

MARTHA A. WDMACKS  
MARION COUNTY AUDITOR

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DULY RECORDED  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

18

REVISED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
FISHER CREEK CONDOMINIUMS

THIS DECLARATION, made on this date hereinafter set forth by Heritage Development of Indiana, LLC, an Indiana limited liability company, hereinafter referred to as "Declarants."

WITNESSETH:

WHEREAS, Declarants are owners of certain property in Warren Township, Marion County, Indiana which is more particularly described in Exhibit "A": attached hereto and by this reference have a part hereof: and

NOW, THEREFORE, Declarants hereby declare that all of the property described in Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors, and assigns and shall insure to the benefit of each owner thereof.

ARTICLE I

NAME

This subdivision shall be known as Fisher Creek Condominiums, a subdivision of Indianapolis, Marion County, Indiana. It is also known as Fisher Creek by reference in this document.

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CHICAGO TITLE  
Inst # 2005-0191318

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Fisher Creek Condominium Association, Inc., and Indiana not-for-profit Corporation, its successors and assigns.

Section 2. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 3. "Building" shall mean and refer to any multifamily dwelling unit that may be construed on a part of more than one Lot.

Section 4. “Master Cluster” shall mean an attached housing plan for the development as approved by the Plat Committee of the Department of Metropolitan Development of the City of Indianapolis consisting of twenty one buildings with 124 Lots (units) in both Section One and Section Two. A Sub-Cluster includes a group of Lots contained within a Block. All area other than the Lot conveyed to an Owner within a Sub-Cluster is Initial Common Area. (Example – A designated building plus some surrounding realty in BLOCK A would be a CLUSTER with all buildings within BLOCK A and all Common Area in BLOCK A comprising in the aggregate BLOCK A in its entirety.) Blocks L & K are Common Areas without buildings and Block M is for the private streets.

Section 5. “Limited Common Area,” shall mean that portion of the Common Area that shall be reserved by each lot owner for his or her exclusive use. Those areas shall be the drive from the edge of road pavement to the face of the garage door, the walk connecting the drive to the front door of the dwelling, mail box, the patio area attached or adjacent to the foundation of the dwelling, the area directly in front of or behind each unit a distance of 22’ in the front yard and 12’ in the rear yard, from the face of the foundation and running between the extended lines of each of the further most points of the ends of the individual foundation of the dwelling.

Section 6. “Common Area” shall mean all the real estate (including improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The conveyance of all Common Areas used for vehicular or easement purposes will occur simultaneously with the conveyance by Declarant of the first Lot in a Cluster to another titleowner, with the balance, if any, of Common Area to be conveyed at a later date when at least fifty (50) lots are conveyed to other titleowners with no assessments being due and payable under Article 6 on any Common Ground not deeded to the Association.

Section 7. “Common Expense(s), with respect to the “Association” or “Fisher Creek Condominium Homeowners Association”, shall include the expenses of administration of the corporation involved, its expenses for the upkeep, maintenance, repair and replacement of Common Areas titled in the particular corporation involved, or items specifically reserved for its maintenance and all sums lawfully assessed against the membership of the involved corporation.

Section 8. “Condominium” means building construction per Lot (unit) in the development. The Lot shall be exactly defined after construction by “As Built Survey” and shall be one tenth larger than foundation dimensions of each dwelling. THE WORD “CONDOMINIUM” IS USED IN THE GENERIC SENSE AND IN NO WAY IS A REPRESENTATION THAT THE HORIZONTAL PROPERTY REGIME UNDER INDIANA STATUTES APPLIES.

Section 9. “Declarant” shall mean and refer to Heritage Development of Indiana, LLC, its successors and assigns as a declarant including builders who purchase Lots for the purpose of the erection of buildings and the resale of the Lots and dwelling units to Owners.

Section 10. “Dwelling” shall mean and refer to a residence erected on a Lot within the Properties.

Section 11. “Lot” or otherwise designated as “unit”, “condo unit” or “condo dwelling unit” in the development shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area. Each Lot shall contain a single-family residential dwelling. Each Lot in the development shall contain an area that exceeds the exterior face of the foundation wall dimensions of the structure by one tenth in dimension. The final plat of each Cluster may include for each platted Lot in each Cluster areas specifically reserved for landscape gardening as determined by the Association. Building setback lines and Lot sizes shall be depicted upon the plat of the residential portion of the development.

Section 12. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation.

Section 13. “Perimeter fence” shall mean and refer to a fence constructed on any boundary of the development, type, timing and specific locations thereof to be in the sole judgment of the Declarant. The ownership, maintenance and use thereof shall be under the control of the Association.

Section 14. “Plat” shall mean and refer to the conditional plat of the Properties recorded in the Office of the Recorder of Marion County, Indiana, Inst. 2005-019134 as the same may be hereafter amended or supplemented, by as-built final plats.

Section 15. “Properties” shall mean and refer to the real estate described in Exhibit “A” and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

### ARTICLE III

#### LOTS

Section 1. Number of Lots. This subdivision consists of at least One Hundred Twenty Four (124) Lots, with streets as shown on the Conditional Plat.

Section 2. Land Use. All lots shall be used exclusively for residential purposes.

Section 3. Conveyance of Lots. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

#### ARTICLE IV

##### ACCESS RIGHTS OF ASSOCIATION

Section 1. Easement to Maintain Facilities. Certain utility lines, sewer and other facilities and other improvements located on one Lot may serve other Lots. The Association, and any member thereof whose enjoyment of the use and occupancy of the member's Lot is affected thereby, shall have an easement thereto and shall have the right, at reasonable times and at any time in case of emergency, to go upon any other Lot for the purpose of maintaining or causing to be maintained or repaired any party walls, utility lines, sewer or other facilities which serve more than one Lot.

Section 2. Failure to Maintain. If any Owner shall fail to adequately maintain the open area included within the Owner's Lot, the Association, upon the giving of ten (10) days' written notice to such Owner, shall have the right to enter upon such open area and do any necessary maintenance thereon. The cost of such maintenance shall be a special assessment against such Lot and the Owner thereof.

Section 3. Easement. The Association shall have an easement for access to all Lots for ingress and egress as reasonably required by its officers, directors, employees and their agents and independent contractors in order to perform its obligations and duties as set forth in this Declaration. These easements are also reserved for the benefit of Declarant so long as Declarant owns any Lot in the subdivision.

#### ARTICLE V

##### ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot, who is subject to assessment, shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot.

Section 2. The Association shall have two (2) classes of voting membership:

Class A Class A members shall be all owners of Lots with dwellings who are liable for the expenses of Fisher Creek Condominium Association, Inc. Builders with models or Spec.'s are not included for expenses.

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

- (a) when the total votes outstanding in the Class A memberships equal the total votes outstanding in the Class B membership; or,
- (b) On January 1, 2009.

Section 3. The Owners shall elect a Board of Directors of the Association as Prescribed by the Association's Bylaws. The Board of Directors shall manage the affairs of the Association.

## ARTICLE VI

### CONVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore and a dwelling constructed, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: 1) monthly assessments or charges; 2) special assessments for capital improvements and operating deficits; and, 3) special assessments as provided in Articles IV and IX; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the successors in title unless expressly assumed by them. Builders with models and built for sale homes are not subject to this section unless dwelling is occupied as a residence.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Properties and for the improvements, maintenance and other purposes as specifically provided herein.

Section 3. Maximum Monthly Assessments.

- (a) Until January 1, 2007, the maximum monthly assessment on any Lot conveyed by Declarant (including assessments for insurance pursuant to Article IX) shall be Twenty-five Dollars (\$40.00) per Lot, except that if a Lot is undeveloped or construction of the residential unit thereon is incomplete or unsold, the assessment for such Lot shall be waived until sold or occupied.
- (b) From and after January 1, 2007, the maximum monthly assessment may be increased each calendar year not more than twenty percent

- (20%) above the maximum assessment for the previous year without a vote of the membership.
- (c) From and after January 1, 2007, the maximum monthly assessment may be increased above twenty percent (20%) by a vote of a majority of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- (d) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement, or establish a Capital Fund for future repairs, of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the asset of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than thirty (30) days, not more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of members of, or proxies entitled to cast, sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments for capital improvements and operating deficits must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments; Due Dates. The monthly assessment provided for herein shall commence on January 1, 2006, and the insurance assessment provided for in Article IX shall commence as to each Lot on the first day of the first month following the conveyance of such Lot to an Owner other than a builder. The Board of Directors shall fix any increase in the amount of the effective date of such increase. Written notice of special assessments and such other assessment notices, as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

**Section 8. Effect of Nonpayment of Assessments; Remedies of the Association.** If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due (pursuant to Section 7 hereof), then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such Lot binding upon the then Owner, the Owner's heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain the Owner's personal obligation and shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action in favor of the prevailing party.

No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of the Owner's Lot.

**Section 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

# CHICAGO TITLE

## ARTICLE VII

### DECLARANT'S RIGHTS

**Section 1. Use of Property.** Declarant reserves the right to use any of the Lots as models and to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain a model, erect signs, maintain an office, staff the office with employees and to show Lots then unsold. Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of buildings and other improvements in the subdivision.

Section 2. Rights of Builders. The rights reserved to Declarant in section 1 are also reserved to a builder purchasing a Lot from Declarant.

## ARTICLE VIII

### MAINTENANCE

#### Section 1. Maintenance by Owners.

- (a) Interior. The Owner of each Lot shall furnish, and be responsible for, at the Owner's own expense, all maintenance, repairs, decorating and replacements within the Owner's residence, including the heating and air conditioning system and any partitions and interior walls. The Owner further shall be responsible for the maintenance, repair and replacement of all windows in the Owner's residence and also the doors leading into the residence, and any and all other maintenance, repair and replacements of the improvements on the Owner's Lot unless otherwise provided herein.
- (b) Exterior. The Owner of each Lot shall furnish, and be responsible for, at the Owner's own expense, the Owner's driveway, front walk, rear patio, mail box, all of the exterior maintenance and repair of the improvement and Lot, except for those items specifically undertaken by the Association pursuant to Sections 2 and 3 of this Article. Such responsibility of the Owner is subject, however, to the conditions and limitations set forth in Article XII regarding Architectural Control.
- (c) Equipment, Facilities and Fixtures. To the extent that equipment, facilities and fixtures within any Lot shall be connected to similar equipment, facilities or fixtures affecting or serving other Lots, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or the manager or managing agent for the Association shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to any equipment, facilities or fixtures affecting or serving other Lots.

Section 2. Maintenance of Private Roads. The Association shall be Responsible for the maintenance, repair and repaving of all private roads. The Association shall be responsible for the replacement of limited common areas (Drive to Garage, walk from Drive to Entry Door and patio and stoops) not on individual Lots and for the maintenance and repair of any pedestrian walkways or sidewalks constructed or to be constructed within the Association property. The private streets shown on the Plat are to be maintained by the Association at their expense and any Lot Owner individually or the Association as a whole may not petition the City of Indianapolis for acceptance of these private streets into the Cities maintenance system. No parking is allowed on the private road at any time.

#### Section 3. Exterior Maintenance Obligations of Association with Respect to



Lots. The Association will maintain the private roads within the development. As to the other maintenance:

(a) Class A members shall maintain and assume the expenses of snow Removal, lawn care, trash removal, private street maintenance, sidewalk maintenance, utility equipment maintenance and landscaping.

(b) Class B members shall maintain and assume the expenses of snow removal, lawn care, trash removal, limited street maintenance, sidewalk maintenance and landscaping on Lots or Homes not yet deeded to Owners.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, the Owner's family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

Section 4. **Best Management Practice.** This subdivision has been designed to include a storm water quality best management practice (BMP(s) owner. Said BMP(s) is currently maintained by the developer; however, upon the activation of the homeowners association, the Operation and Maintenance Manual for such BMP(s) shall become the responsibility of the association subject to all fees and other City requirements.

## ARTICLE IX

### INSURANCE

Section 1. **Liability Insurance.** The Association shall purchase a master comprehensive public liability insurance policy in such amount or amounts, as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors or any committee of the Association, or Board of Directors, all persons acting, or who may come to act, as agents or employees of any of the foregoing, all Owners and all other persons entitled to occupy any Lot.

The Association shall also obtain any other insurance required by law to be maintained including such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors the Owner's right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 2. Monthly Assessment for Insurance. The premiums for all such insurance hereinabove described shall be paid by the Association, and the cost thereof shall be assessed on a monthly basis and shall be part of, except for the one time prepayment at closing with owner as further defined below, the monthly assessment to which each Lot conveyed by Declarant shall be subject under the terms and provisions of Article VI. Each Owner (except builders) shall prepay to the Association at the time the Owner's Lot is conveyed to such Owner an amount equal to thirteen (13) monthly insurance assessments as estimated by the Association and shall maintain such prepayment account at all times. The Association shall hold such funds in escrow for the payment or the purchase of insurance as herein provided; provided further that such funds may be used for the prepayment of insurance premiums. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

Section 3. Distribution of Mortgagee. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event, any remittances shall be to the Owner and the Mortgagee jointly.

Section 4. Additional Insurance. Each Owner shall be solely responsible for and will obtain such additional insurance as the Owner deems necessary or desirable at the Owner's own expense affording coverage upon the Owner's personal property, the coverage of the Owner's residence (including the entire structure, interior and exterior) and the Owner's personal property stored elsewhere on the Properties, and for the Owner's personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association. Each Owner may obtain casualty insurance at the Owner's own expense upon the Owner's Lot, but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to the proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

Section 5. Casualty and Restoration. Damage to, or destruction of, any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Dwelling Owner, and the proceeds of insurance, if any, shall be applied for that purpose.

Section 6. Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association, and/or Dwelling Owner, as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and

repairing and reconstructing the Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall have the right to levy a special assessment against those Lots involved and/or all Lots for such deficiency.

For purposes of Section 5 above, repair, reconstruction and restoration shall mean Construction or rebuilding of the Building or Buildings to as near as possible the same condition, as it existed immediately prior to the damage or destruction and with the same type of architecture.

**Section 7. Surplus of Insurance Proceeds.** In the event that there is any surplus of insurance proceeds from the Association policy after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Properties, or, in the discretion of the Board of Directors, may be distributed to the Owners of the Buildings affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

## ARTICLE X

### EASEMENTS

**Section 1. Utility & Drainage Easements.** There are strips of ground marked "Utility & Drainage Easements" ("U.D.S.") shown on the Plat which are hereby reserved for public utilities, not including transportation companies, for the installation and maintenance of poles, mains, sewers, drains, ducts, lines, wires and the like. The Owners of Lots shall take title subject to the easements hereby created and subject at all times to the rights of proper authorities to service the utilities and the easements hereby created. No permanent structure of any kind, and no part thereof, including fences, shall be built, erected or maintained on said drainage, utility and sewer easements except walkways and paving on the Driveway and Private Roads.

**Section 2. Driveway Limited Easements.** Driveway Limited Easements, as specified in Article II, Section 5, are hereby reserved for the common use and enjoyment of the Owners of the Lot or Lots appurtenant thereto, their families and invitees. Such Driveway Limited Easements shall not be used for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of pickups and deliveries to neighboring Lots. No boats, campers, trailers, velocipedes, bicycles, toys or other private property shall be allowed to obstruct any Driveway Limited Easement, nor shall the same be stored in the open alongside building walls or other locations of public view. Cars, trucks and other vehicles may be parked on the paved portion of any Driveway Limited Easement. No fence, barrier or other obstruction of any kind shall ever be placed upon any Driveway Limited Easement so as to block or impede access upon such easement. Any parking space assigned to an Owner shall be located upon such Owner's Lot and Driveway (or within such Owner's garage, if applicable) to the extent reasonably possible, but may encroach upon the unimproved portion of another Lot to a reasonable extent if necessary or appropriate. The Association may construct additional parking

possible, but may encroach upon the unimproved portion of another Lot to a reasonable extent if necessary or appropriate. The Association may construct additional parking areas (to be properly surfaced) within any common area noted on the Plat (subject to any necessary governmental or utility approvals) or upon any other Lot or Lots with the consent of the Owner thereof and provide access to a Driveway Limited Easement or a street, provided such additional parking areas shall not be located within six (6) feet of a Building. The Association shall be responsible for the maintenance and repair of any parking areas constructed by the Association. All Owners shall have reciprocal rights to any additional parking areas established by the Association subject to any reasonable and nondiscriminatory rules and regulations enacted by the Association.

Section 3. Easement for Emergency Purposes. An easement is hereby granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the Driveway Limited Easements and those areas with private streets, to the extent necessary or appropriate upon any Lot.

Section 4. General Easement. There is hereby created a blanket easement over, across, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of the underground utilities and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, maintenance of the two billboard signs, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant, the Corporation or the providing utility or Service Company or any of their respective agents, employees or designees to install and maintain facilities and equipment on the Property and to excavate for such purposes if Declarant or such company restores the disturbed area. All such restoration to be limited to re-seeding and re-grading and Declarant or such company shall be under no obligation to repair or replace any improvements or landscaping. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in the Property except as proposed and approved by Declarant prior to the conveyance of the first Lot in the Property to an Owner or by the Corporation thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by recorded document, Declarant or the Corporation shall have the right to grant such easement on the Property without conflicting with the terms thereof. This blanket easement shall in no way affect any other recorded easements on the property, shall be limited to improvements as originally constructed, and shall no cover any portion of a Lot upon which a Residence (but for the purpose of this Section, only, including driveway or walks and mailboxes associated with the normal construction of a Residence) which has been constructed.

## ARTICLE XI

### PARTY WALLS AND COMMON WALLS

each other shall constitute a party wall, and, to the extent not inconsistent with the provisions of the Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party or common wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. Subject to the provisions of Article X hereof, if a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right to any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

## ARTICLE XII

# CHICAGO TITLE

## ARCHITECTURAL CONTROL

Except for original construction by Declarant or a builder, no out-building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to, or change or alteration therein, other than by the Board of Directors, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to, and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural committee composed of three (3) or more representatives appointed by the Board. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided.

## ARTICLE XIII

## SIGNS AND HOME OCCUPATIONS

Section 1. Signs. Prior to January 1, 2010, no advertising signs of any kind (other than interior window signs) shall be displayed on any Lot without the prior written approval of Declarant. Further, no signs of any nature, kind or description shall be erected, placed or maintained on any Lot, which identify, advertise or in any way describe the existence or conduct of a home occupation.

Section 2. Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot.

Section 3. Advertising during Construction and Sales Period. Nothing contained herein shall be construed or interpreted to affect the activities of Declarant or builder in the sale of Lots or dwellings as a part of the development of this Subdivision.

#### ARTICLE XIV

##### ENCROACHMENTS AND EASEMENTS FOR BUILDINGS

Section 1. Lot Encroachment. If, by reason of the location, construction, settling or shifting of a Building, any part of a Building consisting of the single-family residence appurtenant to a Lot (hereinafter in the Article referred to as the "Encroaching Lot") now encroaches or shall hereafter encroach upon any other adjacent Lot, then in such event, an easement shall be deemed to exist and run to the Owner of the Encroaching Lot for the maintenance, use and enjoyment of the Encroaching Lot and all appurtenances thereto.

Section 2. Common Easement. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in or on any other Lot and serving an Owner's Lot.

#### ARTICLE XV

##### GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed at any time within ten (10) years following the date of recordation by an instrument recorded in the Office of Marion County, Indiana, signed by at least a majority of the then Owners and thereafter by a similar recorded instrument signed by a least seventy-five percent (75%) of such Owners; provided, however, none of the rights of Declarant reserved hereunder may be amended or changed without Declarant's prior written approval. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty (20) years from the date of recordation in the Office of the Recorder of Marion County, Indiana, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten (10) year period it is amended or changed, in whole or in part, as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of the Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 3. Annexation. Additional residential property may be annexed to the Properties by Declarant by the recording of a declaration applicable to such annexed real estate which incorporates the terms of the Declaration herein.

Section 4. HUD Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Department of Housing and Urban Development: annexation of additional properties; dedication of common area (if any); and, amendment of this Declaration.

IN WITNESS WHEREOF, Heritage Development of Indiana, LLC, by Dean P. McFarland, V.P. has caused this Declaration to be executed this the 19<sup>TH</sup> day of SEPT., 2005.

HERITAGE DEVELOPMENT OF INDIANA, LLC

By:   
Dean P. McFarland

STATE OF INDIANA)

) SS:

COUNTY OF MARION)

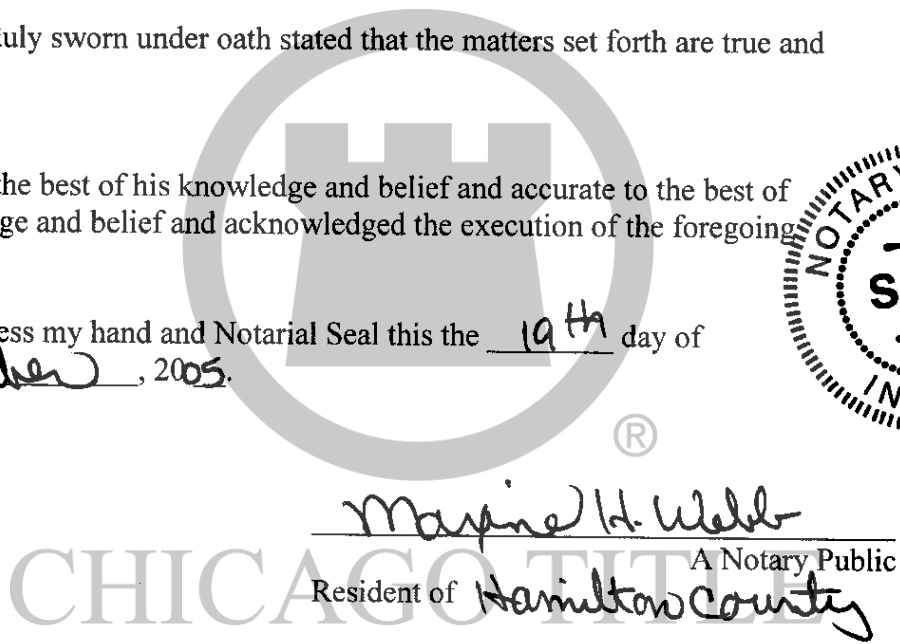
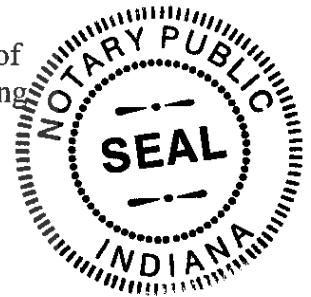
Before me, the undersigned Notary Public, personally appeared

Sean P. McFarland

Who being duly sworn under oath stated that the matters set forth are true and

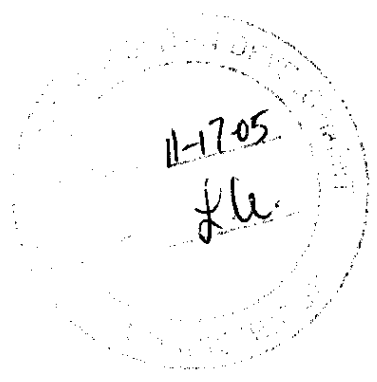
Accurate to the best of his knowledge and belief and accurate to the best of His knowledge and belief and acknowledged the execution of the foregoing Declaration.

Witness my hand and Notarial Seal this the 19<sup>th</sup> day of September, 2005.



Maxine H. Webb  
A Notary Public  
Resident of Hamilton County

My commission Expires:  
12/12/07



APPROVED THIS 18<sup>th</sup>  
DAY OF Nov 2005  
ASSESSOR OF WARREN TOWNSHIP  
Christine Stewart DRAFTSMAN



PROPOSED FISHER CREEK CONDOMINIUMS - SECTION ONE  
LEGAL DESCRIPTION

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 15 NORTH, RANGE 4 EAST OF THE SECOND PRINCIPAL MERIDIAN, MARION COUNTY, INDIANA DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER; THENCE ALONG THE NORTH LINE THEREOF NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST (ASSUMED BEARING) 1335.63 FEET TO THE NORTHWEST CORNER OF SAID EAST HALF QUARTER SECTION; THENCE ALONG THE EAST LINE OF KISSEL HEIGHTS SECOND SECTION AS PER PLAT THEREOF RECORDED IN VOLUME 32, PAGE 25 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA SOUTH 00 DEGREES 11 MINUTES 37 SECONDS WEST 64.97 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG THE EAST LINE OF SAID KISSEL HEIGHTS AND THE EAST LINE OF ENGLISH CROSSING AS PER PLAT THEREOF RECORDED IN INSTRUMENT NO. 94-008657 IN SAID RECORDER'S OFFICE SOUTH 00 DEGREES 11 MINUTES 37 SECONDS WEST 631.74 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 23 SECONDS EAST 121.00 FEET; THENCE NORTH 00 DEGREES 11 MINUTES 37 SECONDS EAST 50.36 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 23 SECONDS EAST 116.79 FEET; THENCE SOUTH 89 DEGREES 30 MINUTES 13 SECONDS EAST 127.42 FEET TO A POINT ON A CURVE CONCAVE WESTERLY THE RADIUS OF WHICH BEARS NORTH 87 DEGREES 56 MINUTES 39 SECONDS WEST 1489.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00 DEGREES 10 MINUTES 22 SECONDS 4.49 FEET; THENCE SOUTH 88 DEGREES 07 MINUTES 01 SECONDS EAST 22.00 FEET TO A POINT ON A CURVE CONCAVE WESTERLY THE RADIUS OF WHICH BEARS NORTH 88 DEGREES 07 MINUTES 01 SECONDS WEST 1511.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01 DEGREE 18 MINUTES 26 SECONDS 34.47 FEET; THENCE SOUTH 86 DEGREES 31 MINUTES 32 SECONDS EAST 152.17 FEET TO A POINT ON THE WESTERLY LIMITED ACCESS RIGHT-OF-WAY LINE OF INTERSTATE 465 PER INDIANA STATE HIGHWAY PROJECT NO. I-465-4(121)(113) SAID POINT BEING A POINT ON A CURVE CONCAVE WESTERLY THE RADIUS OF WHICH BEARS NORTH 84 DEGREES 35 MINUTES 16 SECONDS WEST 3704.72 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07 DEGREES 16 MINUTES 45 SECONDS 470.67 FEET; THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF ENGLISH AVENUE PER SAID HIGHWAY PROJECT NORTH 35 DEGREES 33 MINUTES 47 SECONDS WEST 67.78 FEET; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE NORTH 87 DEGREES 28 MINUTES 21 SECONDS WEST 219.32 FEET; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE NORTH 86 DEGREES 14 MINUTES 53 SECONDS WEST 304.68 FEET TO THE POINT OF BEGINNING, CONTAINING 7.270 ACRES, MORE OR LESS. SUBJECT TO ALL RIGHTS-OF-WAY, EASEMENTS AND RESTRICTIONS.

EXCEPTING THEREFROM:

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 15 NORTH, RANGE 4 EAST OF THE SECOND PRINCIPAL MERIDIAN, MARION COUNTY, INDIANA, DESCRIBED AS FOLLOWS:®

COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST (ASSUMED BEARING) ALONG THE NORTH LINE THEREOF A DISTANCE OF 1335.63 FEET TO THE NORTHWEST CORNER OF THE EAST HALF OF SAID QUARTER SECTION; THENCE ALONG THE EAST LINE OF KISSEL HEIGHTS SECOND SECTION AS PER PLAT THEREOF RECORDED IN VOLUME 32, PAGE 25 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA SOUTH 00 DEGREES 11 MINUTES 37 SECONDS WEST 64.97 FEET TO THE NORTHWEST CORNER OF A TRACT OF LAND DESCRIBED IN INSTRUMENT NO. 94-87740 IN SAID RECORDER'S OFFICE; THENCE THE FOLLOWING TWO (2) COURSES ALONG THE NORTH LINE OF SAID INSTRUMENT NO. 94-87740; (1) THENCE SOUTH 86 DEGREES 14 MINUTES 53 SECONDS EAST 304.68 FEET; (2) THENCE SOUTH 87 DEGREES 28 MINUTES 21 SECONDS EAST 205.05 FEET; THENCE SOUTH 49 DEGREES 27 MINUTES 17 SECONDS WEST 85.79 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 81 DEGREES 15 MINUTES 09 SECONDS EAST 62.37 FEET; THENCE SOUTH 09 DEGREES 40 MINUTES 25 SECONDS WEST 45.35 FEET; THENCE SOUTH 78 DEGREES 10 MINUTES 43 SECONDS WEST 80.72 FEET; THENCE NORTH 06 DEGREES 11 MINUTES 52 SECONDS WEST 76.29 FEET; THENCE SOUTH 81 DEGREES 15 MINUTES 09 SECONDS EAST 33.61 FEET TO THE POINT OF BEGINNING, CONTAINING 5,240 SQUARE FEET, MORE OR LESS.

EXHIBIT "A"

**PROPOSED FISHER CREEK CONDOMINIUMS - SECTION TWO  
LEGAL DESCRIPTION**

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 15 NORTH, RANGE 4 EAST OF THE SECOND PRINCIPAL MERIDIAN, MARION COUNTY, INDIANA DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER; THENCE ALONG THE NORTH LINE THEREOF NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST (ASSUMED BEARING) 1335.63 FEET TO THE NORTHWEST CORNER OF SAID EAST HALF QUARTER SECTION; THENCE ALONG THE EAST LINE OF KISSEL HEIGHTS SECOND SECTION AS PER PLAT THEREOF RECORDED IN VOLUME 32, PAGE 25 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA AND THE EAST LINE OF ENGLISH CROSSING AS PER PLAT THEREOF RECORDED IN INSTRUMENT NO. 94-008657 IN SAID RECORDER'S OFFICE SOUTH 00 DEGREES 11 MINUTES 37 SECONDS WEST 696.71 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG THE EAST LINE OF SAID ENGLISH CROSSING SOUTH 00 DEGREES 11 MINUTES 37 SECONDS WEST 630.34 FEET TO A STONE AT THE SOUTHEAST CORNER OF SAID ENGLISH CROSSING; THENCE SOUTH 00 DEGREES 12 MINUTES 57 SECONDS EAST 122.98 FEET TO THE NORTHWEST CORNER OF A TRACT OF LAND DESCRIBED IN INSTRUMENT NO. 95-141306; THENCE ALONG THE NORTH LINE OF LAST SAID TRACT NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 375.51 FEET TO A POINT ON THE LIMITED ACCESS RIGHT-OF-WAY LINE OF I-465 PER INDIANA STATE HIGHWAY PROJECT NO. I-465-4(121)(113) SAID POINT BEING ON A CURVE CONCAVE WESTERLY THE RADIUS OF WHICH BEARS NORTH 71 DEGREES 26 MINUTES 01 SECONDS WEST 3704.72 FEET; THENCE NORTHERLY ALONG SAID CURVE AND LIMITED ACCESS RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 13 DEGREES 09 MINUTES 15 SECONDS 850.55 FEET; THENCE NORTH 86 DEGREES 31 MINUTES 32 SECONDS WEST 162.17 FEET TO A POINT ON A CURVE CONCAVE WESTERLY THE RADIUS OF WHICH BEARS NORTH 89 DEGREES 25 MINUTES 27 SECONDS WEST 1511.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01 DEGREE 18 MINUTES 26 SECONDS 34.47 FEET; THENCE NORTH 88 DEGREES 07 MINUTES 01 SECONDS WEST 22.00 FEET TO A POINT ON A CURVE CONCAVE WESTERLY THE RADIUS OF WHICH BEARS NORTH 88 DEGREES 07 MINUTES 01 SECONDS WEST 1489.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00 DEGREES 10 MINUTES 22 SECONDS 4.49 FEET; THENCE NORTH 89 DEGREES 30 MINUTES 13 SECONDS WEST 127.42 FEET; THENCE NORTH 89 DEGREES 48 MINUTES 23 SECONDS WEST 116.79 FEET; THENCE SOUTH 00 DEGREES 11 MINUTES 37 SECONDS WEST 50.36 FEET; THENCE NORTH 89 DEGREES 48 MINUTES 23 SECONDS WEST 121.00 TO THE POINT OF BEGINNING, CONTAINING 8.780 ACRES, MORE OR LESS. SUBJECT TO ALL RIGHTS-OF-WAY, EASEMENTS AND RESTRICTIONS.

**EXCEPTION THEREFROM:**

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 15 NORTH, RANGE 4 EAST OF THE SECOND PRINCIPAL MERIDIAN, MARION COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER; THENCE ALONG THE NORTH LINE THEREOF NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST (ASSUMED BEARING) 1335.63 FEET TO THE NORTHWEST CORNER OF SAID EAST HALF; THENCE SOUTH 00 DEGREES 11 MINUTES 37 SECONDS WEST 64.97 FEET TO THE NORTHWEST CORNER OF THE LAND OF SUNG SONG AND CHONG KANG SONG AS RECORDED IN INSTRUMENT NO. 1994-87740 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA; THENCE THE FOLLOWING THREE (3) COURSES ALONG THE NORTHERLY LINE THEREOF; (1) THENCE SOUTH 86 DEGREES 14 MINUTES 53 SECONDS EAST 304.68 FEET; (2) THENCE SOUTH 87 DEGREES 28 MINUTES 21 SECONDS EAST 219.32 FEET; (3) THENCE SOUTH 35 DEGREES 33 MINUTES 47 SECONDS EAST 67.78 FEET TO THE WESTERLY LIMITED ACCESS RIGHT-OF-WAY OF INTERSTATE 465, SAID POINT ALSO BEING ON A CURVE CONCAVE NORTHWESTERLY THE RADIUS OF WHICH BEARS SOUTH 88 DEGREES 07 MINUTES 23 SECONDS WEST 3704.72 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18 DEGREES 49 MINUTES 24 SECONDS 1217.11 FEET; THENCE NORTH 62 DEGREES 37 MINUTES 55 SECONDS WEST 54.99 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 62 DEGREES 37 MINUTES 55 SECONDS WEST 76.01 FEET; THENCE SOUTH 20 DEGREES 34 MINUTES 47 SECONDS WEST 73.37 FEET; THENCE SOUTH 79 DEGREES 12 MINUTES 40 SECONDS EAST 79.98 FEET; THENCE NORTH 16 DEGREES 49 MINUTES 15 SECONDS EAST 50.90 FEET TO THE POINT OF BEGINNING, CONTAINING 4,793 SQUARE FEET, MORE OR LESS. SUBJECT TO ALL EASEMENTS, RIGHTS-OF-WAY AND RESTRICTIONS.

EXHIBIT "A"