

127-00

Recorded Johnson County, Indiana (60)
Jean Harmon, Recorder

Date 11/21/2001 Time 13:39:20 1 of 60 Pgs
Inst # 2001-036014 OFF
Fee Amt: 129.00 2.00 NCF

**DECLARATION OF COVENANTS AND RESTRICTIONS OF
THE WHITETAIL WOODS OWNERSHIP
(DECLARATION)**

THIS DECLARATION made this 20th day of November, 2001 by Whitetail Woods LLC (WWLLC) an Indiana Limited Liability Company and Norman W. Duke and Pamela K. Duke (hereinafter referred to as Duke)

WITNESSETH:

WHEREAS, the following facts are true:

A. WWLLC (hereinafter called "DECLARANT") at the time of execution hereof is the sole owner in fee simple of real estate, containing approximately 80 acres, described in the attached Exhibit "A" and the real estate that is the ingress-egress thereto from County Road 725 W and described in Exhibit "A1" attached, both located in Johnson County, Indiana, and incorporated herein by reference with the aggregate acreage (hereinafter referred to as "TRACT" or "WHITETAIL WOODS" or "WHITETAIL WOODS SUBDIVISION").

B. "Duke" at the time of execution hereof is the sole owner in fee simple of real estate, adjacent to the aforesaid Exhibit "A", containing approximately 80 acres, more particularly described in Exhibit "B" attached which is incorporated herein by reference. Duke is signatory hereto solely to make it possible in the judgement of WWLLC to add to and make the Exhibit "B" realty subject to this "DECLARATION" as an "Additional Tract" as defined and detailed in paragraph 21 hereof. The Exhibit "B" realty's east-west location will be located between the security gate later described and the west boundary of the Exhibit "A" realty.

C. DECLARANT, by execution of this Declaration, assures that all properties which are conveyed which are part of the "TRACT" and possibly the "Additional Tract" shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the "TRACT" and if applicable the "Additional Tract" and be binding upon all parties having right, title or interest in the "TRACT", or any part thereof, and if applicable the "Additional Tract" their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

NOW, THEREFORE, DECLARANT incorporates the RECITALS as if set out in full and hereby makes this Declaration as follows:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

- (a) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation (hereinafter sometimes designated as HOA) and, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.
- (b) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.
- (c) "By-Laws" shall mean the By-Laws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation. A copy of the By-Laws is incorporated herein by reference.
- (d) "Common Expense" means expenses for the administration of the Corporation, and expenses for the upkeep, maintenance, repair and

replacement of the Common Areas or the Common Expense Areas, and all sums lawfully assessed against the members of the Corporation.

(e) Common Areas and/or Common Expense Areas.

The following appear as designated upon the Final Plat of the WHITETAIL WOODS SUBDIVISION.

Private Roads.

As shown on the Conceptual Plan (Exhibit C attached) of the proposed plat of the WHITETAIL WOODS a private hard surface set of roads will be installed by the Declarant with ingress-egress from County Road 725 W on and to Whitetail Woods Drive as the main thoroughfare of the WHITETAIL WOODS Subdivision, with a cul de sac of Whitetail Wood Circle. All roads herein described shall be designated as general common area for all owners of Lots subject to the DECLARATION and subject to:

- (1) A right and easement of access, ingress and egress upon, along over and across the Private Road, for the Lot occupants vehicles or as pedestrians and for their invitees, or privately owned delivery vehicles with the later being subject to the HOA rules and regulation regarding access through any security gate. In addition to the parties described above, all public and quasi-public agencies and their personnel and vehicles, including, but not limited to, police, fire, ambulance and other emergency vehicles, trash

and garbage collection vehicles, postal service vehicles, and vehicles of utility companies, shall have the right to enter upon and use the Private Road in a manner arranged for by and with the HOA for such access purposes in the performance of their duties, giving due regard to the integrity of the security gate.

- (2) The right in DECLARANTS sole option for one access road connection to Whitetail Woods Drive to serve as ingress and egress to the Exhibit B real estate located east of where a security gate is installed in Whitetail Woods Drive. This right shall only exist if the Exhibit B realty is made subject to this Declaration with any roads therein to also be private roads to be maintained by the HOA as a common expense.
- (3) DECLARANT reserves the right before the Applicable Date to install a security gate across Whitetail Woods Drive at some point between 725 W and the West property of the Exhibit A realty. The gate shall operate either on a phone, electronic or card insert eventually determined by the Declarants sole election subject to change by the HOA.
- (4) DECLARANT reserves the right so long as Declarant has a Class B vote as hereafter detailed, but not the obligation, to install a Subdivision Entrance Identification Sign and

accompanying landscaping if desired by Declarant in the easement or at the intersection of 725 W and Whitetail Woods Drive.

The maintenance of roads and any security gate, identification sign and accompanying landscaping shall be the responsibility of the HOA and be deemed to be a common expense.

Park/Common Area

A Park/Common Area of approximately 8.73 acres on the North side of Whitetail Woods Drive as shown on Exhibit C shall be conveyed by the Declarant to the HOA on or before the VOTE TURNOVER DATE in an unimproved state to serve as general common area for the Lot owners subject to this Declaration. It is to be recognized that this area, in combination with the Detention Pond next described, is part of the surface drainage control for the WHITETAIL WOODS Subdivision(s).

The use of this general common area shall be controlled by the rules and regulations of the HOA with said common area and the reference culverts to be maintained by the HOA as a common expense obligation.

Detention Pond Located Within Lot 1

As already stated this proposed wet detention area (pond) shall be part of Lot 1 owners title ownership and limited in its use to said owner subject however to the following:

- No dock(s) may be built on or into this pond.

- Reasonable ingress - egress to and around the perimeter of the pond to appropriate governmental authorities to inspect the integrity thereof and for the HOA to maintain same as its obligation to do so since the pond is part of the surface water drainage control for the WHITETAIL WOODS Subdivision.

- The Declarant and the HOA reserve the right to install and maintain a fountain therein as a common expense of the HOA

DECLARANT AND THE HOA MAKE NO REPRESENTATION AS TO THE LEVEL OF WATER TO BE MAINTAINED IN THIS DETENTION POND.

- (f) "Corporation" also known as HOA means that WHITETAIL WOODS Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 8 of this Declaration.
- (g) "DECLARANT" shall mean and refer to WHITETAIL WOODS LLC and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of DECLARANT hereunder including, but not limited to, any mortgage acquiring title to any portion of the "TRACT" pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by DECLARANT.
- (h) "Dwelling Unit" means the living unit located upon a Lot.
- (i) "Lot" means any plot of ground designated as such upon the recorded Final Plat of WHITETAIL WOODS, or upon the Recorded Plat, if any of

the "Additional Tract" or any part thereof upon which one (1) Dwelling Unit is constructed or is to be constructed. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon.

- (j) "Member" means a member of the Corporation.
- (k) "Mortgage" means the holder of a first mortgage lien on a Lot.
- (l) "WHITETAIL WOODS" or "WHITETAIL WOODS Subdivision" means the name by which the TRACT, as described in Paragraph A above or "Additional Tract" described in Paragraph B above, is subject to this Declaration, by the filing of a Supplemental Declaration shall be known.
- (m) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.
- (n) "Additional Tract" means the Exhibit B realty aforesaid or any part thereof described in paragraph 21 of this Declaration.

2. Declaration. DECLARANT hereby expressly declares that the "TRACT" and "Additional Tract" if applicable shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of "WHITETAIL WOODS". WHITETAIL WOODS within the Exhibit A realty consists of 20 Lots, as designated on the Final Plat and if the Exhibit B realty is made subject to this DECLARATION it will contain NO MORE THAN 8 Additional Lots and be known as WHITETAIL WOODS starting with the number Lot 21, etc. The legal description for each lot in WHITETAIL WOODS shall be as follows:

Lot _____ in WHITETAIL WOODS, a subdivision in Johnson County, Indiana, as per plat thereof recorded _____, 20____, as

Instrument No. _____, in the Office of the Recorder of Johnson County, Indiana.

4. Ownership of Common Area. The Common Areas described in Item 1(e) hereof are subject to this Declaration and shall be conveyed to the "HOA" as therein described and thereafter owned by the Corporation, and shall be held for the use and enjoyment of all the Members except where Common Area is labeled Limited Common Area in which event the use thereof is limited to the use and enjoyment of that particular Lot (Lot 1). The Maintenance of the Common Areas are the responsibility of the HOA. In the event the Exhibit B realty, or any part thereof (Additional Tract), is made subject to this Declaration by the recordation of a Supplemental Declaration the latter document shall detail the common areas within the Additional Tract along with the ownership, maintenance and whether the areas are general or limited in use. The Common Area rights herein detailed shall pass with title to every Lot, subject to the provisions of this Declaration, including, but not limited to, the following.

- (a) The right of the Corporation to control construction of improvements that adjoin on or project into the Detention Pond.
- (b) The right of the Corporation to suspend any Member from the right to use the Common Areas for any period during which any assessment against such Member's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Board's published rules and regulations.
- (c) The right of the Corporation, upon approval by a written instrument signed by two-thirds (2/3rds) of all Class A Members, two-thirds (2/3rds) of all Class B Members, and by two-thirds (2/3rds) of all first mortgagees to

dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Corporation.

- (d) The right of the Corporation to adopt such rules and regulations regarding the Common Areas as it deems necessary as provided in Paragraph 19.

5. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Area to members of his family, his tenants or contract purchasers who reside on any Lot.

6. Encroachments and Easements in Common Area. If by reason of inexactness of construction, settling after construction or for any other reasons, any Common Area encroaches upon any Lot, an easement shall be deemed to exist and run to the Corporation for the maintenance, use and enjoyment of such Common Area.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, in the Common Area and serving his Dwelling Unit.

7. Easement for Utilities and Public and Quasi-Public Vehicles. An easement is granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including, but not limited to water, sewers, gas, telephone and electricity on the "TRACT"; provided however, nothing herein shall permit the installation of sewers, electric lines, water line or other utilities, except as initially designed and approved by DECLARANT on the Plat or as thereafter may be approved by DECLARANT or by the Board of Directors. By virtue of

this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the "TRACT" and to affix and maintain electrical and telephone wires, circuits and conduits underground and across the "TRACT" within the easements shown on the Plat of WHITETAIL WOODS. In the event any utility furnishing service should request a specific easement by a separate recordable document, DECLARANT shall have the right to grant such easement on such "TRACT", without conflicting with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement on the "TRACT". An easement is also granted on and through the Private Road of WHITETAIL WOODS and throughout WHITETAIL WOODS for public police and fire protection and for approved scavenger services serving the Owners of Lots in WHITETAIL WOODS and for the invitees of said Owners.

8. Corporation; Membership; Voting; Functions.

- (a) Membership in Corporation. DECLARANT and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.

(b) Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:

(i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one(1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. The inclusion of the Exhibit B realty under this Declaration shall likewise limit the voting rights to one (1) vote per additional Lot therefore the voting percentage without the addition of the Additional Tract is 1/20th per Lot and shall be no less than 1/28th per Lot if the Additional Tract is made subject to this Declaration.

(ii) Class B. Class B Members shall be DECLARANT and all successors and assigns of DECLARANT designated by DECLARANT as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member shall be entitled to four (4) votes for each Lot of which it is the Owner in all matters requiring a vote of the Members of the Corporation (Lots for this purpose include Lots reflected in a recorded plat.) Notwithstanding the above the Declarant, its successors and assigns shall be allocated a Class B membership for each of the proposed 8 lots in the Exhibit B realty with possible termination per paragraph 21 hereof.

(c) Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, and administration of the Common Areas, and Common Expense Areas (Item 1(e)) and to pay any other necessary expenses and costs in connection with these areas, and to perform such other functions as may be designated by it to perform under this Declaration.

9. Board of Directors.

- (a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by DECLARANT as provided in subparagraph (b) of this paragraph 9.
- (b) Initial Board of Directors. The initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: Michael J. Duke, Brian Bauer and Matt Miles (hereinafter referred to as the "Initial Board") all of whom have been or shall be appointed by DECLARANT. Notwithstanding anything to the contrary contained in, or any other provisions of this Declaration, the Articles or the By-Laws (a) the Initial Board shall hold office until the earliest of the resignation of the entire Initial Board with written notice that the Declarant does not intend to fill such vacancies or 30 days after the Class A votes exceed the Class B votes (the VOTE TURNOVER DATE), and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the VOTE TURNOVER DATE, determined as provided above, every such vacancy shall be filled by a person appointed by DECLARANT, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type or juridical acts inter vivos or

causa mortis, or otherwise, shall be deemed to have appointed DECLARANT as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the VOTE TURNOVER DATE determined as provided above, to exercise all of said Owner's right to vote, and to vote as DECLARANT determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration, the Articles, the By-Laws or otherwise; provided, however, this right to vote granted to DECLARANT shall not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging the Common Areas titled in the HOA or merger/consolidation of the Corporation with another corporation. This appointment of DECLARANT as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by DECLARANT to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation not an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

- (c) Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one

of the persons constituting the multiple Owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one person at a time.

- (d) Terms of Office and Vacancy. The Initial Board, per subparagraph (b) of this Paragraph, shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the VOTE TURNOVER DATE provided herein. After this point, if there are three (3) Board members at least one (1) member shall be required from the Applicable Tract if added to the Declaration and if there are five (5) Board members at least two (2) members shall be required from the Applicable Tract if the Applicable Tract is placed under this Declaration and those members shall be elected for a term of two (2) years. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the VOTE TURNOVER DATE. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions subparagraph (b) of this Paragraph as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with subparagraph (a) of this Paragraph. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such

vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

- (e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.
- (f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, the management, maintenance, repair, upkeep and replacement as required and detailed under this Declaration with the Common Areas, and Common Expense Areas (Item 1(e)), and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party upon ninety (90) days

written notice to the other party. Other than the Initial Management under Paragraph 9 any decision thereafter to employ a professional property management agent shall require the prior consent of the Owners of at least fifty-one percent (51%) of the vote and fifty-one percent (51%) of the vote of Mortgagees who are registered as hereinafter detailed. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (i) protection, surveillance of the Common Areas and Common Expense Areas (Item 1(e)), unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
- (ii) the duties delineated under Item 1(e) hereof;
- (iii) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
- (iv) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (v) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (vi) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the Common Expense Area (Item 1(e)) and the business and affairs of the Corporation specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage, at any time during normal business hours;

- (vii) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under the Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
 - (viii) paying any other necessary expenses and costs in connection with the duties in subsection (ii) hereof; and
 - (ix) to furnish, upon request of any Mortgagee, insurer or guarantor of a first mortgage, an audited financial statement for the immediately preceding fiscal year.
- (g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:
- (i) to employ a Managing Agent to assist the Board in performing its duties;
 - (ii) to purchase, lease or otherwise obtain for the Corporation to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
 - (iii) to employ legal counsel, architects, contractors, accountants and other as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
 - (iv) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
 - (v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom; and
 - (vi) to open and maintain a bank account or accounts in the name of the Corporation.
- (h) Limitation on Board Action. After the VOTE TURNOVER DATE, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 (adjusted

annually for increases or decreases in the Consumer Price Index) but in no event less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

- (i) contracts for replacing or restoring portions of the Common Areas or Common Expense Areas (Item 1(e)) damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
 - (ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
 - (iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.
- (i) Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.
- (j) Non-Liability of Directors, Officers and Committee Members. The Directors, Officers, Committee Members shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, officers or committee members, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of them against any and all liability to any person, firm or corporation arising out of their duties on behalf of the

Corporation. It is intended that the Directors, Officers and Committee Members shall have no personal liability with respect to carrying out their duties in behalf of the Corporation.

(k) Additional Indemnity of Directors, Officers and Committee Members.

The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director, officer, or committee member of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director, officer, or committee member is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director, officer, or committee member the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such official was not guilty of gross negligence or misconduct. In making such finding and notwithstanding the adjudication in any action, suite or proceeding against such official no such official shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such official relied on the books and records of the Corporation

or statement or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such official had actual knowledge of the falsity or incorrectness thereof; nor shall an official be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting.

- (l) Bond. The Board of Directors may provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation, and such other officers or directors of the Corporation that handle or are responsible for funds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to one (1) year aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be cancelled or substantially modified for

any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

10. Initial Management. The Board of Directors has entered or may hereafter enter into a management agreement with DECLARANT or with a corporation or other entity affiliated with DECLARANT or designated by DECLARANT for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice under which DECLARANT (or such other corporation or entity as appropriated) will provide supervision, management and maintenance of the Common Areas of WHITETAIL WOODS detailed in Item 1(e) hereof, and in general perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years or a new management agreement with different parties may be executed under similar terms and conditions. Any management agreement is or will be subject to termination by DECLARANT (or such other corporation or entity as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and DECLARANT (or such other corporation or entity as appropriate) is in effect, DECLARANT (or such other corporation or entity as appropriate) shall have and DECLARANT hereby reserves to itself (or such other corporation or entity as appropriate), the exclusive right to manage the Common Areas of WHITETAIL WOODS and perform all the functions of the Corporation.

11. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot and the Common Areas. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the "TRACT" without a breakdown for each Lot and Common Areas. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the "TRACT" without a breakdown for each Lot and Common Areas, then each Owners shall pay his proportionate share of the real estate taxes assessed to the land comprising the "TRACT" which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the "TRACT" and shall pay his proportionate share of the real estate taxes assessed on the improvements on the "TRACT" based upon the ratio that the square foot of all improved Lots.

12. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered, if any, shall be treated as an paid as part of the Common Expense unless otherwise determined by the Corporation.

13. Maintenance, Repairs and Replacements. Maintenance, repairs, replacements and upkeep of the Common Areas and the Common Expense Areas, as detailed in item 1(e) of this Declaration, shall be furnished by the Corporation as part of its duties and the cost thereof shall constitute a part of the Common Expenses.

Each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon in a good, clean and sanitary condition except as modified by Item 1(e) hereof.

Notwithstanding any obligation or duty of the Corporation to repair or maintain aforesaid if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's lot is subject.

If any Owner shall fail so to maintain and keep his property or any Common Area whose maintenance is the responsibility of the Owner or any part thereof in a good, clean and sanitary condition, exclusive of dwelling maintenance, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

So long as the "TRACT" is subject to this Declaration each Owner, by his acceptance of a deed to any Lot, irrevocably grants the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

14. Architectural Control.

- (a) The Architectural Review Board ("Review Board"). As a standing committee of the Corporation there shall be, and hereby is, established an Architectural Review Board consisting of the Board of Directors of the HOA. Until the date hereinafter referred to in Item 21, the Architectural Review Board shall be the Initial Board of Directors relinquishes this responsibility in writing to the HOA at an earlier date. The Successor Architectural Review Board to the Initial Board shall be appointed by the Board of Directors at such time as all platted lots in the TRACT under Item 21 hereof have been transferred by the Declarant to a title holder other than Declarant.
- (b) Purpose. The Architectural Review Board shall regulate the external design, appearance, use and location of improvements on the Real Estate in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.
- (c) Conditions. No improvements, alterations, repairs, excavation, changes in grade or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the DECLARANT to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit, change in the

Common Areas or Common Expense Areas (Item 1(e)), or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board.

The Review Board acknowledges their Notice of Deed Restrictions to the Lots herein that limit construction of residence to Duke Homes, Inc. or Michael J. Duke and an additional Deed Restriction that allows Duke Homes, Inc. to repurchase a Lot if construction on the residence is not commenced within eighteen (18) months of the date of conveyance from Duke Homes, Inc. to the grantee of a given Lot.

The Architectural Review Board shall be guided by the limitation and applicable standards detailed in Exhibit D entitle "Development Standards" and made a part hereof.

- (d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3rds) vote of the Directors then serving. The Architectural Review Board may establish committees

consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.

- (e) Maintenance of Architectural Control. The Association may not waive or abandon the procedure for regulating and enforcing the architectural design of the Dwelling Units nor for maintaining the Common Areas or Common Expense Areas (Item 1(e) without the prior written approval of 2/3rds of all Owners votes and 2/3rds of all Mortgagees whose mortgage interests have been made known to the Board of Directors in writing by a Mortgagee in accordance with the provisions of this Declaration.

15. Assessments.

- (a) Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then servicing the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.
- (b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such

Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by following generally accepted accounting principles applied on consistent basis.

The annual budget may include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement of the Common Areas and Common Expense Areas (Item 1(e)), which replacement reserve fund (if established) shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement for the Common Areas and Common Expense Areas (Item 1(e)), shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Johnson County, Indiana selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred ten percent (110%) of such last approved budget, as a temporary budget.

- (c) Regular Assessment. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses on the current fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot (unless otherwise specified hereafter). Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total

amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance on an annual basis commencing on the first day of the first month of each fiscal year. Payment of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget, then:

- (i) If the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid within thirty (30) days of written notice to said effect.
- (ii) If the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment of the Regular Assessment coming due, until the entire amount of such excess has been so credited.

The Regular Assessment for the current fiscal year of the corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided sells, conveys or

transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from Payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 16 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. The Regular Assessments shall be due and payable automatically on its due date without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

- (d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that any such assessment shall have the assent of two-thirds ($2/3^{\text{rd}}$) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, and further provided that the DECLARANT shall not be any Owner's agent, attorney-in-fact or proxy in this vote pursuant to the third sentence of Paragraph 7

of this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

- (e) Regular Assessments Prior to the VOTE TURNOVER DATE. During the period that Dwelling Units are being constructed within the "TRACT", it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the VOTE TURNOVER DATE to enable the Corporation to perform its duties and functions. Accordingly, and notwithstanding any other provision contained in the Declaration, the Articles or the By-Laws or otherwise, prior to the VOTE TURNOVER DATE, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this subparagraph.

The Corporation may enter into a management agreement with DECLARANT (or a corporation or other entity designated by DECLARANT) (hereinafter referred to as "Management Agent" or "Managing Agent") in accordance with the provisions of Paragraph 9 of this Declaration. So long as such management agreement (or similar agreement) remains in effect, the Common Expenses and Regular Assessment shall be paid by Owners to Management Agent. DECLARANT shall guarantee that until the earlier of (1) termination of said management agreement or (2) 1 year after the date of execution, the monthly assessments commencing from the time a plat is recorded, for all Owners of platted Lots (other than Declarant) shall be \$50.00 per Lot for Lots unimproved with a residence, WITH DECLARANT BEING OBLIGATED FOR SUCH LOTS TO ONLY 25% OF THE ASSESSMENT with an increase to an aggregate amount of \$200.00 per Lot when a Lot is improved with a residence as evidenced by a dated certificate of occupancy. After this date (assuming that said management agreement or similar agreement is still in effect) and so long thereafter as said management agreement (or similar agreement) remains in effect and Management Agent continues to perform such functions, DECLARANT guarantees that the annual Regular Assessment shall not exceed the amount of the Guaranteed Charge for each year. Such adjustments to the Guaranteed Charge (up to a twenty percent (20%) increase as determined by the Board) shall be made annually on January 1 of each year so long as

said management agreement remains in effect and Management Agent continues to perform such functions. Such annual charge shall during such guaranteed period entirely defray the Owner's obligation for his share of Common Expenses or shall be the Owner's entire Regular Assessment. DECLARANT shall be responsible for any deficit for common expenses during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or if sufficient the replacement reserve fund, if any such fund exists.

The first monthly payment shall be payable in advance on the 1st of the month following the date of platting prorated. Thereafter, payment of the Regular Assessment shall be paid in advance the first day of each monthly period thereafter and adjusted pro-rata when a Lot is improved with a residence as evidenced by a dated certificate of occupancy to reflect the monthly rate of \$200.00 per month being applicable.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 9 of this Declaration and to adhere to and abide by the same.

- (f) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying regular Assessments and Special Assessments or from

contributing toward the Common Expense or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Areas and/or Common Expense Areas (Item 1(e)) or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person the liability of such person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may in its discretion accelerate the entire balance of unpaid assessments. The Owner and any occupant of the Lot and/or Dwelling Unit shall be jointly and severally liable for the payment to the Corporation and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and/or Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or

Special Assessment whether by foreclosure or otherwise, the Board for and on behalf of the Corporation shall be entitled to recover from the Owner of the respective Lot and/or Dwelling Unit costs and expenses of such action incurred (including, but not limited to, reasonable attorney's fees) and interest from the date such assessments were due until paid at the rate equal to the prime interest rate then being charged by NBD of Indianapolis to its largest and best corporate customer (or if said bank is no longer in existence then such rate charged by another National Bank in Johnson County, Indiana selected by the Board of Directors). The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage.

- (g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and/or Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for

any installments of Regular Assessments or Special Assessment thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

16. Mortgages.

- (a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgage and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws or a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove

provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

- (b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or a purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 16 hereof.
- (c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation (1) to pay any charges against the Common Areas and/or Common Expense Areas (Item 1(e)) which are in default and (2) to pay any overdue premiums on hazard insurance for the above areas or to secure new hazard insurance for the above areas on the lapse of a policy. Any Mortgagee making such payment shall be owed immediate reimbursement by the Corporation.
- (d) Notice of Condemnation or Casualty Loss. Mortgagee shall be timely notified of any condemnation loss which affects a material portion of the

"TRACT". Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.

- (e) Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

17. Insurance.

- (a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring, if possible and practical, the Corporation's improvements within the Common Areas and Common Expense Areas (Item 1(e)) in an amount consonant with the full replacement value of these improvements. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual

Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation as provided in the By-Laws shall specifically include protection for any insurance proceeds so received.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Mortgagees and at least ten (10) days prior written notice to the Corporation.

Each Owner shall otherwise be solely responsible for loss or damage to his Dwelling Unit, the contents of his Dwelling Unit and Lot however caused and his personal property stored elsewhere on the "TRACT" and the Corporation shall have no liability to the Owner for loss or damage to the Dwelling Unit, the contents of any Dwelling Unit or any personal property stored elsewhere on the "TRACT". Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

- (b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but not less than \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the "TRACT". Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be cancelled or substantially modified without at least ten (10) days written notice to the Corporation.
- (c) Other Insurance. The Corporation may also obtain any other insurance required by law to be maintained including, but not limited to, workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance shall inure to the benefit

of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

- (d) Insurance by Owners. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

18. Restoration of Common Areas and/or Common Expense Areas (Item 1(e)) ("Improvements"). In the event of damage to or destruction of any of the "Improvements" herein titled due to fire or any other casualty or disaster, the Corporation shall attempt to promptly cause the same to be repaired and reconstructed to the extent of proceeds of insurance and other funds available but without making the HOA insolvent. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the "Improvements", or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the "Improvements" so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part

of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the "Improvements" to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

19. Covenants and Restrictions. The following covenants and restrictions contained in Exhibit D attached and made a part hereof concerning the use and enjoyment of the Lots, Dwelling Units, Common Areas and Common Expense Areas (Item 1(e)) and are in addition to any other covenants or restrictions contained herein and in the Final Plat. All such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and are enforceable by an Owner, or by the Corporation. Present or future Owners or the Corporation who shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof including reasonable attorney fees, but there shall be no right of reversion or forfeiture resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, DECLARANT shall have the right to use and maintain any Lots and Dwelling Units owned by DECLARANT and other portions of the "TRACT" (other than individual Dwelling Units and Lots owned by persons other than DECLARANT), all of such

number and size and at such locations as DECLARANT in its sole discretion may determine, as DECLARANT may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. DECLARANT shall have the right to relocate any or all of the same from time to time as it desires. DECLARANT shall have the right to relocate any or all of the same from time to time as it desires. DECLARANT shall have the right to remove the same from the "TRACT" at any time.

20. Amendment of Declaration.

(a) Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors of Owners having in the aggregate at least a majority of the votes of all Owners.
- (iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
- (iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less a majority in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(v) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 17 with respect to casualty insurance or fidelity bonds to be maintained by the Corporation, or (3) the provisions of Paragraph 18 of this Declaration with respect to reconstruction or repair of the Common Areas and Common Expense Areas (Item 1(e)) in the event of fire or any other casualty or disaster, or (4) the provision of Paragraph 14 of this Declaration establishing the Architectural Review Board and providing for its functions, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.

(vi) **Additional Special Amendments.** No amendment to this Declaration shall be adopted which imposes a right to first refusal or similar restriction or which changes (1) the method of voting, or (2) reserves for, and responsibility for, maintenance, repair and replace of the Common Areas and Common Expense Areas, or (3) right to use the Common Areas and Common Expense Areas, or (4) termination of the applicability of this Declaration, or (5) any provisions which are for the express benefit of Mortgagees without the consent of at least two-thirds (2/3rds) of the votes of the Owners for the first ten (10) years after recording of this Declaration and thereafter at least a majority of the votes of Owners and the consent of Mortgagees holding mortgages on fifty percent (50%) of the Dwelling Units subject to mortgages whose mortgage interest have been made known to the Board of Directors as heretofore detailed.

(vii) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Johnson County, Indiana, and such amendment shall not become effective until so recorded.

(viii) **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.

(b) **Amendments by DECLARANT ONLY.** Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the

DECLARANT shall have and hereby reserves the right and power, acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other person to amend or supplement this Declaration at any time from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements, or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, or (e) adopt amendments prior to the VOTE TURNOVER DATE which are not materially adverse to the owners. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the DECLARANT to vote in favor of, make, or consent to any amendments described in this Paragraph on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof

shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the DECLARANT to vote in favor of, make, execute and record any such amendments. The right of the DECLARANT to act pursuant to rights reserved or granted under this Paragraph shall terminate at such time as the DECLARANT no longer holds or control title to any part or portion of the "TRACT".

- (c) Amendment Prior to the VOTE TURNOVER DATE. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration prior to the VOTE TURNOVER DATE without the consent and approval of DECLARANT.

21. Annexation of Additional Tract. In addition to TRACT Declarant has been given the option detailed in RECITAL B given by the title owner of certain real estate described in attached Exhibit B to make all or part of Exhibit B realty subject to this DECLARATION as follows:

At any time prior to 15 years after date of recordation of this DECLARATION, Declarant, without the consent of the Owners, may, but is not obligated to, develop the Additional Tract or part thereof; provided, however, that the maximum number of Dwelling Units which may be contained in the total Additional Tract shall not be more than eight (8) and such units shall be consistent with the quality of construction of previous units and shall be sized to at least the minimum size Lot in the Exhibit A real estate. Improvements (excluding Dwelling Units) within the area to be annexed must be substantially completed prior to annexation.

In the event the Additional Tract or any part of it is platted in a manner similar to TRACT (Exhibit A), the Owners of such Lots in the Additional Tract or parts thereof, shall have the same rights and obligations as the Owners herein, and the Corporation shall have the same jurisdiction and authority over such Additional Tract or parts thereof as its authority and jurisdiction herein.

In the event Declarant decides not to develop or plat the Additional Tract or any part of it in a manner similar to TRACT (Exhibit A), Declarant shall file a Declaration stating that the Additional Tract or any part thereof shall not be developed as contemplated herein; provided, however, any part of the Additional Tract for which a Supplemental Declaration has not been filed by 15 years after date of recordation of this Declaration, shall be automatically removed from the possibility of having a common entity provide for the maintenance, repair, replacement, administration and operation of such part of the Additional Tract, unless such is established by the Owners in the TRACT (Exhibit A) and those in the Additional Tract (Exhibit B).

Regardless of the method of development of the Additional Tract and whether or not all of the Additional Tract comes within the jurisdiction of the Corporation or subject to the Declaration, Declarant reserves unto itself, its successors and assigns, for the use and benefit of that part of the Additional Tract capable of coming within the jurisdiction of the Corporation or subject to the Declaration, the right and easement to enter upon the streets and Common Area of TRACT (Exhibit A) to provide ingress and egress to the Additional Tract (Exhibit B) until the right to add Additional Tract or part thereof expires.

Declarant hereby grants to the Owners in TRACT (Exhibit A) the right and easement to enter upon any streets and roadways that may exist in the Additional Tract (Exhibit B) to provide ingress and egress to TRACT (Exhibit A) as may be necessary.

It is the purpose and intent of the easements herein granted and reserved to provide free and unrestricted use and access across the roadways and streets of the Tract and Additional Tract, no matter how developed, for the owners of the TRACT and Additional Tract, their guests, invitees, and all public quasi-public vehicles, including but not limited to, police, fire and emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles.

The assessment which the Owner of each Lot in the Additional Tract or part thereof, if within the jurisdiction of the Corporation, shall be obligated to pay shall be equal to that paid by any Owner herein and shall commence on the date of conveyance of such Lot by Declarant. No assessment (Regular, Special or otherwise) on any Lot in the Additional Tract shall be due until such Lot has been conveyed by Declarant or the Dwelling Unit thereon is occupied for the residential purposes.

22. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of

occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or "TRACT" as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporation, partnership, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the "TRACT" in any manner shall be subject to the Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

23. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his misuse of the Common Areas and/or Common Expense Areas.

24. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

25. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas and/or Common Expense Areas or by abandonment of his Lot.

26. Severability Clause. The invalidity of any covenants, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

27. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

28. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

29. The Plat. The Final Plat of the portions of the "TRACT" detailed in Item 3 hereof is incorporated into this Declaration by reference to the Instrument number thereof, filed in the Office of the Recorder of Johnson County, Indiana.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

**"DECLARANT FEE OWNERS"
OF EXHIBIT "A" and "A1" REALTY**

WHITETAIL WOODS, LLC

By: _____

Capacity: Member

**FEE OWNERS
OF EXHIBIT "B" REALTY**

Norman W. Duke

Norman W. Duke
Printed

Pamela K. Duke

Pamela K. Duke
Printed

STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

Before me, a Notary Public, in and for said County and State, personally appeared Michael J. Duke, by me known, and by me known to be the Manager of Whitetail Woods LLC, who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of WHITETAIL WOODS MEMBERSHIP" on behalf of said Indiana Limited Liability Company.



My Commission Expires:

2/18/2007

WITNESS my hand and Notarial Seal this 20th day of Nov., 2001.

Matthew E. Miles
Notary Public

Matthew E. Miles
(Printed)

County of Residence: JOHNSON

STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

Before me, a Notary Public, in and for said County and State, personally appeared Norman W. Duke and Pamela K. Duke, who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of WHITETAIL WOODS OWNERSHIP".

WITNESS my hand and Notarial Seal this 20th day of Nov., 2001.

Matthew E. Miles

Notary Public

Matthew E. Miles

(Printed)

County of Residence: JOHNSON

My Commission Expires:

2/18/2007



This Instrument Prepared by:
Raymond Good, #7201-49
LOCKE REYNOLDS LLP
201 North Illinois Street, Suite 1000
P.O. Box 44961
Indianapolis, IN 46244-0961
(317) 237-3637
496809_2

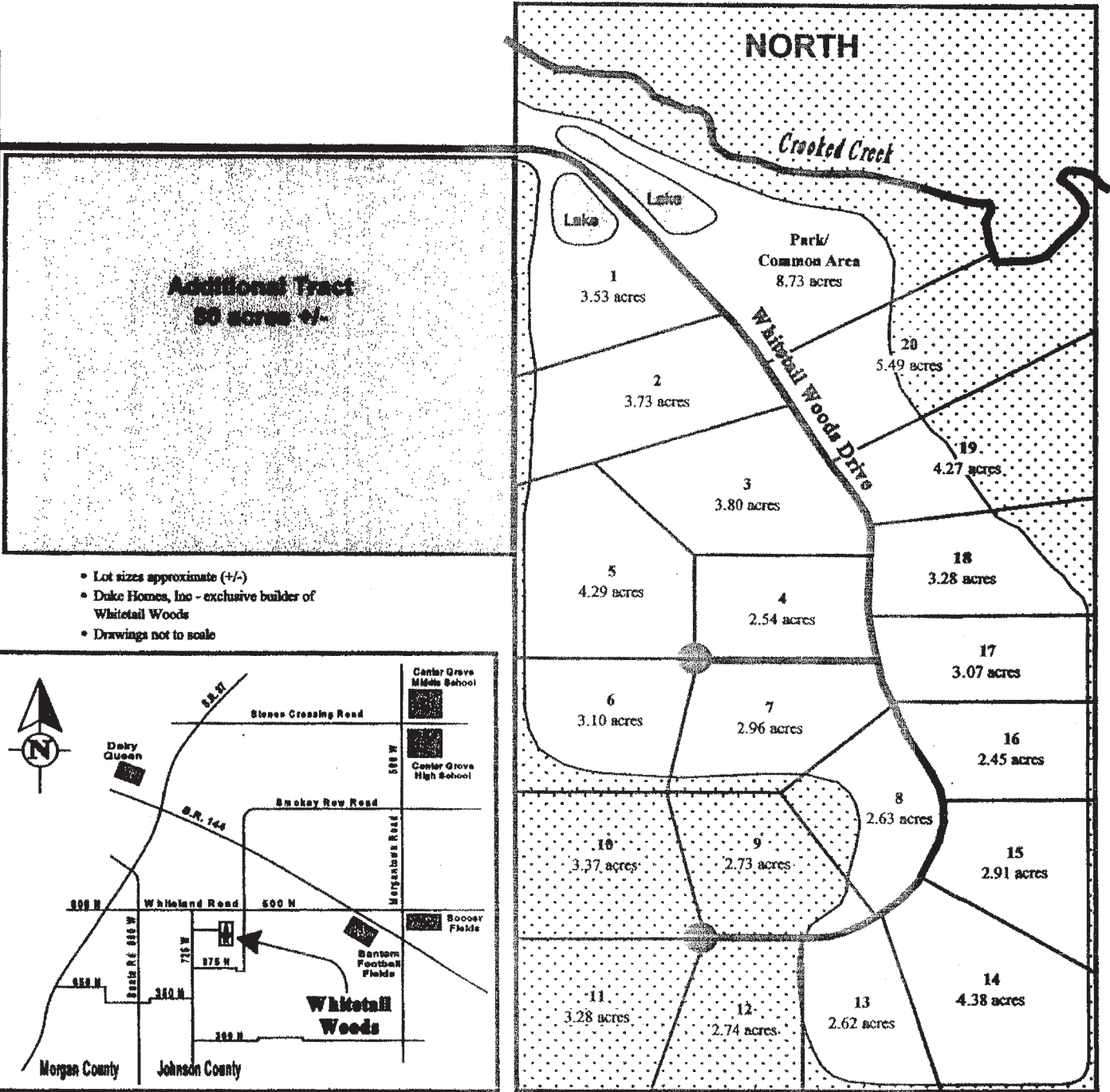
Exhibit C

DUKE
MANY PROMISE. WE DELIVER.

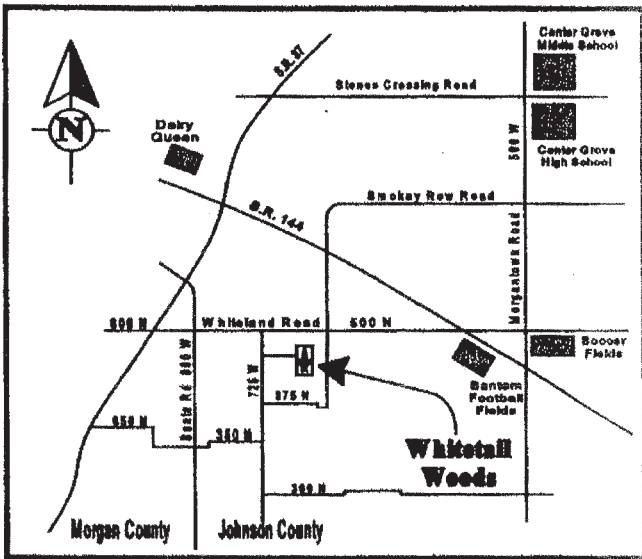


Whitetail
WOODS

Co. Rd 725W



- Lot sizes approximate (+/-)
- Duke Homes, Inc - exclusive builder of Whitetail Woods
- Drawings not to scale



4300 North 725 West • Bargersville, Indiana 46106
317.422.9000 office 317.422.9070 fax
www.dukehomes.com

WOODS -

Exhibit D

Whitetail Woods

Covenants and Restrictions

- 1. Use of Lots:** All lots in this subdivision shall be used solely for residential purposes. No structure shall be erected, altered, placed or permitted to remain on any residential lot herein, other than one detached single-family dwelling and a private attached garage for cars. No dwelling shall have less than a full size 3 car or more than a 4 car attached garage, unless otherwise approved by the Architectural Review Board ("ARB"). All dwellings shall have either a basement or crawl space foundation, specifically, wood foundations and concrete slab foundations will not be permitted. Carports with open sides will not be permitted. No portion of any lot may be sold or subdivided so that there will be thereby created a greater number of lots than the original number platted.
- 2. Minimum Living Space:** The ground floor of all multi-story dwellings constructed in this subdivision, exclusive of one-story open porches, garages and other areas not considered living areas, shall be not less than 1,700 square feet of finished and livable floor area, with a total aggregate of 3,200 minimum square feet of finished and livable floor area. In the case of a one-story structure, the ground floor area, exclusive of one-story open porches, garages and other areas not considered living areas, shall be not less than 2,800 square feet of finished and livable floor area. Basement floor areas, both finished and unfinished, shall not be counted in the above square footage and shall be in addition thereto. Notwithstanding the foregoing, the ARB may in its discretion approve construction of a dwelling that does not comply with the foregoing requirements if in the ARB's discretion the design and size of the dwelling will be compatible with the other dwellings in the subdivision and will not detract from their value.
- 3. Building Setbacks:** No building shall be located on any lot nearer to the front lot line or nearer to the side street than the minimum building setback lines shown on the recorded plat. No building shall be located nearer than fifty (50) feet to a side yard line. No building shall be erected closer than fifty (50) feet to the rear lot line.
- 4. Temporary Construction:** No construction of shacks, out-houses, outbuildings, storage barns or the like shall be erected or situated on any lot herein. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be permitted to remain on any lot or used on any lot at any time as a residence, either temporarily or permanently. All job sites must remain neat and clean during construction. If the Developer or Whitetail Woods Homeowners Association, Inc. (HOA) is not satisfied with the appearance of a construction site, after 10 days' notice thereof to the owner of the respective Lot, the Developer or HOA may cause the site to be cleaned and may assess such charges, including attorney fees, specifically against the owner thereof.
- 5. Pools:** Above-ground swimming pools will not be permitted on any lot or common area. In-ground swimming pools are permissible and shall be subject to any and all state and county regulations.
- 6. Parking:** Except for cars and personal-use pickup trucks, no boats, trucks, campers, trailers, recreational vehicles, motorcycles, or similar vehicles may be parked on a lot unless it is screened in such a way that it is not visible to the occupants of the adjacent lots. No vehicle of any kind shall be parked on any road or street except for a reasonable length of time, and overnight parking on any road or street is not permitted. At no time shall any unlicensed or inoperative vehicles of any kind be parked on any road, street, private driveway, or lot. The Developer and/or HOA shall determine what is acceptable screening and shall determine what is a reasonable length of time.

Exhibit D

7. **Signs:** No sign of any kind shall be displayed to the public view on any lot and/or structure, except signs used by the builder to advertise the property during the construction period or a professional sign advertising property for sale, as approved by the Developer and/or HOA. Signs advertising property for rent are specifically prohibited. Violation of this sign restriction will result in Fifty Dollars (\$50.00) per day liquidation damages payable to the Developer until such time as the HOA owns and is responsible for the maintenance of the common areas, at which time such liquidated damages shall be payable to the said association. The Developer and/or HOA shall approve all signs deemed appropriate by the ARB advertising properties for sale, all signs shall be uniform in design and placed as the ARB shall determine proper.

8. **PLANS AND SPECIFICATIONS TO BE SUBMITTED TO ARB:**

- a. All plans, drawings and blueprints of proposed homes will be of professional quality and draw to a scale of not less than 1/4" = 1'. All plot plans shall be drawn to a scale of not less than 1" = 30'.
- b. The following plans will be submitted for each element of new construction: front elevation; rear elevation; side elevation; floor plan of each floor; foundation plan.
- c. Specifications of major building material, i.e. brick, stone, wood, etc.
- d. A plot plan which will provide and identify the following items: proposed location of house and driveway on lot; location of any easements and undisturbed areas; location of proposed fences, screening, walkways, walls. Existing and proposed grades; location of all trees outside of the building and parking areas which are of a 12 inch caliper diameter or larger; and the type of trees designated on the plot plan. NOTE: A sample plot plan shall be made available by the ARB.

In order to maintain a high-quality, residential development, certain criteria for new homes have been established by the ARB. The ARB will be composed of members designated by Developer. This ARB will remain the sole source of approval until such authority is turned over to the HOA by Developer after completion of the subdivision.

The ARB has the right to promulgate and enforce rules to "regulate the external design, appearance, use, location, and maintenance of land and improvements subject to the restrictions in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography". In order to satisfy this responsibility, the ARB shall take the following action:

- a. Approve or disapprove plans and specifications for all proposed new construction on land subject to the restrictions.
 - b. Approve or disapprove plans and specifications for all improvements of property on land subject to the restrictions. The ARB shall determine that buildings and grounds subject to the restrictions are in compliance with the restrictions.
 - c. Colors of homes and improvements will generally be subdued earthen tones or white and shall be consistent with other structures in the immediate area. No aluminum, vinyl, or 4 X 8 siding.
 - d. In order to preserve the overall aesthetic appearance of the development, only one (1) type of mailbox will be permitted and shall be designated by the ARB.
9. **Nuisances:** No noxious, waste, or offensive activity shall be carried on upon any lot or common area nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Activities upon lots are to be conducted in a quiet and controlled manner. The HOA determination as to what is a nuisance (noxious, waste, or offensive activity) shall be conclusive.
10. **Non-residential Uses:** No industry, trade, or other commercial, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced, or permitted upon or in any lot or the common area. No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot or common area, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot or common area. No derrick or other structure designed for used in boring for oil or natural gas shall be erected, maintained or permitted on any lot or common area. All gas and oil tanks for residential utility purposes must be concealed with the effectiveness of concealment to be solely determined by the Developer and/or HOA.

Exhibit D

11. **Animals:** No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot. Dogs, cats, or other normal household pets may be kept if they are confined in a fenced enclosure or within the principal building, and provided that they are not kept, bred or maintained for any commercial purpose. Dogs and cats so kept shall not be permitted to roam at large within the subdivision and shall be confined to the owner's premises. No freestanding pet facilities are allowed. Customary household pet does not include pot-bellied or midget pigs or hogs, exotic animals and/or other animals that would normally be considered livestock or zoo animals. Animals shall be kept only in a quiet manner. Pets shall be taken outdoors only under leash or other restraints. The HOA under its Rule making powers herein may adopt rules concerning allowed pets. Any pet which in the sole judgment of the HOA is causing or creating a nuisance or unreasonable disturbance or noise, may be required to be permanently removed from the subdivision within ten (10) days after written notice from the HOA to the respective pet owner to do so.
12. **Dumping:** No lot or common area shall be used or maintained as a dumping ground for rubbish, trash or garbage, waste matter or material and shall be kept on each lot only in sanitary containers, and all incinerators or other equipment for the storage or disposal of such material and kept in a clean and sanitary condition. During the construction of a residence all construction and waste shall be kept in enclosure(s) on the subject lot and not permitted to be strewn about. It is the responsibility of the builder of any residence or residential improvements to dispose of all excess building material, trash, waste, etc., from the subject lot.
13. No fence, wall, hedge or shrub planting which obstructs the sight line at elevations between two and six feet above roadways, 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 them at points 25 feet from the intersection of the street property lines, or in the case of a rounded property corner, from the intersection of the street property lines extended, the same sight line limitations shall apply on any lot within 10 feet from the intersection of a street property line with edge of a driveway pavement.
14. Fences, trees, and shrubs are not permitted within the limits of the street right-of-way, nor are they permitted within four (4) feet in any direction of a fire hydrant or between the hydrant and the right-of-way line.
15. Any field tile or underground drain which is encountered in construction of any improvement within this subdivision shall be perpetuated, and all owners of lots in this subdivision and their successors shall comply with the Indiana Drainage Code of 1965, and all amendments thereto.
16. Swales, drainage ditches, and rear or side yard swales shall not be obstructed or altered by structures, fences, planting, fill or other material which may damage, interfere, altar or obstruct the flow of surface water through the drainage channels. If a lot owner desires to construct a fence within the confines of any of the above mentioned drainage ways, the location and type of fence must first be approved by the Architectural Control ARB to insure that proper drainage flows will not be affected. Upon completion of the fence installation, the ARB reserves the right to order the fence to be removed or reconstructed if perpetuation of surface drainage is damaged or obstructed as a result of the fence construction, the expense of the removal and/or reconstruction shall be the sole responsibility of the lot owner and not the ARB. All fences must also be approved by the ARB as to type, size, and material to insure a desired appearance consistent with the overall aesthetics of the subdivision. Desired approvable fencing shall be black wrought iron style.
17. **Utilities:** All utilities in the subdivision to be installed underground.
18. **D&UE:** Strips of ground marked "Drainage and/or Utility Easements" are reserved for the use of public utilities and/or drainage facilities. Within these easements, no structure, fence, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may alter or obstruct the flow of surface water through the drainage channels. The designated location of these easements can be found on the Final Plat for Whitetail Woods, recorded in the Office of the Recorder of Johnson County, Indiana.

Exhibit D

19. **Additional Structures:** One detached, non-residential building will be allowed per lot upon approval of site plan and building plans by the ARB and the Johnson County Planning Department. The minimum standards upon which approval will be based include the building having the same architectural style as the existing residential dwelling including similar brick or exterior finish and similar shingles. The exterior footprint of building shall not exceed 30' x 55' unless approved by the ARB.
20. **Exterior Antennas:** Satellite, TV, radio, and cable transmission/receiving devices are not permitted unless approved by the ARB in regards to size and location.
21. **Builders:** All homes are to be built by Duke Homes, Inc. and/or Michael J. Duke. This covenant is to run with the land with the only exceptions being a written notice from Duke homes, Inc. and/or Michael J. Duke, granting permission for such exceptions.
22. **Exterior Facing:** Materials and colors used on the exterior of all homes and improvements are subject to the approval of the ARB. All exterior colors are, generally, to be subdued, earthen tones or white and compatible with other structures in or planned for the immediate area. No masonite, vinyl or aluminum siding shall be used on exterior construction.
23. **Trees:** Four (4), two-inch caliper trees shall be planted in each front yard of lots that are non-wooded. The type and species of these trees to be approved by the ARB.
24. **Basketball goals:** Basketball goals shall not be allowed in front (on the yard or driveways) of any front entry garage homes - only side entry garage homes may apply to the ARB for approval of basketball goals. Backboards of all basketball goals shall be translucent fiberglass with a black pole (or an approved equal). The ARB reserves the right to approve or disapprove the location of all basketball goals. No basketball goals shall be attached to any structure.
25. **Roofing:** All roofing materials must be of either wood or a dimensional asphalt/fiberglass shingle or as approved by the ARB.
26. **Driveways:** All driveways, including but not limited to those serving the primary resident and additional structures, shall be of a paved, hard surface material or as approved by the ARB.
27. **Leases:** No owner may rent his dwelling unit for transient or hotel purposes. Any lease of a dwelling shall be of the entire dwelling unit and shall have a written lease of at least one (1) year which provides that the tenant and tenant's guests are subject to the provisions of this Declaration with any failure to conform with the terms of this Declaration to be a default under the lease.

Exhibit A

DESCRIPTION

A part of the Southwest Quarter of Section 29, and a part of the Northwest Quarter of Section 29, all in Township 13 North, Range 3 East, White River Township, Johnson County, Indiana, being further described as follows:

Beginning at the southeast corner of the Southwest Quarter of said Section 29; thence North 00 degrees 04 minutes 46 seconds East 2539.77 feet with the east line of said quarter section to a point in the center of Crooked Creek; thence with the center of Crooked Creek for sixteen (16) calls: North 63 degrees 13 minutes 50 seconds West 44.60 feet, South 59 degrees 35 minutes 18 seconds West 96.76 feet, South 39 degrees 15 minutes 39 seconds East 127.02 feet, South 32 degrees 13 minutes 09 seconds West 136.02 feet, South 80 degrees 19 minutes 12 seconds West 101.02 feet, North 06 degrees 47 minutes 10 seconds West 98.25 feet, North 12 degrees 41 minutes 13 seconds East 61.30 feet, North 70 degrees 18 minutes 41 seconds West 153.70 feet, North 79 degrees 06 minutes 35 seconds West 214.73 feet, South 85 degrees 26 minutes 11 seconds West 85.47 feet, North 74 degrees 54 minutes 23 seconds West 206.46 feet, North 18 degrees 58 minutes 58 seconds West 128.31 feet, North 83 degrees 09 minutes 12 seconds West 84.49 feet, North 50 degrees 10 minutes 36 seconds West 134.55 feet, North 87 degrees 19 minutes 21 seconds West 173.09 feet, and North 46 degrees 26 minutes 27 seconds West 115.45 feet to the west line of the east half of the Northwest Quarter of said Section 29; thence South 00 degrees 07 minutes 08 seconds West 257.00 feet with said west line to the northwest corner of the east half of the Southwest Quarter of said Section 29; thence 00 degrees 10 minutes 33 seconds West 2661.68 feet with the west line of said half quarter section to the southwest corner thereof; thence North 88 degrees 27 minutes 08 seconds East 1344.43 feet with the south line of said half quarter section to the Point of Beginning, and containing 80.19 Acres, more or less, and subject to all legal rights-of-way, easements and restrictions.

Prepared by:
Major Engineering and Land Surveying, Inc.
435 East Main Street, Suite G
Greenwood, Indiana 46143

Exhibit A1

LEGAL DESCRIPTION

A part of the Southwest Quarter of Section 29 and the Southeast Quarter of Section 30, all in Township 13 North, Range 3 East, White River Township, Johnson, County, Indiana, being further described as follows:

Beginning at the northeast corner of the Southeast Quarter of said Section 30; thence South 89 degrees 47 minutes 34 seconds West 1336.64 feet with the north line of said Southeast Quarter to the northwest corner of the East Half of said Southeast Quarter; thence South 00 degrees 00 minutes 00 seconds West 175.00 feet with the west line of said east half quarter section; thence North 89 degrees 47 minutes 34 seconds East 35.00 feet parallel with the north line of said east half quarter section; thence North 00 degrees 00 minutes 00 seconds East 90.00 feet parallel with the west line of said east half quarter section; thence North 89 degrees 47 minutes 34 seconds East 65.91 feet parallel with the north line of said east half quarter section; thence North 68 degrees 47 minutes 37 seconds East 97.67 feet to a point on a line 50.00 south of and parallel with the north line of said east half quarter section; thence North 89 degrees 47 minutes 34 seconds East 1145.23 feet with said parallel line to the east line of said east half quarter section, being also the west line of the west half of the Southwest Quarter of said Section 29; thence North 88 degrees 55 minutes 36 seconds East 1339.22 feet on a line 50.00 feet south of and parallel with the north line of said west half quarter section to the east line thereof; thence North 00 degrees 09 minutes 28 seconds West 50.01 feet with the east line of said west half quarter section to the northeast quarter thereof; thence South 88 degrees 55 minutes 36 seconds West 1339.64 feet with the north line of said west half quarter section to the Point of Beginning and containing 3.26 acres, more or less.

Prepared by:
MAJOR Engineering and Land Surveying, Inc.
435 East Main Street, Suite G
Greenwood, Indiana 46143

Exhibit B

The North Half of the West Half of the Southwest Quarter of Section 29, Township 13 North, Range 3 East and
The North Half of the East Half of the Southeast Quarter of Section 30, Township 13 North, Range 3 East, all in White River Township, Johnson County, Indiana.

The above described tracts lie on the Easterly side of County Road 725 West having an approximate address of 4339 N 725 W, Bargersville, Indiana 46106.