

FILED

KEY 27-602-11 to 34 & 39

JAN 12 1995

Olthof Development
P.O. Box 3261
Munster, In 46321

**RESTRICTIVE COVENANTS FOR LOTS 11 THROUGH 34, BOTH INCLUSIVE,
SAM ORLICH AND OUTLOT B IN "WHISPERING OAKS"**

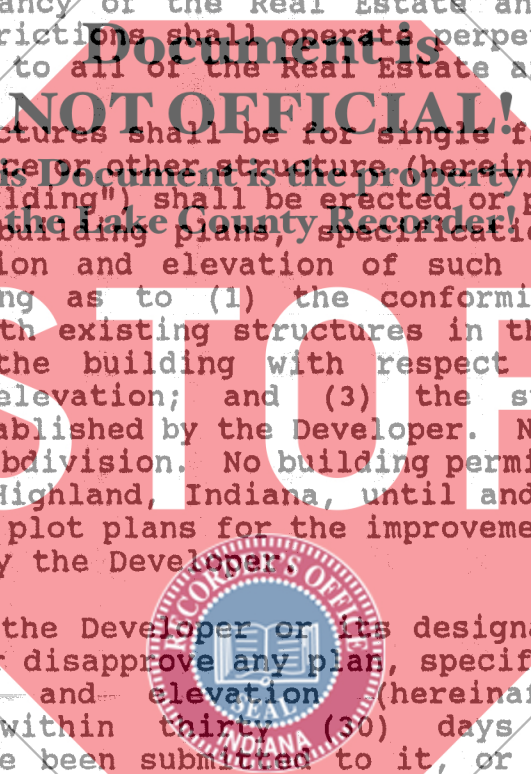
AUDITOR LAKE COUNTY

Mercantile National Bank of Indiana, a National Banking Association as Trustee under the terms and provisions of a trust agreement dated July 30, 1990, also known as Trust #5305 (hereinafter, "Grantor") does hereby appoint Olthof Homes, Inc. as the developer and as its representative. Grantor and Olthof Homes, Inc., an Indiana Corporation (hereinafter, the "Developer"), being the Developer of the Real Estate described in Exhibit "A" attached hereto and made a part hereof (hereinafter the "Real Estate"), commonly known as part of the subdivision "Whispering Oaks" (hereinafter sometimes referred to as "Subdivision"), do hereby establish and execute these Restrictive Covenants which shall hereby establish conditions, covenants, and restrictions to govern the use and occupancy of the Real Estate and such conditions, covenants and restrictions shall operate perpetually and run with the land and title to all of the Real Estate and are as follows:

1. All structures shall be for single family dwelling. No building, wall, fence or other structure (hereinafter, collectively referred to as "building") shall be erected or placed on any lot or parcel until the building plans, specifications and plot plans showing the location and elevation of such building have been approved in writing as to (1) the conformity and harmony of external design with existing structures in the subdivision; (2) the location of the building with respect to topography and finished ground elevation; and (3) the sufficiency of the specifications established by the Developer. No storage sheds are permitted in the subdivision. No building permit shall be obtained from the Town of Highland, Indiana, until and unless the plans, specifications and plot plans for the improvements have been given written approval by the Developer.

In the event the Developer or its designated representative fails to approve or disapprove any plan, specification, plot plan, design, location and elevation (hereinafter, "plans and specifications") within thirty (30) days after plans and specifications have been submitted to it, or in any event if no suit to enjoin the erection of any building or the making of alterations thereof has not been commenced prior to the completion of the roof of such building, such approval will not be required and this covenant will be deemed to have been complied with fully.

The Developer or its employees, agents, and representatives shall not be liable for any damage, loss or prejudice suffered or claimed by any lot owner or contractor who submits such plans and specifications on account of (a) any defect in any plans and specifications submitted, revised or approved in accordance with foregoing provisions; (b) any structural or other defects in any work done according to such plans and specifications; (c) the approval or disapproval of any plans and specifications, whether or not defective; (d) the construction or performance of any work, whether or not pursuant to approved plans and specifications, and (e) the development of any property within the Real Estate as to the Town of Highland, Lake County, Indiana. Any person submitting plans and specifications to the Developer shall indemnify and hold



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STATE OF INDIANA
LAKE COUNTY
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the Developer harmless from any and all damage, loss or prejudice suffered or claimed by any third party, including attorneys' fees incurred, relating to the plans and specifications.

2. All residential structures shall comply with the following: (1) All one-story residential structures shall have a minimum first floor area of 1,800 square feet; (2) All bi-level, split level, tri-level, quad level and raised ranch residential structures shall have a minimum floor(s) area of liveable space of 1,800 square feet above grade level; (3) All two-story residential structures shall have a minimum total floor area of 2,200 square feet above grade level. In computing the minimum square footage required above, the computation of square footage shall exclude porches, breezeways, attached garages or basements.

3. Any residential structure must have a minimum two (2) car garage attached to the residence.

4. All residential structures shall have a minimum of thirty (30) percent of its facia material consisting of masonry. The exterior sidings of all structures shall be redwood, cedar, masonry, or dry-vit (or similar material).

5. All driveways must be constructed of either asphalt, concrete, or paving stone. Construction of a driveway must be completed before occupancy of a residential structure on the lot. All other paving materials for driveways may be installed upon written approval by the Developer. There shall be a minimum of two feet (2') of yard between each side lot line of a lot and the paving material of a driveway.

6. Pursuant to the ordinances of the Town of Highland, sidewalks are to be installed at the homeowner's expense.

7. Each front yard and side yard shall be landscaped with sod grass. Only the back yards may be seeded. Each lot owner shall install an underground sprinkler system to service the sodded areas. Each lot owner, who has not commenced the construction of a residential structure on the owner's lot within six (6) months after the date of conveyance of title to the lot to such owner, shall clear, till and seed the lot, and thereafter shall keep the lot mowed and trimmed in a manner as required by the ordinances of the Town of Highland.

8. Each lot owner shall be permitted to remove (1) all trees necessary for the construction of a residential structure and a driveway and (2) all trees which may be a safety concern, i.e., dead trees or diseased trees. Each lot owner shall promptly remove all dead trees. Otherwise, each lot owner must preserve all trees on a lot which are four inches in diameter or larger which do not represent a safety hazard for the purpose of preserving the wooded setting of the subdivision.

9. No satellite dishes shall be permitted on any part of the Real Estate. No above-ground pools shall be permitted on or upon

the Real Estate. No basketball activity, basketball hoops or backboards shall be permitted on or near any road, avenue, or street within the Real Estate.

10. No unlawful or immoral uses or activities shall be permitted or upon the Real Estate.

11. No obnoxious or offensive trade or activity shall be carried on or upon the Real Estate, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

12. All equipment, garbage cans, woodpiles, or storage piles shall be kept, screened or stored so as to conceal them from the view of neighboring lots and streets. All rubbish, trash or garbage shall be regularly removed from all lots and shall not be allowed to accumulate on the lots within the subdivision. No lot owner shall burn or permit the burning of garbage or other refuse. No lot owner, or builder or contractor for such lot owner, shall dump construction debris, dirt, sand, trash or rubbish on any lot, street or other area on the Real Estate. Each lot owner shall be responsible for the appropriate removal of all such construction debris, dirt, sand, trash and rubbish, and the Developer shall not have any liability or responsibility therefor.

13. No tractor, motor home, trailer, boat, camper etc. shall be permitted to be parked on any lot or anywhere on the Real Estate for more than forty-eight (48) hours unless in a garage. It is the intent of the Developer to restrict parking of the above-mentioned vehicles to the garages upon the lots and to further restrict vehicular parking on or upon the Real Estate to the automobiles regularly used by the lot owners. No lot owner shall repair or restore any vehicle of any kind upon any lot, street, alley, right of way or other thoroughfare except for emergency repairs and except within enclosed garages.

14. Strips of ground shall be reserved as easements for the use of public utilities; for the installation and maintenance of poles, ducts, wires, pipelines, lines; and for drainage. No permanent or other structures are to be erected or maintained upon said strips of land. The lot owners shall take their titles subject to such easements, and such easements are for the benefit of all lot owners in said Real Estate and any adjacent parcels of real estate.

15. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept on any lot, provided that: they are not kept, bred or maintained for any commercial or hobby purpose; they are not left unattended by a lot owner outside of a residential unit; they do not create a nuisance; and they are not permitted to roam elsewhere in the Real Estate except on a leash.

16. Any fencing installed by a lot owner shall be no greater than six feet (6') in height and only constructed around the side

and rear yards of any lot in the Real Estate. A greater height around swimming pools may be allowed if the same is required by ordinance or statute.

17. Each residential structure on a lot shall have at least one (1) coachlight prominently displayed in the area normally designed as the front yard of the lot. Such coachlight shall be operational from dusk to dawn. The type and location shall be identified on the plans and specifications submitted for approval.

18. The undersigned shall have and hereby reserves the right and power and without consent or approval of any of the lot owners to amend or supplement these Restrictive Covenants at any time and 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 of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering the lots of the subdivision and the residential structures constructed or located thereon, (c) to bring these Restrictive Covenants into compliance with any law or statutory requirement, (d) to correct clerical or typographical errors in these Restrictive Covenants or any exhibit hereto or any supplement or amendment hereto.

19. The foregoing covenants, restrictions, and conditions shall run with the Real Estate and shall be binding upon all parties claiming or owning any interest in the Real Estate or to any lot or parcel therein, until January 1, 2010 at which time said covenants, restrictions, and conditions shall automatically be extended for successive periods of ten (10) years, unless there is a vote of the lot owners within the Real Estate to repeal the covenants, restrictions, and conditions. If the owner or person in possession of a lot shall violate or attempt to violate any of these covenants, restrictions and conditions, it shall be lawful for the Grantor, the Developer or any person owning any lot in said Real Estate, to file and prosecute and proceedings at law or in equity against the person or persons violating or attempting to violate (hereinafter, "violators") any of these Restrictive Covenants, to compel compliance with these covenants or to recover damages caused by such violations, and the violator(s) shall pay court costs and reasonable attorney fees in the event judgment is rendered against him or her or them.

20. Except as provided in paragraph 1 hereof, the failure for any period of time to compel compliance with any restrictive covenant shall in no event be deemed as waiver of the right to do so thereafter, and shall in no way be construed as a permission to deviate from said Restrictive Covenants.

21. Invalidation of any of these Restrictive Covenants by judgment or decree of court shall in no way effect any of the other provisions hereof which shall remain in full force and effect. These Restrictive Covenants do not provide for forfeiture or reversion for violation thereof.

22. For the purpose of maintaining roads and common areas, traffic control, general planting within roadway areas, and all common community services of every kind and nature required or desired within the Real Estate for the general use and benefit of all lot owners, each and every lot owner, in accepting a deed or contract for any lot in the Real Estate, agrees to and shall be a member of and be subject to the assessments, obligations and duly enacted Articles of Incorporation, Bylaws, Indentures and Rules of the Whispering Oaks Homeowners Association, Inc., a nonprofit corporation (hereinafter, WOHA).

23. Each lot shall be entitled to one vote in the WOHA. If more than one individual owns a lot, only one individual shall be entitled to cast a vote.

24. The WOHA and each lot owner within the Real Estate shall be responsible for any maintenance charges or assessments relating to a park area (Outlot B) which is adjacent to the townhomes which is a part of Whispering Oaks, and shall have the right to the use and enjoyment of the park area adjacent to the Whispering Oaks townhome area. The WOHA and the Whispering Oaks Townhome Association, Inc., a nonprofit corporation, which is a similar association for purposes of the townhomes in Whispering Oaks, shall agree upon the maintenance to be performed in the common areas, entrance area, and park area.

25. Each association shall be responsible for its pro rata maintenance charges and assessments relating to the common areas, roads, park areas, and the entrance area, which proration shall be determined upon the total number of townhome units and single family residential lots. The WOHA shall be responsible for its share of the maintenance charges and assessments based on the number of single family residential lots divided by the total number of townhome units and single family residential lots in Whispering Oaks.

26. The WOHA shall have all the powers set forth in its Articles, Bylaws, Indentures and Rules, including the power to levy a charge or assessment against any lot within the Real Estate. Upon receipt of written notice of the charge so fixed, each lot owner shall pay such charge within 30 days. Should any lot owner fail to make a payment when due, such charge shall bear interest from and after the due date at a rate of 4% per annum above the prime rate being charged at area banks. Each lot owner subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obligated to pay any expense or cost, including attorneys fees, incurred by the WOHA in collecting the charges. No charge shall ever be levied or assessed against the Developer.

27. As long as the Developer owns any lot within Whispering Oaks Subdivision, all such lots owned by the Developer shall not be subject to any charges or assessments of any nature, including those charges and assessments made by the WOHA. In addition, while the Developer owns any lot within Whispering Oaks Subdivision, the Developer shall be entitled to appoint all of the directors of the WOHA. Once the Developer ceases to own a lot within the Whispering Oaks Subdivision, such a right will terminate and all remaining lot owners shall be entitled to appoint the directors of the WOHA.

28. The Developer shall have the right to grant reasonable variances or adjustments of these restrictions where literal application would result in a hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these restrictions, all determined in the sole discretion of the Developer.

29. Every one of the restrictions is hereby declared to be independent of, and severable from the rest of the restrictions. Therefore, if any of the restrictions shall be held to be invalid or to be unenforceable, this shall be without effect upon the validity, enforceability, or "running" quality of any other one of the restrictions, and the invalid provision shall be stricken only to the extent to make these restrictions valid.

IN WITNESS WHEREOF, the Trustee has caused these presents to be executed by

Corporate Seal

GRANTORS:

Mercantile National Bank of
Indiana, A National Banking
Association as Trustee under
the terms and provisions of a
trust agreement dated July 30,
1990, also known as Trust #5305

SEE SIGNATURE PAGE ATTACHED

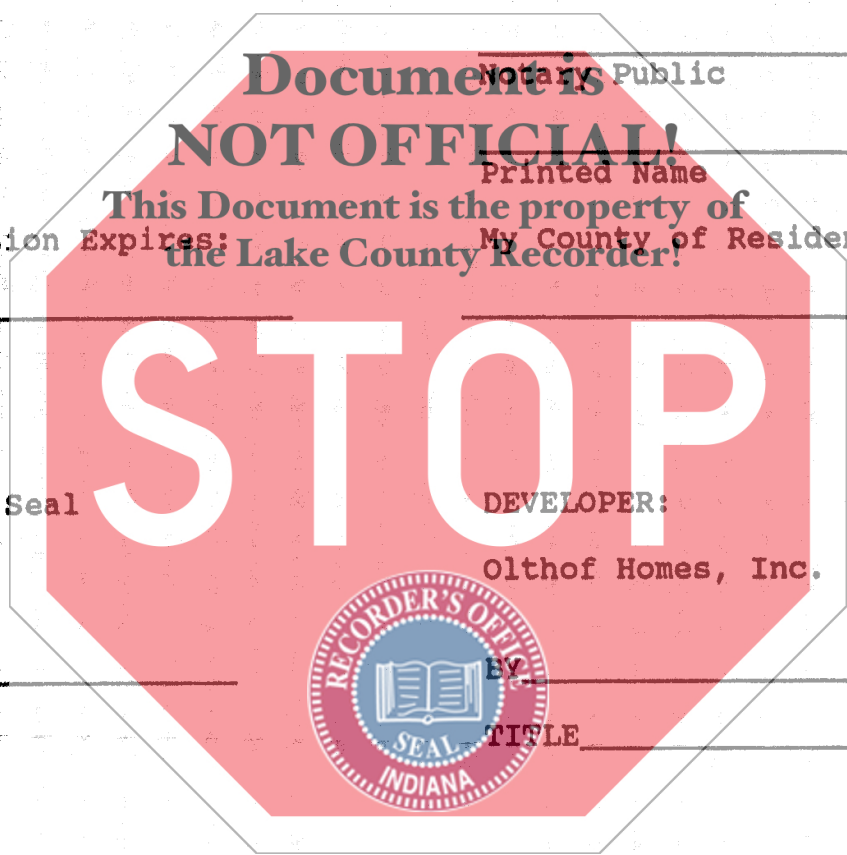
Secretary

TITLE

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, a notary public in and for said county and state, personally appeared _____, who acknowledges the execution of the foregoing, who is a duly authorized representative of the trust and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS MY HAND AND NOTARY SEAL this _____ day of _____, 1994.



Notary Public
Printed Name
My Commission Expires: _____
My County of Residence: _____

Corporate Seal _____ DEVELOPER:
Olthof Homes, Inc.
Secretary _____ BY _____
TITLE _____

EXHIBIT "A"

Lots 11 through 34 all inclusive and outlot B, all in
Whispering Oaks addition to the Town of Highland,
as per plat thereof, recorded in Plat Book 81

Document is
Page 93 in Lake County, Indiana.

NOT OFFICIAL!

**This Document is the property of
the Lake County Recorder!**

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