

APPROVED
DMD-ODS BY *[Signature]*
NOV 15 88
DETAILED
PLANNED DEVELOPMENT

880116910

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS OF
LAKE CHARLEVOIX

CURTIS L. COONROD
MARION COUNTY INDIANA

NOV 15 88 034483

DULY ENTERED FOR
TAXATION

SUBJECT TO FILED 1988
MARION COUNTY INDIANA

41-50
(56)

THIS DECLARATION, made on this 10th day of November 1988 by Lake Charlevoix Development, Inc., an Indiana corporation (hereinafter referred to as "Declarant");

WHEREAS, Declarant is the owner of certain real estate located in Marion County, Indiana, which is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as "Property");

WHEREAS, Declarant desires to subdivide and develop the Property as generally shown on the Plat for Lake Charlevoix Section I and II (hereinafter sometimes referred to as the "Plat" and sometimes referred to as the "Development"), received for record in the office of the Recorder of Marion County on November 7, 1988 as Instrument No. 88-0113298.

NOW, THEREFORE, Declarant hereby declares that all of the platted Lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in the Development and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the development as a whole and of each of said Lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part of parts thereof subject to such Restrictions, and shall insure to the benefit of Declarant's successors in title to any real estate in the Development. Declarant specifically reserves unto itself the right and privilege, prior to the recording of the plat by Declarant of a particular Lot or tract within the Development as described in Exhibit A, to exclude any real estate as shown from the Development, or to include additional real estate.

FILED
NOV 16 1988
LAWRENCE TOWNSHIP
ASSESSOR

EXHIBIT "A"
ARTICLE I
NAME

RECEIVED FOR RECORD
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BEIN O'LAUGHLIN
MARION COUNTY RECORDER

The subdivision of the Property created by this Declaration shall be known and designated as Lake Charlevoix I & II, a subdivision located in Marion County, Indiana, the legal descriptions for which is more particularly described on Exhibit A attached hereto and by reference made a part hereof.

ARTICLE II
DEFINITIONS

Section 2.1. "Association" shall mean Lake Charlevoix Homeowners Association, Inc., an Indiana not-for-profit corporation and its membership shall consist of Lot owners who pay mandatory assessments for liability, maintenance of the landscaped areas and signage; maintenance of the other improvements installed by Declarant and located within the lake easements.

Section 2.2. "Articles" means the Articles of Incorporation of the Association filed with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.3. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of any obligation. Unless specifically indicated to the contrary, the term Owner as used herein shall include the Declarant, so long as the Declarant shall own any Lot.

Section 2.4. "Property" means the real estate described in Exhibit "A" which is Lake Charlevoix I & II including the Common Areas and Lake Area.

Section 2.5. "Plat" means the subdivision plat of the Property identified as Plat of Lake Charlevoix I & II recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented.

Section 2.6. "Lot" means any parcel of land shown upon the Plat of Lake Charlevoix I & II and identified by a number 1 through 102 inclusive.

Section 2.7. "Developer" shall mean Lake Charlevoix Development, Inc., an Indiana Corporation, its successors and assigns as a Declarant.

Section 2.8. "Board of Managers" means the Board of Managers of the Association.

Section 2.9. "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the real estate described in Exhibit A.

Section 2.10. "Committee" shall mean the Development Control Committee, composed of at least 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 Declarant until the end of the Development Period, at which time the Lake Charlevoix Homeowners Association, Inc., shall appoint this Committee. The initial members of the Committee appointed by Declarant are Edwin Pontius, Mark Conreux, and Larry Rodeman.

Section 2.11. "Common Area" means the center of the turnaround, the two esplanades at the two entrances to Lake Charlevoix, the lights and signage.

Section 2.12. "Lake Area" means the lake and the maintenance road used for access to the lake.

Section 2.13. Approvals, determinations, permissions or consents required herein of the Declarant shall be deemed given only if they are given in writing and signed, by the Declarant. Exceptions may be made by the Declarant or, after the Development Period, by the Homeowners Association.

ARTICLE III USE RESTRICTIONS AND ARCHITECTURAL CONTROL

Section 3.1. "Lot Use and Conveyance." All Lots shall be used exclusively for single-family residential purposes, except that Declarant, during the Development Period, reserves the rights provided herein respecting the Property generally. Except as herein provided, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the Covenants, Conditions, and Restrictions contained herein.

Section 3.2. "Building Control." Prior to construction of any structure upon a Lot, the building plans thereof, including plot plans, site storm drainage and grading plan, specifications, plan for landscaping, and any other data or information which may be requested, must be submitted to the Committee and delivered to the person or persons requesting such approval. The Committee is authorized to determine whether the proposed structures, plans and specifications show conformity and harmony of external design with existing structures, whether the building and property set-back lines are in conformity with applicable plat requirements, and whether the proposed site storm drainage plan conforms to the overall project and Lot drainage plans as specified in the approved final construction plans for Lake Charlevoix. No charge will be made to any purchaser of a Lot for examination of plans or for giving approval for construction thereon. In the event the Committee does not indicate in writing its approval or

disapproval of plans submitted for its review within a period of fifteen (15) days after submission, the Committee is deemed to have approved such plans.

Section 3.3. "Occupancy or Residential Use of Partially Completed Dwelling House Prohibited." No dwelling house constructed on any Lot shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the house shall have been substantially completed in accordance with the approved building plan shall be made by the Committee and such decision shall be binding on all parties.

Section 3.4. "Other Restrictions." All of the Property shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the development, all of which are incorporated herein by reference.

Section 3.5. "Building Location and Floor Elevation." No building may be erected between the building line shown on the Plat and the front Lot line; and no structure or part hereof may be built or erected nearer than 7 feet to any side yard line, with a minimum total of both side yards not less than 19 feet, or nearer than 25 feet to any rear Lot line. The lowest floor elevations allowed for any dwelling in this Development is 750.0 (U.S.G.S. Datum) which is two (2) feet above the 100 year flood elevation determined by the Indiana Department of Natural Resources, Division of Water, except in the case of basements. Basement floors will be allowed to be lower provided that the basement is flood-proofed at least up to the elevation of 750.0 (U.S.G.S. Datum) and certified to be so by a registered engineer or architect. (See Section 3.6)

Section 3.6. "Architectural Guidelines." Any new building or improvement or any addition to an existing building or an exterior alteration or change to an existing building must have the prior written approval of the Committee before any work is undertaken. The Committee has established the following guidelines for specific types of construction and improvements. Any addition, exterior alteration or change to an existing building shall be compatible with the existing structure.

- A. Size of Dwelling. The ground floor area of the main structure, shall be not less than 2400 square feet in the case of a one-story dwelling, nor less than 1300 square feet in the case of a two-story dwelling. The first and second floors of a two-story or multi-level shall contain at least 2600 square feet. These square footages refer only to finished interior living space, excluding open patios, finished lower levels, porches, garages, etc.

- 7
- B. Garages. All homes shall have at least two car attached garages. All garage doors shall be of wood or masonite material and be painted or stained to match or compliment the dwelling.
 - C. Driveways. All driveways shall be asphalt, concrete or paving brick material.
 - D. Flat Roofs. No home designs will be permitted which include flat or nearly flat roofs over the main parts of the house.
 - E. Sidewalks. Each home shall have a continuous concrete or brick sidewalk from the driveway to the front porch. In addition, each Lot shall be serviced by a 4' concrete walk on all portions of the Lot with street frontage. Sidewalk shall be installed by the builder and included in the purchase price. If the home is completed in the winter then the sidewalks shall be installed no later than April 30th of the following spring.
 - F. No heat pumps, air conditioning units, or gas meters will be installed on the front of the house.
 - G. Windows-Doors. If storm doors are installed, they must be painted to match the exterior of the home. No unfinished aluminum doors will be allowed. All windows must be wood or wood windows with clad exterior.
 - H. All gutters and downspouts other than copper, will be painted or prefinished painted aluminum to match the exterior of the home.
 - I. All metal roof or range vents will be painted to blend with roof color. Every effort should be made to locate such vents to rear of the house.
 - J. Plumbing. All plumbing vent stacks shall be on rear of house. Sump pump lines shall be connected to underground laterals or storm sewers as provided in the plat.
 - K. Street Cleaning. Builder shall finish cleaning in front of his house upon completion and rough clean the street periodically during construction. Rough cleaning should be done immediately after foundation excavation and basement pouring and at all other times when mud is carried into the street.
 - L. Yard Lights. All Lot Owners are required to furnish and install dusk to dawn light fixtures at all driveway entrances to their Lots, the style and type of which will

be selected by the Committee which shall be the standard for the entire subdivision. Builders shall furnish and install said lights on behalf of the Owner prior to closing.

- M. Awnings. No metal, sheet plastic, fiberglass or similar type material awnings or patio covers will be permitted in the development.
- N. Mailboxes. All mailboxes installed at the street to service Lots in Lake Charlevoix shall be uniform and shall be of a type, color and manufacture approved by the Committee. Such mailboxes shall be installed by the Builder upon posts approved as to type, size and location by the Committee.
- O. Landscaping. Shall be furnished with house and completed before closing. Builder shall sod the front yard and at least 50% of the side yard. Landscape mulch will be allowed in "natural areas". The balance of the yard may be seeded. Each builder will plant two trees having a 3-inch diameter trunk in the front yards. Each home shall include a minimum of \$1500.00 worth of other plantings and landscape. This allowance includes labor and is exclusive of sodding and the two trees aforementioned. All work on the minimum landscape requirement above shall be completed prior to the closing or as soon as weather conditions permit, but no later than May 30th of the following spring. Trees, hedges, and shrubs which restrict visual lines for vehicular traffic shall be cut back or removed. Special landscaping beyond the above minimum must be approved by the Committee prior to installation.
- P. Fireplaces. The exterior of fireplace chimneys shall be brick or stone.
- Q. Swimming Pools. Only permanent, in-ground pools constructed by pool professionals will be permitted. All pools shall be backyard pools and should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design. Backyard pools on lake front Lots must be approved by the Development Control Committee or the Lake Charlevoix Homeowners Association, Inc.
- R. Tennis Courts, Racquetball Courts, Paddle Ball Courts, Etc. Tennis courts, racquetball courts, paddle ball courts, squash courts and other outdoor recreational facilities will not be permitted.

- S. Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth less than 24 inches, swing and slide sets, playhouses and tents shall not require approval by the Committee, provided such equipment is not more than six (6) feet high, maintained by the Lot Owner in good repair (including painting) and every reasonable effort has been made by the Lot Owner to screen or shield such equipment from view. Equipment higher than six (6) feet shall require approval of the design, location, color, material and use by the Committee.
- T. Geothermal heat systems are acceptable. However, the closed loop variety must be used.
- U. Miscellaneous. All exterior lights shall be directed in such a manner so as not to create annoyance to adjacent properties. Lot Owners shall keep garage doors closed at all times except during the times of actual use of the garage facility. Collapsible and removable clotheslines will be permitted, but permanent clotheslines are not acceptable.
- V. Basements. The land which is being developed as Lake Charlevoix lies almost entirely in the flood plain of Blue Creek and Fall Creek. In order to develop buildable sites within this subdivision, it was necessary to elevate the Lots to be at or above the 100-year flood elevation determined by the Indiana Department of Natural Resources. It is also a requirement of IDNR:

. . . that any building proposed for this site be provided with a flood protection grade set at or above an elevation which is two (2) feet above the 100-year frequency flood. The flood protection grade (FPG) is the elevation of the lowest floor of a building or structure. If a basement is included, the basement floor should be considered to be the lowest floor.

However, the City of Indianapolis, Department of Public Works, Drainage Division has stated that they will recommend approval of a variance to allow basement construction in Lake Charlevoix provided that a registered engineer or architect certifies in writing that the basements have been flood-proofed at least up to the flood protection grade.

The 100-Year Flood Elevation = 748.0 U.S.G.S. Datum
The Flood Protection Elevation = 750.0 U.S.G.S. Datum

Regarding flood insurance, the Developer has contacted at least three lending institutions that will not require flood insurance if they are provided a surveyor's certification showing that the lowest land grade around the house is above the 100-year flood elevation determined by IDNR. Some lenders may require flood insurance because the current FEMA flood maps show the entire Lake Charlevoix property in a flood Zone A. Builders should check with their lenders and insurance writers to see what their policies are regarding flood insurance.

W. Liability of Developer. Neither the Developer, the Committee, nor any agent thereof, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Developer and the Committee do not make, and shall not be deemed by virtue of any action of approval or disapproval taken by them, to have made any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

X. Inspection. The Committee may inspect work being performed to assure compliance with these Covenants, Conditions and Restrictions and applicable regulations.

Section 3.7. "Home Occupations." No Lot or Lots shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows may be permitted; any use conducted entirely within the residence dwelling and participated in solely by a member of the immediate family residing in said residence, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof and in connection with which there is: a) No sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling; b) No commodity may be sold upon the premises; c) No person is employed other than a member of the immediate family residing on the premises; and d) No mechanical or electrical equipment used, provided that, in no event shall the following or similar activities be conducted: a barber shop, styling salon, beauty parlor, tea room, fortune-telling parlor, tanning salon, animal hospital, or any form of animal care or treatment such as dog trimming; e) No firewood selling nor storage of firewood for sale. In addition, "Home Occupations" shall be subject to the Marion County Home Occupation Ordinance. In the event of a conflict between this Section 3.7 and the Marion County Home Occupation Ordinance, this section shall prevail.

Section 3.8. "Street Sight Line Restrictions." No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to all Lots within 10 feet of the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 3.9. "Existing Trees." No trees shall be removed along the northern and western side of Fall Creek Parkway within forty (40) feet of the edge of pavement thereof.

ARTICLE IV
GENERAL PROHIBITIONS

Section 4.1. "In General." No noxious or offensive activities shall be carried out on any Lot, nor shall anything be done on any Lot which shall be or become an unreasonable annoyance or nuisance to any Owner of another Lot.

Section 4.2. "Vehicle Parking." No trucks, camper, trailers, recreational vehicles, boats, boat trailers or similar vehicles shall be parked on any street or Lot, unless the same shall be stored in an enclosed, attached garage. No vehicle shall be parked overnight on any street within Lake Charlevoix I & II.

Section 4.3. "Exterior Antenna." Unless specifically authorized by the Committee, no television, radio or other antennas may be erected by any Lot Owner on the exterior of a house or on a Lot. No satellite dishes will be permitted.

Section 4.4. "Garbage and Refuse Disposal." No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view except at the times when refuse collections are being made. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 4.5. "Animals." No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other pets generally and customarily recognized as household pets may be kept provided that they are not kept, bred or maintained

for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots so such that they will not be a nuisance. No exterior structures, animal runs, and detention areas will be allowed for these household pets.

Section 4.6. "Storage Tanks." Any propane (other than propane tanks for portable gas grills), or oil storage tanks used in connection with a Lot shall be either buried or located in a garage or house such that they are completely concealed from public view. The storage of gasoline (except no more than a 5-gallon Underwriters Approved container of gasoline for use in lawn mowers) or any toxic chemical or hazardous materials are prohibited.

Section 4.7. "Temporary Structures and Outbuildings." No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence. No dwelling house constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Developer and such decision shall be binding on all parties. No metal outbuildings shall be permitted on any Lot. All outbuildings must be of same color and materials as the primary structure and attached thereto and be approved by the Committee.

Section 4.8. "Window Coverings." All window coverings such as curtains or blinds shall not be unsightly from the exterior, including garage windows if visible from street or lake.

Section 4.9. "Signs." No sign of any kind shall be displayed to the public view on any Lot except that one sign per builder and one per realtor of not more than six (6) square feet (2'x3') may be displayed at any time for the purpose of advertising the property for sale or for rent. An exception to this rule may be granted by the Declarant during special promotional periods. Also, the Declarant shall be permitted to erect and maintain upon the property such signs as it seems appropriate to advertise during the construction and sale periods.

Section 4.10. "Prohibition of Used Structures and Modular Homes." All structures constructed or placed on any Lot shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any such Lot. No modular or prefabricated structures (except trusses) may be placed on any Lot.

Section 4.11. "Building Completion." Unless a delay is caused by strikes, war, court injunction, or acts of God, the exterior of any dwelling or structure built upon any Lot shall be completed within one (1) year after the date of commencement of the building

process. No improvement which has been partially or totally destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage. If said structure is not completed or repaired within such time, then the Developer, or after the end of the Development Period, the Lake Charlevoix Homeowners Association, Inc. may re-enter, take possession of said Lot, without notice, and sell the same together with improvements, and after payment of liens and expenses, pay the balance of the sale proceeds if any to the Owner of said Lot at time of sale.

Section 4.12. "Fire" No fire shall be permitted to burn upon any street or roadway in the subdivision. Any outside burning will be limited to that permitted by local ordinances.

Section 4.13. "Fences, Walls and Screening." It is the goal of the Developer to keep all fencing or screening as harmonious as possible with the architectural character of the community. No fence or screen will be approved if its installation will obstruct necessary sight lines for vehicular traffic. Undue obstruction of view or other amenities from adjoining properties will be taken into consideration by the Developer, or after the end of the Development Period, the Lake Charlevoix Homeowners Association, Inc., when reviewing fences for approval. Fences shall not be nearer to the front of a home than the rear foundation line of a home except decorative fences. Decorative front fences may be placed parallel to the front foundation of a home only if they do not cause unreasonable visual barriers and they are of identical materials as the main structure. The Developer discourages fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other property Owners. Fences may be privately installed but must be constructed to professional levels of quality. Non-professionally installed fences will be inspected by the Developer, or after the end of the Development Period, the Lake Charlevoix Homeowners Association, Inc., after completion in order to ensure that the final product is of a professional quality, and final approval of the fence shall be deemed withheld until successful completion of this final review. Lake Lot Owners will be governed by ARTICLE XII hereof.

- A. Height restriction. The developer is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the community is damaged by a proliferation of fences of excessive height. The Committee, therefore, will approve rear perimeter fences up to 4 feet in height, which otherwise meet these guidelines. The Committee will give consideration, however, to a variance in this height limit where unique circumstances exist. The use of 5 foot fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio or to enclose an approved

in-ground pool area will be permitted. The specific fence height restrictions are as follows:

- 1) Property fencing and walls above grade shall not exceed 4 feet above grade unless otherwise approved by the Developer.
- 2) The Developer will not ordinarily approve any proposed fence which exceeds 4 feet in height unless unique circumstances exist.
- 3) Patio screens/privacy fences shall not exceed 6 feet in height, except for pools and recreational fences as provided herein.

B. Materials and Finish.

- 1) Wood fencing or screening will be allowed if the design is in conformity with the architectural design of the community and dwelling.
- 2) The installation of a chain link or other galvanized metal fencing will not be permitted unless it is vinyl coated or covered with similar coated material. Black or dark green are pre-approved, all other colors must be approved prior to construction.
- 3) All fencing or screening will have finished material on both sides.
- 4) Walls above grade should be constructed of natural stone, masonry, or attractive timber.

ARTICLE V
MAINTENANCE OF LOTS AND IMPROVEMENTS

The Owner of any Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall cause the following to be done:

- A. Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- B. Remove all debris or rubbish;
- C. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;

- D. Cut down and remove dead trees. No living perimeter trees may be trimmed or removed without written consent of the Board of Managers;
- E. Where applicable, prevent debris and foreign material from entering drainage areas, lakes, and streams; and
- F. Keep the exterior of all improvements in such a state of repair of maintenance as to avoid their becoming unsightly:

Section 5.1. "Right to Perform Certain Maintenance." In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, Developer shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean, or perform such other acts as may be reasonably necessary to make such Lot and improvement situated thereon, if any, conform to the requirements of these Restrictions. The cost thereof shall be an expense of the Owner and the Developer may seek collection of cost in any reasonable manner including placing a lien against said Lot for the expense thereof. Neither the Declarant, nor any of its agents, employees, or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder. Upon the completion of the development period, the Association shall succeed to the rights of the Declarant/Developer in this regard.

ARTICLE VI
DRAINAGE, LAKE, UTILITY, SEWER,
AND SIGN EASEMENTS

Section 6.1. Drainage easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in underground conduit, to serve the needs of the subdivision and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by Developer. Said easements are for the mutual use and benefit of the Owners of all Lots in Lake Charlevoix.

Section 6.2. Lake Easements are created around the lake approximately at the top of the bank. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvements, nor shall any grading restrict, in any manner, the waterflow. Obstructions, such as but not limited to; fences, firewood stacks, grass clippings, gardens, permanent

play equipment, and out buildings in the lake easements are strictly prohibited.

Any Owner who restricts or alters the flow of water through a lake easement shall be notified by registered mail by the Developer or the Homeowners Association of each violation. The Owner shall be given 10 days to correct the matter and then if not corrected the Developer or Homeowners Association as the case may be shall have the duty, obligation and right to enter upon the property and correct the problem or violation.

From time to time the lake easements may require regrading, rework or reconstruction to maintain the proper water flow. By acceptance of a deed, the Owner hereby grants to the Developer and the Homeowners Association the right of reasonable ingress and egress to enter upon the property to construct or reconstruct to any extent necessary to obtain adequate drainage. Aesthetic repairs shall be limited to final grading and seeding of the affected areas.

Should the above repairs or reconstruction be a result of the Lot Owner's violation of these Covenants, Conditions and Restrictions the Developer or Homeowners Association may seek full recovery of costs including costs of enforcement as described in Section 8.1 as well as covenant from liability as described in Section 5.1.

Under no circumstance shall any obligation for the maintenance of any lake facility be imposed upon, or implied as an obligation of any governmental agency, unless such obligation is specifically and expressly assumed or accepted by any such governmental agency.

Section 6.3. Sign Easements are created for the landscape and wall area to be maintained by the Homeowners Association. Such areas are at each of the two entrances to Lake Charlevoix and the turnaround.

Section 6.4. Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal systems designed to serve Lake Charlevoix and adjacent areas for the purpose of installation and maintenance of sewers that are a part of said system.

Section 6.5. Utility Easements (UE) are created for the use of all public utility companies and cable TV companies, not including transportation companies, for the installation and maintenance of mains ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easement.

Section 6.6. All such easements mentioned herein include the right of reasonable ingress and egress for the purpose of maintenance, construction, or reconstruction for the mutual benefit of Owners in Lake Charlevoix. No structure, including fences, shall be built on any drainage, lake, sewer, sign or utility easement.

ARTICLE VII
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 7.1. "Membership." Initially, to satisfy the requirements of the Indiana Not-for-Profit Corporation Act, the three (3) persons who sign the membership list of the Association shall be the members (the "Initial Members"). The Initial Members shall remain members of the Association until three (3) persons have become Class A or Class B members, at which time the Initial Members shall cease to be members unless they also qualify as Class A or Class B members. Every Owner of a Lot shall be a member of the Association. Apart from the Initial Members, membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 7.2. "Classes of Membership and Voting Rights." The Association shall have two (2) classes of voting membership:

CLASS A. Class A Members shall be all Owners with the exception of the Declarant. 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, all such persons shall be members; the vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot.

CLASS B. The Class B member shall be Lake Charlevoix Development, Inc., the Declarant. The Declarant shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease on the happening of the earlier of the following events:

- (a) the end of the Development Period; or,
- (b) January 1, 1993.

Section 7.3. "Board of Managers" The Board of Managers shall manage the affairs of the Association and until the end of the Development Period shall consist of three (3) persons designated by Declarant. After the end of the Development Period, the Owners shall elect a Board of Managers of the Association as prescribed by the Association's Articles and By-Laws.

ARTICLE VIII
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 8.1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot by acceptance of a deed

therefor, from Declarant, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (1) Regular Assessments (for maintenance, repairs, and ordinary operating expenses);
- (2) Special Assessments for
 - (a) capital improvements and operating deficits, as provided for herein; and
 - (b) for special maintenance or repairs as provided for herein; and
- (3) any Insurance as provided for herein.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land ("Enforcement Costs") 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 Owner. Past due assessments shall run with the land and pass with title.

Section 8.2. "Purpose of Regular Annual Assessments." The regular annual assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Managers of the Association, for the promotion of the health, safety and welfare of the residents in the Property, for the improvement, maintenance, and repair of the drainage/detention easements for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. A portion of the regular annual assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the drainage/detention easement and other capital improvements which the Association is required to maintain.

Section 8.3. "Maximum Regular Annual Assessments."

- A. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum regular annual assessment on any Lot conveyed by Declarant shall be one hundred twenty Dollars (\$120.00).
- B. From and after January 1 of such year, the maximum regular annual assessment may be increased each calendar year by not more than 10% above the maximum regular annual assessment for the previous year without a vote of the membership.

- C. From and after January 1 of such year, the maximum regular annual assessment may not be increased each calendar year by more than 10% above the maximum regular annual assessment for the previous year, except with the approval of two-thirds (2/3) of those members of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose.
- D. The Board of Managers from time to time may fix the regular annual assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 8.4. "Special Assessments for Capital Improvements and Operating Deficits." In addition to the regular annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of two-thirds (2/3) of those members who cast votes in person or by proxy at a meeting duly called for this purpose. The foregoing notwithstanding, the Declarant, with respect to any Lots owned by it, shall not be required to pay any special assessments levied for construction, reconstruction, repair or replacement of any capital improvements which the Association is required to maintain or any regular annual assessment.

Section 8.5. "Notice and Quorum for any Action Authorized Under Section 8.3 and 8.4." Written notice of any meeting called for the purpose of taking any action authorized under Section 8.3 or 8.4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (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 8.6. "Uniform Rate Assessment." Regular annual assessments and special assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots.

Section 8.7. "Date of Commencement of Assessments; Due Dates." The regular assessment provided for herein shall commence as to each Lot on the date of conveyance of such Lot by Declarant. The provisions of this Section 8.7 notwithstanding, the Owner shall pay

on the day of conveyance in advance his or her share of the regular annual assessment for the balance of the calendar year in which the conveyance takes place.

The regular annual assessment against each Lot shall be paid in advance on the first day of January of each calendar year. Payment of the regular annual assessment shall be made to the Board of Managers or the Managing Agent, as directed by the Board of Managers.

The Board of Managers shall fix any increase in the amount of such assessments at least thirty (30) days in advance of the effective date of such increase.

Written notice of any increase in the regular assessment, and written notice of any special assessment and such other assessment notices as the Board of Managers shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period for any special assessments, shall be established by the Board of Managers. 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 8.8. "Effect of Nonpayment of Assessments; Remedies of the Association." If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established thereof pursuant to Section 8.7 hereof, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as hereinafter provided and as provided in Section 8.1) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessments relate, binding upon the then Owner, his or her, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessment shall pass to such Owner's successors in title. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve per cent (12%) per annum and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property or both. In such event, 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, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his Lot.

Section 8.9. "Subordination of the Lien to Mortgages: Sale or Transfer." 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 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. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to Section 8.7, as to whether or not such assessments have been paid.

ARTICLE IX
INSURANCE

Section 9.1. "Liability Insurance." The Association shall purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Managers shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, all persons acting or who may come to act as agents or employees, of any of the foregoing with respect to the Association, including members acting on Association matters.

Section 9.2. "Miscellaneous Insurance Provisions." The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workman's compensation insurance, and such other insurance as the Board of Managers 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 Managers and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Managers his right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 9.3. "Payment of Insurance." The premiums for the insurance described above shall be paid by the Association.

Section 9.4. "Additional Insurance." Each Owner shall be solely responsible for and obtain such additional insurance as he deems

necessary or desirable at his own expense affording coverage upon his real and personal property.

ARTICLE X
GENERAL PROVISIONS

Section 10.1. "Right of Enforcement." In the event of a violation, or threatened violation, of any of the Covenants, Conditions and Restrictions herein enumerated, Declarant, the Association, or any Owner 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. The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority, to enforce any covenants, commitments, restrictions or other limitations contained in this plat other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance, 58-AO-3, as amended, or any conditions attached to approval of this plat by the Plat Committee.

Section 10.2. "Severability." Invalidation of any one of the Covenants, Conditions and Restrictions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

Section 10.3. "Amendment." During the first twenty (20) years following its recordation, this Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, approved and signed by at least seventy five per cent (75%) of the then Owners, and thereafter by an instrument signed by at least two thirds (2/3) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declaration also may be amended by Declarant at any time prior to the end of the Development period and if it then has an ownership interest in the Property, at any time within five (5) years after the recordation hereof.

The Covenants, Conditions and Restrictions and all other provisions of this Declaration shall run with the land and shall be binding

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upon all persons claiming under them for a period of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten (10) year period this Declaration is amended or changed in whole or in part as hereinabove provided.

Section 10.4. "Mortgagee Rights." In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges or lien against any common area or any property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fee.

Section 10.5. "Notice of Mortgagees." The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided for herein.

ARTICLE XI
DEDICATION OF ROADS

Section 11.1. All roads shown on the Plat not heretofore dedicated are hereby dedicated to the public.

ARTICLE XII
LAKE COVENANTS
AND
RESTRICTIONS

Upon the development of the proposed lake, as shown on the plats of Lake Charlevoix - Sections I & II, the following Covenants,

Conditions and Restrictions in the use, enjoyment and maintenance thereof shall apply:

1. The Lake Area comprising approximately 18 acres, more or less, shall be controlled as tenants in common (each with an undivided 1/54th interest) by the Owners of all Lots contiguous to the Lake Area. Lots 14 thru 35 as shown on this plat of Lake Charlevoix - Section I are Lots contiguous to the Lake Area in Lake Charlevoix - Section I. Lots 72 thru 102 and Lot 49 of the plat of Lake Charlevoix - Section II, when platted by Declarant, shall be Lots identified as Lots contiguous to the Lake Area.

2. The Owners of said Lots referred to above in Sections I and II of Lake Charlevoix, together with their guests, shall have the exclusive rights to enjoyment afforded by said lake. To this end, there is depicted upon said plats a mutual lake easement for lake access and rights of use, which easement shall also constitute a maintenance easement for any repair, water treatment or other service needed to assure continuous and adequate maintenance of services of said lake and for landscaping and landscaping maintenance purposes.

3. Until such time as twenty-eight (28) Lots are sold adjacent to said lake, with home improvements substantially completed thereon, it shall be the responsibility of the Developer, its successors and assigns, for the maintenance, repair and upkeep of said lake. To this end, Developer shall distribute to each Lot Owner reasonable rules and regulations concerning use of the lake, with which each Owner hereby agrees to comply.

4. Upon conveyance of the twenty-eighth (28th) improved Lot adjacent to the lake, the Owners shall form an association in which each Lot Owner shall have one (1) vote for all matters affecting the lake including the selection of a Board of Managers which shall consist of not less than three (3) nor more than five (5) members. Thereafter, on the first (1st) Saturday in March of each calendar year, the voting members shall elect, by a majority vote of those members present, the Board of Managers for the ensuing year to a term commencing April 1st and expiring March 31st of the following year.

5. The Board of Managers shall thereafter be responsible for establishing rules and regulations pertaining to the lake as well as establishing an annual budget to assure adequate maintenance, upkeep and repair of the lake property, including the easement adjacent thereto. Such budget shall be established annually on or before May 1st of each year for the ensuing twelve (12) month period.

6. Assessments, as determined by the Board of Managers in their sole and absolute discretion, shall be paid by each voting member within thirty (3) days from the date of billing thereof and there

shall be assessed a late charge of 1.5% per month on all delinquent payments.

7. Assessments for maintenance shall be lien upon the properties subordinate only to the lien of a first mortgage holder, which lien can be enforced by the Board of Managers or any individual property Owner subject to these Lake covenants. By acceptance of deed of title to the Lots subject to these Covenants, Conditions and Restrictions, the grantee consents to the lien of assessment and its enforcement provisions, together with the costs of collection, including reasonable attorneys' fees.

8. In the event of a dispute arising from the maintenance, repair and upkeep of the lake, any voting member may request a meeting of the Owners of the Lots contiguous to the Lake Area, upon giving notice to all of said Owners, in writing, designating a time and place not less than seven (7) days from the date of the notice, which time may be shortened in cases of extreme emergency. At such meeting, such dispute shall be resolved by a majority vote of the Owners then present and such decision shall be binding on all Owners.

9. The Board of Managers shall not be held personally liable in the discharge of their official duties except for willful and wanton misconduct, and there may be included in the maintenance budget a sufficient sum to provide insurance from liability in favor of the board of Managers as well as public liability and property damage insurance covering all voting members for liabilities incurred by reason of lake ownership.

10. No voting member or third party shall do or permit to be done any action or activity which could result in the pollution of the lake, diversion of water, change in elevation of the lake level, earth disturbance resulting in silting, pumping or removal of water for any purpose, or any other conduct which could result in an adverse affect upon water quality, drainage, or proper lake management.

11. The Board of Managers, on behalf of the property Owners or any property Owner subject to these Lake covenants, and the Marion County Commissioners or other appropriate county authority having jurisdiction shall have the authority to institute an action for injunction to abate such activity or seek mandatory relief for the correction of any damage caused to the lake or interference with the drainage system, together with any damages incurred, and upon recovery of judgment shall be entitled to costs of the action together with reasonable attorneys' fee.

12. No use of the lake by the Owners of said Lots shall impair or interfere with the use of the lake for drainage and related purposes for the benefit of Lake Charlévoix - Sections I & II, and any such

recreational or related uses shall be subordinate to the primary function of the lake for drainage purposes.

13. Lake access road will be maintained as part of the lake and may be used for launching and retrieving of allowable craft.

14. The use of the lake will be subject to the following rules and regulations:

- a). No docks or piers
- b). No alteration of shoreline topography
- c). No motorized craft except low thrust battery operated trolling motors
- d). No craft shall exceed twelve (12) feet in length and four (4) feet in width. These craft shall be limited to commercially manufactured puddleboats, canoes, kayaks, sailboats, and fishing or deck boats. Craft must be taken out of the water and stored out of view from October 15 to April 15 each year.

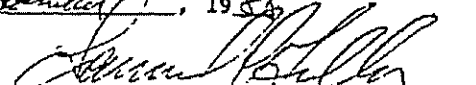
In Testimony Whereof, witness the signature of Owner and Declarant this 10th day of November, 1988.

LAKE CHARLEVOIX DEVELOPMENT, INC.


Edwin E. Pontius, M.D., President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

I, the undersigned, a Notary Public, duly commissioned to take acknowledgments and administer oaths in the State of Indiana, certify that Edwin E. Pontius, M.D., President of LAKE CHARLEVOIX DEVELOPMENT, INC., personally appeared before me and acknowledged the execution of the foregoing indenture, as his duly authorized act, this 10th day of November, 1988.


Notary Public

SAMUEL J. FULLER
NOTARY PUBLIC STATE OF INDIANA
BY COMMISSION EXPIRES 12/31/93
FRSCEL INDIAN INDIANA NOTARY ASSOC.
Printed Name: _____

My commission expires: _____
County of residence: Marion

THIS INSTRUMENT PREPARED BY
Sam Fuller

LAKE CHARLEVOIX
SECTION 1

Part of the Northwest Quarter and part of the Northeast Quarter of Section 2,
Township 15 North, Range 4 East of the Second Principal Meridian in Marion
County, Indiana, being more particularly described as follows:

Commencing at the Southeast Corner of said Northwest Quarter Section; thence
North 00 degrees 00 minutes 00 seconds East (assumed bearing) along the East
line of said Northwest Quarter Section 725.01 feet to a point on a curve to
the left, said point being North 02 degrees 20 minutes 13 seconds East 1190.28
feet from the radius point of said curve thence westerly along said curve
44.82 feet, said point being North 04 degrees 29 minutes 01 seconds West
1106.28 feet from the radius point of said curve, thence North 00 degrees 00
minutes 00 seconds East 1099.16 feet to the POINT OF BEGINNING of this
description, said point being on the centerline of Fall Creek Road, said point
also being on a curve to the left, said point being South 16 degrees 28
minutes 59 seconds East 873.29 feet from the radius point of said curve;
thence northeasterly along said curve and said centerline of Fall Creek Road
159.74 feet to the point of tangency of said curve, said point being South 25
degrees 59 minutes 03 seconds East 873.29 feet from the radius point of said
curve; thence North 84 degrees 00 minutes 55 seconds East along said
centerline 363.10 feet to the point of curvature of a curve to the right, said
point being North 25 degrees 53 minutes 03 seconds West 708.86 feet from the
radius point of said curve; thence easterly along said centerline and along
said curve 468.41 feet to the point of tangency of said curve, said point
being North 13 degrees 35 minutes 38 seconds East 704.84 feet from the radius
point of said curve; thence South 76 degrees 24 minutes 52 seconds East along
said centerline 350.36 feet to a point on the northerly right-of-way line of
the relocation of Fall Creek Parkway as per Indiana State Highway Plans for
Project No. I-465-4 (143) 122; thence South 28 degrees 04 minutes 01 seconds
West along said plan right-of-way 23.25 feet; thence South 39 degrees 30
minutes 00 seconds East along said plan right-of-way 55.80 feet; thence South
00 degrees 41 minutes 40 seconds West along said plan right-of-way 375.00
feet; thence South 34 degrees 33 minutes 13 seconds West along said plan
right-of-way 90.14 feet; thence South 00 degrees 51 minutes 48 seconds West
along said plan right-of-way 100.00 feet; thence South 08 degrees 40 minutes
22 seconds East along said plan right-of-way 179.32 feet; thence North 79
degrees 43 minutes 44 seconds West 327.07 feet; thence North 84 degrees 40
minutes 00 seconds West 310.00 feet; thence South 71 degrees 38 minutes 00
seconds West 671.60 feet to a point on the aforesaid East line of the
Northwest Quarter Section, said point being 1257.13 feet North of the
Southeast corner of said Northwest Quarter Section; thence South 81 degrees 40
minutes 12 seconds West 712.67 feet; thence North 61 degrees 02 minutes 28
seconds East 222.00 feet; thence North 85 degrees 52 minutes 53 seconds West
176.25 feet; thence North 89 degrees 47 minutes 25 seconds West 50.00 feet;
thence North 00 degrees 12 minutes 32 seconds East 16.82 feet; thence North 80
degrees 47 minutes 28 seconds West 190.00 feet to a point on the West line of
the East Half of said Northwest Quarter Section; thence North 00 degrees 12
minutes 32 seconds East along said West line 364.25 feet to a point on the
centerline of Fall Creek Road; thence North 83 degrees 09 minutes 27 seconds
East along said centerline of Fall Creek Road 1130.76 feet to the point of
curvature of a curve to the left, said point being South 08 degrees 38 minutes
13 seconds East 954.93 feet from the radius point of said curve; thence
northeasterly along said curve and said centerline of Fall Creek Road 159.80
feet, said point being South 16 degrees 13 minutes 30 seconds East from the
radius point of said curve, said point also being the place of beginning.
Containing in all 34.687 acres, more or less, subject to all highways,
rights-of-way, easements, and restrictions of record.

EXHIBIT "A"

Page 1 of 2

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LAKE CHARLEVOIX
SECTION 11

Part of the North West Quarter and part of the Northeast Quarter of Section 2, Township 16 North, Range 4 East of the Second Principal Meridian in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southeast Corner of said Northwest Quarter Section; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) along the East line of said Northwest Quarter Section 726.01 feet to the POINT OF BEGINNING of this description, said point being on the Northerly right-of-way line of Fall Creek Parkway as now located and established, said point also being a point on a curve to the left, said point being North 02 degrees 30 minutes 13 seconds West 1,100.26 feet from the radius point of said curve; thence Westerly along said Northerly right-of-way line and along said curve 869.17 feet to the point of tangency of said curve, said point being North 34 degrees 26 minutes 30 seconds West 1,196.26 feet from the radius point of said curve; thence South 55 degrees 33 minutes 27 seconds West along said North right-of-way line 110.98 feet to the point of curvature of a curve to the right, said point being South 34 degrees 28 minutes 33 seconds East 905.37 feet from the radius point of said curve; thence Westerly along said curve and said Northerly right-of-way line 542.84 feet to a point on said curve, said point being South 05 degrees 14 minutes 22 seconds West 905.37 feet from the radius point of said curve; said point also lies on the West line of the East Half of said Northwest Quarter Section; thence North 00 degrees 12 minutes 32 seconds East along said West line 590.11 feet; thence South 39 degrees 47 minutes 28 seconds East 190.00 feet; thence South 00 degrees 12 minutes 32 seconds West 16.62 feet; thence South 69 degrees 47 minutes 28 seconds East 60.00 feet; thence South 85 degrees 32 minutes 33 seconds East 176.28 feet; thence South 81 degrees 02 minutes 28 seconds East 222.00 feet; thence North 61 degrees 46 minutes 12 seconds East 722.87 to a point on the aforesaid East line of the Northwest Quarter Section, said point being 1257.15 feet North of the Southeast corner of said Northwest Quarter Section; thence North 71 degrees 55 minutes 00 seconds East 071.80 feet; thence South 54 degrees 40 minutes 00 seconds East 310.00 feet; thence South 70 degrees 45 minutes 44 seconds East 327.07 feet to a point of curvature of a curve to the right, said point being South 69 degrees 08 minutes 12 seconds East 802.96 feet from the radius point of said curve, said point also being on the Westerly right-of-way line of the relocation of Fall Creek Parkway as per Indiana State Highway plans for Project No. 1-400-4 (146) 122; thence Southwesterly along said plan right-of-way and along said curve 375.53 feet to a point of tangency of said curve; said point being South 46 degrees 21 minutes 26 seconds East 302.96 feet from the radius point of said curve; thence South 51 degrees 54 minutes 31 seconds West along said plan right-of-way 87.38 feet to a point of curvature of a curve to the right, said point being South 38 degrees 21 minutes 28 seconds East 497.98 feet from the radius point of said curve; thence Westerly along said plan right-of-way and along said curve 322.04 feet to the point of tangency of said curve, said point being South 00 degrees 41 minutes 46 seconds West 497.98 feet from the radius point of said curve; thence North 60 degrees 18 minutes 12 seconds West along said plan right-of-way 104.30 feet; thence South 57 degrees 45 minutes 30 seconds West along said plan right-of-way 42.30 feet to a point on the aforesaid Northerly right-of-way line of Fall Creek Parkway; thence North 09 degrees 18 minutes 17 seconds West on and along said Northerly right-of-way line 408.45 feet to the point of curvature of a curve to the left, said point being North 00 degrees 41 minutes 46 seconds East 1,196.26 feet from the radius point of said curve; thence Westerly along said Northerly right-of-way and along said curve 63.54 feet to the place of beginning. Containing in all 37.909 acres, more or less, subject to all highways, right-of-way, easements, and restrictions of record.

EXHIBIT "A"

Page 2 of 2

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4/18/88

CROSS REFERENCE

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FILED
DEC 19 1991
LAWRENCE TOWNSHIP ASSESSOR

SECOND
FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
LAKE CHARLEVOIX

SECOND
THIS ~~FIRST~~ AMENDMENT to Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix ("First Amendment") is made this 18 day of December, 1991 by Lake Charlevoix Development, Inc., an Indiana corporation ("Declarant").

WHEREAS, Declarant has previously recorded in the Office of the Recorder of Marion County, Indiana, a Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix ("Development") on November 16, 1988, at Instrument Number 88-116910 ("Declaration"); and

WHEREAS, Declarant now desires to amend the Declaration to allow for the replatting of the Development to establish the portions of the lots that will lie below the 100 year flood elevation of 748.0 (U.S.G.S. Datum) as common area.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

ARTICLE II, Section 2.11 is hereby amended to read as follows: "Common Area" means the center of the turnaround, the two esplanades at the two entrances to Lake Charlevoix, the lights and signage, the lake, the maintenance road used for access to the lake and any other areas delineated as such on the plat.

ARTICLE II, Section 2.12 is hereby deleted.

ARTICLE III, Section 3.1 is hereby amended to read as follows: "Lot Use and Conveyance." All Lots shall be used exclusively for single-family residential purposes, except that Declarant, during the Developmental Period, reserves the rights provided herein respecting the Property Generally. Except as herein provided, no Lot shall be subdivided to form units of less area, unless such subdivision is necessary to remove the buildable portion of such lot from below the 100 year flood elevation of 748.0 (U.S.G.S. Datum). Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the Covenants, Conditions, and Restrictions contained herein.

ARTICLE X, Section 10.3 is hereby amended to add the following sentence: "The plat may be replatted by the Declarant so long as the Declarant owns seventy-five percent (75%) of the lots in the Development; however, only those lots of owners who consent to the replat may be included therein.

ARTICLE XII is hereby amended to delete the following Covenants, Conditions and Restrictions: Numbers 1. through 9., inclusive.

The remaining provisions of the Declaration not amended hereby shall remain in full force and effect.

In Testimony Whereof, witness the signature of Owner and Declarant this 18th day of December, 1991.

LAKE CHARLEVOIX DEVELOPMENT, INC.

Edwin E. Pontius
Edwin E. Pontius, M.D., President

91 DEC 20 PM 1:46
RECORDED

STATE OF INDIANA)
)SS:)
COUNTY OF MARION)

I, the undersigned, a Notary Public, duly commissioned to take acknowledgements and administer oaths in the State of Indiana, certify that Edwin E. Pontius, M.D., President of LAKE CHARLEVOIX DEVELOPMENT, INC., personally appeared before me and acknowledged the execution of the foregoing indenture, as his duly authorized act, this 18th day of December, 1991.

My Commission Expires:

January 24, 1994

My County of Residence:

Hamilton

Donna J. Brooks
Notary Public

Notary Public

Printed Name

Donna J Brooks

* This instrument prepared by Stephen D. Mears, Attorney at Law, 8395 Keystone Crossing, Suite 100, Indianapolis, Indiana 46240 317/253-5115

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JOAN H. ROMERIL
MARION COUNTY RECORDER

SECOND

FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
LAKE CHARLEVOIX

SECOND

THIS FIRST AMENDMENT to Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix ("First Amendment") is made this 13th day of December, 1991 by Lake Charlevoix Development, Inc., an Indiana corporation ("Declarant").

WHEREAS, Declarant has previously recorded in the Office of the Recorder of Marion County, Indiana, a Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix ("Development") on November 16, 1988, at Instrument Number 88-116910 ("Declaration"); and

WHEREAS, Declarant now desires to amend the Declaration to allow for the replatting of the Development to establish the portions of the lots that will lie below the 100 year flood elevation of 748.0 (U.S.G.S. Datum) as common area.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

ARTICLE II, Section 2.11 is hereby amended to read as follows: "Common Area" means the center of the turnaround, the two esplanades at the two entrances to Lake Charlevoix, the lights and signage, the lake, the maintenance road used for access to the lake and any other areas delineated as such on the plat.

ARTICLE II, Section 2.12 is hereby deleted.

ARTICLE III, Section 3.1 is hereby amended to read as follows: "Lot Use and Conveyance." All Lots shall be used exclusively for single-family residential purposes, except that Declarant, during the Developmental Period, reserves the rights provided herein respecting the Property Generally. Except as herein provided, no Lot shall be subdivided to form units of less area, unless such subdivision is necessary to remove the buildable portion of such lot from below the 100 year flood elevation of 748.0 (U.S.G.S. Datum). Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the Covenants, Conditions, and Restrictions contained herein.

ARTICLE X, Section 10.3 is hereby amended to add the following sentence: "The plat may be replatted by the Declarant so long as the Declarant owns seventy-five percent (75%) of the lots in the Development; however, only those lots of owners who consent to the replat may be included therein.


ARTICLE XII is hereby amended to delete the following Covenants, Conditions and Restrictions: Numbers 1. through 9., inclusive.

The remaining provisions of the Declaration not amended hereby shall remain in full force and effect.

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In Testimony Whereof, witness the signature of Owner and Declarant
this 18th day of December, 1991.


LAKE CHARLEVOIX DEVELOPMENT, INC.


Edwin E. Pontius, M.D., President

STATE OF INDIANA)
)SS:)
COUNTY OF MARION)

I, the undersigned, a Notary Public, duly commissioned to take acknowledgements and administer oaths in the State of Indiana, certify that Edwin E. Pontius, M.D., President of LAKE CHARLEVOIX DEVELOPMENT, INC., personally appeared before me and acknowledged the execution of the foregoing indenture, as his duly authorized act, this 18th day of December, 1991.

My Commission Expires:
January 24, 1994
My County of Residence:
Hamilton


Notary Public
Printed Name
Donna J Brooks

* This instrument prepared by Stephen D. Mears, Attorney at Law, 8395 Keystone Crossing, Suite 100, Indianapolis, Indiana 46240
317/253-5115

920035088

DIM ORIGINAL

LAKE CHARLEVOIX
SECTION 1

Part of the Northwest Quarter and part of the Northeast Quarter of Section 2,
Township 18 North, Range 4 East of the Second Principal Meridian in Marion
County, Indiana, being more particularly described as follows:

Commencing at the Southeast Corner of said Northwest Quarter Section; thence
North 00 degrees 00 minutes 00 seconds East (assumed bearing) along the East
line of said Northwest Quarter Section 729.01 feet to a point on a curve to
the left, said point being North 02 degrees 20 minutes 13 seconds East 1198.28
feet from the radius point of said curve thence Westerly along said curve
44.82 feet, said point being North 04 degrees 29 minutes 01 seconds West
1198.28 feet from the radius point of said curve, thence North 00 degrees 00
minutes 00 seconds East 1098.18 feet to the POINT OF BEGINNING of this
description, said point being on the centerline of Fall Creek Road, said point
also being on a curve to the left, said point being South 18 degrees 28
minutes 53 seconds East 873.29 feet from the radius point of said curve;
thence Northeasterly along said curve and said centerline of Fall Creek Road
159.74 feet to the point of tangency of said curve, said point being South 28
degrees 53 minutes 05 seconds East 873.20 feet from the radius point of said
curve; thence North 84 degrees 08 minutes 55 seconds East along said
centerline 363.10 feet to the point of curvature of a curve to the right, said
point being North 25 degrees 53 minutes 05 seconds West 700.84 feet from the
radius point of said curve; thence Easterly along said centerline and along
said curve 488.41 feet to the point of tangency of said curve, said point
being North 13 degrees 35 minutes 58 seconds East 708.84 feet from the radius
point of said curve; thence South 78 degrees 24 minutes 22 seconds East along
said centerline 330.35 feet to a point on the Northerly right-of-way line of
the relocation of Fall Creek Parkway as per Indiana State Highway Plans for
Project No. 1-465-4 (148) 122; thence South 22 degrees 04 minutes 01 seconds
West along said plan right-of-way 25.28 feet; thence South 59 degrees 30
minutes 00 seconds East along said plan right-of-way 38.00 feet; thence South
00 degrees 51 minutes 48 seconds West along said plan right-of-way 378.00
feet; thence South 34 degrees 03 minutes 12 seconds West along said plan
right-of-way 80.14 feet; thence South 00 degrees 51 minutes 48 seconds West
along said plan right-of-way 100.00 feet; thence South 08 degrees 45 minutes
22 seconds East along said plan right-of-way 178.52 feet; thence North 78
degrees 45 minutes 44 seconds West 327.07 feet; thence North 54 degrees 40
minutes 00 seconds West 310.00 feet; thence South 71 degrees 35 minutes 00
seconds West 871.80 feet to a point on the aforesaid East line of the
Northwest Quarter Section, said point being 1287.13 feet North of the
Southeast corner of said Northwest Quarter Section; thence South 81 degrees 48
minutes 12 seconds West 722.87 feet; thence North 81 degrees 02 minutes 28
seconds West 222.00 feet; thence North 85 degrees 52 minutes 33 seconds West
178.28 feet; thence North 88 degrees 47 minutes 28 seconds West 50.00 feet;
thence North 00 degrees 12 minutes 32 seconds East 18.82 feet; thence North 89
degrees 47 minutes 28 seconds West 180.00 feet to a point on the West line of
the East Half of said Northwest Quarter Section; thence North 00 degrees 12
minutes 32 seconds East along said West line 384.25 feet to a point on the
centerline of Fall Creek Road; thence North 83 degrees 09 minutes 27 seconds
East along said centerline of Fall Creek Road 1130.78 feet to the point of
curvature of a curve to the left, said point being South 08 degrees 38 minutes
13 seconds East 954.93 feet from the radius point of said curve; thence
Northwesterly along said curve and said centerline of Fall Creek Road 150.80
feet, said point being South 18 degrees 13 minutes 30 seconds East from the
radius point of said curve, said point also being the place of beginning.
Containing in all 34.887 acres, more or less, subject to all highways,
rights-of-way, easements, and restrictions of record.

920035088

EXHIBIT "A"

DIM ORIGINAL

LAKE CHARLEVOIX
SECTION 11

Part of the Northwest Quarter and part of the Northeast Quarter of Section 2,
Township 18 North, Range 4 East of the Second Principal Meridian in Marion
County, Indiana, being more particularly described as follows:

Commencing at the Southeast Corner of said Northwest Quarter Section; thence
North 00 degrees 00 minutes 00 seconds East (assumed bearing) along the East
line of said Northwest Quarter Section 728.01 feet to the POINT OF BEGINNING
of this description, said point being on the Northerly right-of-way line of
Fall Creek Parkway as now located and established, said point also being a
point on a curve to the left, said point being North 02 degrees 30 minutes 13
seconds West 1,198.26 feet from the radius point of said curve; thence
Westerly along said Northerly right-of-way line and along said curve 889.17
feet to the point of tangency of said curve, said point being North 34 degrees
28 minutes 33 seconds West 1,198.26 feet from the radius point of said curve;
thence South 55 degrees 33 minutes 27 seconds West along said North
right-of-way line 110.98 feet to the point of curvature of a curve to the
right, said point being South 04 degrees 28 minutes 33 seconds East 905.37
feet from the radius point of said curve; thence Westerly along said curve and
said Northerly right-of-way line 842.64 feet to a point on said curve, said
point being South 08 degrees 14 minutes 22 seconds West 905.37 feet from the
radius point of said curve; said point also lies on the West line of the East
Half of said Northwest Quarter Section; thence North 00 degrees 12 minutes 32
seconds East along said West line 800.11 feet; thence South 88 degrees 47
minutes 20 seconds East 190.00 feet; thence South 00 degrees 12 minutes 32
seconds West 16.82 feet; thence South 89 degrees 47 minutes 20 seconds East
50.00 feet; thence South 85 degrees 62 minutes 33 seconds East 178.28 feet;
thence South 81 degrees 02 minutes 28 seconds East 222.00 feet; thence North
81 degrees 48 minutes 12 seconds East 722.87 to a point on the aforesaid East
line of the Northwest Quarter Section, said point being 1287.13 feet North of
the Southeast corner of said Northwest Quarter Section; thence North 71
degrees 35 minutes 09 seconds East 871.80 feet; thence South 54 degrees 40
minutes 00 seconds East 310.00 feet; thence South 70 degrees 46 minutes 44
seconds East 327.07 feet to a point of curvature of a curve to the right, said
point being South 89 degrees 08 minutes 12 seconds East 802.98 feet from the
radius point of said curve, said point also being on the Westerly right-of-way
line of the relocation of Fall Creek Parkway as per Indiana State Highway
plans for Project No. I-485-4 (148) 122; thence Southwesterly along said plan
right-of-way and along said curve 375.53 feet to a point of tangency of said
curve; said point being South 48 degrees 21 minutes 25 seconds East 502.98
feet from the radius point of said curve; thence South 51 degrees 54 minutes
31 seconds West along said plan right-of-way 87.30 feet to a point of
curvature of a curve to the right, said point being South 38 degrees 21 minutes
26 seconds East 497.98 feet from the radius point of said curve; thence
Westerly along said plan right-of-way and along said curve 322.04 feet to the
point of tangency of said curve, said point being South 00 degrees 41 minutes
48 seconds West 497.98 feet from the radius point of said curve; thence North
89 degrees 18 minutes 12 seconds West along said plan right-of-way 104.60
feet; thence South 67 degrees 45 minutes 30 seconds West along said plan
right-of-way 42.30 feet to a point on the aforesaid Northerly right-of-way
line of Fall Creek Parkway; thence North 89 degrees 18 minutes 12 seconds West
on and along said Northerly right-of-way line 498.45 feet to the point of
curvature of a curve to the left, said point being North 00 degrees 41 minutes
48 seconds East 1,198.26 feet from the radius point of said curve; thence
Westerly along said Northerly right-of-way and along said curve 83.34 feet to
the place of beginning. Containing in all 37.909 acres, more or less, subject
to all highways, right-of-way, easements, and restrictions of record.

EXHIBIT "A"

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Page 2 of 2

CROSS REFERENCE

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AMENDED AND RESTATED
DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS OF
LAKE CHARLEVOIX

RECEIVED FOR RECORD
92 MAR 26 PM 3:58
JOAN N. ROMERIL
MARION COUNTY RECORDER

THIS AMENDMENT to and RESTATEMENT of the Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix is made this 20th day of March, 1992, by Lake Charlevoix Development, Inc., an Indiana corporation ("Declarant").

WHEREAS, Declarant previously recorded in the Office of the Recorder of Marion County, Indiana, a Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix ("Development") on November 16, 1988, as Instrument Number 88-116910 ("Original Declaration") for the real estate more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as "Property"); and

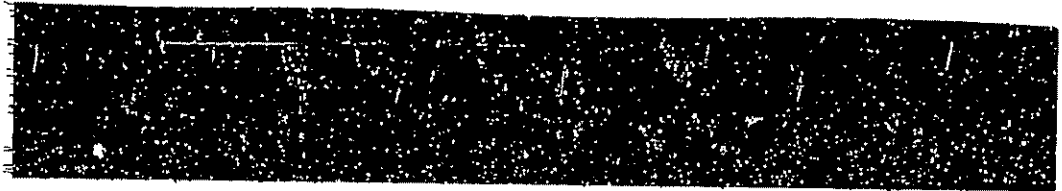
WHEREAS, Declarant has subdivided and developed the Property as generally shown on the Plat for Lake Charlevoix Section I and II (hereinafter sometimes referred to as the "Plat" and sometimes referred to as the "Development"), received for record in the Office of the Recorder of Marion County, Indiana on November 7, 1988, as Instrument Number 88-113298, together with all recorded amendments and replatting thereto; and

WHEREAS, the Original Declaration was amended by a certain First Amendment to Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix ("First Amendment"), which First Amendment was recorded in the Office of the Recorder of Marion County, Indiana on March 1, 1990, as Instrument Number 90-19171; and

WHEREAS, the Original Declaration was further amended by a certain Second Amendment to Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix ("Second Amendment"), which Second Amendment was recorded in the Office of the Recorder of Marion County, Indiana on March 24, 1992, as Instrument Number 92-35088; and

WHEREAS, the Declarant is empowered under Article X, Section 10.3 of the Original Declaration to amend the Declaration at any time prior to the end of the Development Period; and

WHEREAS, the Declarant desires to further amend the Declaration and to restate the Original Declaration as amended by the First Amendment and the Second Amendment as well as by the amendments made as of this date such that this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix in no way nullifies or changes the Original



Declaration, as amended, or the effective dates of the Original Declaration and the amendments thereto.

NOW, THEREFORE, Declarant amends and restates the Declaration such that all of the platted Lots and lands located with the Development as they have been platted and as they may become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which were and are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in the Development were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the development as a whole and of each of said Lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant's successors in title to any real estate in the Development.

ARTICLE I
NAME

The subdivision of the Property created by this Declaration shall be known and designated as Lake Charlevoix I & II, a subdivision located in Marion County, Indiana, the legal description for which is more particularly described on Exhibit A attached hereto and by this reference made a part hereof.

ARTICLE II
DEFINITIONS

Section 2.1. "Association" shall mean Lake Charlevoix Homeowners Association, Inc., an Indiana not-for-profit corporation, whose membership shall consist of Lot Owners who pay mandatory assessments for liability, maintenance of the landscaped areas and signage; maintenance of the other improvements installed by Declarant and located within the lake easements.

Section 2.2. "Articles" means the Articles of Incorporation of the Association filed with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.3. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of any obligation. Unless specifically indicated to the contrary, the term Owner as used herein shall include the Declarant, so long as the Declarant shall own any Lot.

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Section 2.4. "Property" means the real estate described in Exhibit "A" which is Lake Charlevoix I & II including the Common Areas.

Section 2.5. "Plat" means the subdivision plat of the Property identified as Plat of Lake Charlevoix I & II recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended, supplemented, or replatted.

Section 2.6. "Lot" means any parcel of land shown upon the Plat of Lake Charlevoix I & II and identified by a number 1 through 102 inclusive.

Section 2.7. "Developer" shall mean Lake Charlevoix Development, Inc., an Indiana Corporation, its successors and assigns as a Declarant.

Section 2.8. "Board of Managers" means the Board of Managers of the Association.

Section 2.9. "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the real estate described in Exhibit A.

Section 2.10. "Committee" shall mean the Development Control Committee, composed of at least two (2) 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 Declarant until the end of the Development Period, at which time the Lake Charlevoix Homeowners Association, Inc., shall appoint this Committee which shall then consist of three (3) or more individuals who own Lots within the Development. The initial members of the Committee appointed by Declarant are Edwin Pontius and Larry Rodeman.

Section 2.11. "Common Area" means the center of the turnaround, the two esplanades at the two entrances to Lake Charlevoix, the lights and signage, the lake, the maintenance road used for access to the lake and any other areas delineated as such on the Plat.

Section 2.12. Approvals, determinations, permissions or consents required herein of the Declarant, the Committee or the Association shall be deemed given only if they are given in writing and signed by the Declarant, the Committee or the Association. Exceptions may be made by the Declarant or, after the Development Period, by the Association or the Committee.

ARTICLE III
USE RESTRICTIONS AND ARCHITECTURAL CONTROL

Section 3.1. "Lot Use and Conveyance." All Lots shall be used exclusively for single-family residential purposes, except that Declarant, during the Developmental Period, reserves the rights provided herein respecting the Property generally. A single family is defined as a single housekeeping unit, operating on a non-profit, noncommercial basis between its occupants with a common kitchen and dining area. Except as herein provided, no Lot shall be subdivided to form units of less area, unless such subdivision is necessary to remove the buildable portion of such lot from below the 100 year flood elevation of 748.0 (U.S.G.S. Datum). Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the Covenants, Conditions, and Restrictions contained herein.

Section 3.2. "Building Control." Prior to construction of any structure upon a Lot, the building plans thereof, including plot plans, site storm drainage and grading plan, specifications, plan for landscaping, and any other data or information which may be requested, must be submitted to the Committee and delivered to the person or persons requesting such approval. The Committee is authorized to determine whether the proposed structures, plans and specifications show conformity and harmony of external design with existing structures, whether the building and property set-back lines are in conformity with applicable plat requirements, and whether the proposed site storm drainage plan conforms to the overall project and Lot drainage plans as specified in the approved final construction plans for Lake Charlevoix. No charge will be made to any purchaser of a Lot for examination of plans or for giving approval for construction thereon. In the event the Committee does not indicate in writing its approval or disapproval of plans submitted for its review within a period of thirty (30) days after submission, the Committee is deemed to have approved such plans.

Section 3.3. "Occupancy or Residential Use of Partially Completed Dwelling House Prohibited." No dwelling house constructed on any Lot shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the house shall have been substantially completed in accordance with the approved building plan shall be made by the Committee and such decision shall be binding on all parties.

Section 3.4. "Other Restrictions." All of the Property shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the development, all of which are incorporated herein by reference.

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Section 3.5. "Building Location and Floor Elevation." No building may be erected between the building line shown on the Plat and the front Lot line; and no structure or part hereof may be built or erected nearer than 7 feet to any side yard line, with a minimum total of both side yards not less than 19 feet, or nearer than 15 feet to any rear Lot line. The lowest floor elevations allowed for any dwelling in this Development is 750.0 (U.S.G.S. Datum) which is two (2) feet above the 100 year flood elevation determined by the Indiana Department of Natural Resources, Division of Water, except in the case of basements. Basement floors will be allowed to be lower provided that the basement is flood-proofed at least up to the elevation of 750.0 (U.S.G.S. Datum) and certified to be so by a registered engineer or architect. (See Section 3.6)

Section 3.6. "Architectural Guidelines." Any new building or improvement or any addition to an existing building or an exterior alteration or change to an existing building must have the prior written approval of the Committee before any work is undertaken. The Committee has established the following guidelines for specific types of construction and improvements. Any addition, exterior alteration or change to an existing building shall be compatible with the existing structure.

- A. Size of Dwelling. The ground floor area of the main structure, shall be not less than 2400 square feet in the case of a one-story dwelling, nor less than 1300 square feet in the case of a two-story dwelling. The first and second floors of a two-story or multi-level shall contain at least 2600 square feet. These square footages refer only to finished interior living space, excluding open patios, finished lower levels, porches, garages, etc.
- B. Garages. All homes shall have at least two car attached garages. All garage doors shall be of wood or masonite material and be painted or stained to match or compliment the dwelling.
- C. Driveways. All driveways shall be concrete or paving brick material.
- D. Flat Roofs. No home designs will be permitted which include flat or nearly flat roofs over the main parts of the house.
- E. Sidewalks. Each home shall have a continuous concrete or brick sidewalk from the driveway to the front porch. In addition, each Lot shall be serviced by a 4' concrete walk on all portions of the Lot with street frontage. Sidewalk shall be installed by the builder and included in the purchase price. If the home is completed in the

winter then the sidewalks shall be installed no later than April 30th of the following spring.

- F. No heat pumps, air conditioning units, or gas meters will be installed in the front of the house.
- G. Windows-Doors. If storm doors are installed, they must be painted to match the exterior of the home. No unfinished aluminum doors will be allowed. All windows must be wood or windows with wood clad exterior.
- H. Gutters and Downspouts. All gutters and downspouts other than copper, will be painted or prefinished painted aluminum to match the exterior of the home.
- I. Vents. All metal roof or range vents will be painted to blend with roof color. Every effort should be made to locate such vents to the rear of the house.
- J. Plumbing. All plumbing vent stacks shall be on the rear roof of the house. Sump pump lines shall be connected to underground laterals or storm sewers as provided in the plat.
- K. Street Cleaning. Builder shall finish cleaning in front of his house upon completion and rough clean the street periodically during construction. Rough cleaning should be done immediately after foundation excavation and basement pouring and at all other times when mud is carried into the street.
- L. Yard Lights. All Lot Owners are required to furnish and install dusk to dawn light fixtures at all driveway entrances to their Lots, the style and type of which will be selected by the Committee which shall be the standard for the entire subdivision. Builders shall furnish and install said lights on behalf of the Owner prior to closing. Thereafter, the Owner shall be responsible to repair or replace said lights in conformity herewith at the Owner's expense.
- M. Awnings. No metal, sheet plastic, fiberglass or similar type material awnings or patio covers will be permitted in the development.
- N. Mailboxes. All mailboxes installed at the street to service Lots in Lake Charlevoix shall be uniform and shall be of a type, color and manufacture approved by the Committee. Such mailboxes shall be installed by the Builder upon posts approved as to type, size and location by the Committee. Thereafter, the Owner shall

be responsible to repair or replace said mailboxes and posts in conformity herewith at the Owner's expense.

- O. Landscaping. Shall be furnished with house and completed before closing. Builder shall sod the front yard and at least 50% of the side yard. Landscape mulch will be allowed in "natural areas". The balance of the yard may be seeded. Each builder will plant two trees having a 3-inch diameter trunk in the front yards. Each home shall include a minimum of \$1500.00 worth of other plantings and landscape. This allowance includes labor and is exclusive of sodding and the two trees aforementioned. All work on the minimum landscape requirement above shall be completed prior to the closing or as soon as weather conditions permit, but no later than May 30th of the following spring. Trees, hedges, and shrubs which restrict visual lines for vehicular traffic shall be cut back or removed. Special landscaping beyond the above minimum must be approved by the Committee prior to installation.
- P. Fireplaces. The exterior of fireplace chimneys shall be brick or stone.
- Q. Swimming Pools. Only permanent, in-ground pools constructed by pool professionals will be permitted. All pools shall be backyard pools and should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design. Backyard pools on lake front Lots must be approved by the Development Control Committee or the Lake Charlevoix Homeowners Association, Inc.
- R. Tennis Courts, Racquetball Courts, Paddle Ball Courts, Etc. Tennis courts, racquetball courts, paddle ball courts, squash courts and other outdoor recreational facilities will not be permitted, unless approved by the Committee.
- S. Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth less than 24 inches, swing and slide sets, playhouses and tents shall not require approval by the Committee, provided such equipment is not more than six (6) feet high, maintained by the Lot Owner in good repair (including painting) and every reasonable effort has been made by the Lot Owner to screen or shield such equipment from view. Equipment higher than six (6) feet shall require approval of the design, location, color, material and use by the Committee.

- T. Geothermal heat systems are acceptable. However, the closed loop variety must be used.
- U. Miscellaneous. All exterior lights shall be directed in such a manner so as not to create annoyance to adjacent properties. Lot Owners shall keep garage doors closed at all times except during the times of actual use of the garage facility. Collapsible and removable clotheslines will be permitted, but permanent clotheslines are not acceptable.
- V. Basements. The land which is being developed as Lake Charlevoix lies almost entirely in the flood plain of Blue Creek and Fall Creek. In order to develop buildable sites within this subdivision, it was necessary to elevate the Lots to be at or above the 100-year flood elevation determined by the Indiana Department of Natural Resources. It is also a requirement of IDNR:

. . . that any building proposed for this site be provided with a flood protection grade set at or above an elevation which is two (2) feet above the 100-year frequency flood. The flood protection grade (FPG) is the elevation of the lowest floor of a building or structure. If a basement is included, the basement floor should be considered to be the lowest floor.

However, if the entire lot area as shown in the replat is above the elevation of 748.0 (U.S.G.S. Datum), the basement floor may be below 748.0 (U.S.G.S. Datum) provided that the basements have been flood-proofed at least up to the flood protection grade.

- W. Liability. Neither the Developer, the Committee, the Association, nor any agent thereof, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Developer, the Association and the Committee do not make, and shall not be deemed by virtue of any action of approval or disapproval taken by them, to have made any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.
- X. Inspection. The Committee may inspect work being performed to assure compliance with these Covenants, Conditions and Restrictions and applicable regulations.

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Section 3.7. "Home Occupations." No Lot or Lots shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows, may be permitted: any use conducted entirely within the residence dwelling and participated in solely by a member of the immediate family residing in said residence, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof and in connection with which there is: a) No sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling; b) No commodity may be sold upon the premises; c) No person is employed other than a member of the immediate family residing on the premises; and d) No mechanical or electrical equipment used which would create overloading of standard circuits, provided that, in no event shall the following or similar activities be conducted: a barber shop, styling salon, beauty parlor, tea room, fortune-telling parlor, tanning salon, animal hospital, or any form of animal care or treatment such as dog trimming; e) No firewood selling nor storage of firewood for sale. In addition, "Home Occupations" shall be subject to the Marion County Home Occupation Ordinance, as amended from time to time. The Ordinance's restrictions are incorporated herein by this reference as if fully set forth. In the event of a conflict between this Section 3.7 and the Marion County Home Occupation Ordinance, this section shall prevail.

Section 3.8. "Street Sight Line Restrictions." No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to all Lots within 10 feet of the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 3.9. "Existing Trees." No trees shall be removed along the northern and western side of Fall Creek Parkway within forty (40) feet of the edge of pavement thereof.

ARTICLE IV
GENERAL PROHIBITIONS

Section 4.1. "In General." No noxious or offensive activities shall be carried out on any Lot, nor shall anything be done on any Lot which shall be or become an unreasonable annoyance or nuisance to any Owner of another Lot.

Section 4.2. "Vehicle Parking," No trucks, camper, trailers, recreational vehicles, boats, boat trailers or similar vehicles shall be parked on any street or Lot, unless the same shall be stored in an enclosed, attached garage. No vehicle shall be parked overnight on any street within Lake Charlevoix I & II.

Section 4.3. "Exterior Antenna." Unless specifically authorized by the Committee, no television, radio or other antennas may be erected by any Lot Owner on the exterior of a house or on a Lot. No satellite dishes will be permitted.

Section 4.4. "Garbage and Refuse Disposal." No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view except at the times when refuse collections are being made. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 4.5. "Animals." No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other pets generally and customarily recognized as household pets and which are of a gentle disposition may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots so such that they will not be a nuisance. No exterior structures, animal runs, or detention areas will be allowed for these household pets.

Section 4.6. "Storage Tanks." Any propane (other than propane tanks for portable gas grills), or oil storage tanks used in connection with a Lot shall be either buried or located in a garage or house such that they are completely concealed from public view. The storage of gasoline (except no more than a 5-gallon Underwriters Approved container of gasoline for use in lawn mowers) or any toxic chemical or hazardous materials are prohibited.

Section 4.7. "Temporary Structures and outbuildings." No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence. No dwelling house constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Developer and such decision shall be binding on all parties. No metal outbuildings shall be permitted on any Lot. All outbuildings must be of same color and materials as the primary structure and attached thereto and be approved by the Committee.

Section 4.8. "Window Coverings." All window coverings such as curtains or blinds shall not be unsightly from the exterior, including garage windows if visible from street or lake.

Section 4.9. "Signs." No sign of any kind shall be displayed to the public view on any Lot except that one sign per builder and one per realtor of not more than six (6) square feet (2'x3') may be displayed at any time for the purpose of advertising the property for sale or for rent. An exception to this rule may be granted by the Declarant during special promotional periods. Also, the Declarant shall be permitted to erect and maintain upon the property such signs as it seems appropriate to advertise during the construction and sale periods.

Section 4.10. "Prohibition of Used Structures and Modular Homes." All structures constructed or placed on any Lot shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any such Lot. No modular or prefabricated structures (except trusses) may be placed on any Lot.

Section 4.11. "Building Completion." Unless a delay is caused by strikes, war, court injunction, or acts of God, the exterior of any dwelling or structure built upon any Lot shall be completed within one (1) year after the date of commencement of the building process. No improvement which has been partially or totally destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage. If said structure is not completed or repaired within such time, then the Developer, or after the end of the Development Period, the Lake Charlevoix Homeowners Association, Inc. may re-enter, take possession of said Lot, without notice, and sell the same together with improvements, and after payment of liens and expenses, pay the balance of the sale proceeds if any to the Owner of said Lot at time of sale.

Section 4.12. "Fire" No fire shall be permitted to burn upon any street or roadway in the subdivision. Any outside burning will be limited to that permitted by local ordinances.

Section 4.13. "Fences, Walls and Screening." It is the goal of the Developer to keep all fencing or screening as harmonious as possible with the architectural character of the community. No fence or screen will be approved if its installation will obstruct necessary sight lines for vehicular traffic. Undue obstruction of view or other amenities from adjoining properties will be taken into consideration by the Developer, or after the end of the Development Period, the Lake Charlevoix Homeowners Association, Inc. and/or the Committee, when reviewing fences for approval. Fences shall not be nearer to the front of a home than the rear foundation line of a home except decorative fences. Decorative front fences may be placed parallel to the front foundation of a home only if they do not cause unreasonable visual barriers and they are of identical materials as the main structure. The Developer discourages fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other property Owners. Fences may be privately installed but must be constructed to professional levels of

quality. Non-professionally installed fences will be inspected by the Developer, or after the end of the Development Period, the Lake Charlevoix Homeowners Association, Inc. and/or the Committee, after completion in order to ensure that the final product is of a professional quality, and final approval of the fence shall be deemed withheld until successful completion of this final review. Lake Lot Owners will be governed by ARTICLE XII hereof.

A. Height restriction. The developer is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the community is damaged by a proliferation of fences of excessive height. The Committee, therefore, will approve rear perimeter fences up to 4 feet in height, which otherwise meet these guidelines. The Committee will give consideration, however, to a variance in this height limit where unique circumstances exist. The use of 6 foot fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio or to enclose an approved in-ground pool area will be permitted. The specific fence height restrictions are as follows:

- 1) Property fencing and walls above grade shall not exceed 4 feet above grade unless otherwise approved by the Developer or the Committee.
- 2) The Developer or the Committee will not ordinarily approve any proposed fence which exceeds 4 feet in height unless unique circumstances exist.
- 3) Patio screens/privacy fences shall not exceed 6 feet in height, except for pools and recreational fences as provided herein.

B. Materials and Finish.

- 1) Wood fencing or screening will be allowed if the design is in conformity with the architectural design of the community and dwelling.
- 2) The installation of a chain link or other galvanized metal fencing will not be permitted unless it is vinyl coated or covered with similar coated material. Black or dark green are pre-approved, all other colors must be approved prior to construction.
- 3) All fencing or screening will have finished material on both sides.
- 4) Walls above grade should be constructed of natural stone, masonry, or attractive timber.

ARTICLE V
MAINTENANCE OF LOTS AND IMPROVEMENTS

The Owner of any Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall cause the following to be done:

- A. Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- B. Remove all debris or rubbish;
- C. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;
- D. Cut down and remove dead trees. No living perimeter trees may be trimmed or removed without written consent of the Board of Managers;
- E. Where applicable, prevent debris and foreign material from entering drainage areas, lakes, and streams; and
- F. Keep the exterior of all improvements in such a state of repair of maintenance as to avoid their becoming unsightly.

Section 5.1. "Right to Perform Certain Maintenance." In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, Developer shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean, or perform such other acts as may be reasonably necessary to make such Lot and improvement situated thereon, if any, conform to the requirements of these Restrictions. The cost thereof shall be an expense of the Owner and the Developer may seek collection of cost in any reasonable manner including placing a lien against said Lot for the expense thereof. Neither the Declarant, nor any of its agents, employees, or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder. Upon the completion of the development period, the Association shall succeed to the rights of the Declarant/Developer in this regard.

ARTICLE VI
DRAINAGE, LAKE, UTILITY, SEWER,
AND SIGN EASEMENTS

Section 6.1. Drainage easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in

underground conduit, to serve the needs of the subdivision and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by Developer. Said easements are for the mutual use and benefit of the Owners of all Lots in Lake Charlevoix.

Section 6.2. Common Land and Lake Easements are created around the lake approximately at the top of the bank. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvements, nor shall any grading restrict, in any manner, the waterflow.

Any Owner who restricts or alters the flow of water through a lake easement shall be notified by registered mail by the Developer or the Homeowners Association of each violation. The Owner shall be given 10 days to correct the matter and then if not corrected the Developer or Homeowners Association as the case may be shall have the duty, obligation and right to enter upon the property and correct the problem or violation.

From time to time the lake easements may require regrading, rework or reconstruction to maintain the proper water flow. By acceptance of a deed, the Owner hereby grants to the Developer and the Homeowners Association the right of reasonable ingress and egress to enter upon the property to construct or reconstruct to any extent necessary to obtain adequate drainage. Aesthetic repairs shall be limited to final grading and seeding of the affected areas.

Should the above repairs or reconstruction be a result of the Lot Owner's violation of these Covenants, Conditions and Restrictions the Developer or Homeowners Association may seek full recovery of costs including costs of enforcement as described in Section 8.1 as well as covenant from liability as described in Section 5.1.

Under no circumstance shall any obligation for the maintenance of any lake facility be imposed upon, or implied as an obligation of any governmental agency, unless such obligation is specifically and expressly assumed or accepted by any such governmental agency.

Section 6.3. Sign Easements are created for the landscape and wall area to be maintained by the Homeowners Association. Such areas are at each of the two entrances to Lake Charlevoix and the turnaround.

Section 6.4. Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal systems designed to serve Lake Charlevoix and

adjacent areas for the purpose of installation and maintenance of sewers that are a part of said system.

Section 6.5. Utility Easements (UE) are created for the use of all public utility companies and cable TV companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easement.

Section 6.6. All such easements mentioned herein include the right of reasonable ingress and egress for the purpose of maintenance, construction, or reconstruction for the mutual benefit of Owners in Lake Charlevoix. No structure, including fences, shall be built on any drainage, lake, sewer, sign or utility easement, except for that portion of the Common Area above average lake level and then only with prior approval of the Committee.

ARTICLE VII
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 7.1. "Membership." Every Owner of a Lot shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 7.2. "Classes of Membership and Voting Rights." The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant. 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, all such persons shall be members; the vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member shall be Lake Charlevoix Development, Inc., the Declarant. The Declarant shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease on the happening of the earlier of the following events:

- (a) the end of the Development Period; or,
- (b) January 1, 1995.

Section 7.3. "Board of Managers." The Board of Managers shall manage the affairs of the Association and until the end of the Development Period shall consist of two (2) persons designated by Declarant. After the end of the Development Period, the Owners shall elect a Board of Managers of the Association as prescribed by the Association's Articles and By-Laws.

ARTICLE VIII
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 8.1. **Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot by acceptance of a deed therefor, from Declarant, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (1) Regular Assessments (for maintenance, repairs, and ordinary operating expenses);
- (2) Special Assessments for
 - (a) capital improvements and operating deficits, as provided for herein; and
 - (b) for special maintenance or repairs as provided for herein; and
- (3) any Insurance as provided for herein.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land ("Enforcement Costs") 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 Owner. Past due assessments shall run with the land and pass with title.

Section 8.2. "Purpose of Regular Annual Assessments." The regular annual assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Managers of the Association, for the promotion of the health, safety and welfare of the residents in the Property, for the improvement, maintenance, and repair of the drainage/detention easements for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. A portion of the regular annual assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the drainage/detention easement and other capital improvements which the Association is required to maintain.

Section 8.3. "Maximum Regular Annual Assessments."

- A. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum regular annual assessment on any Lot conveyed by Declarant shall be one hundred twenty Dollars (\$120.00). §

- B. From and after January 1 of such year, the maximum regular annual assessment may be increased each calendar year by not more than 10% above the maximum regular annual assessment for the previous year without a vote of the membership.
- C. From and after January 1 of such year, the maximum regular annual assessment may not be increased each calendar year by more than 10% above the maximum regular annual assessment for the previous year, except with the approval of two-thirds (2/3) of those members of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose.
- D. The Board of Managers from time to time may fix the regular annual assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 8.4. "Special Assessments for Capital Improvements and Operating Deficits." In addition to the regular annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of two-thirds (2/3) of those members who cast votes in person or by proxy at a meeting duly called for this purpose. The foregoing notwithstanding, the Declarant, with respect to any Lots owned by it, shall not be required to pay any special assessments levied for construction, reconstruction, repair or replacement of any capital improvements which the Association is required to maintain or any regular annual assessment.

Section 8.5. "Notice and Quorum for any Action Authorized Under Section 8.3 and 8.4." Written notice of any meeting called for the purpose of taking any action authorized under Section 8.3 or 8.4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (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 8.6. "Uniform Rate Assessment." Regular annual assessments and special assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots.

Section 8.7. "Date of Commencement of Assessments; Due Dates." The regular assessment provided for herein shall commence as to each Lot on the date of conveyance of such Lot by Declarant. The provisions of this Section 8.7 notwithstanding, the Owner shall pay on the day of conveyance in advance his or her share of the regular annual assessment for the balance of the calendar year in which the conveyance takes place.

The regular annual assessment against each Lot shall be paid in advance on or before the first day of January of each calendar year. Payment of the regular annual assessment shall be made to the Board of Managers or the Managing Agent, as directed by the Board of Managers.

The Board of Managers shall fix any increase in the amount of such assessments at least thirty (30) days in advance of the effective date of such increase.

Written notice of any increase in the regular assessment, and written notice of any special assessment and such other assessment notices as the Board of Managers shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period for any special assessments, shall be established by the Board of Managers. 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 8.8. "Effect of Nonpayment of Assessments; Remedies of the Association." If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established thereof pursuant to Section 8.7 hereof, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as hereinafter provided and as provided in Section 8.1) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessments relate, binding upon the then Owner, his or her, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessment shall pass to such Owner's successors in title. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve per cent (12%) per annum and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property or both. In such event, 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, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability

for the assessments provided for herein by non-use of the common area or abandonment of his Lot.

Section 8.9. "Subordination of the Lien to Mortgages: Sale or Transfer." 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 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. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to Section 8.7, as to whether or not such assessments have been paid.

ARTICLE IX INSURANCE

Section 9.1. "Liability Insurance." The Association shall purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Managers shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, all persons acting or who may come to act as agents or employees, of any of the foregoing with respect to the Association, including members acting on Association matters.

Section 9.2. "Miscellaneous Insurance Provisions." The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workers' compensation insurance, and such other insurance as the Board of Managers 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 Managers and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Managers his right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 9.3. "Payment of Insurance." The premiums for the insurance described above shall be paid by the Association.

Section 9.4. "Additional Insurance." Each Owner shall be solely responsible for and obtain such additional insurance as he deems

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of any lease or
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Section 9.3. "Payment of Insurance." The premiums for the insurance described above shall be paid by the Association.

Section 9.4. "Additional Insurance." Each Owner shall be solely responsible for and obtain such additional insurance as he deems

necessary or desirable at his own expense affording coverage upon his real and personal property.

ARTICLE X
GENERAL PROVISIONS

Section 10.1. "Right of Enforcement." In the event of a violation, or threatened violation, of any of the Covenants, Conditions and Restrictions herein enumerated, Declarant, the Association, or any Owner and all parties claiming under them shall have the right to enforce the Covenants, Conditions, and Restrictions contained herein, the By-Laws, and any Rules and Regulations promulgated by the Board of Managers, 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. The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority, to enforce any covenants, commitments, restrictions or other limitations contained in this plat other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance, 58-AO-3, as amended, or any conditions attached to approval of this plat by the Plat Committee.

Section 10.2. "Severability." Invalidity of any one of the Covenants, Conditions and Restrictions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

Section 10.3. "Amendment." This Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, approved and signed by at least two thirds (2/3) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Notwithstanding the above, this Declaration also may be amended by Declarant at any time prior to the end of the Development Period. The plat may be replatted by the Declarant so long as the Declarant owns seventy-five percent (75%) of the lots in the Development; however, only those lots of owners who consent to the replat may be included therein.

The Covenants, Conditions and Restrictions and all other provisions of this Declaration shall run with the land and shall be binding upon all persons claiming under them for a period of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods of ten (10) years each unless prior to

the expiration of any such ten (10) year period this Declaration is amended or changed in whole or in part as hereinabove provided.

Section 10.4. "Mortgages Rights." In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges or lien against any common area or any property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fee.

Section 10.5. "Notice of Mortgages." The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided for herein.

ARTICLE XI
DEDICATION OF ROADS

Section 11.1. All roads shown on the Plat not heretofore dedicated are hereby dedicated to the public.

ARTICLE XII
LAKE COVENANTS
AND
RESTRICTIONS

Upon the development of the proposed lake, as shown on the plats of Lake Charlevoix - Sections I & II, the following Covenants, Conditions and Restrictions in the use, enjoyment and maintenance thereof shall apply:

1. No member or third party shall do or permit to be done any action or activity which could result in the pollution of the lake, diversion of water, change in elevation of the lake level, earth disturbance resulting in silting, pumping or removal of water for any purpose, or any other conduct which could result in an adverse affect upon water quality, drainage, or proper lake management.

2. The Board of Managers, on behalf of the Owners, and the Marion County Commissioners or other appropriate county authority having jurisdiction shall have the authority to institute an action for injunction to abate such activity or seek mandatory relief for the correction of any damage caused to the lake or interference with the drainage system, together with any damages incurred, and upon recovery of judgment shall be entitled to costs of the action together with reasonable attorneys' fee.

3. No use of the lake by the Owners shall impair or interfere with the use of the lake for drainage and related purposes for the benefit of Lake Charlevoix - Sections I & II, and any such recreational or related uses shall be subordinate to the primary function of the lake for drainage purposes.

4. The lake access road will be maintained as part of the lake and may be used for launching and retrieving of allowable craft.

5. The use of the lake will be subject to the following rules and regulations:

- a) Docks and piers must be approved by the Committee.
- b) No alteration of shoreline topography shall be allowed.
- c) No motorized craft except low thrust battery operated trolling motors shall be allowed.
- d) No craft shall exceed twelve (12) feet in length and four (4) feet in width. These craft shall be limited to commercially manufactured paddleboats, canoes, kayaks, sailboats, and fishing or deck boats. Craft must be taken out of the water and stored out of view from October 15 to April 15 each year.

In Testimony Whereof, witness the signature of Declarant this 20th day of March, 1992.

LAKE CHARLEVOIX DEVELOPMENT, INC.


Edwin E. Pontius, M.D., President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

I, the undersigned, a Notary Public, duly commissioned to take acknowledgments and administer oaths in the State of Indiana, certify that Edwin E. Pontius, M.D., President of LAKE CHARLEVOIX DEVELOPMENT, INC., personally appeared before me and acknowledged the

execution of the foregoing indenture, as his duly authorized act,
this 20th day of March, 1993.

Donna J. Brooks
Notary Public
Donna J. Brooks
Printed Name

My commission expires: January 24, 1994
County of residence: Hamilton

This Instrument was prepared by and should be returned upon
recording to P. Thomas Murray, Jr., Lewis & Kappes, 1210 One
American Square, Indianapolis, IN 46282.

lakechar.dec

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LAKE CHARLEVOIX
SECTION 1

DIM ORIGINAL

Part of the Northwest Quarter and part of the Northeast Quarter of Section 2, Township 16 North, Range 4 East of the Second Principal Meridian, in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southeast Corner of said Northwest Quarter Section; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) along the East line of said Northwest Quarter Section 728.01 feet to a point on a curve to the left, said point being North 02 degrees 20 minutes 13 seconds East 1198.28 feet from the radius point of said curve thence Westerly along said curve 44.82 feet, said point being North 04 degrees 28 minutes 01 seconds West 1195.28 feet from the radius point of said curve, thence North 00 degrees 00 minutes 00 seconds East 1098.18 feet to the POINT OF BEGINNING of this description, said point being on the centerline of Fall Creek Road, said point also being on a curve to the left, said point being South 18 degrees 28 minutes 53 seconds East 973.29 feet from the radius point of said curve; thence Northwesterly along said curve and said centerline of Fall Creek Road 159.74 feet to the point of tangency of said curve, said point being South 25 degrees 53 minutes 05 seconds East 973.20 feet from the radius point of said curve; thence North 84 degrees 08 minutes 55 seconds East along said centerline 383.10 feet to the point of curvature of a curve to the right, said point being North 25 degrees 53 minutes 05 seconds West 709.84 feet from the radius point of said curve; thence Easterly along said centerline and along said curve 488.41 feet to the point of tangency of said curve, said point being North 13 degrees 35 minutes 38 seconds East 708.04 feet from the radius point of said curve; thence South 76 degrees 24 minutes 22 seconds East along said centerline 330.35 feet to a point on the northerly right-of-way line of the relocation of Fall Creek Parkway as per Indiana State Highway Plans for Project No. 1-465-4 (148) 122; thence South 22 degrees 04 minutes 01 seconds West along said plan right-of-way 25.28 feet; thence South 39 degrees 30 minutes 00 seconds East along said plan right-of-way 38.60 feet; thence South 00 degrees 51 minutes 48 seconds West along said plan right-of-way 375.00 feet; thence South 34 degrees 33 minutes 12 seconds West along said plan right-of-way 90.14 feet; thence South 00 degrees 51 minutes 48 seconds West along said plan right-of-way 100.00 feet; thence South 08 degrees 45 minutes 22 seconds East along said plan right-of-way 179.52 feet; thence North 79 degrees 45 minutes 44 seconds West 327.07 feet; thence North 84 degrees 40 minutes 00 seconds West 310.00 feet; thence South 71 degrees 35 minutes 00 seconds West 671.80 feet to a point on the aforesaid East line of the Northwest Quarter Section, said point being 1267.13 feet North of the Southeast corner of said Northwest Quarter Section; thence South 81 degrees 48 minutes 12 seconds West 722.57 feet; thence North 01 degrees 02 minutes 28 seconds West 222.00 feet; thence North 85 degrees 52 minutes 33 seconds West 176.28 feet; thence North 89 degrees 47 minutes 28 seconds West 59.00 feet; thence North 00 degrees 12 minutes 32 seconds East 16.82 feet; thence North 80 degrees 47 minutes 28 seconds West 180.00 feet to a point on the West line of the East Half of said Northwest Quarter Section; thence North 00 degrees 12 minutes 32 seconds East along said West line 364.25 feet to a point on the centerline of Fall Creek Road; thence North 83 degrees 07 minutes 27 seconds East along said centerline of Fall Creek Road 1130.78 feet to the point of curvature of a curve to the left, said point being South 00 degrees 38 minutes 13 seconds East 964.93 feet from the radius point of said curve; thence Northwesterly along said curve and said centerline of Fall Creek Road 159.00 feet, said point being South 18 degrees 13 minutes 30 seconds East from the radius point of said curve, said point also being the place of beginning. Containing in all 34.687 acres, more or less, subject to all highways, rights-of-way, easements, and restrictions of record.

920035139

EXHIBIT "A"

DIM ORIGINAL

LAKE CHARLEVOIX
SECTION II

Part of the Northwest Quarter and part of the Northeast Quarter of Section 2, Township 18 North, Range 4 East of the Second Principal Meridian in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southeast Corner of said Northwest Quarter Section; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) along the East line of said Northwest Quarter Section 728.01 feet to the POINT OF BEGINNING of this description, said point being on the Northerly right-of-way line of Fall Creek Parkway as now located and established, said point also being a point on a curve to the left, said point being North 02 degrees 30 minutes 13 seconds West 1,198.28 feet from the radius point of said curve; thence Westerly along said Northerly right-of-way line and along said curve 689.17 feet to the point of tangency of said curve, said point being North 34 degrees 38 minutes 33 seconds West 1,186.28 feet from the radius point of said curve; thence South 55 degrees 33 minutes 27 seconds West along said North right-of-way line 110.98 feet to the point of curvature of a curve to the right, said point being South 34 degrees 28 minutes 33 seconds East 805.37 feet from the radius point of said curve; thence Westerly along said curve and said Northerly right-of-way line 842.84 feet to a point on said curve, said point being South 08 degrees 14 minutes 22 seconds West 805.37 feet from the radius point of said curve; said point also lies on the West line of the East Half of said Northwest Quarter Section; thence North 00 degrees 12 minutes 32 seconds East along said West line 800.11 feet; thence South 89 degrees 47 minutes 28 seconds East 190.00 feet; thence South 00 degrees 12 minutes 32 seconds West 18.62 feet; thence South 80 degrees 47 minutes 28 seconds East 50.00 feet; thence South 85 degrees 52 minutes 33 seconds East 178.28 feet; thence South 81 degrees 02 minutes 28 seconds East 222.00 feet; thence North 81 degrees 48 minutes 12 seconds East 722.87 to a point on the aforesaid East line of the Northwest Quarter Section, said point being 1287.13 feet North of the Southeast corner of said Northwest Quarter Section; thence North 71 degrees 35 minutes 03 seconds East 871.80 feet; thence South 54 degrees 40 minutes 00 seconds East 310.00 feet; thence South 70 degrees 45 minutes 44 seconds East 327.07 feet to a point of curvature of a curve to the right, said point being South 89 degrees 02 minutes 12 seconds East 502.88 feet from the radius point of said curve, said point also being on the Westerly right-of-way line of the relocation of Fall Creek Parkway as per Indiana State Highway plans for Project No. 1-486-4 (146) 122; thence Southwesterly along said plan right-of-way and along said curve 375.53 feet to a point of tangency of said curve; said point being South 40 degrees 21 minutes 28 seconds East 502.88 feet from the radius point of said curve; thence South 51 degrees 54 minutes 31 seconds West along said plan right-of-way 07.30 feet to a point of curvature of a curve to the right, said point being South 38 degrees 21 minutes 28 seconds East 497.98 feet from the radius point of said curve; thence Westerly along said plan right-of-way and along said curve 322.04 feet to the point of tangency of said curve, said point being South 00 degrees 41 minutes 48 seconds West 497.98 feet from the radius point of said curve; thence North 88 degrees 18 minutes 12 seconds West along said plan right-of-way 104.60 feet; thence South 57 degrees 45 minutes 30 seconds West along said plan right-of-way 42.30 feet to a point on the aforesaid Northerly right-of-way line of Fall Creek Parkway; thence North 89 degrees 18 minutes 12 seconds West on and along said Northerly right-of-way line 407.45 feet to the point of curvature of a curve to the left, said point being North 00 degrees 41 minutes 48 seconds East 1,198.28 feet from the radius point of said curve; thence Westerly along said Northerly right-of-way and along said curve 83.94 feet to the place of beginning. Containing in all 37.909 acres, more or less, subject to all highways, right-of-way, assessments, and restrictions of record.

EXHIBIT "A"

920035139

Page 2 of 2

(11)

AMENDED AND RESTATED
DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS OF
LAKE CHARLEVOIX

THIS AMENDMENT to and RESTATEMENT of the Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix is made this 4th day of October, 1994, by Lake Charlevoix Development, Inc., an Indiana corporation ("Declarant").

WHEREAS, Declarant previously recorded in the Office of the Recorder of Marion County, Indiana, a Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix ("Development") on November 16, 1988, as Instrument Number 88-116910 ("Original Declaration") for the real estate more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as "Property"); and

WHEREAS, Declarant has subdivided and developed the Property as generally shown on the Plat for Lake Charlevoix Section I and II (hereinafter sometimes referred to as the "Plat" and sometimes referred to as the "Development"), received for record in the Office of the Recorder of Marion County, Indiana on November 7, 1988, as Instrument Number 88-113298, together with all recorded amendments and replatting thereto; and

WHEREAS, the Original Declaration was amended by a certain First Amendment to Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix ("First Amendment"), which First Amendment was recorded in the Office of the Recorder of Marion County, Indiana on March 1, 1990, as Instrument Number 90-19171; and

WHEREAS, the Original Declaration was further amended by a certain Second Amendment to Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix ("Second Amendment"), which Second Amendment was recorded in the Office of the Recorder of Marion County, Indiana on March 26, 1992, as Instrument Number 92-35088; and

WHEREAS, Declarant filed an Amended and Restated Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix, which Amended and Restated Declaration was recorded in the Office of the Recorder of Marion County, Indiana on March 26, 1992, as Instrument Number 92-35139; and

WHEREAS, the Declarant is empowered under Article X, Section 10.3 of the Original Declaration to amend the Declaration at any time prior to the end of the Development Period; and

WHEREAS, the Declarant desires to further amend the Declaration and to restate the Original Declaration as amended by the First Amendment and the Second Amendment as well as by the amendments made as of this date such that this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix in no way nullifies or changes the Original Declaration, as amended, or the effective dates of the Original Declaration and the amendments thereto.

NOW, THEREFORE, Declarant amends and restates the Declaration such that all of the platted Lots and lands located with the Development as they have been platted and as they may become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which were and are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in the Development were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the development as a whole and of each of said Lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant's successors in title to any real estate in the Development.

ARTICLE I NAME

The subdivision of the Property created by this Declaration shall be known and designated as Lake Charlevoix I & II, a subdivision located in Marion County, Indiana, the legal description for which is more particularly described on Exhibit A attached hereto and by this reference made a part hereof.

ARTICLE II DEFINITIONS

Section 2.1. "Association" shall mean Lake Charlevoix Homeowners Association, Inc., an Indiana not-for-profit corporation, whose membership shall consist of Lot Owners who pay mandatory assessments for liability, maintenance of the landscaped areas and signage; maintenance of the other improvements installed by Declarant and located within the lake easements.

Section 2.2. "Articles" means the Articles of Incorporation of the Association filed with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.3. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise

excluding those having such interest merely as security for the performance of any obligation. Unless specifically indicated to the contrary, the term Owner as used herein shall include the Declarant, so long as the Declarant shall own any Lot.

Section 2.4. "Property" means the real estate described in Exhibit "A" which is Lake Charlevoix I & II including the Common Areas.

Section 2.5. "Plat" means the subdivision plat of the Property identified as Plat of Lake Charlevoix I & II recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended, supplemented, or replatted.

Section 2.6. "Lot" means any parcel of land shown upon the Plat of Lake Charlevoix I & II and identified by a number 1 through 102 inclusive, except Lot 22 (waterscape lot) which is now a part of the Common Area.

Section 2.7. "Developer" shall mean Lake Charlevoix Development, Inc., an Indiana Corporation, its successors and assigns as a Declarant.

Section 2.8. "Board of Managers" means the Board of Managers of the Association.

Section 2.9. "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the real estate described in Exhibit A.

Section 2.10. "Committee" shall mean the Development Control Committee, composed of at least two (2) 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 Declarant until the end of the Development Period, at which time the Lake Charlevoix Homeowners Association, Inc., shall appoint this Committee which shall then consist of three (3) or more individuals who own Lots within the Development. The initial members of the Committee appointed by Declarant are Edwin Pontius and Larry Rodeman.

Section 2.11. "Common Area" means the center of the turnaround, the two esplanades at the two entrances to Lake Charlevoix, the lights and signage, the lake, the main enance road used for access to the lake, Lot 22 and all common areas delineated as such on the Replat dated December 18, 1991.

Section 2.12. Approvals, determinations, permissions or consents required herein of the Declarant, the Committee or the Association shall be deemed given only if they are given in writing and signed by the Declarant, the Committee or the Association. Exceptions may

be made by the Declarant or, after the Development Period, by the Association or the Committee.

ARTICLE III
USE RESTRICTIONS AND ARCHITECTURAL CONTROL

Section 3.1. "Lot Use and Conveyance." All Lots shall be used exclusively for single-family residential purposes, except that Declarant, during the Developmental Period, reserves the rights provided herein respecting the Property generally. A single family is defined as a single housekeeping unit, operating on a non-profit, noncommercial basis between its occupants with a common kitchen and dining area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the Covenants, Conditions, and Restrictions contained herein.

Section 3.2. "Building Control." Prior to construction of any structure upon a Lot, the building plans thereof, including plot plans, site storm drainage and grading plan, specifications, plan for landscaping, and any other data or information which may be requested, must be submitted to the Committee and delivered to the person or persons requesting such approval. The Committee is authorized to determine whether the proposed structures, plans and specifications show conformity and harmony of external design with existing structures, whether the building and property set-back lines are in conformity with applicable plat requirements, and whether the proposed site storm drainage plan conforms to the overall project and Lot drainage plans as specified in the approved final construction plans for Lake Charlevoix. No charge will be made to any purchaser of a Lot for examination of plans or for giving approval for construction thereon. In the event the Committee does not indicate in writing its approval or disapproval of plans submitted for its review within a period of thirty (30) days after submission, the Committee is deemed to have approved such plans.

Section 3.3. "Occupancy or Residential Use of Partially Completed Dwelling House Prohibited." No dwelling house constructed on any Lot shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the house shall have been substantially completed in accordance with the approved building plan shall be made by the Committee and such decision shall be binding on all parties.

Section 3.4. "Other Restrictions." All of the Property shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the development, all of which are incorporated herein by reference.

Section 3.5. "Building Location and Floor Elevation." No building may be erected between the building line shown on the Plat and the front lot line; and no structure or part hereof may be built or erected nearer than 7 feet to any side yard line, or nearer than 15 feet to any rear lot line.

Section 3.6. "Architectural Guidelines." Any new building or improvement or any addition to an existing building or an exterior alteration or change to an existing building must have the prior written approval of the Committee before any work is undertaken. The Committee has established the following guidelines for specific types of construction and improvements. Any addition, exterior alteration or change to an existing building shall be compatible with the existing structure.

- A. Size of Dwelling. The ground floor area of the main structure, shall be not less than 2400 square feet in the case of a one-story dwelling, nor less than 1300 square feet in the case of a two-story dwelling. The first and second floors of a two-story or multi-level shall contain at least 2600 square feet. These square footages refer only to finished interior living space, excluding open patios, finished lower levels, porches, garages, etc.
- B. Garages. All homes shall have at least two car attached garages. All garage doors shall be of wood, masonite or metal material and be painted or stained to match or compliment the dwelling.
- C. Driveways. All driveways shall be concrete or paving brick material.
- D. Flat Roofs. No home designs will be permitted which include flat or nearly flat roofs over the main parts of the house.
- E. Sidewalks. Each home shall have a continuous concrete or brick sidewalk from the driveway to the front porch. In addition, each Lot shall be serviced by a 4' concrete walk on all portions of the Lot with street frontage, unless shown without sidewalks on the Replat. Sidewalks shall be installed by the builder and included in the purchase price. If the home is completed in the winter then the sidewalks shall be installed no later than April 30th of the following spring.
- F. No heat pumps, air conditioning units, or gas meters will be installed in the front of the house.
- G. Windows-Doors. If storm doors are installed, they must be painted to match the exterior of the home. No unfinished

aluminum doors will be allowed. All windows must be wood or windows with wood or vinyl clad exterior.

- II. Gutters and Downspouts. All gutters and downspouts other than copper, will be painted or prefinished painted aluminum to match the exterior of the home.
- I. Vents. All metal roof or range vents will be painted to blend with roof color. Every effort should be made to locate such vents to the rear of the house.
- J. Plumbing. All plumbing vent stacks shall be on the rear roof of the house. Sump pump lines shall be connected to underground laterals, storm sewers or drainage easements as provided in the plat.
- K. Street Cleaning. Builder shall finish cleaning in front of his house upon completion and rough clean the street periodically during construction. Rough cleaning should be done immediately after foundation excavation and basement pouring and at all other times when mud is carried into the street.
- L. Yard Lights. All Lot Owners are required to furnish and install dusk to dawn light fixtures at all driveway entrances to their Lots, the style and type of which will be complimentary to that style selected by the Committee. Builders shall furnish and install said lights on behalf of the Owner prior to closing. Thereafter, the Owner shall be responsible to repair or replace said lights in conformity herewith at the Owner's expense.
- M. Awnings. No metal, sheet plastic, fiberglass or similar type material awnings or patio covers will be permitted in the development.
- N. Mailboxes. All mailboxes installed at the street to service Lots in Lake Charlevoix shall be uniform and shall be of a type, color and manufacture approved by the Committee. Such mailboxes shall be installed by the Builder upon posts approved as to type, size and location by the Committee. Thereafter, the Owner shall be responsible to repair or replace said mailboxes and posts in conformity herewith at the Owner's expense.
- O. Landscaping. Shall be furnished with house and completed before closing. Builder shall sod the front yard and at least 50% of the side yard. Landscape mulch will be allowed in "natural areas". The balance of the yard may be seeded. Each builder will plant two trees having a 3-inch diameter trunk in the front yards. Each home shall include a minimum of \$1500.00 worth of other plantings and

landscape. This allowance includes labor and is exclusive of sodding and the two trees aforementioned. All work on the minimum landscape requirement above shall be completed prior to the closing or as soon as weather conditions permit, but no later than May 10th of the following spring. Trees, hedges, and shrubs which restrict visual lines for vehicular traffic shall be cut back or removed. Special landscaping beyond the above minimum must be approved by the Committee prior to installation.

- P. Fireplaces. The exterior of fireplace chimneys shall be brick, stone or appropriate stucco.
- Q. Swimming Pools. Only permanent, in-ground pools constructed by pool professionals will be permitted. All pools shall be backyard pools and should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design. Backyard pools must be approved by the Development Control Committee or the Lake Charlevoix Homeowners Association, Inc.
- R. Tennis Courts, Racquetball Courts, Paddle Ball Courts, Etc. Tennis courts, racquetball courts, paddle ball courts, squash courts and other outdoor recreational facilities will not be permitted, unless approved by the Committee.
- S. Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth less than 24 inches, swing and slide sets, playhouses and tents shall not require approval by the Committee, provided such equipment is not more than six (6) feet high, maintained by the Lot Owner in good repair (including painting) and every reasonable effort has been made by the Lot Owner to screen or shield such equipment from view. Equipment higher than six (6) feet shall require approval of the design, location, color, material and use by the Committee.
- T. Geothermal Heat. Geothermal heat systems are acceptable. However, the closed loop variety must be used.
- U. Miscellaneous. All exterior lights shall be directed in such a manner so as not to create annoyance to adjacent properties. Lot Owners shall keep garage doors closed at all times except during the times of actual use of the garage facility. Collapsible and removable clotheslines will be permitted, but permanent clotheslines are not acceptable.

- V. **Basements.** If the entire lot area as shown in the Replat is above the elevation of 748.0 (U.S.G.S. Datum), the basement floor may be below 748.0 (U.S.G.S. Datum) provided that the basements have been waterproofed.
- W. **Liability.** Neither the Developer, the Committee, the Association, nor any agent thereof, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Developer, the Association and the Committee do not make, and shall not be deemed by virtue of any action of approval or disapproval taken by them, to have made any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.
- X. **Inspection.** The Committee may inspect work being performed to assure compliance with these Covenants, Conditions and Restrictions and applicable regulations.

Section 3.7. "Home Occupations." No Lot or Lots shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows, may be permitted: any use conducted entirely within the residence dwelling and participated in solely by a member of the immediate family residing in said residence, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof and in connection with which there is: a) No sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling; b) No commodity may be sold upon the premises; c) No person is employed other than a member of the immediate family residing on the premises; and d) No mechanical or electrical equipment used which would create overloading of standard circuits, provided that, in no event shall the following or similar activities be conducted: a barber shop, styling salon, beauty parlor, tea room, fortune-telling parlor, tanning salon, animal hospital, or any form of animal care or treatment such as dog trimming; e) No firewood selling nor storage of firewood for sale. In addition, "Home Occupations" shall be subject to the Marion County Home Occupation Ordinance, as amended from time to time. The Ordinance's restrictions are incorporated herein by this reference as if fully set forth. In the event of a conflict between this Section 3.7 and the Marion County Home Occupation Ordinance, this section shall prevail.

Section 3.8. "Street Sight Line Restrictions." No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points 25 feet from

the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to all lots within 10 feet of the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 3.9. "Existing Trees." No trees shall be removed along the northern and western side of Fall Creek Parkway within forty (40) feet of the edge of pavement thereof.

ARTICLE IV GENERAL PROHIBITIONS

Section 4.1. "In General." No noxious or offensive activities shall be carried out on any Lot, nor shall anything be done on any Lot which shall be or become an unreasonable annoyance or nuisance to any Owner of another Lot.

Section 4.2. "Vehicle Parking." No trucks, camper, trailers, recreational vehicles, boats, boat trailers or similar vehicles shall be parked on any street or Lot, unless the same shall be stored in an enclosed, attached garage. No vehicle shall be parked overnight on any street within Lake Charlevoix I & II.

Section 4.3. "Exterior Antenna." Unless specifically authorized by the Committee, no television, radio or other antennas may be erected by any Lot Owner on the exterior of a house or on a Lot. No satellite dishes will be permitted larger than 24 inches in diameter placed appropriately on the Lot.

Section 4.4. "Garbage and Refuse Disposal." No Lot shall be used or maintained as a dumping ground for trash or for the storage of any materials. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view except at the times when refuse collections are being made. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 4.5. "Animals." No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other pets generally and customarily recognized as household pets and which are of a gentle disposition may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots so that they will not be a nuisance. No exterior structures, animal runs, or decoration areas will be allowed for these household pets, except by written permission of the Committee.

Section 4.6. "Storage Tanks." Any propane (other than propane tanks for portable gas grills), or oil storage tanks used in connection with a lot shall be either buried or located in a garage or house such that they are completely concealed from public view. The storage of gasoline (except no more than a 5-gallon Underwriters Approved container of gasoline for use in lawn mowers) or any toxic chemical or hazardous materials are prohibited.

Section 4.7. "Temporary Structures and Outbuildings." No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence. No metal outbuildings shall be permitted on any Lot. All outbuildings must be of same color and materials as the primary structure and attached thereto and be approved by the Committee.

Section 4.8. "Window Coverings." All window coverings such as curtains or blinds shall not be unsightly from the exterior, including garage windows if visible from street or lake.

Section 4.9. "Signs." No sign of any kind shall be displayed to the public view on any Lot except that one sign per builder and one per realtor of not more than six (6) square feet (2'x3') may be displayed at any time for the purpose of advertising the property for sale or for rent. An exception to this rule may be granted by the Declarant during special promotional periods. Also, the Declarant shall be permitted to erect and maintain upon the property such signs as it deems appropriate to advertise during the development period.

Section 4.10. "Prohibition of Used Structures and Modular Homes." All structures constructed or placed on any Lot shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any such Lot. No modular or prefabricated structures (except trusses) may be placed on any Lot, unless approved by the Committee.

Section 4.11. "Building Completion." Unless a delay is caused by strikes, war, court injunction, or acts of God, the exterior of any dwelling or structure built upon any Lot shall be completed within one (1) year after the date of commencement of the building process. No improvement which has been partially or totally destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage. If said structure is not completed or repaired within such time, then the Developer, or after the end of the Development Period, the Lake Charlevoix Homeowners Association, Inc. may re-enter, take possession of said Lot, without notice, and sell the same together with improvements, and after payment of liens and expenses, pay the balance of the sale proceeds if any to the Owner of said Lot at time of sale.

Section 4.12. "Fire" No fire shall be permitted to burn upon any street or roadway in the subdivision. Any outside burning will be limited to that permitted by local ordinances.

Section 4.13. "Fences, Walls and Screening." It is the goal of the Developer to keep all fencing or screening as harmonious as possible with the architectural character of the community. No fence or screen will be approved if its installation will obstruct necessary sight lines for vehicular traffic. Undue obstruction of view or other amenities from adjoining properties will be taken into consideration by the Developer, or after the end of the Development Period, the Lake Charlevoix Homeowners Association, Inc. and/or the Committee, when reviewing fences for approval. Fences shall not be nearer to the front of a home than the rear foundation line of a home except decorative fences, unless approved by the Committee. Decorative front fences may be placed parallel to the front foundation of a home only if they do not cause unreasonable visual barriers and they are of identical materials as the main structure. The Developer discourages fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other property Owners. Fences may be privately installed but must be constructed to professional levels of quality. Non-professionally installed fences will be inspected by the Developer, or after the end of the Development Period, the Lake Charlevoix Homeowners Association, Inc. and/or the Committee, after completion in order to ensure that the final product is of a professional quality, and final approval of the fence shall be deemed withheld until successful completion of this final review. Lake Lot Owners will be governed by ARTICLE XII hereof.

A. Height restriction. The developer is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the community is damaged by a proliferation of fences of excessive height. The Committee, therefore, will approve rear perimeter fences up to 4 feet in height, which otherwise meet these guidelines. The Committee will give consideration, however, to a variance in this height limit where unique circumstances exist. The use of 6 foot fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio or to enclose an approved in-ground pool area will be permitted. The specific fence height restrictions are as follows:

- 1) Property fencing and walls above grade shall not exceed 4 feet above grade unless otherwise approved by the Developer or the Committee.
- 2) The Developer or the Committee will not ordinarily approve any proposed fence which exceeds 4 feet in height unless unique circumstances exist.

- 3) *Patio screens/privacy fences shall not exceed 6 feet in height, except for pools and recreational fences as provided herein.*

B. *Materials and Finish.*

- 1) *Wood fencing or screening will be allowed if the design is in conformity with the architectural design of the community and dwelling.*
- 2) *The installation of a chain link or other galvanized metal fencing will not be permitted unless it is vinyl coated or covered with similar coated material. Black or dark green are pre-approved, all other colors must be approved prior to construction.*
- 3) *All fencing or screening will have finished material on both sides.*
- 4) *Walls above grade should be constructed of natural stone, masonry, or attractive timber.*

ARTICLE V
MAINTENANCE OF LOTS AND IMPROVEMENTS

The Owner of any Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall cause the following to be done:

- A. *Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;*
- B. *Remove all debris or rubbish;*
- C. *Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;*
- D. *Cut down and remove dead trees. No living perimeter trees may be trimmed or removed without written consent of the Board of Managers;*
- E. *Where applicable, prevent debris and foreign material from entering drainage areas, lakes, and streams; and*

F. Keep the exterior of all improvements in such a state of repair of maintenance as to avoid their becoming unightly.

Section 5.1. "Right to Perform Certain Maintenance." In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, Developer shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean, or perform such other acts as may be reasonably necessary to make such Lot and improvement situated thereon, if any, conform to the requirements of these Restrictions. The cost thereof shall be an expense of the Owner and the Developer may seek collection of cost in any reasonable manner including placing a lien against said Lot for the expense thereof. Neither the Declarant, nor any of its agents, employees, or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder. Upon the completion of the development period, the Association shall succeed to the rights of the Declarant/Developer in this regard.

ARTICLE VI
DRAINAGE, LAKE, UTILITY, SEWER,
AND SIGN EASEMENTS

Section 6.1. Drainage easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in underground conduit, to serve the needs of the subdivision and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, unless approved by the Committee. No grading shall restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by Developer. Said easements are for the mutual use and benefit of the Owners of all Lots in Lake Charlevoix.

Section 6.2. Common Land and Lake Easements are created around the lake approximately at the top of the bank. Under no circumstances shall said easement be blocked in any manner. The construction or reconstruction of any improvements, nor shall any grading restrict, in any manner, the waterflow.

Any Owner who restricts or alters the flow of water through a lake easement shall be notified by registered mail by the Developer or the Homeowners Association of each violation. The Owner shall be given 10 days to correct the matter and then if not corrected the Developer or Homeowners Association as the case may be shall have the duty, obligation and right to enter upon the property and correct the problem or violation.

From time to time the lake covenants may require regrading, rework or reconstruction to maintain the proper water flow. By acceptance of a deed, the Owner hereby grants to the Developer and the Homeowners Association the right of reasonable ingress and egress to enter upon the property to construct or reconstruct to any extent necessary to obtain adequate drainage. Aesthetic repairs shall be limited to final grading and seeding of the affected areas.

Should the above repairs or reconstruction be a result of the Lot Owner's violation of these Covenants, Conditions and Restrictions the Developer or Homeowners Association may seek full recovery of costs including costs of enforcement as described in Section 8.1 as well as covenant from liability as described in Section 5.1.

Under no circumstance shall any obligation for the maintenance of any lake facility be imposed upon, or implied as an obligation of any governmental agency, unless such obligation is specifically and expressly assumed or accepted by any such governmental agency.

Common Area or common property adjoining Lots shall be maintained by the individual adjoining Lot Owners, except when the obligation is specifically and expressly assumed or accepted by the Homeowners Association.

Section 6.3. Sign Easements are created for the landscape and wall area to be maintained by the Homeowners Association. Such areas are at each of the two entrances to Lake Charlevoix and the turnaround.

Section 6.4. Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal systems designed to serve Lake Charlevoix and adjacent areas for the purpose of installation and maintenance of sewers that are a part of said system.

Section 6.5. Utility Easements (UE) are created for the use of all public utility companies and cable TV companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easement.

Section 6.6. All such easements mentioned herein include the right of reasonable ingress and egress for the purpose of maintenance, construction, or reconstruction for the mutual benefit of Owners in Lake Charlevoix. No structure, including fences, shall be built on any drainage, lake, sewer, sign or utility easement, except for that portion of the Common Area above average lake level and then only with prior approval of the Committee.

ARTICLE VII
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 7.1. "Membership." Every Owner of a Lot shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 7.2. "Classes of Membership and Voting Rights." The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant. 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, all such persons shall be members; the vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member shall be Lake Charlevoix Development, Inc., the Declarant. The Declarant shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease on the happening of the later of the following events:

- (a) the end of the Development Period; or,
- (b) January 1, 1995.

Section 7.3. "Board of Managers." The Board of Managers shall manage the affairs of the Association and until the end of the Development Period shall consist of two (2) persons designated by Declarant. After the end of the Development Period, the Owners shall elect a Board of Managers of the Association as prescribed by the Association's Articles and By-Laws.

ARTICLE VIII
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 8.1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot by acceptance of a deed therefor, from Declarant, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (1) Regular Assessments (for maintenance, repairs, and ordinary operating expenses);
- (2) Special Assessments for

(a) capital improvements and operating deficits, as provided for herein; and

(b) for special maintenance or repairs as provided for herein; and

(3) any insurance as provided for herein.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land ("Enforcement Costs") 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 Owner. Past due assessments shall run with the land and pass with title.

Section 8.2. "Purpose of Regular Annual Assessments." The regular annual assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Managers of the Association, for the promotion of the health, safety and welfare of the residents in the Property, for the improvement, maintenance, and repair of the drainage/detention easements for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. A portion of the regular annual assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the drainage/detention easement and other capital improvements which the Association is required to maintain.

Section 8.3. "Maximum Regular Annual Assessments."

- A. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum regular annual assessment on any Lot conveyed by Declarant shall be one hundred twenty Dollars (\$120.00). The Declarant, with respect to any Lot owned by it, shall not be required to pay any regular annual assessment.
- B. From and after January 1 of such year, the maximum regular annual assessment may be increased each calendar year by not more than 10% above the maximum regular annual assessment for the previous year without a vote of the membership.
- C. From and after January 1 of such year, the maximum regular annual assessment may not be increased each calendar year by more than 10% above the maximum regular annual assessment for the previous year, except with the approval of fifty-one percent (51%) of those members of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose.
- D. The Board of Managers from time to time may fix the regular annual assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 8.4. "Special Assessments for Capital Improvements and Operating Deficits." In addition to the regular annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of fifty-one percent (51%) of those members who cast votes in person or by proxy at a meeting duly called for this purpose. The foregoing notwithstanding, the Declarant, with respect to any Lots owned by it, shall not be required to pay any special assessments levied for construction, reconstruction, repair or replacement of any capital improvements which the Association is required to maintain or any regular annual assessment.

Section 8.5. "Notice and Quorum for any Action Authorized Under Section 8.3 and 8.4." Written notice of any meeting called for the purpose of taking any action authorized under Section 8.3 or 8.4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (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 8.6. "Uniform Rate Assessment." Regular annual assessments and special assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots.

Section 8.7. "Date of Commencement of Assessments; Due Dates." The regular assessment provided for herein shall commence as to each Lot on the date of conveyance of such Lot by Declarant. The provisions of this Section 8.7 notwithstanding, the Owner shall pay on the day of conveyance in advance his or her share of the regular annual assessment for the balance of the calendar year in which the conveyance takes place.

The regular annual assessment against each Lot shall be paid in advance on or before the first day of January of each calendar year. Payment of the regular annual assessment shall be made to the Board of Managers or the Managing Agent, as directed by the Board of Managers.

The Board of Managers shall fix any increase in the amount of such assessments at least thirty (30) days in advance of the effective date of such increase.

Written notice of any increase in the regular assessment, and written notice of any special assessment and such other assessment notices as the Board of Managers shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period for any special assessments, shall be established by the Board of Managers. 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 8.8. "Effect of Nonpayment of Assessments; Remedies of the Association." If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established thereof pursuant to Section 8.7 hereof, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as hereinafter provided and as provided in Section 8.1) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessments relate, binding upon the then Owner, his or her, devisees, successors and assigns. The personal obligation

of the then Owner to pay such assessment shall pass to such Owner's successors in title. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve per cent (12%) per annum and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property or both. In such event, 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, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his Lot.

Section 8.9. "Subordination of the Lien to Mortgages; Sale or Transfer." 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 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. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to Section 8.7, as to whether or not such assessments have been paid.

ARTICLE IX INSURANCE

Section 9.1. "Liability Insurance." The Association shall purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Managers shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, all persons acting or who may come to act as agents or employees, of any of the foregoing with respect to the Association, including members acting on Association matters.

Section 9.2. "Miscellaneous Insurance Provisions." The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workers' compensation insurance, and such other insurance as the Board of Managers 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 Managers and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Managers his right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 9.3. "Payment of Insurance." The premiums for the insurance described above shall be paid by the Association.

Section 9.4. "Additional Insurance." Each Owner shall be solely responsible for and obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his real and personal property.

ARTICLE X GENERAL PROVISIONS

Section 10.1. "Right of Enforcement." In the event of a violation, or threatened violation, of any of the Covenants, Conditions and Restrictions herein enumerated, Declarant, the Association, or any Owner and all parties claiming under them shall have the right to enforce the Covenants, Conditions, and Restrictions contained herein, the By-Laws, and any Rules and Regulations promulgated by the Board of Managers, 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. The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority, to enforce any covenants, commitments, restrictions or other limitations contained in this plat other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance, 58-AO-3, as amended, or any conditions attached to approval of this plat by the Plat Committee.

Section 10.2. "Severability." Invalidation of any one of the Covenants, Conditions and Restrictions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

Section 10.3. "Amendment." This Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, approved and signed by at least two thirds (2/3) of the then Owners. Provided, however, that none

of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Notwithstanding the above, this Declaration also may be amended by Declarant at any time prior to the end of the Development Period. The plat may be replatted by the Declarant so long as the Declarant owns seventy-five percent (75%) of the lots in the Development; however, only those lots of owners who consent to the replat may be included therein.

The Covenants, Conditions and Restrictions and all other provisions of this Declaration shall run with the land and shall be binding upon all persons claiming under them for a period of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten (10) year period this Declaration is amended or changed in whole or in part as hereinabove provided.

Section 10.4. "Mortgagee Rights." In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges or lien against any common area or any property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fee.

Section 10.5. "Notice of Mortgagees." The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided for herein.

ARTICLE XI DEDICATION OF ROADS

Section 11.1. All roads shown on the Plat not heretofore dedicated are hereby dedicated to the public.

ARTICLE XII
LAKE COVENANTS
AND
RESTRICTIONS

Upon the development of the proposed lake, as shown on the plat of Lake Charlevoix - Sections I & II, the following Covenants, Conditions and Restrictions in the use, enjoyment and maintenance thereof shall apply:

1. No member or third party shall do or permit to be done any action or activity which could result in the pollution of the lake, diversion of water, change in elevation of the lake level, earth disturbance resulting in silting, pumping or removal of water for any purpose (other than the water fountain pump on Lot 22), or any other conduct which could result in an adverse affect upon water quality, drainage, or proper lake management.

2. The Board of Managers, on behalf of the Owners, and the Marion County Commissioners or other appropriate county authority having jurisdiction shall have the authority to institute an action for injunction to abate such activity or seek mandatory relief for the correction of any damage caused to the lake or interference with the drainage system, together with any damages incurred, and upon recovery of judgment shall be entitled to costs of the action together with reasonable attorneys' fee.

3. No use of the lake by the Owners shall impair or interfere with the use of the lake for drainage and related purposes for the benefit of Lake Charlevoix - Sections I & II, and any such recreational or related uses shall be subordinate to the primary function of the lake for drainage purposes.

4. The lake access road will be maintained as part of the lake and may be used for launching and retrieving of allowable craft.

5. The use of the lake will be subject to the following rules and regulations:

- a) Docks, piers, steps, etc. must be approved by the Committee.
- b) No alteration of shoreline topography shall be allowed, unless approved by the Committee.
- c) No motorized craft except low thrust battery operated trolling motors shall be allowed.
- d) No craft shall exceed twelve (12) feet in length and four (4) feet in width. These craft shall be limited to commercially manufactured paddleboats, canoes, kayaks, sailboats, and fishing or deck boats. Craft must be taken out of the water and stored out of view from October 15 to April 15 each year.

In Testimony Whereof, witness the signature of Declarant this 4th day of October, 1994.

LAKE CHARLEVOIX DEVELOPMENT, INC.

Edwin E. Pontius
Edwin E. Pontius, M.D., President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

I, the undersigned, a Notary Public, duly commissioned to take acknowledgments and administer oaths in the State of Indiana, certify that Edwin E. Pontius, M.D., President of LAKE CHARLEVOIX DEVELOPMENT, INC., personally appeared before me and acknowledged the execution of the foregoing indenture, as his duly authorized act, this 4th day of October, 1994.

Dennis J. Brooks
Notary Public
Dennis J. Brooks
Printed Name

My commission expires: January 24, 1998

County of residence: Hamilton

This Instrument was prepared by and should be returned upon recordation to Terence L. Eads, Lewis & Kappes, 1210 One American Square, Indianapolis, IN 46282.

TAKE CHANGES
SECTION 1

Part of the Northwest Quarter and part of the Northeast Quarter of Section 7 Township 16 North Range 4 East of the Second Principal Meridian in Marion County Indiana being more particularly described as follows

Commencing at the Southeast Corner of said Northwest Quarter Section; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) along the East line of said Northwest Quarter Section 776.01 feet to a point on a curve to the left, said point being North 02 degrees 20 minutes 13 seconds East 1196.28 feet from the radius point of said curve thence Westerly along said curve 44.82 feet, said point being North 04 degrees 29 minutes 01 seconds West 1196.28 feet from the radius point of said curve, thence North 00 degrees 00 minutes 00 seconds East 1099.16 feet to the POINT OF BEGINNING of this description, said point being on the centerline of Fall Creek Road, said point also being on a curve to the left, said point being South 18 degrees 28 minutes 53 seconds East 973.29 feet from the radius point of said curve; thence Northwesterly along said curve and said centerline of Fall Creek Road 159.74 feet to the point of tangency of said curve, said point being South 25 degrees 53 minutes 05 seconds East 973.29 feet from the radius point of said curve; thence North 64 degrees 08 minutes 55 seconds East along said centerline 363.10 feet to the point of curvature of a curve to the right, said point being North 25 degrees 53 minutes 05 seconds West 708.84 feet from the radius point of said curve; thence Easterly along said centerline and along said curve 488.41 feet to the point of tangency of said curve, said point being North 13 degrees 35 minutes 38 seconds East 708.84 feet from the radius point of said curve; thence South 78 degrees 24 minutes 22 seconds East along said centerline 330.35 feet to a point on the Northerly right-of-way line of the relocation of Fall Creek Parkway as per Indiana State Highway Plans for Project No. 1-465-4 (146) 122; thence South 22 degrees 04 minutes 01 seconds West along said plan right-of-way 25.28 feet; thence South 39 degrees 30 minutes 00 seconds East along said plan right-of-way 38.70 feet; thence South 00 degrees 51 minutes 48 seconds West along said plan right-of-way 375.00 feet; thence South 34 degrees 33 minutes 12 seconds West along said plan right-of-way 80.14 feet; thence South 00 degrees 51 minutes 48 seconds West along said plan right-of-way 100.00 feet; thence South 08 degrees 45 minutes 22 seconds East along said plan right-of-way 179.52 feet; thence North 79 degrees 45 minutes 44 seconds West 327.07 feet; thence North 54 degrees 40 minutes 00 seconds West 310.00 feet; thence South 71 degrees 35 minutes 00 seconds West 671.60 feet to a point on the aforesaid East line of the Northwest Quarter Section, said point being 1257.15 feet North of the Southeast corner of said Northwest Quarter Section; thence South 81 degrees 46 minutes 12 seconds West 722.67 feet; thence North 61 degrees 02 minutes 28 seconds West 222.00 feet; thence North 85 degrees 52 minutes 33 seconds West 178.25 feet; thence North 89 degrees 47 minutes 28 seconds West 50.00 feet; thence North 00 degrees 12 minutes 32 seconds East 16.52 feet; thence North 89 degrees 47 minutes 28 seconds West 190.00 feet to a point on the West line of the East Half of said Northwest Quarter Section; thence North 00 degrees 12 minutes 32 seconds East along said West line 364.25 feet to a point on the centerline of Fall Creek Road; thence North 83 degrees 09 minutes 27 seconds East along said centerline of Fall Creek Road 1130.78 feet to the point of curvature of a curve to the left, said point being South 06 degrees 38 minutes 13 seconds East 954.93 feet from the radius point of said curve; thence Northwesterly along said curve and said centerline of Fall Creek Road 150.80 feet, said point being South 16 degrees 13 minutes 30 seconds East from the radius point of said curve, said point also being the place of beginning containing in all 34.667 acres more or less, subject to all highways, rights-of-way easements, and restrictions of record

EXHIBIT "A"

EXHIBIT A
11/10/11

Part of the Northwest Quarter and part of the Northeast Quarter of Section 7 Township 14 North Range 4 East of the Second Principal Meridian in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southeast corner of said Northwest Quarter Section; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) along the East line of said Northwest Quarter Section 276.01 feet to the POINT OF BEGINNING of this description, said point being on the Northerly right-of-way line of Fall Creek Parkway as now located and established, said point also being a point on a curve to the left, said point being North 02 degrees 30 minutes 13 seconds West 1,196.20 feet from the radius point of said curve; thence Westerly along said Northerly right-of-way line and along said curve 609.17 feet to the point of tangency of said curve, said point being North 34 degrees 26 minutes 33 seconds West 1,196.78 feet from the radius point of said curve; thence South 55 degrees 33 minutes 27 seconds West along said North right-of-way line 110.98 feet to the point of curvature of a curve to the right, said point being South 24 degrees 26 minutes 33 seconds East 905.37 feet from the radius point of said curve; thence Westerly along said curve and said Northerly right-of-way line 642.84 feet to a point on said curve, said point being South 04 degrees 14 minutes 22 seconds West 905.37 feet from the radius point of said curve; said point also lies on the West line of the East Half of said Northwest Quarter Section; thence North 00 degrees 12 minutes 32 seconds East along said West line 990.11 feet; thence South 89 degrees 7 minutes 28 seconds East 190.00 feet; thence South 00 degrees 12 minutes 32 seconds West 16.82 feet; thence South 00 degrees 47 minutes 20 seconds East 50.00 feet; thence South 85 degrees 52 minutes 33 seconds East 176.28 feet; thence South 61 degrees 02 minutes 28 seconds East 222.00 feet; thence North 61 degrees 45 minutes 12 seconds East 722.67 feet to a point on the aforesaid East line of the Northwest Quarter Section, said point being 1257.13 feet North of the Southeast corner of said Northwest Quarter Section; thence North 71 degrees 35 minutes 00 seconds East 671.60 feet; thence South 54 degrees 40 minutes 00 seconds East 310.00 feet; thence South 70 degrees 45 minutes 44 seconds East 327.07 feet to a point of curvature of a curve to the right, said point being South 89 degrees 08 minutes 12 seconds East 502.96 feet from the radius point of said curve, said point also being on the Westerly right-of-way line of the relocation of Fall Creek Parkway as per Indiana State Highway plans for Project No. 1-465-4 (146) 122; thence Southwesterly along said plan right-of-way and along said curve 375.53 feet to a point of tangency of said curve; said point being South 40 degrees 21 minutes 26 seconds East 502.96 feet from the radius point of said curve; thence South 51 degrees 54 minutes 31 seconds West along said plan right-of-way 07.30 feet to a point of curvature of a curve to the right, said point being South 36 degrees 21 minutes 26 seconds East 497.96 feet from the radius point of said curve; thence Westerly along said plan right-of-way and along said curve 322.04 feet to the point of tangency of said curve, said point being South 00 degrees 41 minutes 48 seconds West 497.96 feet from the radius point of said curve; thence North 89 degrees 18 minutes 12 seconds West along said plan right-of-way 104.50 feet; thence South 67 degrees 45 minutes 30 seconds West along said plan right-of-way 42.30 feet to a point on the aforesaid Northerly right-of-way line of Fall Creek Parkway; thence North 89 degrees 18 minutes 12 seconds West on and along said Northerly right-of-way line 499.45 feet to the point of curvature of a curve to the left, said point being North 00 degrees 41 minutes 48 seconds East 1,196.28 feet from the radius point of said curve; thence Westerly along said Northerly right-of-way and along said curve 63.34 feet to the place of beginning. Containing in all 37,909 acres more or less subject to all highways right-of-way easements and restrictions of record.

EXHIBIT A

Page 2 of 2

**AMENDED AND RESTATED
DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS OF
LAKE CHARLEVOIX**

THIS AMENDMENT to and RESTATEMENT of the Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix is made this 17th day of November 2003 by Lake Charlevoix Home Owners Association, Inc., an Indiana not-for-profit corporation ("Association").

WHEREAS, Lake Charlevoix Development, Inc. ("LCD"), an Indiana corporation, has been legally dissolved and prior to such dissolution, LCD transferred to the Association the rights and obligations set forth in this Declaration of Covenants.

WHEREAS, LCD previously recorded in the Office of the Recorder of Marion County, Indiana, a Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix ("Development") on November 16, 1988, as Instrument Number 88-116910 ("Original Declaration") for the real estate more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as "Property"); and

WHEREAS, LCD has subdivided and developed the Property as generally shown on the Plat for Lake Charlevoix Section I and II (hereinafter sometimes referred to as the "Plat" and sometimes referred to as the "Development"), received for record in the Office of the Recorder of Marion County, Indiana on November 7, 1988, as Instrument Number 83-113298, together with all recorded amendments and replatting thereto; and

WHEREAS, the Original Declaration was amended by a certain First Amendment to Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix ("First Amendment"), which First Amendment was recorded in the Office of the Recorder of Marion County, Indiana on March 1, 1990, as Instrument Number 90-19171; and

WHEREAS, the Original Declaration was further amended by a certain Second Amendment to Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix ("Second Amendment"), which Second Amendment was recorded in the Office of the Recorder of Marion County, Indiana on March 26, 1992, as Instrument Number 92-35088; and

WHEREAS, LCD filed an Amended and Restated Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix, which Amended and Restated Declaration was recorded in the Office of the Recorder of Marion County, Indiana on March 26, 1992, as Instrument Number 92-35139; and

WHEREAS, LCD again filed an Amended and Restated Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix, which Amended and Restated Declaration was recording in the Office of the Recorder of Marion County, Indiana on October 4, 1994, as instrument Number 1994-0151464; and

WHEREAS, the Association desires to further amend the Declaration and to restate the Original Declaration as amended by the First Amendment and the Second Amendment as well as by the amendments made as of this date such that this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Lake Charlevoix in no way nullifies or changes the Original Declaration, as amended, or the effective dates of the Original Declaration and the amendments thereto.

NOW, THEREFORE, the Association amends and restates the Declaration such that all of the platted Lots and lands located with the Development as they have been platted and as they may become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which were and are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in the Development were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the development as a whole and of each of said Lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions.

ARTICLE I **NAME**

The subdivision of the Property created by this Declaration shall be known and designated as Lake Charlevoix I & II, a subdivision located in Marion County, Indiana, the legal description for which is more particularly described on Exhibit A attached hereto and by this reference made a part hereof.

ARTICLE II **DEFINITIONS**

Section 2.1. "**Association**" shall mean Lake Charlevoix Homeowners Association, Inc., an Indiana not-for-profit corporation, whose membership shall consist of Lot Owners who pay mandatory assessments for liability, maintenance of the landscaped areas and signage; maintenance of the other improvements located within the lake easements.

Section 2.2. "**Articles**" means the Articles of Incorporation of the Association filed with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.3. "**Owner**" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of any obligation.

Section 2.4. "**Property**" means the real estate described in Exhibit "A" which is Lake Charlevoix I & II including the Common Areas.

Section 2.5. "**Plat**" means the subdivision plat of the Property identified as Plat of Lake Charlevoix I & II recorded in the Office of the Recorder of Marion County, Indiana, as the, same may be hereafter amended, supplemented, or replatted.

Section 2.6. "**Lot**" means any parcel of land shown upon the Plat of Lake Charlevoix I & II and identified by a number 1 through 102 inclusive,, except Lot 22 (waterscape lot) which is now a part of the Common Area.

Section 2.7. "**Board of Directors**" means the Board of Directors of the Association.

Section 2.8. "**Committee**" shall mean the Architectural Committee, composed of at least three (3) individuals who own Lots within the Development who shall be appointed by the Board of Directors and who shall be subject to removal by the Board of Directors at any time with or without cause.

Section 2.9. "**Common Area**" means the center of the turnaround, the two esplanades at the two entrances to Lake Charlevoix, the lights and signage, the lake, the maintenance road used for access to the lake, Lot 22 and all common areas delineated as such on the Replat dated December 18, 1991.

Section 2.10. "**Approvals, determinations, permissions or consents**" required herein of the Committee, the Board of Directors or the Association shall be deemed given only if they are given in writing and signed by the Committee, the Board of Directors or the Association. Exceptions may be made by the Association, the Board of Directors or the Committee.

ARTICLE III USE RESTRICTIONS AND ARCHITECTURAL CONTROL

Section 3.1. "**Lot Use and Conveyance.** All Lots shall be used exclusively for single-family residential purposes. A single family is defined as a single housekeeping unit, operating on a non-profit, noncommercial basis between its occupants with a common kitchen and dining area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the Covenants, Conditions, and Restrictions contained herein.

Section 3.2. "Building Control." Prior to construction of any structure upon a Lot, the building plans thereof, including plot plans, site storm drainage and grading plan, specifications, plan for landscaping, and any other data or information which may be requested, must be submitted to the Committee and delivered to the person or persons requesting such approval. The Committee is authorized to determine whether the proposed structures, plans and specifications show conformity and harmony of external design with existing structures, whether the building and property set-back lines are in conformity with applicable plat requirements, and whether the proposed site storm drainage plan conforms to the overall project and Lot drainage plans as specified in the approved final construction plans for Lake Charlevoix. No charge will be made to any purchaser of a Lot for examination of plans or for giving approval for construction thereon. In the event the Committee does not indicate in writing its approval or disapproval of plans submitted for its review within a period of thirty (30) days after submission, the Committee is deemed to have approved such plans.

Section 3.3. "Occupancy or Residential of Partially Completed Dwelling House Prohibited." No dwelling house constructed on any Lot shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the house shall have been substantially completed in accordance with the approved building plan shall be made by the Committee and such decision shall be binding on all parties.

Section 3.4. "Other Restrictions." All of the Property shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the development, all of which are incorporated herein by reference.

Section 3.5. "Building Location and Floor Elevation." No building may be erected between the building line shown on the Plat and the front Lot line; and no structure or part hereof may be built or erected nearer than 7 feet to any side yard line, or nearer than 15 feet to any rear Lot line.

Section 3.6. "Architectural Guidelines." Any new building or improvement or any addition to an existing building or an exterior alteration or change to an existing building must have the prior written approval of the Committee before any work is undertaken. The Committee has established the following guidelines for specific types of construction and improvements. Any addition, exterior alteration or change to an existing building shall be compatible with the existing structure.

- A. **Size of Dwelling.** The ground floor area of the main structure, shall be not less than 2400 square feet in the case of a one-story dwelling, nor less than 1300 square feet in the case of a two-story dwelling. The first and second floors of a two-story or multi-level shall contain at least 2600 square feet. These square footages refer only to finished interior living space, excluding open patios, finished lower levels, porches, garages, etc.
- B. **Garages.** All homes shall have at least two car attached garages. All garage doors shall be of wood, masonite or metal material and be painted or stained to match or compliment the dwelling.

- C. Driveways. All driveways shall be concrete or paving brick material.
- D. Flat Roofs. No home designs will be permitted which include flat or nearly flat roofs over the main parts of the house.
- E. Sidewalks. Each home shall have a continuous concrete or brick sidewalk from the driveway-to the front porch. In addition, each Lot shall be serviced by a 4' concrete walk on all portions of the Lot with street frontage, unless shown without sidewalks on the Replat. Sidewalks shall be installed by the builder and included in the purchase price. If the home is completed in the winter then the sidewalks shall be installed no later than April 30th of the following spring.
- F. No heat pumps, air conditioning units, or gas meters will be installed in the front of the house.
- G. Windows-Doors. If storm doors are installed, they must be painted to match or complement the exterior of the home. No unfinished aluminum doors will be allowed. All windows must be wood or windows with wood or vinyl clad exterior.
- H. Gutters and Downspouts. All gutters and downspouts other than copper, will be painted or refinished painted aluminum to match the exterior of the home.
- I. Vents. All metal roof or range vents will be painted to blend with roof color. Every effort should be made to locate such vents to the rear of the house.
- J. Plumbing. All plumbing vent stacks shall be on the rear roof of the house. Sump pump lines shall be connected to underground laterals, storm sewers or drainage easements as provided in the plat.
- K. Street Cleaning. Builder shall finish cleaning in front of his house upon completion and rough clean the street periodically during construction. Rough cleaning should be done immediately after foundation excavation and basement pouring and at all other times when mud is carried into the street.
- L. Yard Lights S. All Lot Owners are required to furnish and install dusk to dawn light fixtures at all driveway entrances to their Lots, the style and type of which will be complimentary to that style selected by the Committee. Builders shall furnish and install said lights on behalf of the Owner prior to closing. Thereafter, the Owner shall be responsible to repair or replace said lights in conformity herewith at the Owner's expense.
- M. Awnings. No metal, sheet plastic, fiberglass or similar type material awnings or patio covers will be permitted in the development.

- N. Mailboxes. All mailboxes installed at the street to service Lots in Lake Charlevoix shall be uniform and shall be of a type, color and manufacture approved by the Committee. Such mailboxes shall be installed by the Builder upon posts approved as to type, size and location by the Committee. Thereafter, the Owner shall be responsible to repair or replace said mailboxes and posts in conformity herewith at the Owner's expense.
- O. Landscaping. Shall be furnished with house and completed before closing. Builder shall sod the front yard and at least 50% of the side yard. Landscape mulch will be allowed in "natural areas". The balance of the yard may be seeded. Each builder will plant two trees having a 3-inch diameter trunk in the front yards. Each home shall include a minimum of \$1500.00 worth of other plantings and landscape. This allowance includes labor and is exclusive of sodding and the two trees aforementioned. All work on the minimum landscape requirement above shall be completed prior to the closing or as soon as weather conditions permit, but no later than May 30th of the following spring. Trees, hedges, and shrubs which restrict visual lines for vehicular traffic shall be cut back or removed. Special landscaping beyond the above minimum must be approved by the Committee prior to installation.
- P. Fireplaces. The exterior of fireplace chimneys shall be brick, stone or appropriate stucco.
- Q. Swimming Pools. Only permanent, in-ground pools constructed by pool professionals will be permitted. All pools shall be backyard pools and should be oriented to minimize the potential effect on neighboring properties. All fencing and/or pool covers shall conform to county or municipal regulations and shall be of harmonious design. Backyard pools must be approved by the Development Control Committee or the Lake Charlevoix Homeowners Association, Inc.
- R. Racquetball Courts, Paddle Ball Courts, Etc. Tennis courts, racquetball courts, paddle ball courts, squash courts and other outdoor recreational facilities will not be permitted, unless approved by the Committee.
- S. Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth less than 24 inches, swing and slide sets, playhouses and tents shall not require approval by the Committee, provided such equipment is not more than six (6) feet high, maintained by the Lot Owner in good repair (including painting) and every reasonable effort has been made by the Lot Owner to screen or shield such equipment from view. Equipment higher than six (6) feet shall require approval of the design, location, color, material and use by the Committee.
- T. Geothermal Heat. Geothermal heat systems are acceptable. However, the closed loop variety must be used.

- U. Miscellaneous. All exterior lights shall be directed in such a manner so as not to create annoyance to adjacent properties. Lot Owners shall keep garage doors closed at all times except during the times of actual use of the garage facility. Collapsible and removable clotheslines will be permitted, but permanent clotheslines are not acceptable.
- V. Basements. If the entire lot area as shown in the Replat is above the elevation of 748.0 (U.S.G.S. Datum), the basement floor may be below 748.0 (U.S.G.S. Datum) provided that the basements have been waterproofed.
- W. Liability. Neither the Board of Directors, the Committee, the Association, nor any agent thereof, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Board of Directors, the Association and the Committee do not make, and shall not be deemed by virtue of any action of approval or disapproval taken by them, to have made any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.
- X. Inspection. The Committee may inspect work being performed to assure compliance with these Covenants, Conditions and Restrictions and applicable regulations.

Section 3.7. "Home Occupations." No Lot or Lots shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows" may be permitted: any use conducted entirely within the residence dwelling and participated in solely by a member of the immediate family residing in said residence, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof and in connection with which there is: a) No sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling; b) No commodity may be sold upon the premises; c) No person is employed other than a member of the immediate family residing on the premises; and d) No mechanical or electrical equipment used which would create overloading of standard circuits, provided that, in no event shall the following or similar activities be conducted: a barber shop, styling salon, beauty parlor, tea room, fortune-telling parlor, tanning salon, animal hospital, or any form of animal doctoring-e or treatment such as dog trimming; e) No firewood selling nor storage of firewood for sale. In addition, "Home Occupations" shall be subject to the Marion County Home Occupation Ordinance, as amended from time to time. The Ordinance's restrictions are incorporated herein by this reference as if fully set forth. In the event of a conflict between this Section 3.7 and the Marion County Home Occupation Ordinance, this section shall prevail.

Section 3.8. "**Street Sight Line Restrictions.**" No fence, wall, ledge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to all Lots within 10 feet of the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 3.9. "**Existing Trees.**" No live trees shall be removed along the northern and western side of Fall Creek Parkway within forty (40) feet of the edge of pavement thereof.

ARTICLE IV GENERAL PROHIBITIONS

Section 4.1. "**In General.**" No noxious or offensive activities shall be carried out on any Lot, nor shall anything be done on any Lot which shall be or become an unreasonable annoyance or nuisance to any Owner of another Lot.

Section 4.2. "**Vehicle Parking.**" No trucks, camper, trailers, recreational vehicles, boats, boat trailers or similar vehicles shall be parked on any street or Lot, unless the same shall be stored in an enclosed, attached garage. No vehicle shall be parked overnight on any street within Lake Charlevoix I & II.

Section 4.3. "**Exterior Antenna.**" Unless specifically authorized by the Committee, no television, radio or other antennas may be erected by any Lot Owner on the exterior of a house or on a Lot. No satellite dishes will be permitted larger than 24 inches in diameter placed appropriately on the Lot.

Section 4.4. "**Garbage and Refuse Disposal.**" No Lot shall be used or maintained as a dumping ground for trash or for the storage of any materials. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view except at the times when refuse collections are being made. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 4.5. "**Animals.**" No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other pets generally and customarily recognized as household pets and which are of a gentle disposition may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots so that they will not be a nuisance. No exterior structures, animal runs, or detention areas will be allowed for these household pets, except by written permission of the Committee.

Section 4.6. "Storage Tanks. Any propane (other than propane tanks for portable gas grills), or oil storage tanks used in connection with a Lot shall be either buried or located in a garage or house such that they are completely concealed from public view. The storage of gasoline (except no more than a 5-gallon Underwriters Approved container of gasoline for use in lawn mowers) or any toxic chemical or hazardous materials are prohibited.

Section 4.7. "Temporary Structures and Outbuildings." No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence. No metal outbuildings shall be permitted on any Lot. All outbuildings must be of same color and materials as the primary structure and attached thereto and be approved by the Committee.

Section 4.8. "Window Coverings." All window coverings curtains or blinds shall not be unsightly from the exterior, including garage windows if visible from street or lake.

Section 4.9. "Signs." No sign of any kind shall be displayed to the public view on any Lot except that one sign per builder and one per realtor of not more than six (6) square feet (2'x3') may be displayed at any time for the purpose of advertising the property for sale or for rent

Section 4.10. "Prohibition of Used Structures and Modular Homes." All structures constructed or placed on any Lot shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any such Lot. No modular or prefabricated structures (except trusses) may be placed on any Lot, unless approved by the Committee.

Section 4.11. "Building Completion." Unless a delay is caused by strikes, war, court injunction, or acts of God, the exterior of any dwelling or structure built upon any Lot shall be completed within one (1) year after the date of commencement of the building process. No improvement which has been partially or totally destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage. If said structure is not completed or repaired within such time, then the Association may re-enter, take possession of said Lot, without notice, and sell the same together with improvements, and after payment of liens and expenses, pay the balance of the sale proceeds if any to the Owner of said Lot at time of sale.

Section 4.12. "Fire." No fire shall be permitted to burn upon any street or roadway in the subdivision. Any outside burning will be limited to that permitted by local ordinances.

Section 4.13. "Fences, Walls and Screening." It is the goal of the Association to keep all fencing or screening as harmonious as possible with the architectural character of the community. No fence or screen will be approved if its installation will obstruct necessary sight lines for vehicular traffic. Undue obstruction of view or other amenities from adjoining properties will be taken into consideration by the Association and/or the Committee, when reviewing fences for approval. Fences shall not be nearer to the front of a home than the rear foundation line of a home except decorative fences, unless approved by the Committee. Decorative front fences may be placed parallel to the front foundation of a home only if they do not cause unreasonable visual barriers and they are of identical materials as the main structure. Fences may be privately installed but must be constructed to professional levels of quality. Non-professionally installed fences will be inspected by the Association and/or the Committee, after completion in order to ensure that the final product is of a professional quality, and final approval of the fence shall be deemed withheld until successful completion of this final review. Lake Lot Owners will be governed by ARTICLE XII hereof.

- A. Height restriction. The Association is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the community is damaged by a proliferation of fences of excessive height. The Committee, therefore, will approve rear perimeter fences up to 4 feet in height, which otherwise meet these guidelines. The Committee will give consideration, however, to a variance in this height limit where unique circumstances exist. The use of 6' foot fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio or to enclose an approved in-ground pool area will be permitted. The specific fence height restrictions are as follows:
- 1) Property fencing and walls above grade shall not exceed 4 feet above grade unless otherwise approved by the Committee.
 - 2) The Committee will not ordinarily approve any proposed fence which exceeds 4 feet in height unless unique circumstances exist.
 - 3) Patio screens/privacy fences shall not exceed 6 feet in height, except for pools and recreational fences as provided herein.
- B. Materials and Finish.
- 1) Wood fencing or screening will be allowed if the design is in conformity with the architectural design of the community and dwelling.
 - 2) The installation of a chain link or other galvanized metal fencing will not be permitted unless it is vinyl coated or covered with similar coated material. Black or dark green are pre-approved, all other colors must be approved prior to construction.

- 3) All fencing or screening will have finished material on both sides.
- 4) Walls above grade should be constructed of natural stone, masonry, or attractive timber.

ARTICLE V
MAINTENANCE OF LOTS AND IMPROVEMENTS

The Owner of any Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall cause the following to be done:

- A. Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- B. Remove all debris or rubbish;
- C. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;
- D. Cut down and remove dead trees. No living perimeter trees may be trimmed or removed without written consent of the Board of Directors;
- E. Where applicable, prevent debris and foreign Material from entering drainage areas, lakes, and streams; and
- F. Keep the exterior of all improvements in such a state of repair of maintenance as to avoid their becoming unsightly.

Section 5.1. "Right to Perform Certain Maintenance." In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean, or perform such other acts as may be reasonably necessary to make such Lot and improvement situated thereon, if any, conform to the requirements of these Restrictions. The cost thereof shall be an expense of the Owner and the Association may seek collection of cost in any reasonable manner including placing a lien against said Lot for the expense thereof. Neither the Association, nor any of its agents, employees, or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder

ARTICLE VI
DRAINAGE, LAKE, UTILITY, SEWER
AND SIGN EASEMENTS

Section 6.1. Drainage easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in underground conduit, to serve the needs of the subdivision and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, unless approved by the Committee. No grading shall restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by the Association. Said easements are for the mutual use and benefit of the Owners of all Lots in Lake Charlevoix.

Section 6.2. Common Land and Lake Easements are created around the lake approximately at the top of the bank. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvements, nor shall any grading restrict, in any manner, the waterflow.

Any Owner who restricts or alters the flow of water through a lake easement shall be notified by registered mail by the Association of each violation. The Owner shall be given 10 days to correct the matter and then if not corrected the Association shall have the duty, obligation and right to enter upon the property and correct the problem or violation.

From time to time the lake easements may require regrading, rework or reconstruction to maintain the proper water flow. By acceptance of a deed, the Owner hereby grants to the Association the right of reasonable ingress and egress to enter upon the property to construct or reconstruct to any extent necessary to obtain adequate drainage. Aesthetic repairs shall be limited to final grading and seeding of the affected areas.

Should the above repairs or reconstruction be a result of the Lot Owner's violation of these Covenants, Conditions and Restrictions the Association may seek full recovery of costs including costs of enforcement as described in Section 8.1 as well as covenant from liability as described in Section 5.1.

Under no circumstance shall any obligation for the maintenance of any lake facility be imposed upon, or implied as an obligation of any governmental agency, unless such obligation is specifically and expressly assumed or accepted by any such governmental agency.

Common Area or common property adjoining Lots shall be maintained by the individual adjoining Lot Owners, except when the obligation is specifically and expressly assumed or accepted by the Homeowners Association.

Section 6.3. **Sign Easements** are created for the landscape and wall area to be maintained by the Association. Such areas are at each of the two entrances to Lake Charlevoix and the turnaround.

Section 6.4. **Sewer Easements (SE)** are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal systems designed to serve Lake Charlevoix and adjacent areas for the purpose of installation and maintenance of sewers that are a part of said system.

Section 6.5. **Utility Easements (UE)** are created for the use of all public utility companies and cable TV companies, not including transportation companies, for the installed on and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easement.

Section 6.6. All such easements mentioned herein include the right of reasonable ingress and egress for the purpose of maintenance, construction, or reconstruction for the mutual benefit of Owners in Lake Charlevoix. No structure, including fences, shall be built on any drainage, lake, sewer, sign or utility easement, except for that portion of the Common Area above average lake level and then only with prior approval of the Committee.

ARTICLE VII ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 7.1. **"Membership.** Every Owner of a Lot shall be a member of the Association. membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 7.2. **"Classes of Membership and Voting Rights."** The Association shall have one (1) class of voting membership. All Owners shall be members of the Association; however, each Lot shall be entitled to only one (1) vote. When more than one (1) person holds an interest in any Lot, all such persons shall be members; the vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot.

Section 7.3. **"Board of Directors."** The Board of Directors shall manage the affairs of the Association and shall consist of seven (7) or more persons designated by Owners who shall elect the Board of Directors of the Association as prescribed by the Association's Articles and By-Laws.

ARTICLE VIII
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 8.1. Creation of the Lien and Personal obligation for Assessments. Each Owner of any Lot by acceptance of a deed therefor is deemed to covenant and agree to pay the Association:

- (1) Regular Assessments (for maintenance, repairs, and ordinary operating expenses);
- (2) Special Assessments for
 - (a) capital improvements and operating deficits, as provided for herein; and
 - (b) for special maintenance or repairs as provided for herein; and
- (3) any Insurance as provided for herein.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land ("Enforcement Costs") 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 Owner. Past due assessments shall run with the land and pass with title.

Section 8.2. "Purpose of Regular Annual Assessments." The regular annual assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the health, safety and welfare of the residents in the Property, for the improvement, maintenance, and repair of the drainage/detention easements for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. A portion of the regular annual assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the drainage/detention easement and other capital improvements which the Association is required to maintain.

Section 8.3. "Maximum Regular Annual Assessments."

- A. The maximum regular annual assessment on any Lot shall be two hundred ninety Dollars (\$290.00) for 1998.
- B. From and after January 1 of each year, the maximum regular annual assessment may be increased each calendar year by not more than 10% above the maximum regular annual assessment for the previous year without a vote of the membership.

- C. From and after January 1 of each year, the maximum regular annual assessment may not be increased each calendar year by more than 10% above the maximum regular annual assessment for the previous year, except with the approval of fifty-one percent (51%) of the members who cast votes in person or by proxy at a meeting duly called for this purpose.
- D. The Board of Directors from time to time may fix the regular annual assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 8.4. "Special Assessments for Capital Improvements and Operating Deficits." In addition to the regular annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of fifty-one percent (51%) of those members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 8.5. "Notice and Quorum for any Action Authorized Under Section 8.3 and 8.4." Written notice of any meeting called for the purpose of taking any action authorized under Section 8.3 or 8.4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (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 8.6. "Uniform Rate Assessment." Regular annual assessments and special assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots.

Section 8.7. "Date of Commencement of Assessments; Due Dates." The regular assessment provided for herein shall commence as to each Lot on the date of conveyance of such Lot to Owner. The provisions of this Section 8.7 notwithstanding, the Owner shall pay on the day of conveyance in advance his or her share of the regular annual assessment for the balance of the calendar year in which the conveyance takes place.

The regular annual assessment against each Lot shall be paid in advance on or before the thirty-first (31st) day of January of each calendar year. Late fees shall be established by the Board of Directors. Payment of the regular annual assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

The Board of Directors shall fix any increase in the amount of such assessments at least thirty (30) days in advance of the effective date of such increase.

Written notice of any increase in the regular assessment, and written notice of any special assessment 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, and the assessment and collection period for any special 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 8.8. "Effect of Nonpayment of Assessments; Remedies of the Association." If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established thereof pursuant to Section 8.7 hereof, then the entire unpaid assessment (together with interest thereon, late fees, costs and attorneys' fees as hereinafter provided and as provided in Section 8.1) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessments relate, binding upon the then owner, his or her, devisees, successors and assigns.

The personal obligation of the then Owner to pay such assessment shall pass to such Owner's successors in title. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve per cent (12%) per annum and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property or both. In such event, 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, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his Lot.

Section 8.9. "Subordination of the Lien to Mortgages: Sale or Transfer." The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale

of 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. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to Section 8.7, as to whether or not such assessments have been paid.

ARTICLE IX INSURANCE

Section 9.1. "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, all persons acting or who may come to act as agents or employees, of any of the foregoing with respect to the Association, including members acting on Association matters (i.e. Directors and Officers liability insurance).

Section 9.2. "Miscellaneous Insurance Provisions." The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workers' compensation insurance, and 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 his right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 9.3. "Payment of Insurance." The premiums for the insurance described above shall be paid by the Association.

Section 9.4. "Additional Insurance." Each Owner shall be solely responsible for and obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his real and personal property.

ARTICLE X
GENERAL PROVISIONS

Section 10.1. "Right of Enforcement." In the event of a violation, or threatened violation, of any of the Covenants, Conditions and Restrictions herein enumerated, the Association, or any Owner and all parties claiming under them shall have the right to enforce the Covenants, Conditions, and Restrictions contained herein, the By-Laws, and any Rules and Regulations promulgated by the Board of Directors, 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. The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority, to enforce any covenants, commitments, restrictions or other limitations contained in this plat other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance, 58-AO-3, as amended, or any conditions attached to approval of this plat by the Plat Committee.

Section 10.2. "Severability." Invalidation of any one of the Covenants, Conditions and Restrictions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

Section 10.3. "Amendment." This Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, approved and signed by at least two thirds (2/3) of the Owners.

The Covenants, Conditions and Restrictions and all other provisions of this Declaration shall run with the land and shall be binding upon all persons claiming under them for a period of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten (10) year period this Declaration is amended or changed in whole or in part as hereinabove provided.

Section 10.4. "Mortgagee Rights." In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges or lien against any common area or any property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fee.

Section 10.5. "Notice of Mortgagees." The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided for herein.

ARTICLE XI
DEDICATION OF ROADS

Section 11.1. All roads shown on the Plat not heretofore dedicated are hereby dedicated to the public.

ARTICLE XII
LAKE COVENANTS
AND
RESTRICTIONS

Upon the development of the proposed lake, as shown on the plats of Lake Charlevoix - Sections I & II, the following Covenants, Conditions and Restrictions in the use, enjoyment and maintenance thereof shall apply:

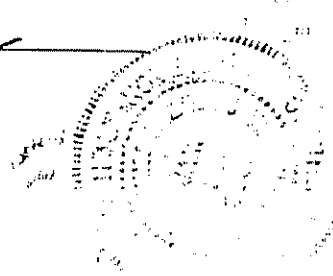
1. No member or third party shall do or permit to be done any action or activity which could result in the pollution of the lake, diversion of water, change in elevation of the lake level, earth disturbance resulting in silting, pumping or removal of water for any purpose (other than the water fountain pump on Lot 22), or any other conduct which could result in an adverse affect upon water quality, drainage, or proper lake management.
2. The Board of Directors, on behalf of the Owners, and the Marion County Commissioners or other appropriate county authority having jurisdiction shall have the authority to institute an action for injunction to abate such activity or seek mandatory relief for the correction of any damage caused to the lake or interference with the drainage system, together with any damages incurred, and upon recovery of judgment shall be entitled to costs of the action together with reasonable attorneys' fee.
3. No use of the lake by the Owners shall impair or interfere with the use of the lake for drainage and related purposes for the benefit of Lake Charlevoix - Sections I & II, and any such recreational or related uses shall be subordinate to the primary function of the lake for drainage purposes.

4. The lake access area may be used for launching and retrieving of allowable craft.
5. The use of the lake will be subject to the following rules and regulations:
 - a) Docks, piers, steps, etc. must be approved by the Committee.
 - b) No alteration of shoreline topography shall be allowed, unless approved by the Committee.
 - c) No motorized craft except low thrust battery operated trolling motors shall be allowed.
 - d) No craft shall exceed twelve (12) feet in length and six (6) feet in width. These craft shall be limited to commercially manufactured paddleboats, canoes, kayaks, sailboats, and fishing or deck boats. Craft must be taken out of the water from November 15 to April 15 each year.

In Testimony Whereof witness the signature of an officer of the Association this 17th day of November, 2003.

LAKE CHARLEVOIX HOMEOWNERS ASSOCIATION, INC.

Michael J Nowlan



STATE OF INDIANA

SS:

COUNTY OF MARION

I, the undersigned, a Notary Public, duly commissioned to take acknowledgments and administer oaths in the State of Indiana, certify that Michael J Nowlan, President of LAKE CHARLEVOIX HOMEOWNERS ASSOCIATION, INC., personally appeared before me and acknowledged the execution foregoing indenture, as his duly authorized act, this 17th day of November, 2003.

Tami Holt Kovey
Notary Public

Tami Holt Kovey
Printed Name

My commission expires: 11/26/08

County of residence: Hamilton

EXHIBIT "A"

LAKE CHARLEVOIX
SECTION I

Part of the Northwest Quarter and part of the Northeast Quarter of Section 2, Township 16 North, Range 4 East of the Second Principal Meridian in Marion County, Indiana, being more Particularly described as follows:

Commencing at the Southeast Corner of said Northwest Quarter Section: thence North 00 degrees 00 minutes 00 seconds East (assumed bearing,) along the East line of said Northwest Quarter Section 726.01 feet to a point on a curve to the left, said point being North 02 degrees 20 minutes 13 seconds East 1196.28 feet from the radius point of said curve thence Westerly along said curve 44.82 feet, said point being North 04 degrees 29 minutes 01 seconds West 1196.28 feet from the radius point of said curve, thence North 00 degrees 00 minutes 00 seconds East 1099.16 feet to the POINT OF BEGINNING of this description, said point being on the centerline of Fall Creek Road, said point also being on a curve to the left, said point being South 16 degrees 28 minutes 53 seconds East 973.29 feet from the radius point of said curve; thence Northeasterly along said curve and said centerline of Fall Creek Road 159.74 feet to the point of tangency of said curve, said point being South 25 degrees 53 minutes 05 seconds East 973.29 feet from the radius point of said curve; thence North 64 degrees 06 minutes 55 seconds East along said centerline 363.10 feet to the point of curvature of a curve to the right, said point being North 25 degrees 53 minutes 05 seconds West 708.84 feet from the radius point of said curve; thence Easterly along said centerline-and along said curve 488.41 feet to the point of tangency of said curve, said point being North 13 degrees 35 minutes 38 seconds East 708.84 feet from the radius point of said curve; thence South 76 degrees 24 minutes 22 seconds East along said centerline 330.35 feet to a point on the Northerly right-of-way line of the relocation of Fall Creek Parkway as per Indiana State Highway Plans for Project No. 1-465-4 (146) 122; thence South 22 degrees 04 minutes 01 seconds West along said plan right-of-way 25.28 feet; thence South 39 degrees 30 minutes 00 seconds East along said plan right-of-way 38.60 feet; thence south 00 degrees 51 minutes 48 seconds West along said plan right-of-way 375.00 feet; thence South 34 degrees 33 minutes 12 seconds West along said plan right-of-way 90.14 feet; thence South 00 degrees 51 minutes 48 seconds West along said plan right-of-way 100.00 feet; thence, South 08 degrees 45 minutes 22 seconds East along said plan right-of-way 179.52 feet; thence North 79 degrees 45 Minutes 44 seconds West 327.07 feet; thence North 54 degrees 40 minutes 00 seconds West 310.00 feet; thence South 71 degrees 35 minutes 00 seconds West 671.60 feet to a point on the aforesaid East line of the Northwest Quarter Section, said point being 1257.13 feet North of the Southeast corner of said Northwest Quarter Section; thence South 81 degrees 46 minutes 12 seconds West 722.67 feet; thence North 61 degrees 02 minutes 28 seconds west 222.00 feet; thence North 85 degrees 52 minutes 33 seconds West 176.26 feet; thence North 89 degrees 47 minutes 28 seconds West 50.00 feet; thence North 00 degrees 12 minutes 32 seconds East 16.62 feet; thence North 89 degrees 47 minutes 28 seconds West 190.00 feet to a point on the West line of the East Half of said Northwest Quarter Section; thence North 00 degrees 12 minutes 32 seconds East along said West line 364.25 feet to a point on the centerline of Fall Creek Road: thence North 83 degrees 09 minutes 27 seconds East along said centerline of Fall Creek Road 1130.76 feet to the point of curvature of a curve to the left, said point being South 06 degrees 38 minutes 13 seconds East 954.93 feet from the radius point of said curve; thence Northwesterly along said curve and said centerline of Fall Creek Road 150.80 feet, said point being South 16 degrees 13 minutes 30 seconds East from the radius point of said curve, said point also being the place of beginning. Containing in all 34.667 acres, more or less, subject to all highways, rights-of-way, easements, and restrictions of record.

EXHIBIT "A"

LAKE CHARLEVOIX
SECTION II

Part or Northwest Quarter and part or the Northeast Quarter of Section 2, Township 16 North, Range 4 East of the Second Principal Meridian in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southeast Corner of said Northwest Quarter Section; thence, North 00 degrees 00 minutes 00 seconds East (assumed bearing along the East line of said Northwest Quarter Section 726.01 feet to the POINT OF BEGINNING of this description, said point being on the Northerly right-of-way line of Fall Creek Parkway as now located and established, said point also being a point on a curve to the left, said point being North 02 degrees 30 minutes 13 seconds West 1196.28 feet from the radius point of said curve; thence Westerly along said Northerly right-of-way line and along said curve 669.17 feet to the point of tangency of said curve, said point being North 34 degrees 26 minutes 33 seconds West 1196.28 feet from the radius point of said curve; thence South 55 degrees 33 minutes 27 seconds West along said North right-of-way line 110.98 feet to the point of curvature of a curve to the right, said Point being South 34 degrees 26 minutes 33 seconds East 905.37 feet from the radius point of said curve; thence Westerly along said curve and said Northerly right-of-way line 642.84 feet to a point on said curve, said point being South 06 degrees 14 minutes 22 seconds West 905.37 feet from the radius point of said curve; said point also lies on the West line of the East Half of said Northwest Quarter Section; thence North 00 degrees 12 minutes 32 seconds East along said West line 990.11 feet; thence South 89 degrees 47 minutes 28 seconds East 190.00 feet; thence South 00 degrees 12 minutes 32 seconds West 16.62 feet; thence South 89 degrees 47 minutes 28 seconds East 50.00 feet; thence South 85 degrees 52 minutes 33 seconds East 176.26 feet; thence South 61 degrees 02 minutes 28 seconds East 222.00 feet; thence North 81 degrees 46 minutes 12 seconds East 722.67 to a point on the aforesaid East line of the Northwest Quarter Section, said point being 1257.13 feet North of the Southeast corner of said Northwest Quarter Section; thence North 71 degrees 35 minutes 00 seconds East 671.60 feet; thence South 54 degrees 40 minutes 00 seconds East 310.00 feet; thence South 79 degrees 45 minutes 44 seconds East 327.07 feet to a point of curvature of a curve to the right, said point being South 89 degrees 08 minutes 12 seconds East 502.96 feet from the radius point of said curve, said point also being on the Westerly right-of-way line of the relocation of Fall Creek Parkway as per Indiana State Highway plans for Project No. 1-465-4 (146) 122; thence Southwesterly along said plan right-of-way and along said curve 375.53 feet to a point of tangency of said curve; said point being South 46 degrees 21 minutes 26 seconds East 502.96 feet from the radius point of said curve; thence South 51 degrees 54 minutes 31 seconds West along said plan right-of-way 87.38 feet to a point of curvature of a curve to the right, said point being South 36 degrees 21 minutes 26 seconds East 497.96 feet from the radius point of said curve; thence Westerly along said plan right-of-way and along said curve 322.04 feet to the point of tangency of said curve, said point being South 00 degrees 41 minutes 48 seconds West 497.96 feet from the radius point of said curve; thence North 89 degrees 18 minutes 12 seconds West along said plan right-of-way 104.50 feet; thence South 57 degrees 45 minutes 30 seconds West along said plan right-of-way 42.30 feet to a point on the aforesaid Northerly right-of-way line of Fall Creek Parkway; thence North 89 degrees 18 minutes 12 seconds West on and along said Northerly right-of-way line 499.45 feet to the point of curvature of a Curve to the left, said point being North 00 degrees 41 minutes 48 seconds East 1196.28 feet from the radius point of said curve; thence Westerly along said Northerly right-of-way and along said curve 63.34 feet to the place or beginning. Containing in all 37.909 acres, more or less, subject to all highways, right-of-way, easements, and restrictions of record.