

MARTHA A. WOMACKS
MARION COUNTY AUDITOR

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SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
LAKE CLEARWATER

This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Lake Clearwater ("Declaration") is entered into this 29th day of June, 2005, by Lake Clearwater Homeowners Association, Inc. ("Association").

WITNESSETH:

WHEREAS, Lake Clearwater Development Company, Inc. ("Declarant") executed that certain Declaration of Covenants, Conditions and Restrictions of Lake Clearwater, Section 1 dated July 2, 1982 and recorded in the office of the Recorder of Marion County, Indiana on July 15, 1982 as Instrument No. 82-37890 ("Original Declaration") as subsequently amended; and

WHEREAS, pursuant to Section 4 Article VII of the Original Declaration, the Original Declaration may be amended by a two-thirds (2/3) vote of the membership of the Association as defined therein; and

WHEREAS, written notice was sent to every Owner as required by the Original Declaration and the following Amended and Restated Declaration was approved by at least a two-thirds (2/3) vote of the membership of the Association.

The property which is the subject of this Declaration, consists of 17.8 acres, more or less, and is more particularly described in Exhibit "A", attached hereto and made a part of this Declaration.

NOW, THEREFORE, the Original Declaration and all subsequent amendment and addendums thereto are hereby amended and restated in their entirety to read as follows:

The real estate described on Exhibit "A" (subject to certain easements servicing the Properties) shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the real estate, and which shall run with the real estate and shall be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Declarant" shall mean and refer to Lake Clearwater Development Company, Inc., its successors and assigns.

Section 2. "Association" shall mean and refer to Lake Clearwater Homeowners Association, Inc., an Indiana Not-For-Profit Corporation, its successors and assigns.

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Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Properties" shall mean and refer to the certain real estate described on Exhibit "A," and such additions thereto as may hereafter be brought within the jurisdiction of the Association and may also be referred to as "Lake Clearwater".

Section 5. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties with the exception of any Common Areas. There are sixty-six (66) Lots on the Properties. Each Lot shall contain a "single" family residential dwelling with a minimum of a two-car garage, attached or detached. The Lots are described in Exhibit "B" attached and made a part hereof. Each Lot shall include the Lot's side of one-half (1/2) of any party wall dividing a dwelling structure on a Lot from any other dwelling structure or Lot.

Section 6. "Dwelling" or "Home" shall mean and refer to a single family residence erected on a Lot within the Properties.

Section 7. "Common Area," if any, shall mean all the real estate (including improvements thereto) owned or rented by the Association for the common use and enjoyment of the Owners.

Section 8. "Lake Clearwater Lake Association, Inc." ("Lake Association") means the association established by the Declarant. The classes of membership, purposes and powers of the Lake Association are set forth generally in the Articles and By-Laws of the Lake Association. Members of the Lake Association have the right to use, occupy and enjoy the Lake Area only pursuant to and in accordance with the provisions of the Articles and By-Laws of the Lake Association, and the provisions hereof.

Section 9. "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas, if any, appurtenant to each Lot.

Section 10. "Member" or "Membership" shall mean as set forth in Article III.

Section 11. "Boundary Fence" shall mean that fence running along the perimeter of the Properties between the Dwellings and 79th Street on the South and between the Dwellings and Dean Road on the East.

Section 12. "Frontage Road" shall mean that road running between the Dwellings and the Boundary Fence including all entries and exits to and from Dean Road and 79th Street.

Section 13. "Association Landscaping" shall mean the lawn, trees, shrubberies and other growing things on the land abutting the Frontage Road but not including landscaping on land west of the easterly dwelling rooflines (as extended north and south) in the case of Dean Road Dwellings and north of the southerly dwelling rooflines (as extended east and west) in the case of 79th Street Dwellings.

ARTICLE IA

LAKE ASSOCIATION

Section 1.A.1. Restriction on Use of Private Lake(s). Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and does hereby agree to the assessments, restrictions, conditions, covenants, declarations, and rules and regulations now established and which may hereafter be established by the Lake Clearwater Lake Association, Inc., for the ownership control, use, maintenance, operation and improvement of the adjoining private lake or lakes, a portion of which is or may be included in the legal description of each Lot of Lake Clearwater. All rules and regulations shall apply with equal force to all groups. No preference in the use and enjoyment of the Lake shall be given to any owner or organization.

Section 1.A.2. Membership in the Lake Association. Each Owner of any Lot shall be a Class A member of the Lake Association. Membership rights and duties shall be as set forth in the Articles and By-Laws. Every Owner of a Lot is subject to assessment as defined in Article IV, Section 1 hereof. Class B members shall be those appointed by the developer in accordance with the Articles and By-Laws of the Lake Association.

Section 2.A.1. Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Lake Clearwater Lake Association, Inc., (1) annual assessments or charges, and (2) special assessments or charges for maintenance and capital improvements as are established and shall be collected in the manner set forth in the Articles and By-Laws of the Lake Association.

Section 2.A.2. Manner of Selecting Representative to Lake Association. Each subordinate association, be it residential, commercial or office, shall appoint its President, as its director under Class A Membership in the Lake Association.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the easements which shall be a part of and shall pass with the title to every Lot, subject to the following provisions:

- a) The right of the Association and Lake Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations;
- b) The right of the Association and Lake Association to dedicate or transfer all or any part of the easements to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be

effective unless two-thirds (2/3) of the total vote of the Association vote in favor of such dedication or transfer.

c) The right of the Association and Lake Association to suspend the rights of an owner to use the Lake facilities and amenities;

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the easements to the members of his family, his tenants, guests or contract purchasers who reside on a Lot.

Section 3. Property Subject to Declaration. The Properties which are, and shall be, held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration are located in Marion County, State of Indiana, and are more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

Section 4. No Property Right to Private Lake(s). No Lot Owner shall acquire a property right in and to the private lake(s) adjoining each Lot.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot is subject to assessment, as defined in Article IV, Section 1, and shall be a member of the Association and Lake Association.

Section 2. Every person, group of persons or entity, other than the Declarant, who is a record Owner of a fee interest in any Lot shall be a Class A Member of the Associations, provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership in the Association but not in the Lake Association. Only the directors of the Lake Association shall be entitled to vote. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association and Lake Association: (1) annual assessments or

charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

All sums assessed by the Association and Lake Association shall be established by using generally accepted accounting principles applied on a consistent basis and shall include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repairs. Any fund for capital expenditures shall be maintained in a separate interest bearing account.

The annual and special assessments in favor of the Association and Lake Association, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot 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 attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed, but such delinquent accounts shall remain a lien upon the Lot subject to foreclosure.

Section 2. Purpose of Assessments. The annual assessments levied by the Association on a Lot shall be used for those purposes set forth in Article V or such other purposes determined by appropriate Board of Directors' action to promote the recreation, health, safety and welfare of the Owners and/or the Association. Annual assessment levied by the Lake Association shall be used as determined by the Lake Association. Special assessments as levied by the Association shall be used for those purposes set forth in Section 6 hereof or as determined by two thirds (2/3rds) of the total vote of the Association.

Section 3. Date of Commencement of Annual Assessments: Due Dates. A Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association and Lake Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association and Lake Association as to the status of assessment on a Lot is binding on the date of its issuance.

Section 4. Uniform Rates of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots. Annual assessments shall be paid on a monthly basis. Defaults in the payment of any one installment, shall cause the entire unpaid assessment for the year in which the delinquency occurs to become immediately due and payable.

Section 5 Annual Assessment. The Board of Directors shall fix the annual assessment per Lot.

Section 6. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, provided that any

such assessment shall have the assent of two-thirds (2/3) of the total vote of the Association. Any special assessment shall be paid off in full at the time of closing on a Lot and/or Home by the Owner unless the purchaser of the Lot and/or Home assumes in writing the obligation to pay the balance of the special assessment.

Section 7. Notice and Quorum for any Action Authorized Under Section 6. Written notice of any meeting called for the purpose of taking any action authorized under Section 6 shall be sent to all Class A 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 Class A or of proxies entitled to cast a majority of all the votes of the Class A shall constitute a quorum.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment for a Class A Membership not paid within thirty (30) days after the due date shall become delinquent. If an assessment is not paid within thirty (30) days after the due date, the assessment shall bear a late charge of one and one-half percent (1-1/2%) per month. The Association and Lake Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 9. Lake Association Assessments. The assessments for the Lake Association shall be determined, applied, and collected, as set forth in this Article IV.

Section 10. Real Estate Taxes. Real estate taxes are to be separately taxed to each Lot. Improvements on individual Lots which are owned by the Association and the Lake Association shall be assessed and taxed separately and the tax shall be paid by the appropriate Association.

Section 11. Utilities. Each Owner shall pay his own utilities which are separately metered. Utilities which are not separately metered shall be treated and paid as a part of the Association expenses.

Section 12. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Article shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

INSTALLATION AND EXTERIOR MAINTENANCE

The Association through its Board of Directors shall contract for services and materials for the benefit of the Association as said Board of Directors determines from time to time to be appropriately applied on a common basis to all Properties (including the Dwellings and other improvements thereon). These commonly applied services and materials may include, without

limitation, the maintenance of the following unless the maintenance is terminated by appropriate Board of Director's action:

- 1) the Boundary Fence
- 2) the Frontage Road
- 3) the Association Landscaping
- 4) the removal of or partial removal of snow from the Frontage Road, Dwelling driveways and Dwelling sidewalks running to the nearest Dwelling entry door.
- 5) painting of the Dwellings and their exterior stair railings.
- 6) the Dwelling roofs of those units not re-roofed in 2002-2005 until such time as the Association re-roofs or offers to re-roof such Dwelling pursuant to the re-roofing schedule mailed to such Dwelling.
- 7) Sprinkler Systems associated with the Association Landscaping
- 8) insurance covering the Common Area, the Boundary Fence, Directors and Officers of the Association liability, and other general liability of the Association at levels determined to be appropriate by the Board of Directors.
- 9) professional and consulting fees, including without limitation, accounting, management, recording, legal and engineering fees.
- 10) casualty insurance of not less than \$17 million on the Dwellings and other Association improvements along with liability coverage for the Association and its Directors and Officers until the expiration date of the Association's policy with State Farm Fire and Casualty Company of January 31, 2006, at which time the Owners shall be responsible for insuring their own Properties (except as described in (8) above).
- 11) such other expenses of the Association as approved by appropriate Board of Directors' action.
- 12) the pole lights common to each Lot located in the area of the Association Landscaping
- 13) the flagpole and related decoration and lighting located in the south eastern portion of Lot 20
- 14) the utility pipes and lines and the drainage ditches and conduits associated with the Properties and arising out of easements granted under or pursuant to those Declarations

Any warranties for service performed or materials provided shall accrue to the individual benefit of each affected Dwelling owner as well as the Association.

Any cost of service or materials for matters as above described which arise out of a covered occurrence under a Dwelling Owner's casualty or liability insurance policy shall be first paid from said policy proceeds before any payments are made by the Association, and the Association shall be entitled to reimbursement from said policy proceeds or the Owner in the event the Association incurs any such cost or maintenance.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, to the extent not inconsistent with the provisions of this Article, the general rules of law of the State of Indiana regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners.

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

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

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

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provision of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the dispute shall be settled by a decision of a majority of all the arbitrators.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Enforcement. These covenants, conditions and restrictions may be enforced by the Association and Lake Association or any Owner. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction, either to restrain or enjoin violation or to recover covenants; and the failure or forbearance by the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be conclusive presumption that any violation or breach of any attempted violation or breach of any of the within covenants, conditions or restrictions cannot be adequately remedied by action at law or by recovery of damages.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Duration. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, Lake Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of thirty (30) years from the date of recordation of the Original Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each, unless by a two-thirds (2/3) vote of all Class A Members of the Association such covenants and conditions are amended, altered or revoked.

Section 4. Amendment. This Declaration may be amended by a two-thirds (2/3) vote of the membership of the Association. Any amendment must be recorded in the Office of the Recorder of Marion County, Indiana. No such agreement to amend, in whole or in part, shall be effective unless written notice of the proposed Amendment is sent to every Owner at least thirty (30) days in advance of any action taken and no such Amendment shall be effective with respect to any permanent easements or other permanent rights or interest relating to the Common Areas, if any, here created.

ARTICLE VIII

MORTGAGEE'S RIGHTS

Section 1. Notice of Rights of Mortgagee of a Lot. Upon written request by a mortgagee to the Association or Lake Association, the Mortgagee of a Lot shall be entitled to receive written notification of any default, not cured within (60) days after its occurrence, by the Owner of the Lot of any obligation of the Owner under the Declaration, the By-Laws of the Association and Lake Association or the Articles of Incorporation of the Association and Lake Association. The request for notification can be made by any mortgagee of a Lot, its successor or assign. The notification shall be sent not later than the 65th day after the occurrence of an uncured default. The Mortgagee may be charged a reasonable fee for this service.

Section 2. Rights of First Refusal. No first mortgagee, its successor or assign, of a Lot, who comes into possession of that Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, a deed or assignment taken in lieu of foreclosure shall be subject to any rights of first refusal which the Owner may have given to the Association or other Owners of the Lots.

Section 3. Rights of Mortgagee. Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned), or the Class A Members have given their prior written approval, the Association shall not:

a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Properties or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Properties by the Association and Lake Association shall not be deemed a transfer within the meaning of this clause.

b) Change the method of determining the obligations, assessments, dues or other changes which may be levied against a Lot or Owner.

c) Fail to maintain fire and extended coverage insurance on property owned by the Association or Lake Association on current replacement costs basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

d) Use hazard insurance proceeds for losses to any property for other than the repair, replacement or reconstruction of such improvements.

Section 4. Right to Examine Books and Records. Mortgagees, their successors or assigns, shall have the right to examine the books and records of the Association, upon reasonable notice and during normal business hours.

Section 5. Insurance Proceeds and Condemnation Awards. No provision of the constituent documents shall give a Lot or Dwelling owner or any other party, priority over any rights of first mortgagees of Dwellings with the Properties pursuant to their mortgages in the case of a distribution to Lot or Dwelling owners of insurance proceeds or condemnation awards.

ARTICLE IX

HARMONY AND ENVIRONMENTAL CONTROLS

Section 1. Architectural Control Committee. Except for original construction or as otherwise in these covenants provided, no building, fence, sidewalk, drive, walk, dock, or other structure shall be created, placed, altered, or maintained upon the properties nor shall any exterior addition to or change (including any change in color) or alternation therein be made until the proposed building plans, specifications, exterior color and finish, plot plans (showing the proposed location of such building or structure, drives and parking areas), general contractor and all subcontractors, and construction schedule shall have been submitted to and approved in writing by the Board of Directors of the Association, or by any architectural control committee composed of not less than three (3) members appointed by said Board of Directors. Refusal of approval of plans, location or specification by said Board of Directors or architectural control committee may be based upon any ground, including, without limitation, lack of harmony of external design, color, location or relation to surrounding structures and topography and purely aesthetic considerations which, in the sole and uncontrolled discretion of said Board of Directors or architectural control committee shall seem sufficient. No alternations may be made in such plans after approval by the Board of Directors or architectural control committee is given except by and with their prior written consent. One copy of all plans, specifications and related data shall be furnished the Board of Directors or architectural control committee for its record. The person submitting plans shall be required to obtain a dated receipt for said plans from the board or committee. In the event the Board of Directors, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this article will be deemed to have been fully complied with. Notice of disapproval shall be by certified mail, return receipt requested.

Section 2. Prohibited Uses and Nuisances. The following shall apply to each Owner and Lot as applicable:

- a) No noxious or offensive trade or activity shall be carried on upon any Lot or within any Dwelling situated upon a Lot, nor shall anything be done therein or thereon which may be or may become an annoyance or nuisance to the neighborhood, the other Owners of the Lots, or the Declarant.
- b) The maintenance, keeping, boarding and/or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any Dwelling situated upon the Properties, except that this shall not prohibit the keeping of dogs, cats, and/or caged birds or other reasonably domestic pets provided they are not kept, bred or maintained for commercial purposes. Such pets if kept shall not be outside on the lots except under direct control and supervision of the owner, and shall not be kept in unreasonable numbers nor under unreasonable conditions.
- c) No burning of any trash and no accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any Lot.
- d) Except as hereinafter elsewhere provided, no junk, unlicensed or disabled vehicle, motorcycle, commercial vehicle, trailer truck, camper, camp truck, housetrailer, boat or the like, shall be kept upon the Properties (except in enclosed garages) nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of its Board of Directors, provide and maintain a suitable area designated for the parking of such vehicles or the like.
- e) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection.
- f) No large trash deposits shall be subject to public view except on days of major trash collections.
- g) No sound hardwood trees shall be removed from any portion of the Properties without written approval of the Association acting through its Board of Directors or duly appointed committee.
- h) Except as may be approved in writing by the Board of Directors or its designated committee, no structure of a temporary character, trailer, tent, shack, barn or other out-building shall be used on any portion of the property at any time.
- i) Except for entrance signs, directional signs, community "theme" and the like, no signs of any character shall be erected, posted or displayed upon, in or about any Lot situated upon the Properties.
- j) No structure, planting or other material shall be placed or permitted to remain upon any portion of the Properties which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels.
- k) Garage doors and the doors of any other storage room or the like shall be maintained in a closed position when not being used for immediate ingress and egress.

l) No outside television or radio aerial or antenna, or other aerial or antenna, for reception or transmission shall be maintained upon any Lot without the prior written consent of the Board of Directors unless such structure is a part of the basic design of a Dwelling or group of Dwellings.

m) There shall be no violation of any rules which may from time to time be adopted by the Board of Directors or promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the By-Laws, authorized to adopt such rules. These rules shall include a provision that no passes, permits or other authority shall be given by any Owner to any person or persons to utilize the Common Areas, recreational facilities and amenities.

n) In addition to the foregoing restrictions, all restrictions of the Plat as to the use of the Properties are incorporated by reference herein as restrictions of this Declaration.

o) The Property shall be developed and used only for single family attached or detached residential uses.

p) Each Lot shall be separately platted in such a manner as will permit it to be individually sold as a part of a permanent home community.

Section 3. Maintenance of Lots and Dwellings. Except for those matters of maintenance expressly assumed by the Association pursuant to Article V herein, each Owner shall at all times maintain his/her Lot and Dwelling and any other improvements on the Lot in good order and repair and shall prevent the Lot, Dwelling, and other improvements from becoming unsightly.

Section 4. Right of Association to Remove or Correct Violations of this Article.

The Association and Lake Association may, in the interest of the general welfare of all the Owners of the Lots and after reasonable notice to the Owner, enter upon any Lot or the exterior of any Dwelling at reasonable hours on any day for the purpose of removing or correcting any violations or breach or any attempted violation of any of the covenants and restrictions contained in this Article, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided, however, that no such action shall be taken without a resolution of the Board of Directors of the Association and Lake Association or by an architectural control committee composed of three (3) or more members appointed by the Board.

Section 5. Perpetual Easement for Encroachments. If any Lot or any Improvement, building, overhang, fixture or other structure or improvements of whatever type shall for any reason encroach upon any other Lot as a result of the construction of the building or improvements, a valid, perpetual easement for the encroachment and for its maintenance is retained by the Declarant for its benefit and for the benefit of the Association and Lake Association and any owner of a Lot whose Lot is affected thereby and shall exist perpetually. In the event the building or the improvement shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceeding, and then rebuilt, any resulting encroachment shall be permitted, and a valid easement for such encroachments is hereby reserved by the Declarant for its benefit and for the benefit of the Association and any owner of a Lot whose Lot is affected thereby and shall exist perpetually.

IN WITNESS WHEREOF, the Association through its duly authorized representative has executed this Amendment this 29th day of June, 2005.

Lake Clearwater Homeowners Association, Inc.

By: Gerry E. Griffith
Gerry Griffith, President

STATE OF INDIANA)

)SS:

COUNTY OF MARION)

Before me, a Notary Public, in and for the State of Indiana, personally appeared Gerry Griffith, the President of Lake Clearwater Homeowners Association, Inc., an Indiana non-profit corporation, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of said corporation.

Witness my hand and Notarial Seal this 29 day of June, 2005.

Janice S. Muller
Notary Public

Printed: Janice S. Muller

My Commission Expires:

July 12, 2008

My County of Residence is:

Hamilton

This instrument prepared by Steven C. Robinson, Robinson Wolenty & Young, LLP, 8888 Keystone Crossing, Suite 710, Indianapolis, Indiana 46240, (317) 587-7820.

EXHIBIT "A"

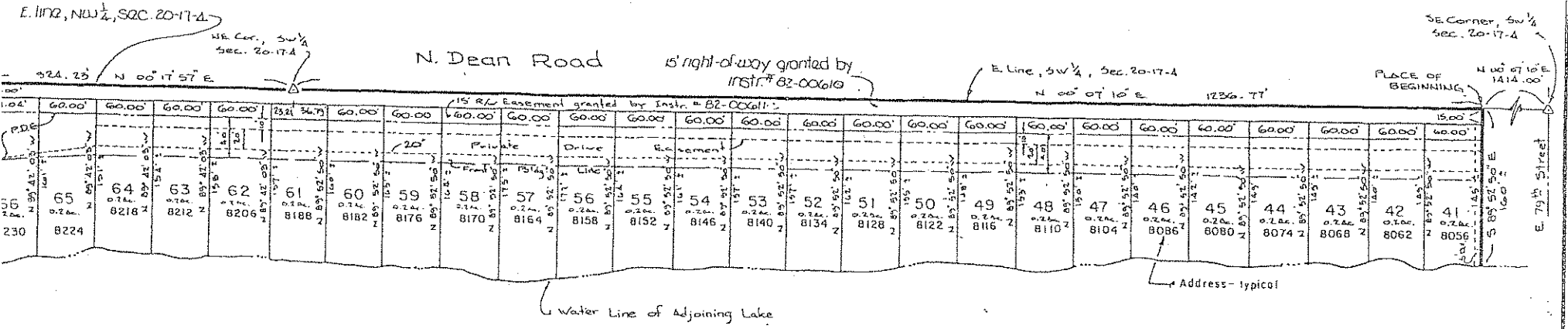
Part of the Southwest Quarter and the Northwest Quarter of Section 20, Township 17 North of Range 4 East in Marion County, Indiana being more particularly described as follows:

Beginning at the Southeast corner of said southwest Quarter; thence North 00 degrees 07 minutes 10 seconds East upon and along the East line of said Quarter 2650.78 feet to the center of Section 20, Township 17 North of Range 4 East; thence North 00 degrees 17 minutes 57 seconds East upon and along the East line of the said Northwest Quarter Section 324.23 feet to a point; thence North 89 degrees 42 minutes 03 seconds West 175 feet, more or less to a point on the shore line of an existing lake; thence upon and along the meanderings of said shore line South, Southwest and Westerly to its intersection with the West line of the Southeast Quarter of said Southwest Quarter; thence South 00 degrees 00 minutes 33 seconds West upon and along said West line 210 feet, more or less to the Southwest corner of said Quarter Quarter; thence South said Quarter Quarter 1338.96 feet to the Place of Beginning, containing 17.8 acres, more or less.

EXHIBIT "B"
DESCRIPTION OF 66 LOTS

Exhibit B

860086054



- denotes private drive easement
 - denotes drainage easement

LAKE CLEARWATER SECTION THREE

I, the undersigned, hereby certify that the within plat is true and correct prepared under my supervision and represents a part of the Southwest Quarter and the Northwest Quarter of Section 20, Township 17 North of Range 4 East in Marion County, Indiana, being more particularly described as follows:

beginning at a point on the East line of said Quarter which lies North 00 degrees 07 minutes 10 seconds East 1414.00 feet from the Southeast corner of said Southwest Quarter Section; thence North 07 minutes 10 seconds East upon and along the East line of said Quarter 1236.77 feet to the center of Section 20, Township 17 North of Range 4 East; thence North 00 degrees 17 minutes 07 seconds East upon and along the East line of the said Northwest Quarter Section 324.23 feet to a point; thence North 89 degrees 42 minutes 03 seconds West 175 feet, more or less to a point on the line of an existing lake; thence South along the meanderings of said shore line to its intersection with a line which bears North 89 degrees 52 minutes 50 seconds West from the place of beginning; thence South 89 degrees 52 minutes 50 seconds East 160 feet more or less to the Place of Beginning, containing 6.5 acres, more or less.

The above description of the vision consists of 26 lots numbered 41 through 66 inclusive. The size of lots and width of the street are shown in figures denoting feet and decimal parts thereof.

Witness my hand and signature this 22nd day of August, 1986

James E. Dankert
 James E. Dankert
 R.L.S. # 4028

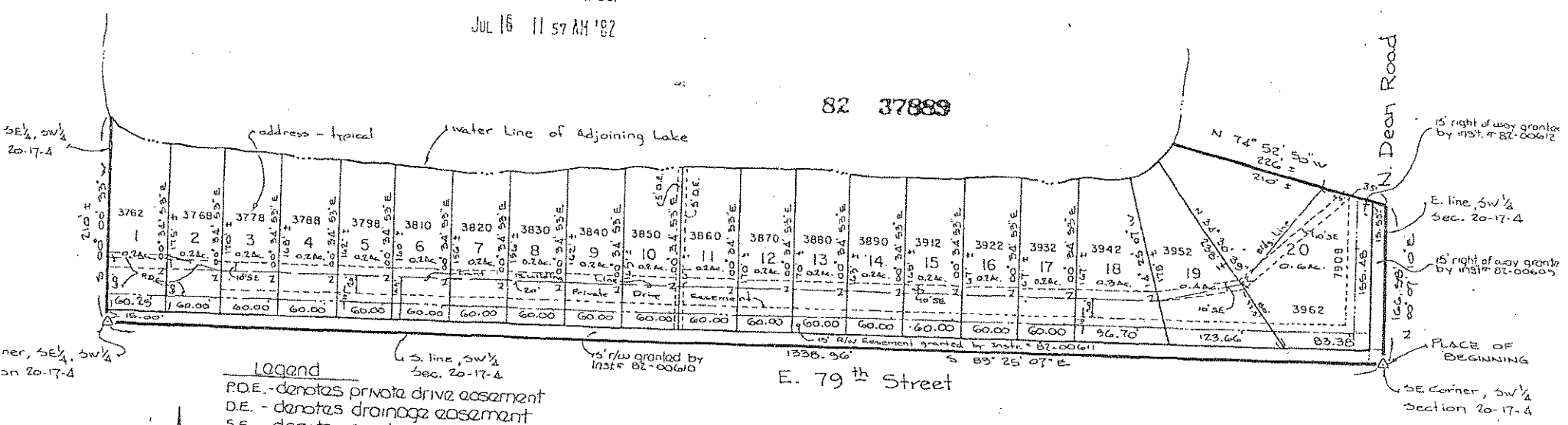


Exhibit B

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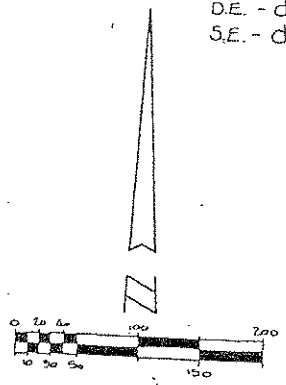
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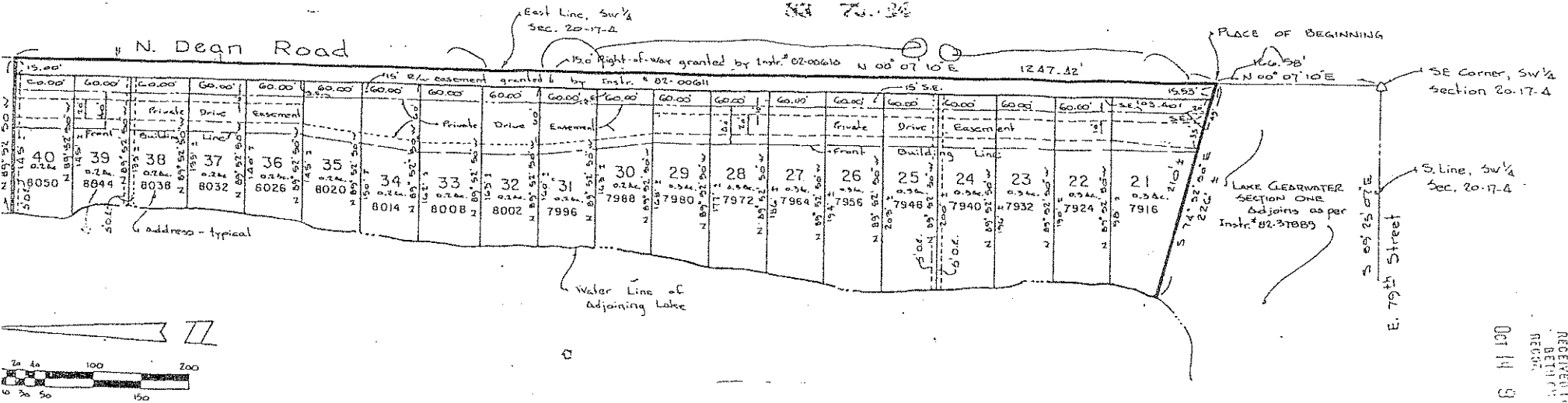
Legend
 P.D.E. - denotes private drive easement
 D.E. - denotes drainage easement
 S.E. - denotes sanitary sewer easement

LAKE CLEARWATER SECTION ONE



I, the undersigned, hereby certify that the within plat is true and correct prepared under my supervision and represents a part of the Southwest Quarter of Section 20, Township 17 North of Range 4 Harrison County, Indiana, being more particularly described as follows:
 at the Southeast corner of said Quarter Section; thence North 00 degrees 07 minutes 10 seconds East upon and along the East line of said Quarter 166.58 feet to a point; thence North 74 2 minutes 50 seconds West 226 feet, more or less to the shore line of an existing lake; thence upon and along the meanderings of said shore line South, Southwest and Westerly to its intersection with the West line of the Southeast Quarter of said Southwest Quarter; thence South 89 degrees 25 minutes 07 seconds East upon and along said West line 210 feet, more or less to the Southeast corner of said Quarter Quarter; thence South 00 degrees 00 minutes 33 seconds West upon and along the South line of said Quarter Quarter 1338.96 feet to the Place of Beginning, containing 5.8 acres or less.
 My division consists of 20 lots numbered 1 through 20, inclusive.
 My signature this 2 day of July, 1982.

Exhibit B



LAKE CLEARWATER SECTION TWO

I, the undersigned, hereby certify that the within plat is true and correct prepared under my supervision and represents a part of the Southwest Quarter of Section 20, Township 17 North of Range 4, Marion County, Indiana, being more particularly described as follows:

beginning at a point on the East line of said Quarter which lies North 00 degrees 07 minutes 10 seconds East 166.58 feet from the Southeast corner of said Quarter Section; thence North 00 degrees 07 minutes 10 seconds East 1247.42 feet to a point; thence North 89 degrees 52 minutes 50 seconds West 160 feet, more or less to a point on the shore of an existing lake; thence South along the meanderings of said shore line to its intersection with a line which bears North 74 degrees 52 minutes 50 seconds West from the place of beginning; thence North 74 degrees 52 minutes 50 seconds East 226 feet more or less to the Place of Beginning, containing 5.5 acres, more or less.

The division consists of 20 lots numbered 21 through 40.
 Witness my signature this 12 day of OCTOBER, 1983

James E. Dankert
 James E. Dankert
 R.L.S. # 4028

The undersigned, Lake Clearwater Development Co., Inc., being owners of record of the within described tract, do hereby lay off, plat and subdivide into lots, said tract in accordance with the plat attached hereto. The following restrictions, limitations and covenants are hereby imposed upon and shall run with the land and shall be binding upon the grantor, his heirs, successors and assigns.
 A Declaration of Covenants, Conditions and Restrictions recorded on July 16, 1982, as Instrument #82-37890 and Amendment to Declaration recorded September 9, 1983 as Instrument #83-65721 in the Office of the Recorder of Marion County, Indiana, are hereby incorporated by reference and define the restrictions, limitations and benefits of permitted land use together with the charges upon

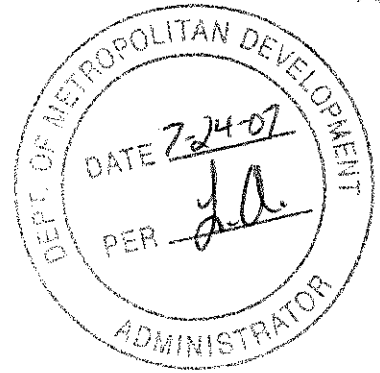
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BILLIE J. BREAUX
MARION COUNTY AUDITOR

590225 JUL 24 5

DULY ENTERED FOR REGISTRATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER



Approved 07/23/2007
Washington Township Assessor
By: [Signature]
Real Estate Deputy

SECOND AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
LAKE CLEARWATER

This Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Lake Clearwater ("Declaration") is entered into this 16th day of May, 2007, by Lake Clearwater Homeowners Association, Inc. ("Association").

WITNESSETH:

WHEREAS, Lake Clearwater Development Company, Inc. ("Declarant") executed that certain Declaration of Covenants, Conditions and Restrictions of Lake Clearwater, Section 1 dated July 2, 1982 and recorded in the office of the Recorder of Marion County, Indiana on July 15, 1982 as Instrument No. 82-37890 ("Original Declaration") as subsequently amended; and

WHEREAS, the Original Declaration was amended and restated by the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Lake Clearwater dated June 29, 2005 and recorded on July 13, 2005 as Instrument No. 2005-0109946 in the office of the Recorder of Marion County, Indiana ("Restated Declaration").

WHEREAS, pursuant to Section 4 Article VII of the Restated Declaration, the Restated Declaration may be amended by a two-thirds (2/3) vote of the membership of the Association as defined therein; and

WHEREAS, written notice was sent to every Owner as required by the Restated Declaration and the following Second Amended and Restated Declaration was approved by at least a two-thirds (2/3) vote of the membership of the Association.

The property which is the subject of this Declaration, consists of 17.8 acres, more or less, and is more particularly described in Exhibit "A", attached hereto and made a part of this Declaration.

NOW, THEREFORE, the Restated Declaration and all subsequent amendment and addendums thereto are hereby amended and restated in their entirety to read as follows:

07/24/07 10:12AM JULIE L VOORHIES MARION CTY RECORDER SLC 51.00 PAGES: 20
Inst # 2007-0108284

The real estate described on Exhibit "A" (subject to certain easements servicing the Properties) shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the real estate, and which shall run with the real estate and shall be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Declarant" shall mean and refer to Lake Clearwater Development Company, Inc., its successors and assigns.

Section 2. "Association" shall mean and refer to Lake Clearwater Homeowners Association, Inc., an Indiana Nonprofit Corporation, its successors and assigns.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Properties" shall mean and refer to the certain real estate described on Exhibit "A," and such additions thereto as may hereafter be brought within the jurisdiction of the Association and may also be referred to as "Lake Clearwater".

Section 5. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties with the exception of any Common Areas. There are sixty-six (66) Lots on the Properties. Each Lot shall contain a "single" family residential dwelling with a minimum of a two-car garage, attached or detached. The Lots are described in Exhibit "B" attached and made a part hereof. Each Lot shall include the Lot's side of one-half (1/2) of any party wall dividing a dwelling structure on a Lot from any other dwelling structure or Lot.

Section 6. "Dwelling" or "Home" shall mean and refer to a single family residence erected on a Lot within the Properties.

Section 7. "Common Area," if any, shall mean all the real estate (including improvements thereto) owned or rented by the Association for the common use and enjoyment of the Owners.

Section 8. "Lake Clearwater Lake Association, Inc." ("Lake Association") means the association established by the Declarant. The classes of membership, purposes and powers of the Lake Association are set forth generally in the Articles and By-Laws of the Lake Association. Members of the Lake Association have the right to use, occupy and enjoy the Lake Area only pursuant to and in accordance with the provisions of the Articles and By-Laws of the Lake Association, and the provisions hereof.

Section 9. "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas, if any, appurtenant to each Lot.

Section 10. "Member" or "Membership" shall mean as set forth in Article III.

Section 11. "Boundary Fence" shall mean that fence running along the perimeter of the Properties between the Dwellings and 79th Street on the South and between the Dwellings and Dean Road on the East.

Section 12. "Frontage Road" shall mean that road running between the Dwellings and the Boundary Fence including all entries and exits to and from Dean Road and 79th Street.

Section 13. "Association Landscaping" shall mean the lawn, trees, shrubberies and other growing things on the land abutting the Frontage Road but not including landscaping on land west of the easterly dwelling rooflines (as extended north and south) in the case of Dean Road Dwellings and north of the southerly dwelling rooflines (as extended east and west) in the case of 79th Street Dwellings.

ARTICLE IA

LAKE ASSOCIATION

Section 1.A.1. Restriction on Use of Private Lake(s). Each Owner of any Lot by acceptance of a deed for the Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and does hereby agree to the assessments, restrictions, conditions, covenants, declarations, and rules and regulations now established and which may hereafter be established by the Lake Clearwater Lake Association, Inc., for the ownership control, use, maintenance, operation and improvement of the adjoining private lake or lakes, a portion of which is or may be included in the legal description of each Lot of Lake Clearwater. All rules and regulations shall apply with equal force to all groups. No preference in the use and enjoyment of the Lake shall be given to any owner or organization.

Section 1.A.2. Membership in the Lake Association. Each Owner of any Lot shall be a Class A member of the Lake Association. Membership rights and duties shall be as set forth in the Articles and By-Laws. Every Owner of a Lot is subject to assessment as defined in Article IV, Section 1 hereof.

Section 1.A.3. Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed for the Lot, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Lake Clearwater Lake Association, Inc., (1) annual assessments or charges, and (2) special assessments or charges for maintenance and capital improvements as are established and shall be collected in the manner set forth in the Articles and By-Laws of the Lake Association.

Section 1.A.4. Manner of Selecting Representative to Lake Association. Each subordinate association, be it residential, commercial or office, shall appoint a member of its board, as its director on the Lake Association Board.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the easements which shall be a part of and shall pass with the title to every Lot, subject to the following provisions:

a) The right of the Association and Lake Association to suspend the voting rights of an Owner for any period of time during which any assessment against his Lot remains unpaid and for a period of time not to exceed the longer of sixty (60) days or the period of time of the infraction for any infraction of the published rules and regulations;

b) The right of the Association and Lake Association to dedicate or transfer all or any part of the easements to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless two-thirds (2/3) of the total vote of the Association vote in favor of such dedication or transfer; and

c) The right of the Association and Lake Association to suspend the rights of an owner to use the Lake facilities and amenities.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the easements to the members of his family, his tenants, guests or contract purchasers who reside on a Lot.

Section 3. Property Subject to Declaration. The Properties which are, and shall be, held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration are located in Marion County, State of Indiana, on the real estate more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

Section 4. No Property Right to Private Lake(s). No Lot Owner shall acquire a property right in and to the private lake(s) adjoining each Lot.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot is subject to assessment, as defined in Article IV, Section 1, and shall be a member of the Association and Lake Association.

Section 2. Voting Rights. Every person, group of persons or entity, other than the Declarant, who is a record Owner of a fee interest in any Lot shall be a Member of the Associations, provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Members shall be entitled to one (1) vote for each Lot in which they

hold the interest required for membership in the Association but not in the Lake Association. Only the directors of the Lake Association shall be entitled to vote. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. Each Owner of any Lot by acceptance of a deed for the Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association and Lake Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

All sums assessed by the Association and Lake Association shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual and special assessments in favor of the Association and Lake Association, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot 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 attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed, but such delinquent accounts shall remain a lien upon the Lot subject to foreclosure.

Section 2. Purpose of Assessments. The annual assessments levied by the Association on a Lot shall be used for those purposes set forth in Article V or such other purposes determined by appropriate Board of Directors' action to promote the recreation, health, safety and welfare of the Owners and/or the Association. Annual assessment levied by the Lake Association shall be used as determined by the Lake Association. Special assessments as levied by the Association shall be used for those purposes set forth in Section 6 hereof or as determined by two thirds (2/3rds) of the total vote of the Association.

Section 3. Date of Commencement of Annual Assessments: Due Dates. A Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association and Lake Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association and Lake Association as to the status of assessment on a Lot is binding on the date of its issuance.

Section 4. Uniform Rates of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots. Annual assessments shall be paid on a monthly basis. Defaults in the payment of any one installment or any other assessment payment provided for in this Article, shall cause the entire unpaid assessment for the year in which the delinquency occurs to become immediately due and payable upon written notice to the defaulting Owner. If an installment for a prior year remains unpaid at the beginning of next year's annual assessment period, the next year's annual assessment shall be fully due and payable and unless specifically approved by the Board of Directors, may not be paid on a monthly basis.

Section 5. Annual Assessment. The Board of Directors shall fix the annual assessment per Lot.

Section 6. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the total vote of the Association. Any special assessment shall be paid off in full at the time of closing on a Lot and/or Home by the Owner unless the purchaser of the Lot and/or Home assumes in writing the obligation to pay the balance of the special assessment. In the event such special assessment is payable in installments, on the default of the payment of any installment or any other assessment payment provided for in this Article, the Board may by written notice to the defaulting Owner declare all remaining installments to be due and payable in full.

Section 7. Notice and Quorum for any Action Authorized Under Section 6. Written notice of any meeting called for the purpose of taking any action authorized under Section 6 shall be sent to all Members neither 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 for the Members) entitled to cast a majority of all the votes of the Membership shall constitute a quorum.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment for a Membership not paid within thirty (30) days after the due date shall become delinquent. If an assessment is not paid within thirty (30) days after the due date, the assessment (and amounts due by way of acceleration pursuant to Section 4 and 6 of this Article IV) shall bear a late charge of one and one-half percent (1-1/2%) per month. The Association or the Lake Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Lot and Dwelling. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of the Owner's Lot and Dwelling. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 9. Lake Association Assessments. The assessments for the Lake Association shall be determined, applied, and collected, as set forth in this Article IV.

Section 10. Real Estate Taxes. Real estate taxes are to be separately taxed to each Lot. Improvements on individual Lots which are owned by the Association and the Lake Association shall be assessed and taxed separately and the tax shall be paid by the appropriate Association.

Section 11. Utilities. Each Owner shall pay his own utilities which are separately metered. Utilities which are not separately metered shall be treated and paid as a part of the Association expenses.

Section 12. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Article shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot, pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

INSTALLATION AND EXTERIOR MAINTENANCE

The Association through its Board of Directors shall contract for services and materials for the benefit of the Association as said Board of Directors determines from time to time to be appropriately applied on a common basis to all Properties (including the Dwellings and other improvements thereon). These commonly applied services and materials may include, without limitation, the maintenance of the following unless the maintenance is terminated by appropriate Board of Director's action:

- 1) the Boundary Fence
- 2) the Frontage Road
- 3) the Association Landscaping
- 4) the removal of or partial removal of snow from the Frontage Road, Dwelling driveways and Dwelling sidewalks running to the nearest Dwelling entry door.
- 5) Sprinkler Systems associated with the Association Landscaping
- 6) insurance covering the Common Area, the Boundary Fence, Directors and Officers of the Association liability, and other general liability of the Association at levels determined to be appropriate by the Board of Directors.
- 7) professional and consulting fees, including without limitation, accounting, management, recording, legal and engineering fees.
- 8) the pole lights common to each Lot located in the area of the Association Landscaping
- 9) the flagpole and related decoration and lighting located in the south eastern portion of Lot 20
- 10) the utility pipes and lines and the drainage ditches and conduits associated with the Properties and arising out of easements granted under or pursuant to those Declarations
- 11) such other expenses of the Association as approved by appropriate Board of Directors' action.

Any warranties for service performed or materials provided shall accrue to the individual benefit of each affected Dwelling owner as well as the Association.

Any cost of service or materials for matters as above described which arise out of a covered occurrence under a Dwelling Owner's casualty or liability insurance policy shall be first paid from said policy proceeds before any payments are made by the Association, and the Association shall be entitled to reimbursement from said policy proceeds or the Owner in the event the Association incurs any such cost or maintenance.

ARTICLE VI PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling upon the Properties and placed on the dividing line between the Lots shall constitute a party wall as hereinafter defined, to the extent not inconsistent with the provisions of this Article, the general rules of law of the State of Indiana regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair maintenance or replacement of a party wall and the roof above the party wall (hereinafter the "Party Wall") shall be shared equally by the adjoining Owners, provided, however, if the need for such repair, maintenance or replacement arises from the negligence, failure to maintain the Owner's roof or chimney or willful act of any Owner or any person under its reasonable control, such Owner shall be solely responsible for the cost of such maintenance, repair or replacement.

In the event an Owner believes that a Party Wall is required to be repaired, maintained or replaced then either (a) the affected Owners shall agree upon the work to be performed, when such work is to be performed and who will perform such work, and the cost of such work, in writing, prior to the performance of such work, such agreement not to be unreasonably withheld, or (b) if such Owners cannot agree as provided in subparagraph (a), then the Owner desiring the performance of the maintenance, repair or replacement shall be entitled to employ an independent inspection contractor, who is a licensed and is bonded and insured, to inspect the Party Wall and report as to whether the desired maintenance, repair or replacement is necessary to maintain the Party Wall in good order, condition and repair. If such inspector reports that the work is necessary as provided above, the Owner may proceed to cause the performance of such maintenance, repair or replacement and each party shall pay its proportionate share of the cost thereof, and the cost of the inspector, shall be shared equally by the Owners. If such inspector reports that the work is not necessary as provided above, the Owner shall not proceed with such work at that time and shall be solely responsible for the cost of the inspector.

Section 3. Destruction by Fire or Other Casualty. Notwithstanding anything contained in Section 2 of this Article VI to the contrary, if a Party Wall is destroyed or damaged by fire or other casualty, repair or replacement shall be paid by the adjacent Owners in proportion to the damage sustained to the Party Wall, without prejudice, however, to the right of any such Owners

to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions.

Section 4. Access to Party Wall. An adjoining Owner shall allow reasonable access to the Party Wall to complete repair, maintenance or replacement as required under this Article VI. In addition, an adjoining Owner shall allow reasonable access over the adjoining Owner's roof, if required to repair, maintain or replace the Party Wall. The other Owner, in using the adjoining Owner's roof for access, shall be responsible for any damages caused to the adjoining Owner's roof.

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

Section 6. Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Article VI, the parties shall resolve the dispute by binding arbitration under the rules of the American Arbitration Association. The parties may agree on one arbitrator. If they cannot agree on one arbitrator, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the dispute shall be settled by a decision of a majority of all the arbitrators. The parties shall share equally the cost of an arbitrator selected by them or each party shall pay for the arbitrator selected by each of them and shall share equally the cost of the third arbitrator. The decision of the arbitrator(s) shall be final and binding and shall be enforceable in any Court of competent jurisdiction.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Enforcement. These covenants, conditions and restrictions may be enforced by the Association or the Lake Association or any Owner. Notwithstanding the prior sentence, except for Article VI, before an Owner may enforce the Declaration, the Owner must first pursue enforcement through the Association Board of Directors. If the Board of Directors is unable or unwilling to pursue enforcement, then the Owner may pursue enforcement. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction, either to restrain or enjoin violation or to recover covenants; and the failure or forbearance by the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be conclusive presumption that any violation or breach of any attempted violation or breach of any of the within covenants, conditions or restrictions cannot be adequately remedied by action at law or by recovery of damages. All rights and remedies of the parties are cumulative. In addition, the Board of Directors is hereby authorized, during the period of any default or delinquency, to take actions to enforce compliance with such provisions, rules, regulations or decisions, including, without limitation, the suspension of a defaulting Owner's voting privileges or assessment of fines as determined by the Board of Directors; provided, however, that no such enforcement action shall affect the rights of a Mortgagee hereunder. Any system for assessment of fines shall be provided for by appropriate Board action and will be included in the By Laws. The failure to pay a fine shall be treated the same as the

failure to pay an assessment under Article IV and all rights and obligations under Article IV shall apply.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Duration. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, Lake Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of thirty (30) years from the date of recordation of the Original Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each, unless by a two-thirds (2/3) vote of all Members of the Association such covenants and conditions are amended, altered or revoked.

Section 4. Amendment. This Declaration may be amended by a two-thirds (2/3) vote of the membership of the Association. Any amendment must be recorded in the Office of the Recorder of Marion County, Indiana. No such agreement to amend, in whole or in part, shall be effective unless written notice of the proposed Amendment is sent to every Owner at least thirty (30) days in advance of any action taken and no such Amendment shall be effective with respect to any permanent easements or other permanent rights or interest relating to the Common Areas, if any, here created.

Section 5. Costs and Attorneys' Fees. In a proceeding arising because of an alleged failure of an Owner: (i) to make any required payments or (ii) to comply with any provision of the Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the party, initiating such proceeding shall be entitled to recover its costs, expenses, interest and reasonable attorneys' fees from the Owner, incurred in connection with such proceeding, if it is found or agreed in such proceeding that a failure to make payment as required hereby or a violation by such Owner of this Declaration, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, did occur.

ARTICLE VIII

MORTGAGEE'S RIGHTS

Section 1. Notice of Rights of Mortgagee of a Lot. Upon written request by a mortgagee to the Association or Lake Association, the Mortgagee of a Lot shall be entitled to receive written notification of any default, not cured within sixty (60) days after its occurrence, by the Owner of the Lot of any obligation of the Owner under the Declaration, the By-Laws of the Association and Lake Association or the Articles of Incorporation of the Association and Lake Association. The request for notification can be made by any mortgagee of a Lot, its successor or assign. The notification shall be sent not later than the sixty-fifth (65th) day after the occurrence of an uncured default. The Mortgagee may be charged a reasonable fee for this service.

Section 2. Rights of First Refusal. No first mortgagee, its successor or assign, of a Lot, who comes into possession of that Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, a deed or assignment taken in lieu of foreclosure shall be subject to any rights of first refusal which the Owner may have given to the Association or other Owners of the Lots.

Section 3. Rights of Mortgagee. Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned), or the Members have given their prior written approval, the Association shall not:

a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Properties or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Properties by the Association and Lake Association shall not be deemed a transfer within the meaning of this clause;

b) Change the method of determining the obligations, assessments, dues or other changes which may be levied against a Lot or Owner;

c) Fail to maintain fire and extended coverage insurance on property owned by the Association or Lake Association on current replacement costs basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or

d) Use hazard insurance proceeds for losses to any property for other than the repair, replacement or reconstruction of such improvements.

Section 4. Right to Examine Books and Records. Mortgagees, their successors or assigns, shall have the right to examine the books and records of the Association, upon reasonable notice and during normal business hours.

Section 5. Insurance Proceeds and Condemnation Awards. No provision of the constituent documents shall give a Lot or Dwelling owner or any other party, priority over any rights of first mortgagees of Dwellings with the Properties pursuant to their mortgages in the case of a distribution to Lot or Dwelling owners of insurance proceeds or condemnation awards.

ARTICLE IX

HARMONY AND ENVIRONMENTAL CONTROLS

Section 1. Architectural Control Committee. Except for original construction or as otherwise in these covenants provided, no building, fence, sidewalk, drive, walk, dock, or other structure shall be created, placed, altered, or maintained upon the properties nor shall any exterior addition to or change (including any change in color) or alteration therein be made until the proposed building plans, specifications, exterior color and finish, plot plans (showing the proposed location of such building or structure, drives and parking areas), general contractor and all subcontractors, and construction schedule in form, substance and composition satisfactory to the Board of Directors ("Complete Plans") shall have been received by and approved in writing by the Board of Directors of the Association, or by any architectural control committee

composed of not less than three (3) members appointed by said Board of Directors ("Architectural Control Committee"). The Board or Architectural Control Committee may refuse to consider any request on the grounds that the Owner is delinquent in any assessment or is in violation of these Covenants, the By Laws or rules or regulations. Refusal of approval of the Complete Plans by said Board of Directors or Architectural Control Committee may be based upon any ground, including, without limitation, lack of harmony of external design, color, location or relation to surrounding structures and topography and purely aesthetic considerations which, in the sole and uncontrolled discretion of said Board of Directors or Architectural Control Committee shall seem sufficient. No alterations may be made in such plans after approval by the Board of Directors or Architectural Control Committee is given except by and with its prior written consent. One copy of the Complete Plans, specifications and related data shall be furnished the Board of Directors or Architectural Control Committee for its record. The person submitting plans shall be required to obtain a dated receipt for the Complete Plans from the Board or Architectural Control Committee. In the event the Board of Directors or the Architectural Control Committee fails to approve or disapprove the Complete Plans within thirty (30) days after the Complete Plans have been received by the Board or Architectural Control Committee, approval will not be required and this Article will be deemed to have been fully complied with. Notice of disapproval shall be by certified mail, return receipt requested.

Section 2. Prohibited Uses and Nuisances. The following shall apply to each Owner and Lot as applicable:

a) No noxious or offensive trade or activity shall be carried on upon any Lot or within any Dwelling situated upon a Lot, nor shall anything be done therein or thereon which may be or may become an annoyance or nuisance to the neighborhood, the other Owners of the Lots, or the Declarant.

b) The maintenance, keeping, boarding and/or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any Dwelling situated upon the Properties, except that this shall not prohibit the keeping of dogs, cats, and/or caged birds or other reasonably domestic pets provided they are not kept, bred or maintained for commercial purposes. Such pets if kept shall not be outside on the lots except under direct control and supervision of the owner, and shall not be kept in unreasonable numbers or under unreasonable conditions.

c) No burning of any trash or accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any Lot.

d) Except as hereinafter elsewhere provided, no junk, unlicensed or disabled vehicle, motorcycle, commercial vehicle, trailer truck, camper, camp truck, house trailer, boat or the like, shall be kept upon the Properties (except in enclosed garages) nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of its Board of Directors, provide and maintain a suitable area designated for the parking of such vehicles or the like.

e) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection.

f) No large trash deposits shall be subject to public view except on days of major trash collections.

g) No sound hardwood trees shall be removed from any portion of the Properties without written approval of the Association acting through its Board of Directors or duly appointed committee.

h) Except as may be approved in writing by the Board of Directors or its designated committee, no structure of a temporary character, trailer, tent, shack, barn or other out-building shall be used on any portion of the property at any time.

i) Except for entrance signs, directional signs, community "theme" and the like, no signs of any character shall be erected, posted or displayed upon, in or about any Lot situated upon the Properties.

j) No structure, planting or other material shall be placed or permitted to remain upon any portion of the Properties which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels.

k) Garage doors and the doors of any other storage room or the like shall be maintained in a closed position when not being used for immediate ingress and egress.

l) No outside television or radio aerial or antenna, or other aerial or antenna, for reception or transmission shall be maintained upon any Lot without the prior written consent of the Board of Directors unless such structure is a part of the basic design of a Dwelling or group of Dwellings.

m) There shall be no violation of any rules or regulations which may from time to time be adopted by the Board of Directors or promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the By-Laws, authorized to adopt such rules. These rules shall include a provision that no passes, permits or other authority shall be given by any Owner to any person or persons to utilize the Common Areas, recreational facilities and amenities.

n) In addition to the foregoing restrictions, all restrictions of the Plat as to the use of the Properties are incorporated by reference herein as restrictions of this Declaration.

o) The Property shall be developed and used only for single family attached or detached residential uses.

p) Each Lot shall be separately platted in such a manner as will permit it to be individually sold as a part of a permanent home community.

Section 3. Maintenance of Lots and Dwellings. Except for those matters of maintenance expressly assumed by the Association pursuant to Article V herein, each Owner shall at all times maintain his/her Lot and Dwelling and any other improvements on the Lot in good order and repair and shall prevent the Lot, Dwelling, and other improvements from becoming unsightly.

Section 4. Right of Association to Remove or Correct Violations of this Article.

The Association and/or the Lake Association may, in the interest of the general welfare of all the Owners of the Lots and after reasonable notice to the Owner, enter upon any Lot or the exterior of any Dwelling at reasonable hours on any day for the purpose of removing or correcting any violations or breach or any attempted violation of any of the covenants and restrictions contained in this Article, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided, however, that no such action shall be taken without a resolution of the Board of Directors of the Association or Lake Association or by the Architectural Control Committee.

Section 5. Perpetual Easement for Encroachments. If any Lot or any Improvement, building, overhang, fixture or other structure or improvements of whatever type shall for any reason encroach upon any other Lot as a result of the construction of the building or improvements, a valid, perpetual easement for the encroachment and for its maintenance is retained by the Declarant for its benefit and for the benefit of the Association and Lake Association and any owner of a Lot whose Lot is affected thereby and shall exist perpetually. In the event the building or the improvement shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceeding, and then rebuilt, any resulting encroachment shall be permitted, and a valid easement for such encroachments is hereby reserved by the Declarant for its benefit and for the benefit of the Association and any owner of a Lot whose Lot is affected thereby and shall exist perpetually.

Signature page to follow.

IN WITNESS WHEREOF, the Association through its duly authorized representative has executed this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Lake Clearwater this 16 day of May, 2007.

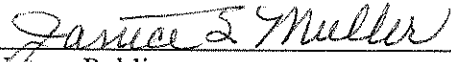
Lake Clearwater Homeowners Association, Inc.

By: 
Richard C. Scott, President

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public, in and for the State of Indiana, personally appeared Richard C. Scott, the President of Lake Clearwater Homeowners Association, Inc., an Indiana non-profit corporation, who, having been duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of said corporation.

Witness my hand and Notarial Seal this 16 day of May, 2007.


Notary Public

Printed: Janice S. Muller

My Commission Expires:

July 12, 2008

My County of Residence is:

Hamilton

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." Steven C. Robinson

THIS INSTRUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:
* Steven C. Robinson, Robinson Wolenty & Young, LLP, 8888 Keystone Crossing, Suite 710, Indianapolis, Indiana 46240, (317) 587-7820.

EXHIBIT "A"

Part of the Southwest Quarter and the Northwest Quarter of Section 20, Township 17 North of Range 4 East in Marion County, Indiana being more particularly described as follows:

Beginning at the Southeast corner of said southwest Quarter; thence North 00 degrees 07 minutes 10 seconds East upon and along the East line of said Quarter 2650.78 feet to the center of Section 20, Township 17 North of Range 4 East; thence North 00 degrees 17 minutes 57 seconds East upon and along the East line of the said Northwest Quarter Section 324.23 feet to a point; thence North 89 degrees 42 minutes 03 seconds West 175 feet, more or less to a point on the shore line of an existing lake; thence upon and along the meanderings of said shore line South, Southwest and Westerly to its intersection with the West line of the Southeast Quarter of said Southwest Quarter; thence South 00 degrees 00 minutes 33 seconds West upon and along said West line 210 feet, more or less to the Southwest corner of said Quarter Quarter; thence South said Quarter Quarter 1338.96 feet to the Place of Beginning, containing 17.8 acres, more or less.

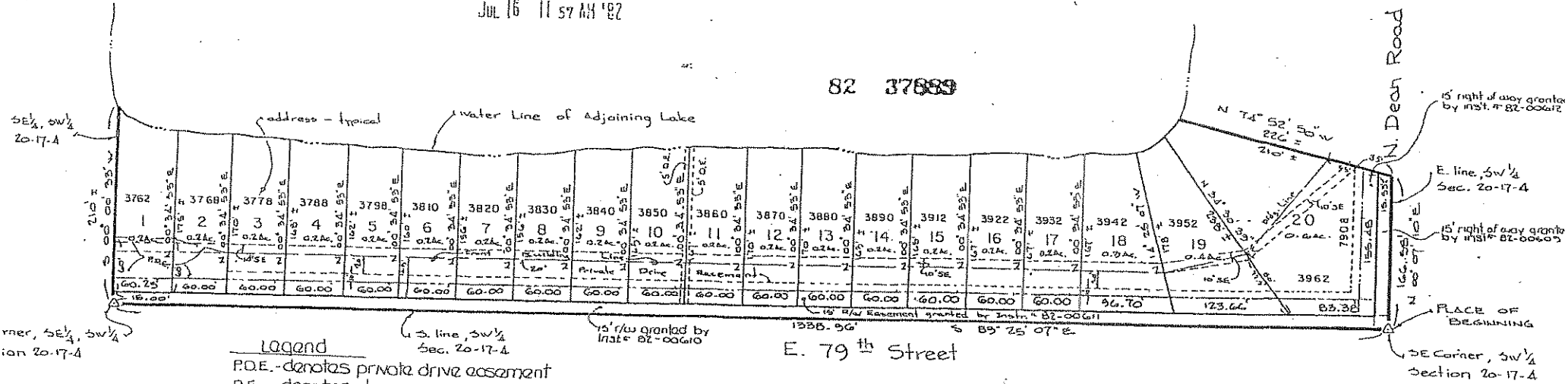
EXHIBIT "B"
DESCRIPTION OF 66 LOTS

Exhibit B

RECEIVED FOR RECORD
LUCILLE CAMP
REGORDER-MARION CO.

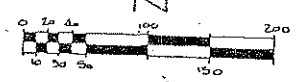
JUL 16 11 57 AM '82

82 37689



Legend
P.D.E. - denotes private drive easement
D.E. - denotes drainage easement
S.E. - denotes sanitary sewer easement

LAKE CLEARWATER SECTION ONE



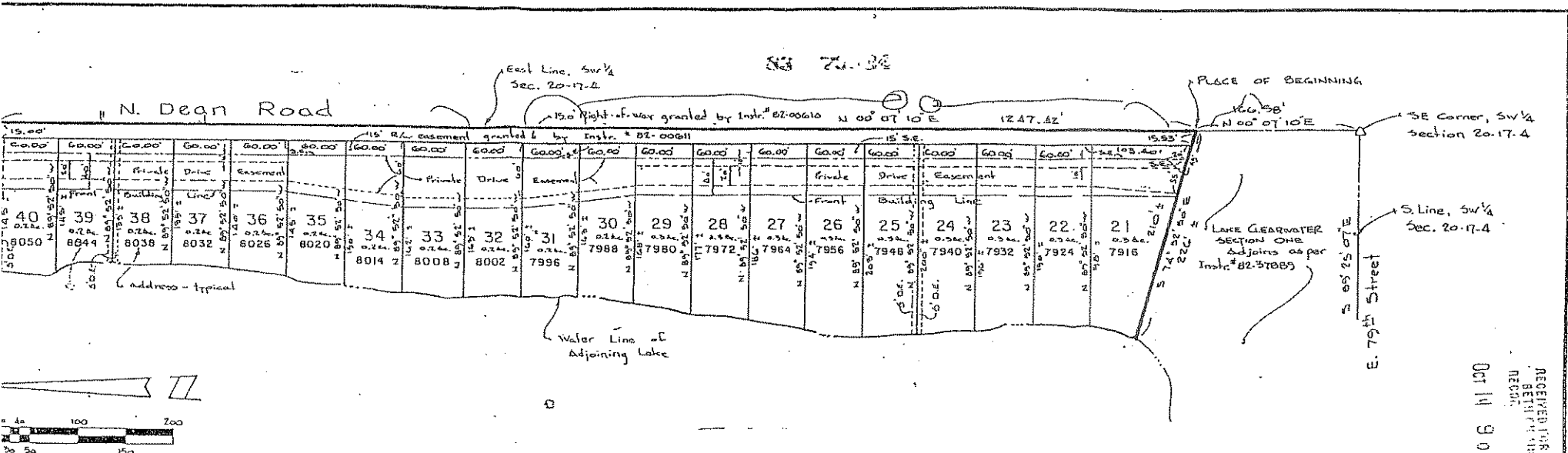
I, the undersigned, hereby certify that the within plat is true and correct prepared under my supervision and represents a part of the Southwest Quarter of Section 20, Township 17 North of Range 4 Marion County, Indiana, being more particularly described as follows:

Beginning at the Southeast corner of said Quarter Section; thence North 00 degrees 07 minutes 10 seconds East upon and along the East line of said Quarter 166.58 feet to a point; thence North 74 degrees 2 minutes 50 seconds West 226 feet, more or less to the shore line of an existing lake; thence upon and along the meanderings of said shore line South, Southwest and Westerly to its intersection with the West line of the Southeast Quarter of said Southwest Quarter; thence South 89 degrees 25 minutes 07 seconds East upon and along the South line of said Quarter 1338.96 feet to the Place of Beginning, containing 5.8 acres, more or less.

The division consists of lots numbered 1 through 20, inclusive.

Witness my signature this _____ day of _____ 1982

Exhibit B



LAKE CLEARWATER SECTION TWO

I, the undersigned, hereby certify that the within plat is true and correct prepared under my supervision and represents a part of the Southwest Quarter of Section 20, Township 17 North of Range 4, Marion County, Indiana, being more particularly described as follows:

at a point on the East line of said Quarter which lies North 00 degrees 07 minutes 10 seconds East 166.58 feet from the Southeast corner of said Quarter Section; thence North 00 degrees 10 seconds East upon and along the East line of said Quarter 1247.42 feet to a point; thence North 89 degrees 52 minutes 50 seconds West 160 feet, more or less to a point on the shore of an existing lake; thence South along the meanderings of said shore line to its intersection with a line which bears North 74 degrees 52 minutes 50 seconds West from the place of beginning; thence North 74 degrees 52 minutes 50 seconds East 226 feet more or less to the Place of Beginning, containing 5.5 acres, more or less.

The within division consists of 20 lots numbered 21 through 40

Witness my hand and signature this 12 day of October, 1983

James E. Dankert
James E. Dankert
R.L.S. # 4028

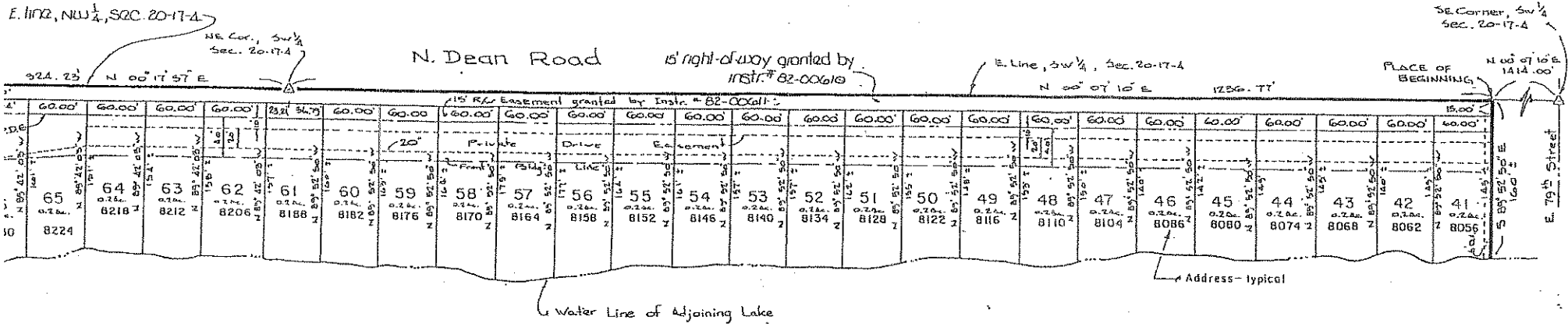
The undersigned, Lake Clearwater Development Co., Inc., being owners of record of the within described tract of land, do hereby lay off, plat and subdivide into lots, said tract in accordance with the following declarations, limitations and covenants are hereby imposed upon and shall run with the land and shall be binding upon the grantor, his heirs, successors and assigns.

Declaration of Covenants, Conditions and Restrictions recorded on July 16, 1982, as Instrument #82-37890 and Amendment to Declaration recorded September 9, 1983 as Instrument #83-65721 in the

RECEIVED FOR RECORD
BETH F. HARRIS
REC'D
OCT 14 9 06 AM '83

Exhibit B

860086054



LAKE CLEARWATER SECTION THREE

denotes private drive easement
denotes drainage easement

I, the undersigned, hereby certify that the within plat is true and correct prepared under my supervision and represents a part of the Southwest Quarter and the Northwest Quarter of Section 20, North of Range 4 East in Marion County, Indiana, being more particularly described as follows:

From a point on the East line of said Quarter which lies North 00 degrees 07 minutes 10 seconds East 1414.00 feet from the Southeast corner of said Southwest Quarter Section; thence North 17 minutes 10 seconds East upon and along the East line of said Quarter 1236.77 feet to the center of Section 20, Township 17 North of Range 4 East; thence North 00 degrees 17 minutes 10 seconds East upon and along the East line of the said Northwest Quarter Section 324.23 feet to a point; thence North 89 degrees 42 minutes 03 seconds West 175 feet, more or less to a point on the shore of an existing lake; thence South along the meanderings of said shore line to its intersection with a line which bears North 89 degrees 52 minutes 50 seconds West from the place of beginning; thence South 89 degrees 52 minutes 50 seconds East 160 feet more or less to the Place of Beginning, containing 6.5 acres, more or less.

The section consists of 26 lots numbered 41 through 66 inclusive. The size of lots and width of the street are shown in figures denoting feet and decimal parts thereof.

My signature this 22nd day of August, 1986

James E. ...
James E.
R.L.S. #

