the directors present. The interested director or directors may be counted in determining the presence of a quorum at such meeting. This Section 1 of this Article XII shall not be construed to invalidate any contract or other transaction which would otherwise be valid under the common, or statutory law applicable thereto.

Section 2. Meetings of Members. Meetings of the Members of the Association shall be held at such place within or without the State of Indiana, as may be specified in the respective notices or waivers of notice thereof.

Section 3. Meetings of Directors. Meetings of the directors of the Association shall be held at such place within or without the State of Indiana, as may be specified in the respective notices or waivers of notice thereof. Any action required or permitted to be taken at any meeting of the Board of Directors or of any Committee thereof, may be taken without a meeting, if prior to such action a written consent thereto is signed by all members of the Board of Directors, or of such Committee, as the case may be, and such written consent is filed with the minutes or proceedings of the Board of Directors or Committee.

Section 4. Powers Relative to the Code of By-Laws. The initial Code of By-Laws of the Corporation (the "By-Laws") shall be adopted by the Initial Board. The power to alter, amend, add to and repeal the By-Laws of the Corporation is hereby vested in the Members, which power shall be exercised in accordance with the requirements of the By-Laws; provided, however, that there shall be no amendment, alteration, addition to or repeal of the By-Laws without the prior written approval of the Declarant so long as Declarant owns at least six (6) Lots within Cumberland Lakes, and further provided that there shall be no amendment, alteration to or repeal of the By-Laws without the consent and approval of at least two-thirds (2/3) of the Members.

Section 5. General Powers of Directors. In addition to the powers and authority expressly conferred by these Articles of Incorporation, the Board of Directors is hereby authorized to exercise such powers and to do all such acts as may be exercised or done by a corporation organized and existing under the provisions of the Act, and as may be exercised or done by virtue of any other law.

Section 6. Indemnification of Directors, Officers, Agents, Employees and Others.

(a) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgment, fines and amounts paid settlement reasonably incurred by

him in connection with such action, suit or proceeding or in connection with any appeal therein, except in relation to matters in which such officer, director, employee or agent is found and adjudged to be liable for negligence or misconduct in the performance of his duties to the Corporation. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person was liable for negligence or misconduct in the performance of his duties to the Corporation.

(b) To the extent that director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsection (a) of this Section Six (6) or in defense of any claim, issue or matter therein, he shall be indemnified against any expenses (including attorneys' fees) reasonably incurred by him in connection therewith.

(c) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in a specific case upon receipt of a promise to repay such amount or of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount, and if it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this Section, such director, officer, employee or agent of the Corporation shall not be bound by such promise to repay or the undertaking to repay such advances.

(d) The indemnification provided by Section Six (6) of this Article XII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any other Article or Section of these Articles of Incorporation or any By-Law, resolution, authorization or agreement adopted, after notice, by a majority of all the voting Members of the Corporation, and shall continue as to a person who has ceased to be a director, officer, employee or agent of the Corporation and shall inure to the benefit of the heirs, executors and administrators of such a person

#### Section 7. Fidelity Bonds and Insurance.

(a) The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability

(b) The Corporation may maintain a fidelity bond indemnifying the Association, the Board of Directors, and the Lot Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee, agent of the Corporation

or anyone who either handles or is responsible for funds held or administered by the Association.

(c) The Corporation shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury and such other insurance in accordance with the requirements, if any, of the Declaration or as the Board of Directors shall reasonably determine is necessary.

(d) All insurance policies and fidelity bonds shall provide at least ten (10) days' written notice to the Association and all Members requesting such notice before the insurance policies or fidelity bonds are cancelled or substantially modified for any reason.

Section 8. Right to Amend Articles. The Corporation reserves the right to amend, alter, change or repeal, in the manner now or hereafter prescribed by the Act, any provisions contained in these Articles, and all rights, powers and privileges hereby conferred on Members, directors or officers of the Corporation are subject to this reserved power; provided, however, that there shall be no amendment, alteration, change or repeal of these Articles of Incorporation without the prior written approval of Declarant so long as Declarant owns at least six (6) Lots within Cumberland Lakes and provided further that there shall be no amendment, alteration to or repeal of these Articles of Incorporation without the consent and approval of two-thirds(2/3) of the Members.

Section 9. Initial Board. The Initial Board named in Article VIII hereof shall serve as the Board of Directors of the Corporation until the Applicable Date and until their successors have been duly elected and qualified, unless said directors sooner resign, be removed or otherwise disqualified to serve. In the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by a person appointed by Declarant. Any such person so appointed by Declarant shall thereafter be deemed a member of the Initial Board.

Section 10. Terms of Directors After the Applicable Date. After the Applicable Date, except as otherwise permitted by the Act, each member of the Board of Directors of the Corporation shall be elected for a term of one (1) year.

The undersigned hereby adopts these Articles of Incorporation, representing beforehand to the Secretary of State of the State of Indiana and all persons whom it may concern that a membership list or lists of the above-named Corporation for which a

Certificate of Incorporation is hereby applied for, have heretofore been opened and kept in accordance with the Act.

IN WITNESS WHEREOF, I, the undersigned Incorporator, do hereby execute these Articles of Incorporation and certify to the truth of the facts herein stated this 25 day of Sept., 1998.

  
Richard E. Jones, Incorporator

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**DECLARATION OF MAINTENANCE OBLIGATION**

THIS DECLARATION made this 14<sup>TH</sup> day of MAY, 1999,  
by \* CROOKED CREEK DEVELOPMENT Co., INC.  
("Declarant").

Address 11718 1/2 ROTHE WAY

**WITNESSETH**

WHEREAS, the following facts are true.

A. Declarant is the owner of fee simple title to certain real estate located in MARION County, Indiana, more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Real Estate").

B. Declarant has installed or plans to install in the right-of-way known as CUMBERLAND ROAD Street, Indianapolis, Indiana (hereinafter referred to as the "Right-of-Way") adjacent to the Real Estate the equipment described in Exhibit B attached hereto (hereinafter referred to as the "Water Equipment"), which Declarant desires to connect to the water line of the Indianapolis Water Company ("Water Company").

C. The Water Company is objecting to the installation of the Water Equipment pursuant to Rule 7(A) of its Rules and Regulations on file with and approved by the Indiana Utility Regulatory Commission governing its provision of water utility service because it is concerned that in the future the Water Company might be requested to maintain, repair or replace (hereinafter "maintain") the Water Equipment because of its location in the Right-of-Way.

D. Declarant deems it desirable that the owner of the Real Estate be responsible for maintaining the Water Equipment and that the Water Company have no obligation to maintain the Water Equipment.

NOW, THEREFORE, Declarant declares that the Real Estate and the Water Equipment be held, transferred, sold, conveyed, encumbered, leased, rented, used and occupied subject to the provisions, agreements, covenants and restriction hereinafter set forth:



**1. Declaration.** Declarant hereby expressly declares (1) that the Water Company shall have no obligation to maintain in any manner the Water Equipment; (2) that the Water Company shall not be responsible for any damage that might occur to the Water Equipment regardless of the cause; and (3) that the maintenance of the Water Equipment, if such is to be maintained, shall be the obligation of the owners of the Real Estate. No person shall have any right to require that the Water Company expend any funds toward the maintenance of the Water Equipment or any right to impose an obligation on the Water Company to maintain the Water Equipment, and if Declarant or any other person would allegedly have such right pursuant to any rule or regulation, the Declarant for itself and its successors and assigns hereby expressly waives that right.

**2. Acceptance and Ratification.** All present and future owners, mortgagees, tenants and occupants of the Real Estate and the Water Equipment, shall be subject to and comply with the provisions of the Declaration and all such provisions shall be covenants running with the land and shall be binding on any persons having at any time any interest or estate in the Real Estate or the Water Equipment as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage and lease thereof. This Declaration shall remain in effect for so long as the Water Equipment is connected to the water line of the Water Company. All persons, corporations, partnerships, trust and other legal entities which may own, occupy, use, enjoy or control any of the Real Estate or the Water Equipment shall be subject to this Declaration.

**3. Maintenance of the Water Equipment.** The obligation to maintain the Water Equipment shall rest with the owners of the Real Estate for so long as the Water Equipment is connected to the water line of the Water Company. If the owners of the Real Estate fail to maintain the Water Equipment, such failure shall not put any obligation on the Water Company or on any other entity to provide maintenance.

IN WITNESS WHEREOF, Declarant has executed this Declaration on this day and year first hereinabove set forth.

[Handwritten Signature]

By:

Signature

Ronald L. Tooley  
Printed Name

SECRETARY

Title CRACKED CREEK & GEIST DEVELOPMENT Co., INC.

STATE OF INDIANA )

SS:

COUNTY OF Hamilton

Before me, a Notary Public in and for said County and State, personally appeared Ronald L. Tooley, by me known to be the secretary of Cracked Creek & Geist Develop. Co., Inc. who acknowledged the execution of the foregoing "Declaration of Maintenance Obligation" on behalf of said corporation.

WITNESS my hand and Notarial Seal this 17 day of May, 1999.

Patricia A. Kenney  
Notary Public

Patricia A. Kenney  
Printed Signature

My Commission Expires:

7-19-06

My County of Residence:

Hamilton

**EXHIBIT A**

**(Legal Description of the Real Estate owned by Declarant adjacent to right-of-way.)**

**CUMBERLAND FARMS SECTION TWO  
LAND DESCRIPTION**

A part of the Northeast Quarter of Section 27, Township 16 North, Range 5 East, being located in the City of Indianapolis, Indiana being bounded as follows:

Commencing at the Northwest Corner of the Northeast Quarter of said section 27 thence North 89°19'48" East 1050.00 feet to the POINT OF BEGINNING; thence South 00°40'12" East 70.00 feet; thence South 56°21'44" West 193.22 feet; thence South 21°53'09" West 221.92 feet; thence South 43°07'27" West 166.27 feet; thence South 89°21'55" West 110.00 feet; thence South 00°38'05" East 90.00 feet; thence South 44°21'55" West 56.57 feet; thence South 64°06'11" West 88.47 feet; thence South 00°38'05" East 271.71 feet; thence North 89°21'55" East 580.00 feet; thence South 00°38'05" East 50.00 feet; thence North 89°21'55" East 285.67 feet; thence North 00°39'10" West 990.00 feet to the Northeast Corner of the West half of the Northeast Quarter of Section 27, Twp. 16 North, Range 5 East; thence South 89°19'48" West 273.36 feet to the POINT OF BEGINNING containing 13.83 acres, more or less, subject to all applicable easements and rights-of-way of record.

THIS SUBDIVISION CONSISTS OF 30 LOTS NUMBERED 24-53 BOTH INCLUSIVE, AND STREETS AS SHOWN HEREON. THE SIZE OF LOTS AND WIDTHS OF STREETS ARE SHOWN ON THIS PLAN BY FIGURES DENOTING FEET AND DECIMAL PARTS THEREOF.

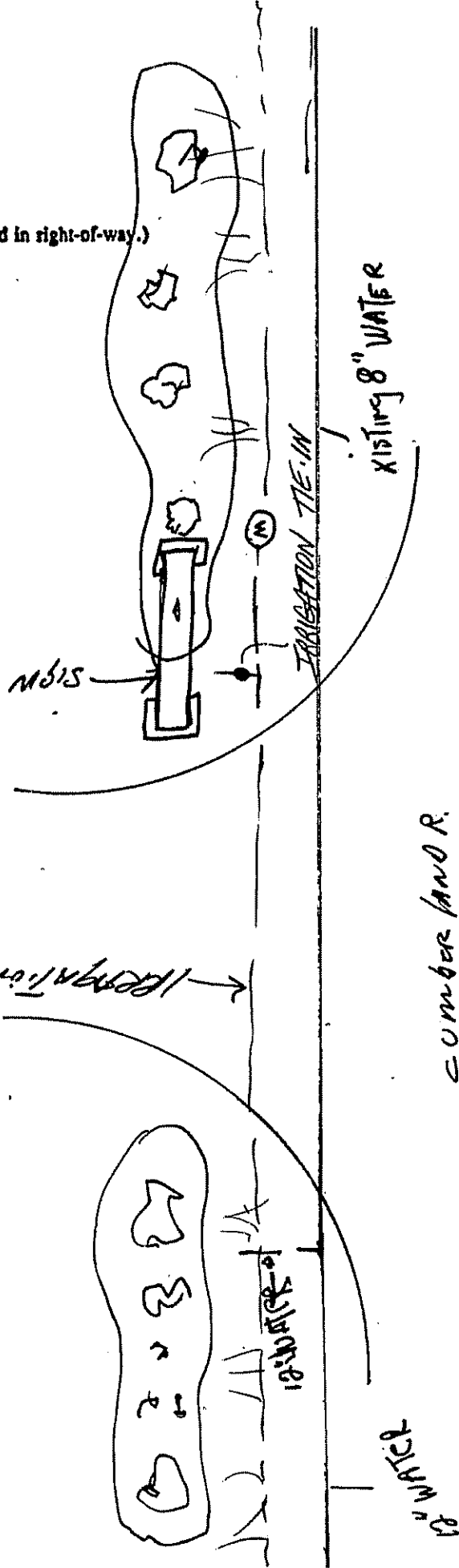
**EXHIBIT B**

(Description of Water Equipment located in right-of-way.)

\* IRRIGATION TIE-IN  
WILL BE MADE  
NEAR SIGNAGE TO  
GET ELECTRIC TO  
TIMER

FOR THE WAY

IRRIGATION



5

**DECLARATION OF MAINTENANCE OBLIGATION**

THIS DECLARATION made this 22 day of June, 1999  
by CROOKED CREEK RT GEIST DEV. CO., INC.  
("Declarant").

Address 9125 E 146<sup>th</sup> Noblesville, In  
46060

**WITNESSETH**

WHEREAS, the following facts are true.

A. Declarant is the owner of fee simple title to certain real estate located in Marion County, Indiana, more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Real Estate").

B. Declarant has installed or plans to install in the right-of-way known as CUMBERLAND LAKES (RD) Street, Indianapolis, Indiana (hereinafter referred to as the "Right-of-Way") adjacent to the Real Estate the equipment described in Exhibit B attached hereto (hereinafter referred to as the "Water Equipment"), which Declarant desires to connect to the water line of the Indianapolis Water Company ("Water Company").

C. The Water Company is objecting to the installation of the Water Equipment pursuant to Rule 7(A) of its Rules and Regulations on file with and approved by the Indiana Utility Regulatory Commission governing its provision of water utility service because it is concerned that in the future the Water Company might be requested to maintain, repair or replace (hereinafter "maintain") the Water Equipment because of its location in the Right-of-Way.

D. Declarant deems it desirable that the owner of the Real Estate be responsible for maintaining the Water Equipment and that the Water Company have no obligation to maintain the Water Equipment.

NOW, THEREFORE, Declarant declares that the Real Estate and the Water Equipment be held, transferred, sold, conveyed, encumbered, leased, rented, used and occupied subject to the provisions, agreements, covenants and restriction hereinafter set forth:

*Prepared by  
Indianapolis Water Company*

1. Declaration. Declarant hereby expressly declares (1) that the Water Company shall have no obligation to maintain in any manner the Water Equipment; (2) that the Water Company shall not be responsible for any damage that might occur to the Water Equipment regardless of the cause; and (3) that the maintenance of the Water Equipment, if such is to be maintained, shall be the obligation of the owners of the Real Estate. No person shall have any right to require that the Water Company expend any funds toward the maintenance of the Water Equipment or any right to impose an obligation on the Water Company to maintain the Water Equipment, and if Declarant or any other person would allegedly have such right pursuant to any rule or regulation, the Declarant for itself and its successors and assigns hereby expressly waives that right.

2. Acceptance and Ratification. All present and future owners, mortgagees, tenants and occupants of the Real Estate and the Water Equipment, shall be subject to and comply with the provisions of the Declaration and all such provisions shall be covenants running with the land and shall be binding on any persons having at any time any interest or estate in the Real Estate or the Water Equipment as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage and lease thereof. This Declaration shall remain in effect for so long as the Water Equipment is connected to the water line of the Water Company. All persons, corporations, partnerships, trust and other legal entities which may own, occupy, use, enjoy or control any of the Real Estate or the Water Equipment shall be subject to this Declaration.

3. Maintenance of the Water Equipment. The obligation to maintain the Water Equipment shall rest with the owners of the Real Estate for so long as the Water Equipment is connected to the water line of the Water Company. If the owners of the Real Estate fail to maintain the Water Equipment, such failure shall not put any obligation on the Water Company or on any other entity to provide maintenance.

IN WITNESS WHEREOF, Declarant has executed this Declaration on this day and year first hereinabove set forth.

Crooked Creek at Geist Dev. Co.

By: [Signature]  
Signature  
Ronald L. Tooley  
Printed Name  
SECRETARY  
Title

STATE OF INDIANA )  
                          )SS:  
COUNTY OF Hamilton )

Before me, a Notary Public in and for said County and State, personally appeared Ronald L. Tooley, by me known to be the Secretary of Crooked Creek at Geist Dev. Co. who acknowledged the execution of the foregoing "Declaration of Maintenance Obligation" on behalf of said corporation.

WITNESS my hand and Notarial Seal this 22 day of June, 1999.

[Signature]  
Notary Public

Carol M. Cox  
Printed Signature

My Commission Expires:  
12/28/01

My County of Residence:  
Hamilton

**EXHIBIT A**

**(Legal Description of the Real Estate owned by Declarant adjacent to right-of-way.)**

A part of the Northeast Quarter of Section 27, Township 16 North, Range 5 East, being located in the City of Indianapolis, Indiana being bounded as follows:

Commencing at the Northwest Corner of the Northeast Quarter of said section 27 thence North 89°19'48" East (assumed bearing) along the north line thereof 1858.00 feet to the POINT OF BEGINNING; thence South 0°40'12" East 70.00 feet; thence South 56°21'44" West 193.22 feet; thence South 21°53'09" West 221.92 feet; thence South 43°07'27" West 156.27 feet; thence South 89°21'55" West 118.00 feet; thence South 00°38'05" East 98.88 feet; thence South 44°21'55" West 56.57 feet; thence South 64°06'11" West 88.47 feet; thence South 00°38'05" East 271.71 feet; thence North 89°21'55" East 588.88 feet; thence South 00°38'05" East 50.00 feet; thence North 89°21'55" East 285.67 feet; thence North 00°39'10" West 990.00 feet to the Northeast Corner of the West half of the Northeast Quarter of Section 27, Twp. 16 North, Range 5 East; thence South 89°19'48" West 273.36 feet to the POINT OF BEGINNING containing 13.83 acres, more or less, subject to all applicable easements and rights-of-way of record.



**EXHIBIT B**

(Description of Water Equipment located in right-of-way.)

