

2004-0118689

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WARREN TOWNSHIP

JUN 10 2004

Assessor
Marion County

DECLARATION OF RESTRICTIONS

FOR ROSSWOOD, SECTION 1

MARTHA A. WOMACKS
MARION COUNTY AUDITOR

530467 JUN 11 2004

DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

THIS DECLARATION, made this 10th day of June, 2004 by
RossWood Development Company, LLC (hereinafter referred to as the "Developer");

WITNESSETH:

WHEREAS, the Developer is the owner of all the land contained in the area shown on Exhibit A, attached hereto and made a part hereof, which lands are part of an Entire Development known as RossWood; with Section 1 thereof being the subject of this Declaration ("Development"); and

WHEREAS, the Developer is about to sell and convey the residential lots situated within the platted areas of the Development and, before doing so, desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit of the lots and lands in the Development and the future owners thereof, while including the Development in the Association and under the jurisdiction of the Committee of the Entire Development;

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the Development. For a period of five years after the sale of the last lot in the Entire Development, Developer specifically reserves unto itself the right and privilege to include additional real estate as a part of the Development.

1. DEFINITIONS. The following are the definitions of the terms as they are used in this Declaration.

A. "Committee" shall mean the RossWood Development Committee composed of the Developer or three members appointed by the Developer who shall be subject to removal by the Developer at any time. The Developer may, at its sole option, at any time hereafter, relinquish to the Association the power to appoint and remove members of the Committee.

B. "Association" shall mean the RossWood Homeowners Association, Inc., a not-for-profit corporation.

C. "Lot" shall mean any parcel of residential real estate described by the plat of the Development which is recorded in the office of the Recorder of Marion County, Indiana.

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D. "Approvals, determinations, permissions, or consents" required herein shall be deemed given if they are given in writing signed, within respect to the Developer of the Association by the President or Vice-President thereof and with respect to the Committee, by two members thereof.

E. "Color scheme" shall mean a combination of siding, trim, shutters and front door color.

F. "Owner" shall mean a person, partnership, trust or corporation who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

G. "Entire Development" shall mean the subdivision known as RossWood, including existing and future sections.

H. "Development" shall mean the section or sections in the Entire Development encumbered by this Declaration.

2. CHARACTER OF-THE DEVELOPMENT .

A. In General. Every numbered lot platted as part of the Development is for residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house. No double occupancy dwelling shall be permitted on any part of the Development. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded Plat shall be used in a manner generally consistent with the zoning and use designated in the plan filed by the Developer in a rezoning or approval proceedings before the applicable development approval body in Marion County, Indiana. However, the Developer reserves unto itself the right to change the character of such designated use at any time in the future by applying to the applicable approval body and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Developer's planned use.

B. Prohibited Improvements. Sheds, outbuildings, carports, mini-barns, above ground pools, antennae, satellite disks which exceed one meter in diameter, or clothes lines shall not be erected or placed on any lot. Solar panels may not be erected or placed on the front or side roof of any house. Lawn ornaments are permitted in rear yards only.

C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed.

3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed in the development, exclusive of porches, terraces, garages, carports, accessory buildings, or basements, or any portion thereof, shall not contain less than 1200 square feet of living area.

B. Residential Setback Requirements. Front Setbacks. Unless otherwise provided in these Restrictions or on the recorded plat, all dwelling houses and above-grade structures shall be constructed or placed on residential lots in the Development so as to comply with the set-back lines, as established on the plat of the Development.

C. Fences. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, all fences must be approved by the Committee as to location, and composition before being installed. All fences shall be wooden (including, but not limited to Decorative Wood, Rustic Rail 6" minimum or Split Rail), decorative, PVC, ornamental iron or decorative metal. Non-reflective or vinyl coated metal fence (including chain link) may be installed as an integral part of a fence constructed of the aforementioned materials in order to provide a secure enclosure. Barbed wire, chain link or similar fences shall be prohibited. All fences shall be constructed so that the finished side thereof shall face the adjacent lots. Except for temporary decorative fences in the yards of model homes while being used as model homes, fences shall not be erected beyond the setback lines in the front yard. However, corner lots (those with two (2) frontages) may erect a fence up to five feet (5') beyond the side yard setback line which faces a street.

D. Tree Preservation. No live tree with a trunk diameter of 6 inches or more when measured 4 feet above the ground may be removed without the prior written consent of the Committee.

E. Addresses, Mailboxes and Lighting. Address numbers shall be permanently affixed to the front elevation of the residential structures in a uniform manner throughout the development. Mailboxes with reflective address numbers are required to be installed by the builder on each lot. The approved mailbox shall be Caporale medium custom on a 4" by 4" post. Uniform dusk to dawn post lamps (or carriage lights on the garages) are required to be installed by the builder on each lot.

F. Landscaping. Each lot shall include a planting and mulching plan. Such plan shall include a minimum of six (6) shrubs, with a least one (1) being an ornamental shrub of twenty-four (24) inches or more in size and all other shrubs being a minimum of eighteen (18) inches; and a minimum of two (2) trees, with shade trees at least two and one-quarter inches (2 1/4") in caliper and ornamental or evergreens trees at least six feet (6') in height.

G. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding or any other similar material. The front elevation of all houses shall contain at least 25% masonry exclusive of window, gable and door areas, with the exception of Victorian, Cape Cod, Colonial, Country French, and Indiana Farmhouse type homes. No house shall have metal prefabricated flues that extend above the highest roofline. All driveways must be paved with asphalt or

concrete. The minimum roof pitch shall be 5/12. There shall be a separation of one lot before a house type and elevation and color scheme shall be repeated on the same side of the street.

H. House Approval. All houses in the development shall first be approved by the Developer or its designee.

I. Committee Approval. All fences, awnings, satellite dishes less than one meter in diameter (as to screening, location and landscaping), additions and other improvements shall be approved by the Committee prior to erection. Prior to construction, the builder or Owner shall submit to the Committee a plot plan, print or brochure, and a color scheme.

J. Garages Required. All residential dwellings in the Development shall include an enclosed 2-car garage. Carports shall not be allowed.

K. Heating Plants. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house.

L. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within six (6) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

M. Sales of Lots by Developer. Every lot within the Development shall be sold to an approved builder or developed by the Developer.

N. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

O. Maintenance of Lots and Improvements. The Owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly; and, specifically, such Owner shall:

(i) *Mow* the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds,

(ii) Remove all debris or rubbish

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.

(iv) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE

A. Outside Toilets. No outside toilets shall be permitted on any lot in the Development (except during a period of construction).

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the Marion County Board of Health. No storm water (subsurface or surface) shall be discharged into sanitary sewers.

5. GENERAL PROHIBITIONS.

A. In General. No noxious or offensive activities shall be permitted on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another lot in the Development.

B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development, except entry signs and home or lot sales signs.

C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

D. Vehicle Parking. No trucks, campers, trailers, boats or similar vehicles shall be parked on any street or on any lot in the Development. Furthermore, disabled or non-operational vehicles of any kind shall not be parked on any lot, driveway or street. Storage of any vehicle is prohibited, except in a driveway or enclosed garage.

E. Garbage and Other Refuse. No Owner of a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in subparagraph F below. All houses built in the Development shall be equipped with a garbage disposal unit.

F. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at anytime, except at the times when refuse collections are being made.

G. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer. Model homes shall have a minimum living area of 1,500 square feet for one-story homes and 2,000 square feet for two-story homes, excluding garages.

H. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot.

I. Ditches and Swales. It shall be the duty of every Owner of every lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection. Further, drainage easements shall not be altered in any fashion.

J. Septic Tanks. Septic tanks shall not be installed on any of the lots in the Development, unless public sewer tap-in is unavailable.

6. OWNERSHIP, USE AND ENJOYMENT OF COMMON FACILITIES.

Each common facility depicted on the recorded plat of the Development shall remain private; and the common area shown on the plat can never be separated from the plat, nor developed. The Developer's execution or recording of the plat or the doing of any other act by the Developer is not, nor is intended to be, or shall not be construed as, a dedication to the public of the common facilities. Ownership of the common facilities shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion as provided in this Declaration of Restrictions of RossWood. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as the Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such common facilities to the Association. However, the common area cannot be mortgaged or conveyed without the consent of at least 67% of the lot owners, excluding the Developer. Maintenance of the common areas and community amenities shall be the responsibility of the Homeowners Association. Such responsibilities may include, but not be limited to: mowing; maintenance of landscaping, ponds, mulch walking and fitness trails, entry monument, street signs, community lighting and recreational areas. Funding for the maintenance shall be from the Homeowners Association annual assessment, in accordance with the By-Laws of the Homeowners Association.

7 REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but, except for negligence or unworkman like product or services, neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions. In the event of any legal action being taken under the terms of this paragraph, the prevailing party shall be entitled to recover reasonable attorneys fees.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of anyone or more of these restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

C. Association's or Developer's Right to Perform Certain Maintenance. In the event that the Owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association or the Developer shall have the right, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of the Restrictions. The cost therefore to the Association shall be added to and become a part of the annual charge to which said lot is subject, and may be collected in any manner in which such annual charge may be collected. Furthermore, the Developer, Association or any public or governmental division or entity shall have the right to enter upon lots which abut or encroach a pond for purposes of maintenance or upkeep. Except for negligence or unworkmanlike products or services, neither the Developer, the Association nor any of their agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

8. EFFECT OF BECOMING AN OWNER.

The Owners of any lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Developer and of the Association (including automatic membership therein by all lot owners) with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners covenant and agree and consent to and with the Developer, the Association and to and with the Owners and subsequent owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

9. TITLES.

The underlined titles preceding the various paragraphs and subparagraphs of the Restrictions are for convenience *or* reference only, and none of them shall be used as an aid to the construction of any provisions of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

10 DURATION.

The foregoing covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years, at which time said covenants and restrictions shall be automatically extended for successive periods often (10) years.

11. AMENDMENT.

This Declaration may be amended at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, executed by the Developer or the Association and at

least 75% of the lot owners. Modification or waiver of any provisions of this Declaration shall be done one at a time and not as a whole.

12. SEVERABILITY.

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

13. LIEN OF ASSESSMENT.

All sums assessed by the Association, but unpaid, including installments of the Annual Assessment and Special Assessments, and any fines duly imposed by the Association, together with late charges, interest, attorney's fees and the costs of collection thereof, shall constitute a lien on the Owners lot prior to all other liens, except only:

- (a) Tax liens on the lot in favor of any assessing unit or special district; and
- (b) All sums unpaid on a first mortgage of record.

The sale or transfer of any lot by foreclosure or by deed in lieu of foreclosure (but not any other transfer), shall extinguish the Assessment lien for payments which became due prior to the date of such sale or transfer, but shall not extinguish the personal liability of the lot Owner for such assessments. No such sale or transfer shall relieve the lot Owner from liability for any assessments thereafter becoming due or from the lien thereof. The lien for sums assessed may be foreclosed by a suit by the Association or the Managing Agent on its behalf in like manner as a mortgage of such property. In any such foreclosure the Owner shall be required to pay a reasonable rental for the use and occupancy of the lot. The Association, upon the affirmative vote of 90% of all the Owners (so authorizing and setting up a special assessment to pay for the same), shall have the power to bid on the lot at any foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

The initial assessment for Owners in the Development shall be \$225.00 per year, subject to changes as provided for in the By-Laws of the Association.

IN TESTIMONY WHEREOF, witness the signature of the Declarant this 2ND day of June, 2004.

ROSSWOOD DEVELOPMENT
COMPANY, LLC
By: The Bradford Group, Inc., as the
Managing Member

By: 
James L. Brothers, President

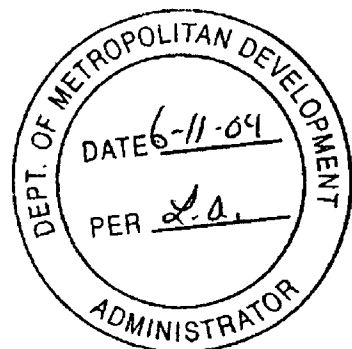
STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared James L. Brothers, President of the Bradford Group, Inc. who acknowledged the execution of the foregoing Declaration of Restrictions for and on behalf of that Corporation and the limited liability company. Witness my hand and seal this 2ND day of June 2004.

Joan Fitzwater
Signature
Joan Fitzwater
Printed

NOTARY PUBLIC

My Commission Expires: 10-29-2006
County of Residence: Marion



This instrument was prepared by Stephen D. Mears, Attorney at Law,
8395 Keystone Crossing, Suite 104, Indianapolis, Indiana, 46240

Exhibit A

LAND DESCRIPTION ROSSWOOD SECTION ONE

Part of the West Half of the Southeast Quarter of Section 27, Township 16 North, Range 5 East of the Second Principal Meridian, Warren Township, Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of the West Half of said Quarter Section, thence South 89°32'41" West on and along the South line of said Quarter Section 545.77 feet to the POINT OF BEGINNING for this description; thence continuing South 89°32'41" West on and along the South line of said Quarter Section 773.62 feet to the Southwest corner of said Quarter Section; thence North 00°36'28" West on and along the West line of said Quarter Section 920.74 feet; thence North 89°23'32" East 294.67 feet; thence North 05°00'23" East 60.01 feet; thence South 85°56'22" East 160.00 feet; thence South 04°03'38" West 26.37 feet; thence South 85°56'22" East 98.58 feet; thence South 04°09'07" West 47.18 feet; thence South 05°55'45" West 60.00 feet; thence South 09°49'37" West 20.47 feet; thence South 08°35'50" West 42.49 feet; thence South 15°32'47" West 30.97 feet; thence South 15°13'35" West 16.09 feet; thence South 16°02'25" West 11.77 feet; thence South 15°12'37" West 149.42 feet; thence South 01°55'58" East 9.79 feet; South 54°35'59" East 40.18 feet; thence South 54°43'58" East 12.65 feet; thence South 54°20'22" East 72.02 feet; thence South 50°14'20" East 14.21 feet; thence North 46°24'20" East 162.04 feet; to a point being on a curve concave Northeasterly having a radius of 125.00 feet and a central angle of 08°17'37", thence Northwesterly along said curve an arc distance of 18.09 feet, subtended by a chord having a bearing of North 39°26'50" West and a distance of 18.08 feet; thence North 37°19'19" East 82.91; thence North 28°50'59" East 60.17 feet; thence North 24°22'14" East 60.72 feet; thence North 13°09'49" East 61.25 feet; thence North 05°01'50" East 105.79 feet; thence North 33°21'58" East 28.14 feet; thence North 86°37'43" East 135.26 feet; thence North 88°19'57" East 25.49 feet; thence North 88°21'56" East 39.35 feet; thence North 89°28'11" East 62.23 feet; thence South 00°30'34" East 86.49 feet; thence South 00°58'44" West 60.06 feet; thence South 01°35'00" West 60.06 feet; thence South 14°20'42" West 62.12 feet; thence South 20°50'08" West 64.43 feet; thence South 22°36'43" West 38.49 feet; thence South 15°58'56" East 25.53 feet; thence South 15°34'41" East 41.35 feet; thence South 15°25'20" East 25.85 feet; thence South 14°46'59" East 56.82 feet; thence South 09°05'45" East 60.68 feet; thence South 22°19'43" West 134.76 feet; thence South 72°54'56" West 109.66 feet; thence North 73°14'33" West 128.93 feet; thence North 44°50'54" West 22.46 feet; thence South 37°18'00" West 160.12 feet; thence South 24°53'48" East 65.59 feet; thence South 69°53'49" East 51.01 feet; thence South 00°27'19" East 95.34 feet to the POINT OF BEGINNING; containing 19.000 acres, more or less, subject to all legal easements and rights of way of record.

