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Stoneybrook Grove Home Owners Association
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Stoneybrook Grove Home Owners Association
Plat Covenants, Conditions and Restrictions

- 1 The undersigned the C.P. Morgan Co., Inc., by William B. Blake, Executive Vice President for and behalf of said the C.P. Morgan Co., Inc., as owner of the within described real estate, do hereby lay off, plat and subdivide the same into lots and streets in accordance with the within plat, the within plat shall be known and designated as "Stoneybrook Grove" Section 1, a subdivision in Johnson County, White River Township, Indiana.
- 2 **PUBLIC STREETS.** The streets and public right of ways shown hereon, subject to construction standards and acceptance, are hereby dedicated to public use, to be owned and maintained by the governmental body having jurisdiction.
- 3 **RESIDENCE LIMITATIONS** No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent; nor may any structure of a temporary character be used as a residence.
- 4 **ATTACHED GARAGE AND STORAGE** No garage shall be erected on any lot herein which is not permanently attached to the residence, and no unenclosed storage area shall be erected. No enclosed storage area shall be erected on any lot, which is not permanently attached to the residence.
- 5 **TEMPORARY STRUCTURE** No trailer, shacks, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any lot.
- 6 **BUILDING LOCATION** No building or structure shall be located on any lot nearer to the front lot line or nearer to the side street lot line (corner lots) than the minimum building setback lines as shown on the within plat.
- 7 **DRAINAGE, UTILITY AND SEWER EASEMENTS** There are strips of ground as shown on the within plat marked "D U & S E" (Drainage, utility and sewer easement) and "Transmission Line Easement" which are reserved for the nonexclusive use of public utility companies, including cable television companies, but not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines, wires, sewers and drains, subject at all times to the proper authorities, and to the easements herein reserved. No permanent or other structures shall be erected or maintained on said strips except for fences, gates, decks, driveways and walkways. The owners of such lots in this addition, however, shall take their title subject to the nonexclusive rights of the public utilities and other owners of said lots in this addition to said easements herein granted for ingress and egress in along and through the strips so reserved.

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- 8 **TEN FOOT SETBACK.** There shall be a ten (10) foot drainage, utility and sewer easement on the front of each lot unless otherwise noted (said 10' D.U. & S.E. applies to both frontages on corner lots)
- 9 **DRAINAGE EASEMENTS** There are areas of ground on the plat marked "Drainage Easements" The drainage easements are hereby created and reserved: (I) for the use of developer during the "development period", as such term is defined in the declaration of covenants, conditions, and restrictions for Stoneybrook Grove ("Declaration"), for access to and installation, repair or removal of a drainage system, either by surface drainage, or appropriate underground installations, for the real estate and adjoining property and (II) for the nonexclusive use of the Association, (as defined in the declaration); the Johnson County Drainage Board or any other applicable governmental authority for access to and maintenance, repair and replacement of such drainage systems and common areas; provided, however, that the owner of any lot in the subdivision subject to a drainage easement shall be required to keep the portion of said drainage easement on his lot free from obstructions so that the surface water drainage will be unimpeded. The dedication of the drainage easement areas on the plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any lot subject to such easements temporarily to the extent reasonable necessary for the exercise of the rights granted to by this paragraph. No permanent or other structures shall be erected or maintained on said drainage easements except for fences, patios, decks, driveways and walkways
- 10 **PRESERVATION LANDSCAPE EASEMENT** A 30 foot deep preservation landscape easement exists along the northern property line of Stoneybrook Grove. No permanent or semi-permanent structural improvements, such as swing sets, may be placed within this area. This area must remain in its natural undisturbed state except for storm water drainage improvements, and light ground maintenance.
- 11 **COMMON AREAS** There are areas of ground on the plat marked "Common Area" The common areas are hereby created and reserved.
- I. Solely for the common visual and aesthetic enjoyment of the owners;
 - II For the use as retention and detention pond or lake, entryways and a playground, and
 - III For the ownership and use of the association for the management and control of retention and a detention pond or lake, entryways and a playground and the installation, maintenance and repair of improvement thereto
- 12 **LIMITED COMMON AREA.** Appears upon the platted lots of the subdivision designated by block lettering showing the quantity of acreage contained therein and further identified as a "Cul-De-Loop" which is created for the exclusive use and enjoyment of those particular lots having public streets access therefrom. Each such owner shall have an easement for ingress and egress in such area. Such a Cul-De-Loop shall further have landscaping therein adjacent to the public Right-of-Way and such limited common area, shall be owned and maintained by equal undivided interest as tenants in common of the lots abutting

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CUL-DE-LOOP

18. **MOTOR VEHICLES AND TRAILERS** All motor vehicles belonging to members of a household shall have permanent parking spaces in garages or driveways and no disabled vehicle shall be openly stored on any residential lot. Only passenger cars, station wagons or small trucks (pickups, vans etc.) of a size not larger than may be parked within the garage shall be regularly parked on or adjacent to a lot. Also no boat, trailer, camper, or motor home of any kind (including, but not in limitation thereof, house trailers, camper trailers or boat trailers) shall be kept or parked upon said lot except within a garage or other approved structure.

19. **TRASH AND WASTE** No lot shall be used or maintained as a dumping ground for trash, rubbish, garbage or other waste shall be kept in sanitary containers. All equipment for storage or disposal of such material shall be kept clean and shall not be stored on any lot in open public view. All rubbish garbage or other waste shall be regularly removed from a lot and shall not be allowed to accumulate thereon.

20. **STORAGE TANKS** Any gas or oil storage tanks used in connection with a lot shall be either buried or located in a garage or house such that they are completely concealed from public view.

21. **ANTENNAS** No antenna in this subdivision shall exceed five (5) feet above a roof peak.

22. **SATELLITE DISHES** Satellite dishes are permitted only after the homeowner has submitted a Homeowner Request for Change Form from the Stoneybrook Grove Architectural Committee. All dishes are required to be in the rear of the homeowners lot, behind the house, if possible with the least line of sight from the street, and still be able to function.

23. **GUTTERS AND DOWNSPOUTS** All gutters and downspouts in this subdivision shall be painted or of a colored material other than gray galvanized.

24. **AWINGS** No metal, fiberglass or similar type material awnings or patio covers shall be permitted in this subdivision.

25. **SWIMMING POOLS** No above ground swimming pools shall be permitted in this subdivision.

26. **SOLAR HEAT PANELS** No solar heat panels shall be permitted on roofs of any structures in this subdivision. All such panels will be enclosed within a fenced area and shall be concealed from the view of neighboring lots and the streets.

27. **MODULAR HOMES** Modular homes shall not be permitted in the subdivision.

28. **STREET ACCESS** All lots shall be accessed from the interior streets of the subdivision. No access is permitted from the main street.

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29 **DRAINAGE SWALES** Drainage swales (ditches) along dedicated roadways and within the Right-of-Way, or on dedicated easements, are not to be altered, dug out, filled in, tled or otherwise changed without the written permission of the Greenwood Board of Public Works and Safety. Property owners must maintain these swales as sodded grassways, or other noneroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or such water will not damage ditches. Driveways may be constructed over these swale or ditches only when appropriate sized culverts or other approved structures have been permitted by the B.P.W. & S. Any property owner altering, changing, damaging or failing to maintain these drainage swales or ditch will be held responsible for such action and will be given 10 days notice by certified mail to repair said damage, after which time, if no action is taken, the B.P.W. & S. will cause said repairs to be accomplished and the bill for said repairs will be sent to the affected property owner for immediate payment. Failure to pay will result in a lien against the property.

30 **FENCES** No fence shall be higher than six (6) feet. No fencing shall extend forward of the furthest back corner of the residence. Chain link fences must have a brown, black or green vinyl coated factory finish and all wood fences shall be painted or stained in a color compatible with the color of the residences. No fence, except those fences installed initially by the developer or fences not exceeding four (4) feet in height and not patently visible from the street, shall be erected without the written consent of the Architectural Control Committee.

31 **ENFORCEMENT** The right to enforce the within provisions, restrictions and covenants by injunction with the right to cause removal by due process of law of any septic tank absorption bed or structure erected or maintained in violation thereof is hereby dedicated and reserved to the owners of the several lots in this subdivision, their heirs and assigns, and who shall be entitled to such relief without being required to show any damage of any kind to any such owner or owners by or through any such violation or attempted violation.

32 **GREENWOOD PLAN COMMISSION** The Greenwood Planning Commission, its successors and assigns, shall have no right, power or authority, to enforce any covenants, commitments, restrictions or other limitations contained in this plat other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Greenwood Plan Commission; provided further, that nothing herein shall be construed to prevent the Greenwood Plan Commission from enforcing any provisions of the subdivision covenants or ordinance as amended, or any conditions attached to approval of this plat by the Plan Commission or Board of Zoning Appeals.

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CITY OF GREENWOOD

33. **DEVELOPMENT STANDARDS** The real estate of Stonybrook Grove is zoned R-2 and R-2A residential single family use. The real estate is furthermore subject to zoning commitments approved on January 1, 1989, described as follows: (1) There shall be a thirty (30) foot preservation landscape easement recorded along the northern property line of Stonybrook Grove. (2) Homes shall consist of no less than 1200 square feet of living area except lots 148 through 150, which shall not be less than 1800 square feet.

34. **TERM** The within covenants, limitations, and restrictions are to run with the land and shall be binding on all parties claiming under them. These covenants shall be in full force and effect for a period of twenty-five (25) years from recording date, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of the majority of the then owners of the lots, it is agreed to change the covenants in whole or in part. Invalidation of any of the covenants by judgment of court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

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

A. "Assessments" shall mean the share of the Common Expense imposed on each Lot or other special assessments, as determined and levied pursuant to the provisions of paragraph 5 hereof.

B. "Association" shall mean the Stonybrook Grove Homeowners' Association, Inc., an Indiana Not-For-Profit corporation formed under the Indiana Not-For-Profit Corporation Act of 1971, as amended.

C. "Board" shall mean the Board of Directors of the Association.

D. "Committee" shall mean the Architectural Control Committee, composed of three (3) members of the Association appointed by the Board. The members of the Committee shall serve for one (1) year terms, but are subject to removal by the Board at any time with or without cause. Any vacancies on the Committee from time to time existing shall be filled by appointment by the board.

E. "Common Areas" shall mean those areas and all improvements located thereon set aside for recreation areas, theme structures or landscaped areas, fountains, park areas, street lighting, the Lake, as defined herein, the shoreline area of the Lake as may be shown on the Plat, or on the plat or plats of other adjacent real estate, and any other adjacent real estate.

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COPIES

F "Common Expenses" shall mean the actual and estimated cost to the Association of its proportionate share of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the Benefit of the Association.

G "Lake" shall mean and refer to the water detention pond or lake and common area portion of the shoreline area as may be shown on the Plat which serves or may serve as part of the storm and surface water drainage system serving the Development, as such may in the future be more particularly described in the Plat, or on the plat or plats of other adjacent real estate. Notwithstanding anything herein to the contrary, the Lake is not included in the lands contained in the area shown on Exhibit "A" and, as of the date hereof, do not constitute a part of the platted areas of the Development.

H "Lot" or "Lots" shall mean any parcel (s) of real estate, whether residential or otherwise, described by the Plat.

I "Owner" or "Member" shall mean a person who has or in 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.

36. ORGANIZATION OF ASSOCIATION The Association shall be organized as a Not-For-Profit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by the Developer, and Code of By-Laws of the Association. The membership of the Association shall consist of one class of voting members, with each member having equal voting rights. In the event that any one Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, they shall be treated collectively as one member for voting purposes, so that as to any matter being considered by the Association, only one vote appertains to each Lot.

37. GENERAL DUTIES OF THE ASSOCIATION The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions, and restrictions contained in the Plat. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration or unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

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38 AMENDMENT OF THE DECLARATION The Association shall have the right to amend this Declaration at any time, and from time to time, in accordance with paragraph 11 of this Declaration

39 INSURANCE The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association may, but need not, maintain in force adequate officers and directors insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, board members, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

40 FIDELITY BOND The Association shall maintain a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) years' assessment on all Lots in the Development, plus the Association's reserve fund. The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially notified for any reason.

41 CONDEMNATION, DESTRUCTION In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in

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proportion to their Pro-rata Shares (as hereinafter defined), whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.

42 **MORTGAGEES' RIGHTS** Any mortgagees of any Owners shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. In addition, neither the Owners nor the Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

43 **POWERS OF THE COMMITTEE** In general, no dwelling, building structure, fencing, exterior painting (excluding repainting in the same color) or exterior improvement of any type or kind (excluding landscaping) shall be constructed or placed on any Lot without the prior written approval of the Committee. Such approval shall be obtained only after written application requesting authorization has been made to the Committee by the Owner of the Lot. Such written application shall be in the manner and form prescribed from time to time by the Committee, and the Committee may require a set of plans and specifications for any such proposed construction or improvement. The Committee may require that such plans included plot plans showing the location of all improvements existing upon the Lot and the location of the improvements proposed to be constructed or placed upon the Lot, each property and clearly designated. The Committee may also require that such plans and specifications set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. Notwithstanding anything herein to the contrary, approval of the committee will not be required for improvements, fencing not extending beyond the farthest back front corner of the residence on the Lot and not exceeding four (4) feet in height, or playground facilities, decks, patios or similar items not patently visible from the street.

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COMMUNITY

44 **POWER OF DISAPPROVAL.** The Committee may refuse to grant permission to construct, place or make the requested improvement, when, (1) The plans, specifications, drawing or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of these Restrictions (2) The design, proposed material or color scheme of a proposed improvement, is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, siding, roof and brick colors or with the Development in general (3) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any other Owners.

45 **DUTIES OF THE COMMITTEE:** The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been received, a copy of submitted materials shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor. The Committee shall further affix its signature of approval upon two (2) site plans for purposes of obtaining an improvement permit, or similar permit, from the Permits Section of the Department of Metropolitan Development, or other applicable governmental authority, if such are required.

46 **LIABILITY OF THE COMMITTEE:** Neither the Committee nor any agent or member, thereof, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

47 **INSPECTION:** The Committee or its designated agent may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

48 **RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER:** Whenever two or more contiguous Lots shall be owned by the same Owner, and such Owner shall desire to use two or more of said Lots as a site for a single dwelling, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single dwelling shall be treated as a single Lot for the purpose of determining the Assessment and for applying these Restrictions to said Lots, so long as such Lots remain improved with one single dwelling.

49. **REMEDIES** In general, any party to whose benefit these Restrictions insure, any Owner, or the Code of Enforcement Division of the Department of Metropolitan Development, or other applicable governmental authority may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, the Association shall not be liable for damages of any kind to any person for failing either to enforce or carry out any of these Restrictions.

50. **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 any one or more of these restrictions shall be held to be a waiver by that party (or and estoppel of the party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

51. **COVENANTS FOR MAINTENANCE ASSESSMENTS AND PURPOSES OF ASSESSMENTS** The assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Development and promoting the health, safety and welfare of the Owners, users and occupants of the Development and, in particular, for the Association's obligations relating to the improvements, repairing, operating, and maintenance of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay the Association. A pro-rata Share (as hereinafter defined) of the annual Assessment fixed, established, and determined from time to time, as hereinafter provided. A Pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined for time to time, as hereinafter provided.

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

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53 PRO-RATA SHARE The Pro-rata Share of each Owner for purposes of this paragraph 53 shall be the percentage obtained by dividing one by the total number of Lots shown on the Plat of the Development ("Pro-rata Share"), except, as provided in paragraph 48 herein.

54 BASIS OF ANNUAL ASSESSMENTS The board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Association.

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

56 FISCAL YEAR, DATE OF COMMENCEMENT OF ASSESSMENTS DUE DATES The fiscal year of the Association shall be established by the Association and may be changed from time to time by the action of the Association. The annual Assessments of each Lot in the Development shall commence on the first day of the second month following the month in which the Developer first conveys ownership of any Lot in such section to an Owner. The first annual Assessment shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

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57 DUTIES OF THE ASSOCIATION: The Board shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice. The Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

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CONTRACT

58. **NON-PAYMENT OF ASSESSMENTS REMEDIES OF ASSOCIATION** If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessments was made and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in paragraph 57 hereof, provided, however, that such lien shall be subordinated to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due. If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at an annual rate which is two times the rate in effect for ninety-day U.S. Treasury Bills at the time such Assessment is due, but in no event greater than the maximum rate allowable under any applicable usury laws, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys' fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

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

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60 EFFECT OF BECOMING AN OWNER. The Owner 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 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 new Owner acknowledges the rights and powers of the Association with respect to these Restrictions and also the themselves, their heirs, personal representatives, successors and assigns. Such Owner covenant and agree and consent to and with 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.

61 CONTROL OF THE LAKE AND THE COMMON AREAS - CONTROL BY THE BOARD: The Board shall regulate and control the use of the Common Areas, and if such become a part of the Common Areas, the Lake, and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Lake and Common Areas.

62. CONDITIONS No improvements, excavation, changes in grade or other work shall be done upon the Lake or common Areas by any Owner, nor shall the Lake or common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Board.

63 RESTRICTION, COVENANTS AND REGULATIONS ON USE. The following covenants and restrictions on the use and enjoyment of the Lots, the Common Areas and the Lake, if such become a part of the Common Areas, shall be in addition to any other covenants or restrictions contained herein or in the Plat and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion of forfeiture resulting from such violation. These covenants and restrictions are as follows, (1) No one other than Owners who are Members in good standing with the Association, or such Owner's occupant, tenants, guests or invitees, may use the Lake or Common Areas. (2) No nuisance shall be permitted to exist on any Lot and no waste shall be committed on any Lot which shall or might damage or cause injury to the Lake or the Common Areas. (3) All Owners and members of their families, their guests, or invitees, and all occupants of any Lot or the Properties or other persons entitled to use the same and to use and enjoy the Lake and the Common Areas, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the board governing the operation, use and enjoyment of the Lake and the Common Areas. (4) No Owner shall be allowed to plant trees, landscape or do any gardening in any part of the Lake or the Common Areas, except with the expressed permission from the Board. (5) The Lake and the Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing the Lake is and will be an integral part of the storm water drainage system serving the Development, and is intended to be used for such purposes and primarily as a visual and aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made of the Lake which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, swimming, diving, skiing, ice-skating or other recreational activity shall be permitted in or on the Lake. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into the Lake, except the Association may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to create the same. Fishing from the shoreline area of the Lake by an Owner, his occupants, his invited guests and family, shall be permitted subject to rules determined by the Association and obedience and compliance with all applicable fishing and game laws, ordinances, rules and regulations. No Owner or other person shall take or remove any water from or out of the Lake, or utilize the water contained therein for any purposes, including, without limitation connection with any sprinkler or irrigation systems. No pier, docks retaining walls, rafts or other improvements shall be built,

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constructed or located on any Lot or on the Properties which extend into, or to within twenty-five (25) feet from the shoreline of the Lake.

64 NON-APPLICABILITY TO ASSOCIATION Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in paragraph 63 shall not apply to or be binding upon the Association in its management, administration, operation, maintenance, repair, replacement and upkeep of the Lake and Common areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the lake and Common Areas.

65 AMENDMENT OF THE DECLARATION Generally - Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner: (1) Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered. (2) A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners. (3) The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-laws of the Association. (4) Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot is subject to a first mortgage, the mortgagee thereunder shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the mortgagee has given prior written notice of its mortgage interest to the Association. (5) No amendment to this Declaration shall be adopted which changes the applicable share of an Owner's liability for assessments, or the method of determining the same, without, in each and any of such circumstances, the unanimous approval of all Owners and all mortgagees whose mortgage interests have been made known to the Association. (6) Each amendment to this Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the Office of the Recorder of Johnson County, Indiana, and such amendment shall not become effective until so recorded.

66 SEVERABILITY. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions 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 validity, enforceability or "running" quality of any other one of the Restrictions.

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State of Indiana SS
County of Johnson

Before me the undersigned, a Notary Public for Johnson County, State of Indiana personally appeared James J. Jess and they, being first duly sworn by me upon their oath, says that the facts alleged in the foregoing instrument are true. Signed and sealed this 31st day of July, 1998.

My Commission Expires:

August 10, 2000

James J. Jess
Notary Public
(Ray) Lou Jones

Resident of Johnson Co, Ind.



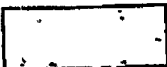
EXHIBIT A

Land Description

Part of the East Half of the North-East Quarter of Section 26, Township 14 North, Range 3 East of the Second Principal Meridian in Johnson County, Indiana being described as follows:

Beginning at a PK. nail at the southeast corner of said half-quarter thence on a bearing of South 29 degrees 55 minutes 40 seconds West along the south line thereof (bearing is from Deed Record 130, Page 413 Office of the Johnson Co. Recorder) a distance of 166 1/2 feet thence North 66 degrees 24 minutes 40 seconds East parallel with the east line of said half-quarter a distance of 111 1/2 feet; thence North 23 degrees 04 minutes 29 seconds West a distance of 114 1/2 feet thence North 60 degrees 54 minutes 40 seconds East parallel with the east line of said half-quarter a distance of 114 1/2 feet; thence North 43 degrees 19 minutes 04 seconds West a distance of 143 feet to a point on the east side hereof a lot of thence northward and thence West 20 degrees 49 minutes 32 seconds North 29 degrees 24 minutes 30 seconds West 41 1/2 feet thence North 49 degrees 49 minutes 32 seconds West 47 1/2 feet; thence North 39 degrees 45 minutes 49 seconds West 67 1/2 feet; thence North 39 degrees 54 minutes 33 seconds West 92 1/2 feet; thence North 18 degrees 13 minutes 17 seconds West 90 1/2 feet; thence North 15 degrees 31 minutes 33 seconds West 66 1/2 feet; thence North 17 degrees 19 minutes 33 seconds West 24 1/2 feet; thence North 18 degrees 29 minutes 04 seconds West 11 1/2 feet; thence North 17 degrees 31 minutes 21 seconds West 19 1/2 feet; thence North 17 degrees 17 minutes 14 seconds West a distance of 1079 feet to the south corner of a 6076 acre tract of land described in a deed from F Lake Child to The Yeatts Capital Growth, Inc. and Coan Company (dated May 24, 1992) thence North 00 degrees 30 minutes 15 seconds East along the west line of said Yeatts tract a distance of 123 1/2 feet to the northwest corner thereof; thence North 45 degrees 35 minutes 31 seconds East along the north line of said Yeatts tract a distance of 497 feet to the easterly corner thereof; thence containing North 15 degrees 35 minutes 31 seconds East along the easterly corner thereof; thence containing North 15 degrees 35 minutes 31 seconds East a distance of 131 1/2 feet; thence North 45 degrees 35 minutes 31 seconds East a distance of 131 1/2 feet; thence North 29 degrees 04 minutes 29 seconds East a distance of 131 1/2 feet to the east line of the half-quarter section thence South 60 degrees 54 minutes 40 seconds West along said east line a distance of 692 1/2 feet to the point of Beginning. Containing 2.43 acres, more or less.

THIS SUBDIVISION CONSISTS OF 37 LOTS, NUMBERED 1 THROUGH 37, TOGETHER WITH COMMON AREAS, STREETS, AND EASEMENTS AS SHOWN ON THE MAPS PLAT: (Plat Cabinet C, Pages 412A and 412B)



This instrument prepared by James J. Jess

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