

JOHN R. VON ARX  
MARION COUNTY AUDITOR

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SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
WALDEN TRACE**

THIS DECLARATION made this 15th day of August, 1998, by Bay Communities, LLC (hereinafter referred to as "Declarant"),

**WITNESSETH:**

WHEREAS, Declarant is the owner of all of the lands contained in the area shown on Exhibit A, attached hereto and made a part hereof, which lands will be subdivided and known as "Walden Trace" (hereinafter referred to as the "Development"), and will be more particularly described in the plat thereof to be recorded in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant is about to sell and convey the residential lots situated within the platted areas of the Development in Walden Trace and before doing so desires to subject and impose upon all real estate within the platted areas of the Development in Walden Trace mutual and beneficial covenants and restrictions and charges under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development of Walden Trace and future home owners thereof.

NOW, THEREFORE, Declarant hereby declares that all of the platted lots and lands located within the Development of Walden Trace as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following covenants and 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 covenants, conditions and restrictions shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant's successors in title to any real estate in the Development.

1. **Drainage and Utility Easements.** There are strips and parcels of ground as shown on the plat marked Landscape, Drainage and/or Utility Esmt. ("L,DU&SE") which are hereby reserved for the use of landscaping, public utilities, including cable TV companies and sanitary sewer, but not including transportation companies, for the installation and maintenance of poles, mains, ducts, drains, lines, cables and wires, subject at all times to the proper authorities and to the easements herein granted and reserved, and such other further public service facilities and landscaping as the undersigned owner of record may deem necessary along, through, in, over and under the strips of land shown on this

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plat.

2. **Building and Grounds Maintenance.** The owner or party in possession of each lot in the Development shall conform to the following standards:

- a) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- b) Remove all debris or rubbish;
- c) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development;
- d) Cut down and remove dead trees;
- e) Where applicable, prevent debris and foreign material from entering drainage areas;
- f) Keep the exterior of all improvements in such a state of repair and maintenance as to avoid their becoming unsightly or detracting from the value of the general neighborhood;
- (g) Regularly treat or cause to be treated the lawn areas against weed and insect infestation;
- (h) Not allow hazardous materials to enter storm sewers.

In the event that any owner of a lot shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the property owners association, the Declarant or the owner or owners of any lot in the immediate neighborhood shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said lot and repair, mow, clean, or perform such other acts as may be reasonably necessary to make such lot and improvement situated thereon, if any, conform to the requirements of these Restrictions. The cost thereof shall be an expense of the lot owner, and such lot owner shall have a lien against said lot for the expense thereof, including court costs and reasonable attorney fees. Neither the Declarant, nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

3. **Setback Lines.** Building setback lines ("BL") shall be established on the plat. In the event a building is erected on more than one single lot, this restriction shall apply to the side lines of the extreme boundary of the multiple lots. In the event of a discrepancy between this Declaration and a recorded plat, this Declaration shall control. However, minimum front setback lines shall be twenty feet (20') to provide staggering of front building lines.

4. **Use Restrictions.** All lots in this subdivision shall be known and designated as residential lots. No business buildings shall be erected on said lots and no business may be conducted on any part thereof. No structure shall be erected, altered, placed or permitted to remain on any residential lot herein, other than one detached single family dwelling, one story or multi-storied, not to exceed thirty-five feet (35') in height. There shall be no carports or accessory buildings, including storage barns, erected or maintained on any lot. There shall be no above ground swimming pools permitted.

5. **Lake, Landscaping and Retention Areas.** There may be Blocks of land reciting the acreage therein and containing Common Areas, ponds, landscaped areas and landscaped easements including pipeline easements designated Pipeline Easement Common Area in the plat, which Block and landscape easements which are not incorporated in a platted lot shall be conveyed by the Declarant to an association of property owners ("Association") within the Development as hereinafter provided. Provided, however, **NO MAN-MADE STRUCTURES OR EXCAVATIONS SHALL BE MADE IN ANY PIPELINE EASEMENT AND PARTICULARLY IN LOTS 22 THROUGH 31.** Ponds and drainage easements thereto shall become a part of the storm water drainage system of Walden Trace and shall run to the Department of Capital Asset Management of the City of Indianapolis. No lot owner or other person, firm or corporation shall alter, impair or impede the drainage system and all lot owners shall be subject to regulation by the public authority having jurisdiction and the property owners association as hereinafter set forth.

The Association, as hereinafter described, shall own Block areas designated Retention Pond Common Area and Pipeline Easements (excepting those incorporated in Lots 22 through 31) and landscaped areas ("LA") and, through its bylaws and regulations, control the water quality and condition of any pond located on Block A, and the Landscaped areas ("LA") shall be regularly planted and maintained by the Association for the beautification of Walden Trace and may include masonry piers and wrought iron style or other fencing or walls.

Mounding and landscaping shall be created and installed by Declarant along West 86th Street frontage as specifically designated on the plat as Landscape Easement ("L & UE"), and care and maintenance shall be the responsibility of the Association. All trees more than 6 inches caliper diameter measured 30 inches from ground grade within 20 feet of the perimeter of the plat boundaries, except in areas of utilities, water retention and grading associated with property drainage and street installation, shall be preserved.

If a tree is removed more than 6 inches caliper diameter measured 30 inches above ground grade, it will be the responsibility of the individual lot owner (on whose property the tree had existed, or the Association if the lot owner fails to do so, to replant the tree. If the lot owner was responsible for the removal of a tree resulting in the Association having to replace same, then the cost thereof shall be added to that home owner's next regular assessment collectable in the same manner as provided for collection of associations in the Bylaws of the Association.

It is the intent of the owner that tree preservation areas shall remain undisturbed by construction and development of the property. The owner further agrees to supplement the existing trees along the ease boundary of Walden Trace at the time of development by installing evergreen trees, minimum 6 feet in height, in the existing gaps within this existing stand of trees. However, John F. Fisbeck, or his successors, shall have the option of selecting a farm fence with a strand of barb wire in lieu of the above plantings and the association shall maintain same.

In addition to the landscape plantings above, the Developer shall plant and the Association shall maintain the following landscaping:

- (a) Five (5) evergreens a minimum of 10 feet in height on lots in Trader's Hollow Subdivision where homes presently exist and which abut Walden Trace;
- (b) Evergreen trees to be planted and maintained by the Developer or his successors or assigns shall be limited to the Norway Spruce and Austrian Pine species. Declarant shall allow a representative of Trader's Hollow Homeowner's Association, selected by its board of Directors, to review and comment on the appropriate location and species of trees to be planted; and
- (c) Declarant may install a vinyl clad chain link fence along the east boundary of the existing school property which shall be maintained by the Association.

6. **Property Owners Association.** A property owners association is or shall be created named Walden Trace, Inc. (the "Association"), an Indiana nonprofit corporation, prior to the sale of the first lot in Walden Trace platted addition. Bylaws marked Exhibit B are attached.

7. **Power of Assessment and Collection.** The Association shall have all the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law, including the power to levy a uniform annual assessment against the lots within the Development as set forth herein and in the bylaws of the Association, attached hereto.

8. **Membership and Voting Rights.** Every owner of a lot shall be a member of the Association. For purposes of determining classes of membership, a Class A member shall be the owner of any conveyed lot containing a home thereon, and a Class B member shall be the owner of any undeveloped platted lot, and each reference to a lot in this Declaration shall be deemed to be a conveyed lot, containing a home or an unconveyed, platted or unplatted, lot, respectively, as more particularly set forth as follows. The Association shall have two (2) classes of membership:

8.1 **Class A.** Every person, group of persons or entity, other than the Declarant, who is a record owner of a fee interest in any improved lot shall, by this Declaration, be subject to assessment by the Association and shall be classified as a Class A member; 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 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.

8.2 **Class B.** The Class B members shall be the Declarant and shall be entitled to three (3) votes for each platted Lot owned. For purposes of determining voting rights and duties, it shall be assumed there is a total of twenty-three (23) platted and unplatted lots within the Development and Declarant shall have the automatic right to plat and record, not to contain in excess of twenty-three (23) homes, without the consent or approval of the Association or any other person, firm or corporation. The Class B membership shall cease and be converted to a Class A membership upon the earlier of the following: (1) 90% of homes on lots are deeded to homeowners; or (2) July 1st, 2003. In the event all the lots have not been conveyed to owners or the Class B memberships have not been surrendered by the then holders thereof for cancellation on the books of the Association, Class B memberships existing, if any, at time of

cancellation, shall automatically become Class A memberships excepting such Class A memberships shall not be subject to assessment or the lien of assessment until a home is constructed thereon.

9. **Covenant Accepting Assessments.** 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: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as provided in the bylaws of the association.

10. **Commencement of Assessments.** The annual assessments shall commence as to all lots with homes thereon on the first day of the month following the initial conveyance of a home on the lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year and thereafter until the board of directors fixes the permanent annual assessment date. The 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 and provide the membership due notice thereof. Annual assessments may be made payable at more frequent periods than one (1) year by resolution of the board of directors of the Association.

11. **Exception to Assessments.** The Declarant, as owner of platted or unplatted lots, shall be exempt from any and all assessments but Declarant shall pay any deficits in usual or ordinary expense until such time as assessments upon lots with homes thereon is sufficient to meet such expense.

12. **Uniform Rates.** Both annual and special assessments shall be fixed at a uniform rate for all lots containing a home.

13. **Right To Increase Annual Assessments.** Because of uncertainties in usual and ordinary common property expenses due to Indiana real property reassessment, costs of energy, insurance, maintenance and landscaping costs or other unforeseeable operating expenses, the board of directors of the association may increase the budgeted initial temporary assessment by a sum not to exceed ten percent (10%) per annum without vote of the membership. However, any such increases shall be documented by normal accounting procedures and distributed to the membership to demonstrate that such increases are attributable to increases in operating expenses and no portion of such increase shall inure to the benefit of the Declarant and the monies received shall be entirely expended on association expense.

The maximum annual assessment per lot may be increased above the maximum percentage set forth above only by a vote of two-thirds (2/3rds) of the Class A members who are voting in person or by proxy, at a meeting duly called for this purpose.

14. **Liens, Charges and Subordination.** Any charge levied or assessed against any lot, together with interest and other charges and costs hereinafter provided, shall become and remain a lien upon that lot until paid in full, subordinate only to the lien of a first mortgage, and shall also be a personal obligation of the owner or owners of the lot at the time the charge fell due. Such charge shall bear interest as a late charge at a rate of two percent (2%) per month until paid in full. If, in the opinion of the board of directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction.

The owner of the lot or lots subject to the charge shall, in addition to the amount of the charge at



the time legal action is instituted, be obliged to pay the expense or costs, including reasonable attorney's fees, incurred by the Association in collecting same. Every owner of a lot in the subdivision and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified that by acquisition of such interest such person agrees that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the subdivision is hereby notified that by the act of acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to these covenants and restrictions.

The lien of assessments provided for herein 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. However, a first mortgagee is not, at any time, obligated to perform the duty of collection of assessments.

The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specified lot have been paid or that certain assessments against said lot remain unpaid, as the case may be. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. The charges or assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association, and for the improvement and maintenance of the properties owned or operated by the Association.

**15. Suspension of Privileges.** Notwithstanding any other provision contained herein or in the bylaws, the board of directors of the Association shall have the right to suspend the voting rights, if any, and the right to use the facilities of the Association of any member or associate member: (i) for any period during which any of the Association's charges owed by the member or associate member remains unpaid; (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the board of directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, bylaws or regulations of the Association.

**16. Mortgagees Rights.** 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:

16.1 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Development, common property 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 Development by the Association shall not be deemed a transfer within the meaning of this clause.

16.2 Change the method of determining the obligations, assessments, dues or other charges which may be levied against a homeowner.

16.3 By act or omission, change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior appearance of the homes on lots, the exterior maintenance of the dwellings on lots, the maintenance of common fences or common driveways or the upkeep of lawns and plantings in the Development.

16.4 Fail to maintain fire and extended coverage insurance on insurable common property on current replacement cost basis in an amount not less than one hundred percent of the insurance value (based on current replacement cost).

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

16.6 Mortgagees, their successors or assigns, shall have the right to examine the books and records of the Association.

16.7 First mortgagees of homes on lots may, jointly or singly, pay the taxes or other charges which are in default and which may or have become a charge against any common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such common property, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

16.8 No provision of the constituent documents shall give an owner or any other party priority over any rights of first mortgagees of homes within the Development pursuant to their mortgages in the case of a distribution to homeowners of insurance proceeds or condemnation awards for losses to or a taking of common property.

17. **Temporary Structures.** 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, except that used by Declarant or builder during construction on the property.

18. **Nuisances.** No farm animals, fowls or domestic animals maintained for food or for commercial purposes shall be kept or permitted on any lot or lots in the subdivision. No noxious, unlawful or otherwise offensive activity shall be carried out on any lot in this subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance. In Walden Trace, every owner or occupant of a dwelling shall be required to fence in or place on a leash within the rear yard or keep confined indoors, any dog or domestic animal in their ownership or possession.

19. **Architectural Control.** There shall be created an architectural control committee (the "Committee") initially composed of a designee of Declarant, one member of the Trader's Hollow Homeowners Association selected by its Board of Directors, and Bruce T. Sklare who shall serve until ninety percent (90%) of the total lots within Development are developed at which time the Association shall appoint three (3) persons as the Committee from among its members. However, the Declarant shall have sole right to approve plans for original construction on any lot and the Committee shall regulate reconstruction, remodeling, additions and other construction or alteration upon the lots.

The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the vegetation and topography.

19.1 **Generally.** No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the subdivision without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner or builder for the owner of the lot requesting authorization by the Committee, and

shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall 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. All building plans and drawings required to be submitted to the Committee shall be drawn on a scale of 1/4" = 1" and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require.

19.2 Sight Visibility. Regardless of Committee approval, no fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2') and six (6') feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five feet (25') from the intersection of said street lines or, in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within ten feet (10') from intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

19.3 Fences, Walls and Screening. It is the goal of the Committee to keep all fencing or screening as harmonious as possible with the architectural character of the Development. Undue obstruction of view of other amenities from adjoining properties will be taken into consideration by the Committee when reviewing fences for approval. Fences shall not be nearer to the front of a home than the rear foundation line of a home except decorative fences. With Committee approval, front fences may be placed parallel to the front foundation of a home only if they do not cause unreasonable visual barriers and they are of identical materials as the main structure.

The Committee will discourage fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other lot Owners. Approved fencing may be privately installed but must be constructed to professional levels of quality. Fences installed by nonprofessionals will be inspected by the Committee after completion in order to insure that the final product is of a professional quality and final approval of the fence shall be deemed withheld until successful completion of this final review. All fences or screens will be submitted to the Committee for approval.

19.4 Height Restriction. The Declarant is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the Development is damaged by the proliferation of fences of excessive height.

The Committee, therefore, may approve rear perimeter fences up to four (4) feet in height which otherwise meet these guidelines. The Committee will give consideration to a deviation in their height limit where the rear line of the lot abuts a public roadway or other clearly unique circumstance exists. The use of six foot (6') fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio area may be permitted. The guidelines for specific fence height restrictions are as follows:

- a) Property fencing and walls shall not exceed four (4') feet above grade unless otherwise approved by the Committee.
- b) The Committee will not ordinarily approve a proposed fence which exceeds four feet



(4') in height unless the rear line of that lot abuts a roadway or offers some other circumstances clearly unique to that lot.

c) Patio screens/privacy fences shall not exceed six feet (6') in height except for pools and other recreational fences as provided herein

d) There shall be no fencing, walls or other structures erected and maintained in any area designated 100 year floodway upon Federal flood hazard maps and the plats of Walden Trace.

19.5 **Power of Disapproval.** The Committee may refuse to grant permission to construct, place or make any requested improvement when:

a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these restrictions.

b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures.

c) The proposed improvement or any part thereof would, in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of other owners.

19.6 **Duties of Committee.** The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of the submitted material shall be retained by the Committee, or copies thereof in a reduced form, for its permanent files and the second copy returned to applicant. 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 for such disapproval.

19.7 **Liability of Committee.** Neither the Committee, any agent thereof or the Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Committee does not make any representation or warranty as to suitability or advisability of design, engineering, method of construction or the materials to be used.

20. **Size of Dwellings, Garages and Paving.** It is agreed that the minimum size home to be built on the property shall be 1600 square feet for one-story dwellings and 1800 square feet for two-story dwellings; with minimum lot width and lot area of 60 feet and 6,600 square feet, respectively, excepting there shall be constructed a maximum of 33 dwellings within the 14.54 acre boundary. It is further agreed that all homes constructed on the property shall have a minimum two car attached garage and an asphalt or concrete paved driveway.

21. **Exterior Construction.** Single family detached dwellings shall conform to the following restrictions:

a) The finished exterior of every building constructed or placed on any lot may be of vinyl siding or trim. Provided, however, before application of material other than brick, stone or wood, all exterior and veneer, plus roof materials, will be submitted and approved to assure uniformity of quality, safety, appearance and durability with other

dwellings in the subdivision.

- b) No heat pumps, air conditioning units or gas meters will be installed in or on the front of a dwelling.
- c) If storm doors or windows are installed, they must be painted. No unfinished aluminum windows or doors will be allowed.
- d) All gutters and downspouts other than copper will be painted or coated.
- e) All roof and fireplace flashing other than copper will be painted or coated.
- f) All metal roof or range vents will be painted or coated to blend with roof color. Every effort should be made to locate such vents to the rear of the dwelling.
- g) All basement and crawl space sump pumps must discharge into retention ponds or six inch (6") surface drains must be provided at the rear of each lot or along the curb.
- h) Every effort should be made to locate all plumbing vent stacks to rear of the dwelling.
- i) There shall be no carports erected or maintained upon any lot within the development. Accessory buildings, storage barns or outbuildings shall be a maximum size of 150 sq. ft. and colors of roof shingles and exterior must match those of the dwelling. No metal is allowed in the construction of these accessory buildings and they cannot be located in any drainage, utility or sewer easement. All accessory buildings, storage barns or outbuildings must be approved by the Architectural Control Committee

22. **Driveways and Sidewalks.** All driveways shall be paved simultaneously with construction of the dwellings and the type of construction and materials must first be approved by the Committee.

23. **Mailboxes and Lights.** All mailboxes shall be in accordance with the standards set forth by the Committee and shall be installed by the builder simultaneously with the construction of the dwelling. All homes shall have a garage light on the exterior of the home which will operate by photocell or similar device from dusk to dawn. Entrance to West 86th Street shall be illuminated with one street light installed by Declarant and the maintenance and energy costs shall be the obligation of the Association.

24. **Signs.** Except for marketing and permanent signs that the Declarant may place at the project entrance or entrances, no sign of any kind shall be displayed to the public view on any lot except that one sign of not more than six (6) sq. ft. may be displayed at any time for the purpose of advertising the property for sale or rent, or may be displayed by a builder to advertise the property during construction and sale.

25. **Garbage and Refuse Disposal.** No lot shall be used or maintained as dumping ground for trash. Rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any lot in public view.

26. **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 so that they are completely concealed from view. Underground storage tanks shall conform to Federal, State and local standards of environmental management.

27. **Swimming Pools.** Only permanent in-ground pools with professional construction will be permitted. All backyard pools should be oriented to minimize the potential effect on neighboring lots. All fencing shall conform to state, county and municipal regulations and shall be of harmonious design to the dwelling and adjoining properties. The use of plantings/screenings in the vicinity of the pool will be required to soften the visual and sound effect on adjacent properties.

28. **Enforcement of Restrictions.** In the event there shall be any violation or attempted violation of any of these restrictions, it shall be lawful for the undersigned, the Association, or for any person owning any real property in this subdivision, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such restrictions, and either to prevent him or them from doing so or to recover damages from such violation, but neither the Declarant 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 covenants and restrictions.

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 covenants and 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 covenants and restrictions.

29. **General Provisions.** The foregoing restrictions may be amended at any time by the owners of at least two-thirds of the owners of lots subject to such restrictions subject to mortgagees' rights set forth in paragraphs 14 and 16 above. Provided, however, that until all of the lots are sold in this subdivision by the undersigned, any such amendment of these restrictions shall require prior written approval of the undersigned. Each such amendment must be evidenced by a written instrument, signed and acknowledged by the owner or owners concurring therein, setting forth facts sufficient to indicate compliance with this paragraph and recorded in the Marion County Recorder's Office. U.S. Dept. of Housing and Urban Development and U.S. Veterans Administration ("HUD/VA") approval is required as long as there is a Class B Membership for the annexation of additional properties, dedication of Common Area and amendment of the Declaration.

30. **Effect of Becoming an Owner.** The owners of any lot subject to these covenants and restrictions, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every covenants, restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of Declarant with respect to these covenants and restrictions; and also for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with Declarant and to and with the owners and subsequent owners of each of the lots affected by these covenants and restrictions to keep, observe, comply with and perform such covenants, restrictions and agreements.

31. **Titles.** The underlined titles preceding the various paragraphs and subparagraphs of the covenants and restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the covenants and 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.

32. **Severability.** Every one of the covenants and restrictions is hereby declared to be independent of, and severable from, the rest of the covenants and restrictions and of and from every other one of the covenants and restrictions, and of and from every combination of the covenants and restrictions.

Therefore, if any of the covenants or 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 covenants and restrictions.

IN TESTIMONY WHEREOF, witness the signature of Declarant this 11<sup>th</sup> day of August, 1998.

Bay Communities, LLC

By Bruce T. Sklare  
Bruce T. Sklare, Member

STATE OF INDIANA )  
                                  ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for County and State, personally appeared Bruce T. Sklare, e known to me to be a Member of **Bay Communities, LLC**, who acknowledged execution of the foregoing Declaration for and on behalf of said Company, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and notarial seal this 11<sup>th</sup> day of August 1998.

My commission expires:

April 1, 2008

Jud. A. LeMond  
Jud. A. LeMond Notary Public  
Residing in Morgan County, IN

This instrument prepared by William F. LeMond, IN Atty. No. 8761-49, 107 N. Pennsylvania St., Suite 901, Indianapolis IN 46204-2409.

## EXHIBIT A

### LAND DESCRIPTION FOR WALDEN TRACE

A part of the North Half of Section 21, Township 17 North, Range 2 East, in Pike Township, Marion County, Indiana, being more particularly described as follows:

Commencing and beginning at the northeast corner of the Northwest Quarter of Section 21, Township 17 North, Range 2 East, Marion County, Indiana; thence North 90 degrees 00 minutes 00 seconds West (assumed bearing) on the north line of said Northwest Quarter a distance of 113.09 feet to the northeast corner of the real estate described in Instrument No. 87-33390 in the Office of the Recorder of Marion County, Indiana; thence South 00 degrees 00 minutes 00 seconds East on the east line of said real estate a distance of 800.00 feet to the southeast corner of said real estate; thence South 72 degrees 41 minutes 45 seconds East a distance of 311.61 feet; thence North 65 degrees 21 minutes 25 seconds East a distance of 528.44 feet to a point on the west line of the real estate described in Instrument No. 90-50545 in said Recorder's Office; thence North 01 degrees 21 minutes 47 seconds East on said west line a distance of 673.09 feet to a point on the north line of the Northeast Quarter of said Section 21; thence South 89 degrees 57 minutes 14 seconds West on said north line a distance of 680.73 feet to the point of beginning, containing 14.54 acres, more or less.

Subject to the right-of-way of 86th Street.

Subject to a Pipeline Easement per Instrument No. 72-63160.

Subject to a Gas Line Easement per Instrument No. 77-47200.

Subject to all other easements, restrictions, and rights-of-way of record.



**BYLAWS  
OF  
WALDEN TRACE, INC.**

**ARTICLE I  
Name and Location**

The name of the Corporation is Walden Trace, Inc., (hereinafter referred to as the "Association"). The principal office of the Association shall be 10415 N. College Ave., Indianapolis IN 46280, but meetings of members and directors may be held at such places within the State of Indiana as may be designated by the Board of Directors.

**ARTICLE II  
Definitions**

Section 1. "Declarant" shall mean and refer to Bay Communities, LLC, its successors and assigns as a declarant.

Section 2. "Association" shall mean and refer to Walden Trace, Inc., its successors and assigns.

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

Section 4. "Development" shall mean and refer to the certain real estate described in the Declaration of Covenants and Restrictions of Walden Trace.

Section 5. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Development with the exception of Blocks designated Retention Pond, Pipeline Easement or landscaped areas, respectively, in the recorded plat of Walden Trace.

Section 6. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of Walden Trace applicable to the Development, recorded in the Office of the Marion County Recorder, Indianapolis, Indiana

**ARTICLE III  
Meeting of Members**

Section 1. Annual Meeting. The first annual meeting of the members shall be held on the first Thursday of each year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 4:00 'clock P.M. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first

day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-sixth (1/6th) of all of the votes of the Class A memberships.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-sixth (1/6th) the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented.

Section 5. Proxies. At all meetings of members, each member entitled to vote may vote in person or by proxy. All proxies shall be signed in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon the presence of the member at a meeting or upon conveyance by the member of his Lot.

#### ARTICLE IV

##### Board of Directors: Selection; Term of Office

Section 1. Number. The affairs of this Association shall be managed by a Board not to exceed five (5) directors, who are all members of the Association, excepting the initial Board of Directors shall consist of three (3) members.

Section 2. Term of Office. At the time of conversion of the Class B member to a Class A member as defined by the Declaration, the members shall elect one (1) director for a term of one (1) year, one (1) director for a term of (2) years, and one (1) director for a term of three (3) years; and at each annual meeting thereafter the members shall elect one (1) director for a term of three (3) years to replace the director whose term has expired, excepting they may enlarge the Board to five members and prescribe the length of their term.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the consent of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors

## **ARTICLE V**

### **Nomination and Election of Directors**

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the not less than the number of vacancies that are to be filled. Such nominations may only be made from among members of the Association.

Section 2. Election. Election to the Board of Directors shall be by written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **ARTICLE VI**

### **Meetings of Directors**

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the Act of the Board.

## **ARTICLE VII**

### **Powers and Duties of The Board of Directors**

Section 1. Powers. The Board of Directors shall have power to:

- a) adopt and publish rules and regulations governing the use of common areas and water retention areas as depicted upon the plat of Walden Trace.

b) suspend the voting rights and right of use of recreational facilities, if any, of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

e) employ a manager, independent contractor, or such other employees as they deem necessary, and to prescribe their duties with regard to the maintenance and upkeep of the common areas and water retention ponds.

**Section 2. Duties.** It shall be the duty of the Board of Directors to:

a) cause to be kept a complete record of all its acts concerning corporate affairs and to make available to the members the corporate records within a reasonable time after request is made.

b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

c) as more fully provided in the Declaration, to:

i) fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period;

ii) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

iii) foreclose the lien against any property for which assessments are not paid within sixty (60) days after due date and to bring an action at law against the owner personally obligated to pay the same;

d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

e) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.

## **ARTICLE VIII Officers and Their Duties**

**Section 1. Enumeration of Officers.** The officers of this Association shall be a president

and vice president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be appointed annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or be otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The office of president and treasurer may be one person and the office of vice president and secretary/treasurer may be held by one person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

#### PRESIDENT

a) The president shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board are carried out, shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

#### VICE PRESIDENT

b) The vice president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

#### SECRETARY

c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.



## TREASURER

d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## ARTICLE IX Committees

The Board of Directors shall appoint an architectural control committee, as provided in the Declaration, and nominating committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purposes.

## ARTICLE X Books and Records

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE XI Assessments

As more fully provided in the Declaration, each Class A and Class B member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid within thirty (30) days shall be delinquent. If an assessment is not paid within thirty (30) days after the due date, the assessment shall bear a late charge of two percent (2%) per month and the Association may bring an action at law against the Owner personally obligated to pay the Assessment or foreclose the lien against the Property, interest, costs and reasonable attorney fees of any such action shall be added to the amount of the assessment. No Owner may waive or otherwise escape liability for assessments provided herein by non-use of the common areas, facilities or services of the Association. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, but the lien of any delinquent assessments shall run with the land.

## ARTICLE XII Amendments

Section 1. These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy. HUD/VA has the

right to veto amendments to the Bylaws while there is Class B membership.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**ARTICLE XIII**  
**Miscellaneous**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

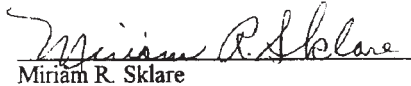
IN WITNESS WHEREOF, we, being all the directors of Walden Trace, Inc. have hereunto set our hands and seals this 11<sup>th</sup> day of August, 1998.



Bruce T. Sklare



Allen I. Sklare



Miriam R. Sklare



**FILED**

FEB 19 1999

PIKE TOWNSHIP  
ASSESSOR

Certificate of Correction

This Instrument is filed for the purpose of amending the original Plat of Walden Trace recorded as Instrument #980199232 in the Office of the Marion County Recorder. The following item has been added:

- 1.) An Irregular Utility Easement & Ingress and Egress Easement has been added to Lot Number Twenty-Seven (27) and a Twenty (20) Foot Utility Easement & Ingress and Egress Easement has been added to Lots Twenty-Six (26), Twenty-Seven (27), and Twenty-Eight (28) as shown.

Certified this the 8<sup>th</sup> day of February, 1999.

*Michael L. DeBoy*  
 Michael L. DeBoy, Reg. L.S. - Indiana #S0539



RECEIVED  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

164646 FEB 19 99

MARTHA A. WOMACKS  
MARION COUNTY RECORDER

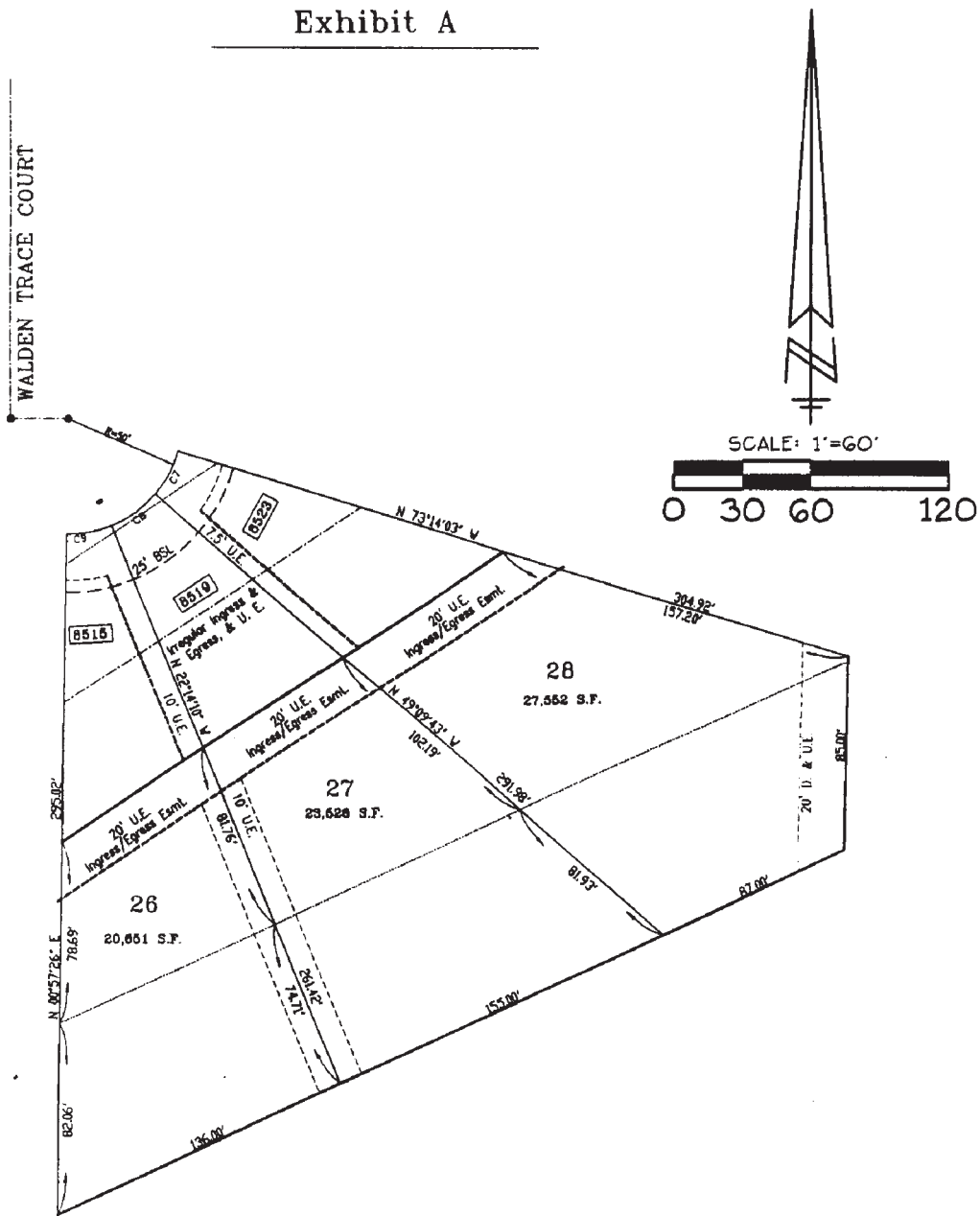
Inst # 1999-0038169

02/19/99 02:47PM MARION COUNTY RECORDER SRC 12:00 PAGES: 2

This Instrument prepared by Weihe Engineers, Inc.  
 10505 North College Avenue  
 Indianapolis, Indiana 46280  
 (317) 846-6611 - Office  
 (317) 843-0546 - Fax



Exhibit A



Prepared By: Weihe Engineers, INC  
10505 North College Ave  
Indianapolis, IN 46280  
Phone: 317-846-6611 Fax: 317-843-0546

3

RECORDED  
COMMUNITY DEVELOPMENT  
PIKE TOWNSHIP

MARTHA A. WDMACKS  
MAGISTRATE CLERK  
203527 NOV 30 99

SECOND SUBJECT ORIGINAL ACCEPTANCE  
CERTIFICATE OF CORRECTION TRANSFER

TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF WALDEN TRACE

This correction to Declaration of Covenants, Conditions and Restrictions of Walden Trace, recorded August 11, 1998 as Instrument No. 1998-0138499 in the Office of Recorder, Marion County, Indiana (Exhibit A, legal description, attached);

WITNESS:

Whereas, the last paragraph of paragraph numbered 5 on page 3, along with (a), (b), and (c) on page 4 sets forth development standards that have nothing to do with Walden Trace and should not have appeared in this Declaration; and

Whereas, paragraph numbered 8, sec. 8.2 on page 4 relating to Class B membership in the Association, says on line 3 of this paragraph that there are twenty-three (23) homes, when in fact there are (thirty-three) 33 home sites in Walden Trace as shown by plat recorded November 11, 1998 as Instrument No. 98-0199232 in the Office of Recorder, Marion County, Indiana.

Whereas, by error and inadvertence, the last paragraph of paragraph numbered 5 was not deleted from the text of this Declaration and an incorrect number of lots was given in paragraph number 8, sec. 8.2.

Now, Therefore, the Declaration is corrected by deleting the last paragraph of paragraph numbered 5 along with (a), (b) and (c) of said last paragraph, and correcting the number of lots to thirty-three (33) in paragraph numbered 8, sec. 8.2, for the reasons set forth above.

12/01/99 09:19AM MARION COUNTY RECORDER INC 14.00 PAGES: 3  
Inst # 1999-022793B

FILED  
NOV 30 1999  
DEPT. METRO DEVELOPMENT  
BY

*William F. LeMond*  
William F. LeMond, Attorney for  
Bay Communities, LLC, Declarant of  
Declaration of Covenants, Conditions and  
Restrictions of Walden Trace

FILED  
NOV 30 1999  
PIKE TOWNSHIP  
ASSESSOR



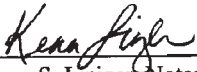
STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

Before me, a Notary public in and for said County of State, personally appeared William F. LeMond, Attorney, who acknowledged the execution of the foregoing Second Certificate of Correction to Declaration of Covenants, Conditions and Restrictions of Walden Trace, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and seal this 30th day of November, 1999.

My commission expires:

8/16/2007

  
\_\_\_\_\_  
Kena S. Liniger, Notary Public  
Residing in Marion County, Indiana


Prepared by William F. LeMond, IN. Atty. No. 8761-49, 107 N. Pennsylvania St., Suite 901, Indianapolis, IN 46204-2409. 

EXHIBIT A

LAND DESCRIPTION FOR WALDEN TRACE

A part of the North Half of Section 21, Township 17 North, Range 2 East, in Pike Township, Marion County, Indiana, being more particularly described as follows:

Commencing and beginning at the northeast corner of the Northwest Quarter of Section 21, Township 17 North, Range 2 East, Marion County, Indiana; thence North 90 degrees 00 minutes 00 seconds West (assumed bearing) on the north line of said Northwest Quarter a distance of 113.09 feet to the northeast corner of the real estate described in Instrument No. 87-33390 in the Office of the Recorder of Marion County, Indiana; thence South 00 degrees 00 minutes 00 seconds East on the east line of said real estate a distance of 800.00 feet to the southeast corner of said real estate; thence South 72 degrees 41 minutes 45 seconds East a distance of 311.61 feet; thence North 65 degrees 21 minutes 25 seconds East a distance of 528.44 feet to a point on the west line of the real estate described in Instrument No. 90-50545 in said Recorder's Office; thence North 01 degrees 21 minutes 47 seconds East on said west line a distance of 673.09 feet to a point on the north line of the Northeast Quarter of said Section 21; thence South 89 degrees 57 minutes 14 seconds West on said north line a distance of 680.73 feet to the point of beginning, containing 14.54 acres, more or less.

Subject to the right-of-way of 86th Street.

Subject to a Pipeline Easement per Instrument No. 72-63160.

Subject to a Gas Line Easement per Instrument No. 77-47200.

Subject to all other easements, restrictions, and rights-of-way of record.

11

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
WALDEN TRACE

1  
2  
3

MCR

Names Do Not Match  
Throughout Document.

THIS DECLARATION made this 11th day of August 1998, by Bay Communities, LLC (hereinafter referred to as "Declarant"),

WHEREAS, Declarant is the owner of all of the lands contained in the area shown on Exhibit A, attached hereto and made a part hereof, which lands will be subdivided and known as "Walden Trace" (hereinafter referred to as the "Development"), and will be more particularly described in the plat thereof to be recorded in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant is about to sell and convey the residential lots situated within the platted areas of the Development in Walden Trace and before doing so desires to subject and impose upon all real estate within the platted areas of the Development in Walden Trace mutual and beneficial covenants and restrictions and charges under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development of Walden Trace and future home owners thereof.

NOW, THEREFORE, Declarant hereby declares that all of the platted lots and lands located within the Development of Walden Trace as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following covenants and 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 covenants, conditions and restrictions shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant's successors in title to any real estate in the Development.

1. **Drainage and Utility Easements.** There are strips and parcels of ground as shown on the plat marked Landscape, Drainage and/or Utility Easement ("L,DU&SE") which are hereby reserved for the use of landscaping, public utilities, including cable TV companies and sanitary sewer, but not including transportation companies, for the installation and maintenance of poles, mains, ducts, drains, lines, cables and wires, subject at all times to the proper authorities and to the easements herein granted and reserved, and such other further public service facilities and landscaping as the undersigned owner of record may deem necessary along, through, in, over and under the strips of land shown on this plat.

2. **Building and Grounds Maintenance.** The owner or party in possession of each lot in the Development shall conform to the following standards:

- a) Mow the lot as such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- b) Remove all debris or rubbish;
- c) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development;
- d) Cut down and remove dead trees;

APPROVED: \_\_\_\_\_ 25th  
February 20 02  
ASSESSOR  
T.M.

03/03/03 12:53PM WANDA MARTIN MARION CTY RECORDER JGG 29.00 PAGES: 11

- 43 e) Where applicable, prevent debris and foreign material from entering drainage areas;
- 44 f) Keep the exterior of all improvements in such a state of repair and maintenance as to  
45 avoid their becoming unsightly or detracting from the value of the general neighborhood;
- 46 g) Regularly treat or cause to be treated the lawn areas against weed and insect infestation;
- 47 h) Not allow hazardous materials to enter storm sewers.

48 In the event that any owner of a lot shall fail to maintain his lot and any improvements situated  
49 thereon in accordance with the provisions of these Restrictions, the property owners association, the  
50 Declarant or the owner or owners of any lot in the immediate neighborhood shall have the right, but  
51 not the obligation, by and through its agents and employees or contractors, to enter upon said lot and  
52 repair, mow, clean, or perform such other acts as may be reasonably necessary to make such lot and  
53 improvement situated thereon, if any, conform to the requirements of these Restrictions. The cost  
54 thereof shall be an expense of the lot owner, and such lot owner shall have a lien against said lot for  
55 the expense thereof, including court costs and reasonable attorney fees. Neither the Declarant, nor  
56 any of its agents, employees or contractors shall be liable for any damage, which may result from  
57 any maintenance work performed hereunder.

58 3. **Setback Lines.** Building setback lines ("BL") shall be established on the plat. In the event a  
59 building is erected on more than one single lot, this restriction shall apply to the sidelines of the  
60 extreme boundary of the multiple lots. In the event of a discrepancy between this Declaration and a  
61 recorded plat, this Declaration shall control. However, minimum front setback lines shall be twenty  
62 feet (20') to provide staggering front building lines.

63 4. **Use Restrictions.** All lots in this subdivision shall be known and designated as residential  
64 lots. No business buildings shall be erected on said lots and no business may be conducted on any  
65 part thereof. No structure shall be erected, altered, placed or permitted to remain on any residential  
66 lot herein, other than one detached single family dwelling, one story or multi-storied, not to exceed  
67 thirty-five feet (35') in height. There shall be no carports or accessory buildings, including storage  
68 barns, erected or maintained on any lot. There shall be no above ground swimming pools permitted.

69 5. **Lake, Landscaping and Retention Areas.** There may be Blocks of land reciting the acreage  
70 therein and easements containing Common Areas, ponds, landscaped easements including pipeline  
71 easements designated Pipeline Easement Common Area in the plat, which Blocks and landscape  
72 easements which are not incorporated in a platted lot shall be conveyed by the Declarant to an  
73 association of property owners ("Association") within the Development as hereinafter provided for.  
74 Provided, however, **NO MAN-MADE STRUCTURES OR EXCAVATIONS SHALL BE MADE**  
75 **IN ANY PIPELINE EASEMENT AND PARTICULARLY IN LOTS 22 THROUGH 31.**  
76 Ponds and drainage easements thereto shall become a part of the storm water drainage system of  
77 Walden Trace and shall run to the Department of Capital Asset Management of the City of  
78 Indianapolis. No lot owner or other person, firm or corporation shall alter, impair or impede the  
79 drainage system and all lot owners shall be subject to regulation by the public authority having  
80 jurisdiction and the property owners association as hereinafter set forth.

81 The Association, as hereinafter described, shall own Block areas designated Retention Pond  
82 Common Area and Pipeline Easements (excepting those incorporated in Lots 22 through 31) and  
83 landscaped areas ("LA") and, through its bylaws and regulations, control the water quality and  
84 condition of any retention pond located on Block A, and the Landscaped areas ("L.A.") shall be  
85 regularly planted and maintained by the Association for the beautification of Walden Trace and may  
86 include masonry piers and wrought iron style or other fencing or walls.

87 Mounding and landscaping shall be created and installed by Declarant along West 86th Street  
88 frontage as specifically designated on the plat as Landscape Easement ("L& UE"), and care and  
89 maintenance shall be the responsibility of the Association. All trees more than 6 inches caliper  
90 diameter measured 30 inches from ground grade within 20 feet of the perimeter of the plat  
91 boundaries, except in areas of utilities, water retention and grading associated with proper drainage  
92 and street installation, shall be preserved.

93 If a tree is removed more than 6 inches caliper diameter measured 30 inches above ground  
94 grade, it will be the responsibility of the individual lot owner (on whose property the tree had  
95 existed), or the Association if the lot owner fails to do so, to replant the tree of a size at least 3 inch  
96 caliper 3 feet above the ground. If the lot owner was responsible for the removal of a tree resulting  
97 in the Association having to replace same, then the cost thereof shall be added to that home owner's  
98 next regular assessment collectable in the same manner as provided for collection of assessments in  
99 the Bylaws of the Association.

100 It is the intent of the owner that tree preservation areas shall remain undisturbed by  
101 construction and development of the property. The owner further agrees to supplement the existing  
102 trees along the east boundary of Walden Trace at the time of development by installing evergreen  
103 trees, minimum 6 feet in height, in the existing gaps within this existing stand of trees. However,  
104 John F. Fisbeck, or his successors, shall have the option of selecting a farm fence with a strand of  
105 barbwire in lieu of the above plantings and the Association shall maintain same.

106 6. **Property Owners Association.** A property owners association is or shall be created named  
107 Walden Trace, Inc. (the "Association"), an Indiana nonprofit corporation, prior to the sale of  
108 the first lot in Walden Trace platted addition. Bylaws marked Exhibit B are attached.

109 7. **Power of Assessment and Collection.** The Association shall have all the powers set forth in  
110 its Articles of Incorporation, together with all other powers that belong to it by law, including the  
111 power to levy a uniform annual assessment against the lots within the Development as set forth  
112 herein and in the bylaws of the Association, attached hereto.

113 8. **Membership and Voting Rights.** Every owner of a lot shall be a member of the Association.  
114 For purposes of determining classes of membership, a Class A member shall be the owner of any  
115 conveyed lot containing a home thereon, and a Class B member shall be the owner of any  
116 undeveloped platted lot; and each reference to a lot in this Declaration shall be deemed to be a  
117 conveyed lot, containing a home or an unconveyed, platted or unplatted, lot, respectively, as more  
118 particularly set forth as follows. The Association shall have two (2) classes of membership:

119 8.1 **Class A.** Every person, group of persons or entity, other than the Declarant, who is a  
120 record owner of a fee interest in any improved lot shall, by this Declaration, be  
121 subject to assessment by the Association and shall be classified as a Class A member;  
122 provided, however, that any such person, group of persons or entity who holds such  
123 interest solely as security for the performance of an obligation shall not be a member.  
124 A Class A membership shall be appurtenant to and may not be separated from  
125 ownership of any lot which is subject to assessment. Class A members shall be  
126 entitled to one (1) vote for each lot in which they hold the interest required for  
127 membership. In the event that more than one person, group of persons or entity is the  
128 record owner of a fee interest in any lot, then the vote for the membership appurtenant  
129 to such lot shall be exercised as they among themselves determine, but in no event  
130 shall more than one (1) vote be cast with respect to any lot. In the event agreement is  
131 not reached, the vote attributable to such lot shall not be cast.

132 8.2 **Class B.** The Class B members shall be the Declarant and shall be entitled to three  
133 (3) votes for each platted Lot owned. For purposes of determining voting rights and



134 duties, it shall be assumed there is a total of thirty-three (33) platted and unplatted lots  
135 within the Development and Declarant shall have the automatic right to plat and  
136 record, not to contain in excess of thirty-three (33) homes, without the consent or  
137 approval of the Association or any other person, firm or corporation. The Class B  
138 membership shall cease and be converted to a Class A membership upon the earlier  
139 of the following: (1) 90% of homes on lots are deeded to homeowners; or (2) July  
140 1st, 2003. In the event all the lots have not been conveyed to owners or the Class B  
141 memberships have not been surrendered by the then holders thereof for cancellation  
142 on the books of the Association, Class B memberships existing, if any, at time of  
143 cancellation, shall automatically become Class A memberships excepting such Class  
144 A memberships shall not be subject to assessment or the lien of assessment until a  
145 home is constructed thereon.

146 9. **Covenant Accepting Assessments.** Each owner of any lot, by acceptance of a deed therefor,  
147 whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the  
148 association: (1) annual assessments or charges, and (2) special assessments for capital  
149 improvements, such assessments to be established and collected as provided in the bylaws of the  
150 association.

151 10. **Commencement of Assessments.** The annual assessments shall commence as to all lots  
152 with homes thereon on the first day of the month following the initial conveyance of a home on the  
153 lot. The first annual assessment shall be adjusted according to the number of months remaining in  
154 the calendar year and thereafter until the board of directors fixes the permanent annual assessment  
155 date. The board of directors shall fix the amount of the annual assessment against each lot at least  
156 thirty (30) days in advance of each annual assessment period and provide the membership due notice  
157 thereof. Annual assessments may be made payable at more frequent periods than one (1) year by  
158 resolution of the board of directors of the Association.

159 11. **Exception to Assessments.** The Declarant, as owner of platted or unplatted lots, shall be  
160 exempt from any and all assessments but Declarant shall pay any deficits in usual or ordinary  
161 expense until such time as assessments upon lots with homes thereon is sufficient to meet such  
162 expense.

163 12. **Uniform Rates.** Both annual and special assessments shall be fixed at a uniform rate for all  
164 lots containing a home.

165 13. **Right To Increase Annual Assessments.** Because of uncertainties in usual and ordinary  
166 common property expenses due to Indiana real property reassessment, costs of energy, insurance,  
167 maintenance and landscaping costs or other unforeseeable operating expenses, the board of directors  
168 of the association may increase the budgeted initial temporary assessment by a sum not to exceed ten  
169 percent (10%) per annum without vote of the membership. However, any such increases shall be  
170 documented by normal accounting procedures and distributed to the membership to demonstrate that  
171 such increases are attributable to increases in operating expenses and no portion of such increase  
172 shall inure to the benefit of the Declarant and the monies received shall be entirely expended on  
173 association expense.

174 The maximum annual assessment per lot may be increased above the maximum  
175 percentage set forth above only by a vote of two-thirds (2/3rds) of the Class A members who are  
176 voting in person or by proxy, at a meeting duly called for this purpose.

177 14. **Liens, Charges and Subordination.** Any charge levied or assessed against any lot, together  
178 with interest and other charges and costs hereinafter provided, shall become and remain a lien upon  
179 that lot until paid in full, subordinate only to the lien of a first mortgage, and shall also be a personal  
180 obligation of the owner or owners of the lot at the time the charge fell due. Such charge shall bear  
181 interest as a late charge at a rate of two percent (2%) per month until paid in full. If, in the opinion  
182 of the board of directors of the Association, such charge has remained due and payable for an  
183 unreasonably long period of time, the board may, on behalf of the Association, institute such  
184 procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in  
185 any court of competent jurisdiction.

186 The owner of the lot or lots subject to the charge shall, in addition to the amount of the charge  
187 at the time legal action is instituted, be obliged to pay the expense or costs, including reasonable  
188 attorney's fees, incurred by the Association in collecting same. Every owner of a lot in the  
189 subdivision and any person who may acquire any interest in such lot, whether as an owner or  
190 otherwise, is hereby notified that by acquisition of such interest such person agrees that any such  
191 liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and  
192 shall be paid. Every person who shall become an owner of a lot in the subdivision is hereby notified  
193 that by the act of acquiring such title, such person shall be conclusively held to have covenanted to  
194 pay the Association all charges that the Association shall make pursuant to these covenants and  
195 restrictions.

196 The lien of assessments provided for herein shall be subordinate to the lien of any first  
197 mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or  
198 transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall  
199 extinguish the lien of such assessments as to payments which became due prior to such sale or  
200 transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter  
201 becoming due or from the lien thereof. However, a first mortgagee is not, at any time, obligated to  
202 perform the duty of collection of assessments.

203 The Association shall, upon demand at any time, furnish a certificate in writing signed by an  
204 officer of the Association that the assessments on a specified lot have been paid or that certain  
205 assessments against said lot remain unpaid, as the case may be. Such certificate shall be conclusive  
206 evidence of payment of any assessment therein stated to have been paid. The charges or assessments  
207 levied by the Association shall be used exclusively for the purpose of promoting the recreation,  
208 health, safety and welfare of the members of the Association, and for the improvement and  
209 maintenance of the properties owned or operated by the Association.

210 15. **Suspension of Privileges.** Notwithstanding any other provision contained herein or in the  
211 bylaws, the board of directors of the Association shall have the right to suspend the voting rights, if  
212 any, and the right to use the facilities of the Association of any member or associate member: (i) for  
213 any period during which any of the Association's charges owed by the member or associate member  
214 remains unpaid; (ii) during the period of any continuing violation of the restrictive covenants for the  
215 Development, after the existence of the violation shall have been declared by the board of directors  
216 of the Association; and (iii) during the period of any violation of the Articles of Incorporation,  
217 bylaws or regulations of the Association.

218 16. **Mortgagees Rights.** Unless at least seventy-five percent (75%) of the first mortgagees  
219 (based upon one vote for each first mortgage owned) or the Class A members have given their prior  
220 written approval, the Association shall not:

221 16.1 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the  
222 Development, common property or improvements located thereon which are owned directly or  
223 indirectly by the Association for the benefit of the lots. The granting of easements for public  
224 utilities or for other public purposes consistent with the intended use of the Development by  
225 the Association shall not be deemed a transfer within the meaning of this clause.

226 16.2 Change the method of determining the obligations, assessments, dues or other charges,  
227 which may be levied against a homeowner.

228 16.3 By act or omission, change, waive or abandon any scheme of regulation or enforcement  
229 thereof pertaining to the architectural design or exterior appearance of the homes on lots, the  
230 exterior maintenance of the dwellings on lots, the maintenance of common fences or common  
231 driveways or the upkeep of lawns and plantings in the Development.

232 16.4 Fail to maintain fire and extended coverage insurance on insurable common property on  
233 current replacement cost basis in an amount not less than one hundred percent of the  
234 insurance value (based on current replacement cost).

235 16.5 Use hazard insurance proceeds for losses to common property for other than the repair,  
236 replacement or reconstruction of such improvements.

237 16.6 Mortgagees, their successors or assigns, shall have the right to examine the books and  
238 records of the Association.

239 16.7 First mortgagees of homes on lots may, jointly or singly, pay the taxes or other charges  
240 which are in default and which may or have become a charge against any common property  
241 and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance  
242 coverage on the lapse of a policy for such common property, and first mortgagees making  
243 such payments shall be owed immediate reimbursement therefor from the Association.

244 16.8 No provision of the constituent documents shall give an owner or any other party  
245 priority over any rights of first mortgagees of homes within the Development pursuant to their  
246 mortgages in the case of a distribution to homeowners of insurance proceeds or condemnation  
247 awards for losses to or a taking of common property.

248 17. **Temporary Structures.** No trailer, shack, tent, boat, basement, garage or other outbuilding  
249 may be used at any time as a residence, temporary or permanent, nor may any structure of a  
250 temporary character be used as a residence, except that used by Declarant or builder during  
251 construction on the property.

252 18. **Nuisances.** No farm animals, fowls or domestic animals maintained for food or for  
253 commercial purposes shall be kept or permitted on any lot or lots in the subdivision. No noxious,  
254 unlawful or otherwise offensive activity shall be carried out on any lot in this subdivision, nor shall  
255 anything be done thereon which may be or may become an annoyance or nuisance. In Walden  
256 Trace, every owner or occupant of a dwelling shall be required to fence in or place on a leash within  
257 the rear yard or keep confined indoors, any dog or domestic animal in their ownership or possession.

258 19. **Architectural Control.** There shall be created an architectural control committee (the  
259 "Committee") initially composed of a designee of Declarant, one member of the Trader's Hollow  
260 Homeowners Association selected by its Board of Directors, and Bruce T. Sklare who shall serve  
261 until ninety percent (90%) of the total lots within Development are developed at which time the  
262 Association shall appoint three (3) persons as the Committee from among its members. However,  
263 the Declarant shall have sole right to approve plans for original construction on any lot and the  
264 Committee shall regulate reconstruction, remodeling, additions and other construction or alteration  
265 upon the lots.

266 The Committee shall regulate the external design, appearance, use, location and maintenance of  
267 lands subject to these restrictions and improvements thereon, in such a manner as to preserve and  
268 enhance values and to maintain a harmonious relationship among structures and the vegetation and  
269 topography.

270 19.1 **Generally.** No dwelling, building structure or improvement of any type or kind shall be  
271 constructed or placed on any lot in the subdivision without the prior approval of the



272 Committee. Such approval shall be obtained only after written application has been made to  
273 the Committee by the owner or builder for the owner of the lot requesting authorization by the  
274 Committee, and shall be accompanied by two (2) complete sets of plans and specifications for  
275 any such proposed construction or improvement. Such plans shall include plot plans showing  
276 the lot and the location of the improvement proposed to be constructed or placed upon the lot,  
277 each properly and clearly designated. Such plans and specifications shall set forth the color  
278 and composition of all exterior materials proposed to be used and any proposed landscaping,  
279 together with any other material or information which the Committee may require. All  
280 building plans and drawings required to be submitted to the Committee shall be drawn on a  
281 scale of 1/4" = 1" and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale  
282 as the Committee shall require.

283 19.2 Sight Visibility. Regardless of Committee approval, no fence, wall, hedge or shrub  
284 planting which obstructs sight lines at elevations between two (2') and six (6') feet above the  
285 street shall be placed or permitted to remain on any corner lot within the triangular area  
286 formed by the street property lines and a line connecting points twenty-five feet (25') from the  
287 intersection of said street lines or, in the case of a rounded property corner, from the  
288 intersection of the street lines extended. The same sight line limitations shall apply to any lot  
289 within ten feet (10') from intersection of a street line with the edge of a driveway pavement or  
290 alley line. No tree shall be permitted to remain within such distances of such intersections  
291 unless the foliage line is maintained at sufficient height to prevent obstruction of such sight  
292 lines.

293 19.3 Fences, Walls and Screening. It is the goal of the Committee to keep all fencing or  
294 screening as harmonious as possible with the architectural character of the Development.  
295 Undue obstruction of view of other amenities from adjoining properties will be taken into  
296 consideration by the Committee when reviewing fences for approval. Fences shall not be  
297 nearer to the front of a home than the rear foundation line of a home except decorative fences.  
298 With Committee approval, front fences may be placed parallel to the front foundation of a  
299 home only if they do not cause unreasonable visual barriers and they are of identical materials  
300 as the main structure.

301 The Committee will discourage fencing of the entire back yard due to the effect that this  
302 fencing may have on the feeling of spaciousness desired by other lot Owners. Approved  
303 fencing may be privately installed but must be constructed to professional levels of quality.  
304 Fences installed by nonprofessionals will be inspected by the Committee after completion in  
305 order to insure that the final product is of a professional quality and final approval of the fence  
306 shall be deemed withheld until successful completion of this final review. All fences or  
307 screens will be submitted to the Committee for approval.

308 19.4 Height Restriction. The Declarant is of the opinion that the environmental integrity  
309 of the community will be materially lessened if the open nature of the Development is  
310 damaged by the proliferation of fences of excessive height.

311 The Committee, therefore, may approve rear perimeter fences up to four (4') feet in height  
312 which otherwise meet these guidelines. The Committee will give consideration to a deviation  
313 in their height limit where the real line of the lot abuts a public roadway or other clearly  
314 unique circumstance exists. The use of six-foot (6') fences around small patio areas of a  
315 backyard of a home in order to secure privacy for the immediate patio area may be permitted.  
316 The guidelines for specific fence height restrictions are as follows:

317 a) Property fencing and walls shall not exceed four (4') above grade unless  
318 otherwise approved by the Committee.

319 b) The Committee will not ordinarily approve a proposed fence which exceeds four  
320 feet (4') in height unless the rear line of that lot abuts a roadway or offers some other  
321 circumstances clearly unique to that lot.

- 322 c) Patio screens/privacy fences shall not exceed six feet (6') in height except for  
323 pools and other recreational fences as provided herein
- 324 d) There shall be no fencing, walls or other structures erected and maintained in any  
325 area designated 100-year floodway upon Federal flood hazard maps and the plats of  
326 Walden Trace.
- 327 19.5 Power of Disapproval. The Committee may refuse to grant permission to construct,  
328 place or make any requested improvement when:
- 329 a) The plans, specifications, drawings or other material submitted are themselves  
330 inadequate or incomplete, or show the proposed improvement to be in violation of  
331 these restrictions.
- 332 b) The design or color scheme of a proposed improvement is not in harmony with  
333 the general surroundings of the lot or with adjacent buildings or structures.
- 334 c) The proposed improvement or any part thereof would, in the opinion of the  
335 Committee, be contrary to the interests, welfare or rights of all or any part of other  
336 owners.
- 337 19.6 Duties of Committee. The Committee shall approve or disapprove proposed  
338 improvements within thirty (30) days after all required information shall have been  
339 submitted to it. One copy of the submitted material shall be retained by the Committee,  
340 or copies thereof in a reduced form, for its permanent files and the second copy returned  
341 to applicant. All notifications to applicants shall be in writing and, in the event that such  
342 notification is one of disapproval, it shall specify the reason or reasons for such  
343 disapproval.
- 344 19.7 Liability of Committee. Neither the Committee, any agent thereof or the Declarant shall  
345 be responsible in any way for any defects in any plans, specifications or other materials  
346 submitted to it, or for any defects in any work done according thereto. Further, the  
347 Committee does not make any representation or warranty as to suitability or advisability  
348 of design, engineering, method of construction or the materials to be used.
- 349 20. Size of Dwellings, Garages and Paving. It is agreed that the minimum size home to be built  
350 on the property shall be 1600 square feet for one-story dwellings and 1800 square feet for two-story  
351 dwellings; with minimum lot width and lot area of 60 feet and 6,600 square feet, respectively,  
352 excepting there shall be constructed a maximum of 33 dwellings within the 14.54 acre boundary. It  
353 is further agreed that all homes constructed on the property shall have a minimum two car attached  
354 garage and an asphalt or concrete paved driveway.
- 355 21. Exterior Construction. Single family detached dwellings shall conform to the following  
356 restrictions:
- 357 a) The finished exterior of every building constructed or placed on any lot may be of vinyl  
358 siding or trim. Provided, however, before application of material other than brick, stone  
359 or wood, all exterior and veneer, plus roof materials, will be submitted and approved to  
360 assure uniformity of quality, safety, appearance and durability with other dwellings in  
361 the subdivision.
- 362 b) No heat pumps, air conditioning units or gas meters will be installed in or on the front of  
363 a dwelling.
- 364 c) If storm doors or windows are installed, they must be painted. No unfinished aluminum  
365 windows or doors will be allowed.

- 366 d) All gutters and downspouts other than copper will be painted or coated.  
367 e) All roof and fireplace flashing other than copper will be painted or coated.  
368 f) All metal roof or range vents will be painted or coated to blend with roof color. Every  
369 effort should be made to locate such vents to the rear of the dwelling.  
370 g) All basement and crawl space sump pumps must discharge into retention pounds or six  
371 inch (6") surface drains must be provided at the rear of each lot or along the curb.  
372 h) Every effort should be made to locate all plumbing vent stacks to the rear of the  
373 dwelling.

374 22. **Driveways and Sidewalks.** All driveways shall be paved simultaneously with construction of  
375 the dwellings and the type of construction and materials must first be approved by the Committee.

376 23. **Mailboxes and Lights.** All mailboxes shall be in accordance with the standards set forth by  
377 the Committee and shall be installed by the builder simultaneously with the construction of the  
378 dwelling. All homes shall have a garage light, on the exterior of the home, which will operate by  
379 photocell or similar device from dusk to dawn. Entrance to West 86th Street shall be illuminated  
380 with one streetlight installed by Declarant and the maintenance and energy costs shall be the  
381 obligation of the Association.

382 24. **Signs.** Except for marketing and permanent signs that the Declarant may place at the project  
383 entrance or entrances, no sign of any kind shall be displayed to the public view on any lot except that  
384 one sign of not more than six (6) sq. ft. may be displayed at any time for the purpose of advertising  
385 the property for sale or rent, or may be displayed by a builder to advertise the property during  
386 construction and sale.

387 25. **Garbage and Refuse Disposal.** No lot shall be used or maintained as dumping ground for  
388 trash. Rubbish, garbage or other waste shall not be kept except in sanitary containers. All  
389 equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any  
390 lot in public view.

391 26. **Storage Tanks.** Any gas or oil storage tanks used in connection with a lot shall be either  
392 buried or located in a garage or house so that they are completely concealed from view.  
393 Underground storage tanks shall conform to Federal, State and local standards of environmental  
394 management.

395 27. **Swimming Pools.** Only permanent in-ground pools with professional construction will be  
396 permitted. All backyard pools should be oriented to minimize the potential effect on neighboring  
397 lots. All fencing shall conform to state, county and municipal regulations and shall be of  
398 harmonious design to the dwelling and adjoining properties. The use of plantings/screenings in the  
399 vicinity of the pool will be required to soften the visual and sound effect on adjacent properties.

400 28. **Enforcement of Restrictions.** In the event there shall be any violation or attempted violation  
401 of any of these restrictions, it shall be lawful for the undersigned, the Association, or for any person  
402 owning any real property in this subdivision, to prosecute any proceedings at law or in equity against  
403 the person or persons violating or attempting to violate any such restrictions, and either to prevent  
404 him or them from doing so or to recover damages from such violation, but neither the Declarant nor  
405 the Association shall be liable for damages of any kind to any person for failing either to abide by,  
406 enforce or carry out any of these covenants and restrictions.

407 No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to  
408 a violation of any one or more of these covenants and restrictions shall be held to be a waiver by that  
409 party (or an estoppel of that party to assert) any right available to him upon the occurrence,  
410 recurrence or continuation of such violation or violations of these covenants and restrictions.



411 29. **General Provisions.** The foregoing restrictions may be amended at any time by the owners  
412 of at least two-thirds of the owners of lots subject to such restrictions subject to mortgagees' rights  
413 set forth in paragraphs 14 and 16 above. Provided, however, that until all of the lots are sold in this  
414 subdivision by the undersigned, any such amendment of these restrictions shall require prior written  
415 approval of the undersigned. Each such amendment must be evidenced by a written instrument,  
416 signed and acknowledged by the owner or owners concurring therein, setting forth facts sufficient to  
417 indicate compliance with this paragraph and recorded in the Marion County Recorder's Office. U.S.  
418 Dept. of Housing and Urban Development and U.S. Veterans Administration ("HUD/VA") approval  
419 is required as long as there is a Class B Membership for the annexation of additional properties,  
420 dedication of Common Area and amendment of the Declaration.

421 30. **Effect of Becoming an Owner.** The owners of any lot subject to these covenants and  
422 restrictions, by acceptance of a deed conveying title thereto or the execution of a contract for the  
423 purchase thereof, whether from Declarant or a subsequent owner of such lot, shall accept such deed  
424 and execute such contract subject to each and every covenants, restriction and agreement herein  
425 contained. By acceptance of such deed or execution of such contract, the owner acknowledges the  
426 rights and powers of Declarant with respect to these covenants and restrictions; and also for  
427 themselves, their heirs, personal representatives, successors and assigns, such owners covenant and  
428 agree and consent to and with Declarant and to and with the owners and subsequent owners of each  
429 of the lots affected by these covenants and restrictions to keep, observe, comply with and perform  
430 such covenants, restrictions and agreements.

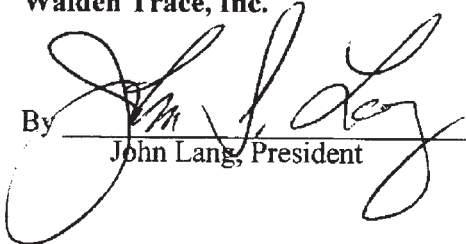
431 31. **Titles.** The underlined titles preceding the various paragraphs and subparagraphs of the  
432 covenants and restrictions are for the convenience of reference only, and none of them shall be used  
433 as an aid to the construction of any provisions of the covenants and restrictions. Wherever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

436 32. **Severability.** Every one of the covenants and restrictions is hereby declared to be  
437 independent of, and severable from, the rest of the covenants and restrictions and of and from every  
438 other one of the covenants and restrictions, and of and from every combination of the covenants and  
439 restrictions.

440 IN TESTIMONY WHEREOF, witness the signature of Declarant this 25<sup>th</sup> day of  
441 February, 2003.

442  
443  
444  
445  
446



Walden Trace, Inc.  
By  \_\_\_\_\_  
John Lang, President

Revisions to this document were prepared by Jay Wasson, 2002 President of Walden Trace, Inc.

446 STATE OF INDIANA )  
447 ) SS:  
448 COUNTY OF MARION )

449 Before me, a Notary Public in and for County and State, personally appeared John Lang,  
450 known to me to be a Member of Walden Trace, Inc., who acknowledged execution of the foregoing  
451 Declaration for and on behalf of sand Company, and who, having been duly sworn, stated that the  
452 representations therein contained are true.

453 Witness my hand and notarial seal this 25<sup>th</sup> day of February, 2003.

454

455 My commission expires:

456 5-9-08

457



Stephanie L. Pelko  
Stephanie L. Pelko Notary Public  
Residing in Marion County, Indiana

MARTHA A. WOMACKS  
MARION COUNTY AUDITOR

461200 MAR-38

DULY RECEIVED FOR TAXATION  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

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**BYLAWS  
OF  
WALDEN TRACE, INC.**

APPROVED THIS 25th (7)  
DAY OF February 20 02  
PIKE TOWNSHIP ASSESSOR  
DRAFTSMAN *TM*

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7  
8  
9

**ARTICLE I  
Name and Location**

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The name of the Corporation is Walden Trace, Inc., (hereinafter referred to as the "Association"). The principal office of the Association shall be P.O. Box 78583, Indianapolis, IN 46278, but meetings of members and directors may be held at such places within the State of Indiana as may be designated by the Board of Directors.

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**ARTICLE II  
Definitions**

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Section 1. "Declarant" shall mean and refer to Bay Communities, LLC, its successors and assigns as a declarant.

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Section 2. "Association" shall mean and refer to Walden Trace, Inc., its successors and assigns.

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

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21

Section 4. "Development" shall mean and refer to the certain real estate described in the Declaration of Covenants and Restrictions of Walden Trace.

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24

Section 5. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Development with the exception of Blocks designated Retention Pond, Pipeline Easement or landscaped areas, respectively, in the recorded plat of Walden Trace.

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26  
27

Section 6. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of Walden Trace applicable to the Development, recorded in the Office of the Marion County Recorder, Indianapolis, Indiana

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**ARTICLE III  
Meeting of Members**

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Section 1. Annual Meeting. The first annual meeting of the members shall be held on the second Tuesday of each year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 7 o'clock P.M. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first

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Inst # 2003-0043146

35 day following which is not a legal holiday.

36 Section 2. Special Meetings. Special meetings of the members may be called at any time by  
37 the president or by the Board of Directors, or upon written request of the members who are entitled  
38 to vote one-sixth (1/6th) of all of the votes of the Class A memberships.

39 Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given  
40 by the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage  
41 prepaid, at least ten (10) days before such meeting to each member entitled to vote thereat, addressed  
42 to the member's address last appearing on the books of the Association, or supplied by such member  
43 to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the  
44 meeting, and, in the case of special meeting, the purpose of the meeting.

45 Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies  
46 entitled to cast, one-sixth (1/6th) the votes of each class of membership shall constitute a quorum for  
47 any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these  
48 Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members  
49 entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice  
50 other than announcement at the meeting, until a quorum as aforesaid shall be present or represented.

51 Section 5. Proxies. At all meetings of members, each member entitled to vote may vote in  
52 person or by proxy. All proxies shall be signed in writing and filed with the secretary. Every proxy  
53 shall be revocable and shall automatically cease upon the presence of the member at a meeting or  
54 upon conveyance by the member of his Lot.

55 **ARTICLE IV**  
56 **Board of Directors: Selection; Term of Office**

57 Section 1. Number. The affairs of this Association shall be managed by a Board not to  
58 exceed five (5) directors, who are all members of the Association, excepting the initial Board of  
59 Directors shall consist of three (3) members.

60 Section 2. Term of Office. At the time of conversion of the Class B member to a Class A  
61 member as defined by the Declaration, the members shall elect one (1) director for a term of one (1)  
62 year, one (1) director for a term of (2) years, and one (1) director for a term of three (3) years; and at  
63 each annual meeting thereafter the members shall elect two (2) directors for a term of two (2) years  
64 to replace the directors whose terms have expired, excepting they may enlarge the Board to five  
65 members and prescribe the length of their term.

66  
67 Section 3. Removal. Any director may be removed from the Board, with or without cause, by  
68 a majority vote of the members of the Association. In the event of death, resignation or removal of a  
69 director, his successor shall be selected by the remaining members of the Board and shall serve for  
70 the unexpired term of his predecessor.

71 Section 4. Compensation. No director shall receive compensation for any service he may  
72 render to the Association. However, any director may be reimbursed for his actual expenses incurred  
73 in the performance of his duties.

74 Section 5. Action Taken Without a Meeting. The directors shall have the right to take any  
75 action in the absence of a meeting which they could take at a meeting by obtaining the consent of all

76 the directors. Any action so approved shall have the same effect as though taken at a meeting of the  
77 directors

78  
79

**ARTICLE V  
Nomination and Election of Directors**

80 Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a  
81 Nominating Committee. Nominations may also be made from the floor at the annual meeting. The  
82 Nominating Committee shall consist of a Chairman, who shall be a member of the Board of  
83 Directors, and two or more members of the Association. The Nominating Committee shall be  
84 appointed by the Board of Directors prior to each annual meeting of the members, to serve from the  
85 close of such annual meeting until the close of the next annual meeting, and such appointment shall  
86 be announced at each annual meeting. The Nominating Committee shall make as many nominations  
87 for election to the not less than the number of vacancies that are to be filled. Such nominations may  
88 only be made from among members of the Association.

89 Section 2. Election. Election to the Board of Directors shall be by written ballot. At such  
90 election the members or their proxies may cast, in respect to each vacancy, as many votes as they are  
91 entitled to exercise under the provisions of the Declaration. The persons receiving the largest number  
92 of votes shall be elected. Cumulative voting is not permitted.

93  
94

**ARTICLE VI  
Meetings of Directors**

95 Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at  
96 least once every six (6) months without notice, at such place and hour as may be fixed from time to  
97 time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting  
98 shall be held at the same time on the next day which is not a legal holiday.

99 Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when  
100 called by the president of the Association, or by any two (2) directors, after not less than three (3)  
101 days notice to each director.

102 Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the  
103 transaction of business. Every act or decision done or made by a majority of the directors present at a  
104 duly held meeting at which a quorum is present shall be regarded as the Act of the Board.

105  
106

**ARTICLE VII  
Powers and Duties of the Board of Directors**

107 Section 1. Powers. The Board of Directors shall have power to:

108 a) adopt and publish rules and regulations governing the use of common areas and water  
109 retention areas as depicted upon the plat of Walden Trace.

110



110 b) suspend the voting rights and right of use of recreational facilities, if any, of a member  
111 during any period in which such member shall be in default in the payment of any assessment  
112 levied by the Association. Such rights may also be suspended after notice and hearing, for a  
113 period not to exceed sixty (60) days for infraction of published rules and regulations;

114 c) exercise for the Association all powers, duties and authority vested in or delegated to this  
115 Association and not reserved to the membership by other provisions of these Bylaws, the  
116 Articles of Incorporation, or the Declaration;

117 d) declare the office of a member of the Board of Directors to be vacant in the event such  
118 member shall be absent from three (3) consecutive regular meetings of the Board of  
119 Directors; and

120 e) employ a manager, independent contractor, or such other employees as they deem  
121 necessary, and to prescribe their duties with regard to the maintenance and upkeep of the  
122 common areas and water retention ponds.

123 Section 2. Duties. It shall be the duty of the Board of Directors to:

124 a) cause to be kept a complete record of all its acts concerning corporate affairs and to make  
125 available to the members the corporate records within a reasonable time after request is  
126 made.

127 b) supervise all officers, agents and employees of this Association, and to see that their duties  
128 are properly performed;

129 c) as more fully provided in the Declaration, to:

130 i) fix the amount of the annual assessment against each Unit at least thirty (30)  
131 days in advance of each annual assessment period;

132 ii) send written notice of each assessment to every Owner subject thereto at least  
133 thirty (30) days in advance of each annual assessment period; and

134 iii) foreclose the lien against any property for which assessments are not paid  
135 within sixty (60) days after due date and to bring an action at law against the owner  
136 personally obligated to pay the same;

137 d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate  
138 setting forth whether or not any assessment has been paid. A reasonable charge may be made  
139 by the Board for the issuance of these certificates. If a certificate states an assessment has  
140 been paid, such certificate shall be conclusive evidence of such payment;

141 e) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem  
142 appropriate.

143 **ARTICLE VIII**  
144 **Officers and Their Duties**



182

## TREASURER

183 d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the  
184 Association and shall disburse such funds as directed by resolution of the Board of Directors; shall  
185 sign all checks and promissory notes of the Association; keep proper books of account; cause an  
186 annual audit of the Association books to be made by a public accountant at the completion of each  
187 fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be  
188 presented to the membership at its regular annual meeting, and deliver a copy of each to the  
189 members.

190

## ARTICLE IX

191

### Committees

192

193 The Board of Directors shall appoint an architectural control committee, as provided in the  
194 Declaration, and nominating committee, as provided in these Bylaws. In addition, the Board of  
Directors shall appoint other committees as deemed appropriate in carrying out its purposes.

195

## ARTICLE X

196

### Books and Records

197

198 The books, records and papers of the Association shall at all times, during reasonable  
199 business hours, be subject to inspection by any member. The Declaration, the Articles of  
200 Incorporation and the Bylaws of the Association shall be available for inspection by any member at  
the principal office of the Association, where copies may be purchased at reasonable cost.

201

## ARTICLE XI

202

### Assessments

203

204 As more fully provided in the Declaration, each Class A and Class B member is obligated to  
205 pay to the Association annual and special assessments which are secured by a continuing lien upon  
206 the property against which the assessment is made. Any assessments which are not paid within thirty  
207 (30) days shall be delinquent. If an assessment is not paid within thirty (30) days after the due date,  
208 the assessment shall bear a late charge of two percent (2%) per month and the Association may bring  
209 an action at law against the Owner personally obligated to pay the Assessment or foreclose the lien  
210 against the Property, interest, costs and reasonable attorney fees of any such action shall be added to  
211 the amount of the assessment. No Owner may waive or otherwise escape liability for assessments  
212 provided herein by non-use of the common areas, facilities or services of the Association. The  
213 personal obligation for delinquent assessments shall not pass to his successors in title unless  
expressly assumed by them, but the lien of any delinquent assessments shall run with the land.

214

## ARTICLE XII

215

### Amendments

216

217 Section 1. These Bylaws may be amended, at a regular or special meeting of the members, by  
218 a vote of a majority of a quorum of members present in person or by proxy. HUD/VA has the right  
to veto amendments to the Bylaws while there is Class B membership.

219

220 Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws,  
221 the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws,  
the Declaration shall control.

222

**ARTICLE XIII**

223

**Miscellaneous**

224

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

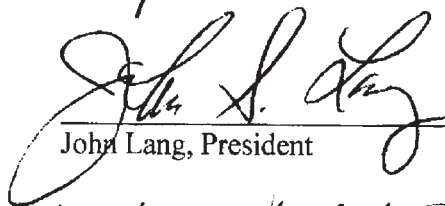
225

226

IN WHITNESS WHEREOF we, being all the directors of Walden Trace, Inc. have hereunto set our hands and seals this 27<sup>th</sup> day of February, 2003.

227

228

  
\_\_\_\_\_  
John Lang, President

229

230

  
\_\_\_\_\_  
Shawn Smith, Vice-President

231

232

  
\_\_\_\_\_  
Jessica Miller, Treasurer

233

234

  
\_\_\_\_\_  
Michelle Barker, Secretary

235

RECEIVED

JAN 19 2007

2-26-07

L.A.

①  
M

PIKE TOWNSHIP  
ASSESSOR

**CERTIFICATE OF AMENDMENT  
TO**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WALDEN  
TRACE**

This amendment of Declaration Of Covenants, Conditions And Restrictions of Walden Trace, recorded February 25, 2002 as Inst # 2003-0043145;

**WITNESS:**

Whereas, Paragraph 14 Liens, Charges and Subordination at the top of Page 5, lines 4 through 9, now reads: "Such charge shall bear interest as a late charge at a rate of two percent (2%) per month until paid in full. If, in the opinion of the board of directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction."

Whereas by virtue of a vote comprised of at least seventy-five (75%) of the first mortgagees eligible to vote said Paragraph 14 lines 4 through 9 are now amended to read: "Such charge shall bear interest as a late charge of two percent (2%) per the first month, four percent (4%) per the second month and six percent (6%) per month there after until paid in full. If charges remain due and payable beyond the second consecutive semi-annual assessment, the board must, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction."

Now, therefore, the Declaration Of Covenants, Conditions And Restrictions of Walden Trace are amended by changing Paragraph 14 lines 4 through 9 for the reasons set forth above.

IN TESTIMONY WHEREOF, witness the signature of Declarant this 16<sup>TH</sup> day of JANUARY, 2007.

Walden Trace Inc.

By Linda Mills  
Linda Mills, President

By Tom Ransburg  
Tom Ransburg, Treasurer

STATE OF INDIANA )

)SS:

COUNTY OF MARION )

Before me, a Notary Public in and for County and State, personally appeared Stephen Thomas Ransburg, President of Walden Trace Inc., who acknowledged execution of the foregoing Declaration for and on behalf of said Incorporation, and who, has been duly sworn, stated that the representation therein contained are true.

Witness my hand and notarial seal this 16<sup>TH</sup> day of JANUARY, 2007.

My commission expires:

[Signature]  
\_\_\_\_\_, Notary Public

Residing in \_\_\_\_\_ County, Indiana

"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."

Tom Ransburg

MYRA L DUPASKI  
NOTARY PUBLIC STATE OF INDIANA  
MARION COUNTY  
MY COMMISSION EXPIRES NOV 16 2007

DEUTY EXECUTED FOR ASSOCIATION  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

667983 JAN 26 07

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