

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD  
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS

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OF  
"THE PRESERVE - UNIT 3"

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE PRESERVE, is made this 26th day of August, 2004, by Donald E. Cripe and Bonnie L. Cripe, as Trustees, under the provisions of Trust No. LTDEC-101, dated July 6, 2000 and Donald E. Cripe and Bonnie L. Cripe individually.

WITNESSETH:

WHEREAS, Declarants are the owners and developers of the real property described below (hereinafter the "Property" or the "Development")

WHEREAS, Declarants intends by this Declaration to impose upon the Development mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of residential property within The Preserve made subject to this Declaration (and amendments hereto) by the recording of this Declaration; and

WHEREAS, Declarants desires to provide a flexible and reasonable procedure for the overall development of the Development, and to establish a method for the administration, maintenance, preservation, and enjoyment of such property subject to this Declaration.

NOW, THEREFORE, Declarant hereby declares that all the Development described hereinbelow shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions (hereinafter sometimes referred to as the "Restrictions") which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Development or any part thereof, their heirs, successors, successors-in-title, and assigns and shall insure to the benefit of each Owner thereof.

ARTICLE I

PROPERTY SUBJECT TO AND BENEFITTING FROM THIS DECLARATION

1. THE PRESERVE SUBDIVISION - UNIT 3. The real property which is the property benefitted is and shall be, held, transferred, sold, conveyed, used and occupied subject to the Covenants and is commonly known as THE PRESERVE SUBDIVISION, (hereinafter sometimes referred to as "The Preserve" or the "Subdivision"), located in Lake County, Indiana and is more particularly described as follows, to-wit:

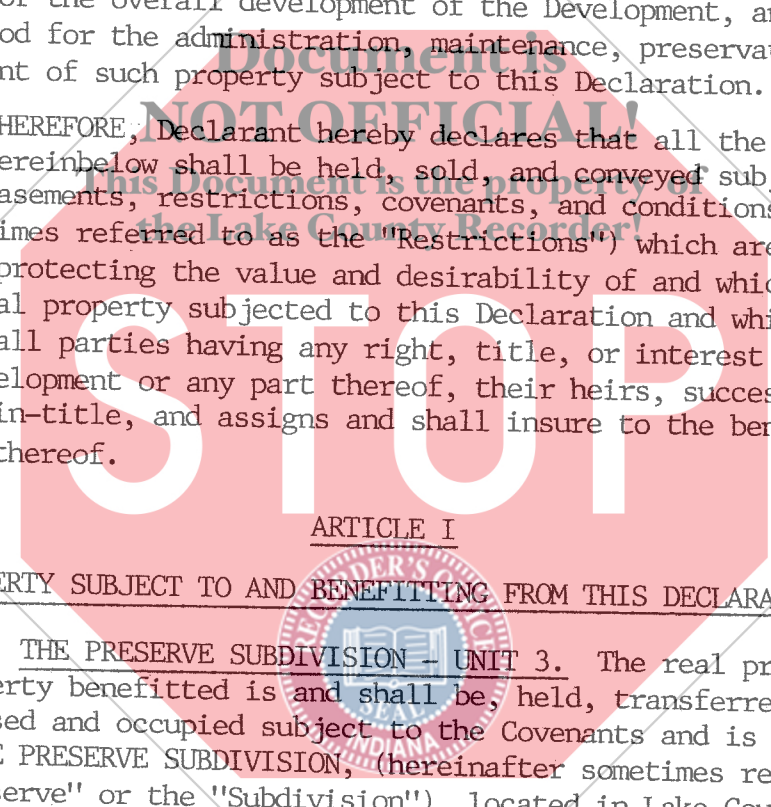
Being a parcel of land lying in the Northwest Quarter of Section 24 Township 33 North, Range 9 West, of the Second Principal Meridian, all in The Town of Lowell, Lake County, Indiana, more particularly described as follows:

1.

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Commencing at the Northeast corner of Castlebrook Unit One to the Town of Lowell, as shown in Plat Book 46, Page 128 in the Office of Recorder of Lake County, Indiana, said point being the Point of Beginning; thence continuing along the Northerly line of said Unit One for the next 4 courses; thence S 89°12'51"W, a distance of 173.00 feet; thence N 00°47'09" W, a distance of 44.35 feet; thence S 89°12'51" W, a distance of 203.33 feet; thence S 85°56'27" W, a distance of 75.85 feet; to the point of beginning; thence continuing along the Northerly line of said Unit One for the next 5 courses; thence S 85°56'27" W, a distance of 207.25 feet; to a point of intersection with a non-tangent curve, concave Westerly, having a radius of 317.00 feet and a central angle of 06°35'11", thence Southerly along the arc of said curve to the right, from which the local tangent at the beginning point bears S 16°06'20" E, a distance of 36.44 feet, said arc subtended by a chord which bears S 12°48'44" E, a distance of 36.42 feet to the curve's end; thence S 09°31'09" E, a distance of 5.51 feet; thence S 80°28'51" W, a distance of 140.04 feet; thence N 41°53'45" W, a distance of 113.84 feet to a point being the most southeasterly corner of Lot 23 in the Preserves, Unit One, as shown in Plat Book 79, Page 2 in the Office of the Recorder of Lake County, Indiana; thence N 00°47'09"W along the westerly line of said Lot 23 and the West line of Lot 24 and 25 in the Preserve, Unit Two, as shown in Plat Book 83, Page 27 in the Office of the Recorder of Lake County, Indiana, a distance of 184.83 feet; thence N 22°38'18" E, along said West line of said Unit Two, a distance of 361.72 feet; thence N 00°47'09" W, along the aforesaid West Line, a distance of 645.18 feet, to a point on the North Line of the Northwest Quarter of said Section 24; thence S 89°37'23" E, along said North Line, a distance of 720.15 feet to the Northeast Corner of the Northwest Quarter of said Section 24; thence S 00°47'09" E, along the East Line of the Northwest Quarter of said Section 24, a distance of 318.93 feet, thence S 89°12'51"W, a distance of 171.73 feet to a point of intersection with a non-tangent curve, concave Easterly, have a radius of 270.00 feet and a central angle of 00°46'57", thence Southerly along the arc of said curve to the left, from which the local tangent at the beginning point bears S 04°46'54" W, a distance of 3.69 feet, said arc subtended by a chord which bears S 04°23'25" W, a distance of 3.69 feet to the point of intersection with a non-tangent line, thence S 89°12'51" W, a distance of 197.95 feet; thence S 00°47'09" E, a distance of 355.36 feet; thence S 22°38'18" W, a distance of 327.17 feet; thence S 15°39'45" E, a distance of 187.01 feet, to the POINT OF BEGINNING: Containing 12.74 acres, more or less.

a subdivision plat of which was recorded on the 26th day of August, 2004 in Plat Book 095, Page 97, in the Office of the Recorder of Lake County, in Crown Point, Indiana.

2. WAIVER. Declarant may waive in whole or in part the benefits of the Covenants. If such waiver is by a document duly executed by said Developers, acknowledged and recorded with the Recorder of Lake County, Indiana, the same shall permanently waive the benefits of the Covenants for the benefit of the property benefitted and shall be binding upon said various Owners and their respective successors and assigns.

## ARTICLE II

### GENERAL PURPOSES OF THIS DECLARATION

This Subdivision is subject to the Covenants to insure proper use and appropriate development and improvement of The Preserve and every party thereof; to protect each and every Owner of any part of The Preserve against such use as may depreciate the value of their property; to guard against the erection thereon of buildings built of improper or unsuitable materials; to insure adequate and reasonable development of The Preserve and the use and enjoyment of the property ownership therein, to encourage the erection of attractive improvements thereon, with appropriate locations thereof; and in general to provide adequately for a type and quality of improvement in The Preserve consistent with these Covenants. The provisions herein contained are for the mutual benefit and protection of the Owners, present or future, of any and all of the Lots in said The Preserve, their respective legal representatives, heirs, successors, grantees and assigns.

## ARTICLE III

### GENERAL RESTRICTIONS

1. LAND USE. Each Lot shall be used, exclusively, as a site for a dwelling for private residence purposes only by a single family; related by blood, adoption or marriage and in addition, servants employed in and upon the residence. No further resubdivision shall be allowed.

2. DWELLING SIZE. The minimum square footage of living area shall be 1300 square feet for a ranch and 1850 square feet for a two-story. All houses shall at least have an attached two-car garage.

3. ARCHITECTURAL CONTROLS. Home styles shall be compatible with the existing area and the contour of the land. Only site built homes shall be permitted. No building, nor any structure, shall be moved to any Lot in the Subdivision. No modular, manufactured, nor mobile homes shall be allowed. No temporary structures shall be allowed. All structures shall have at least 2 foot overhang on front and rear, 1 foot overhang on ends of house. All structures shall have approved Asphalt, Fiberglass or Cedar Shingle roofing (no rolled roofing) and at least a 4/12 pitch. All structures shall have at least 40% of front covered with Brick or Stone (no simulated material to be used in place of Brick or Stone).

A written copy of all plans and all specifications shall be submitted to the Declarant, or its designated agent(s) and/or successor(s), and subject to its written approval. Approval or disapproval shall be given in writing within 30 days after receiving complete plans and specifications. In the event written approval or disapproval is not obtained within 30 days after submission of complete plans and specifications, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related Covenants shall be deemed to have been fully complied with. All construction shall be completed within 6 months from the date of issuance of the building permit. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than 3 months from the time of such destruction or damage. Neither the Lot Owners, nor any agent thereof, nor the Declarant, shall be responsible in any way for any defects in plans, or other materials submitted to it, nor for any defects in any work done.



4. **ADDITIONAL STRUCTURES.** No trailer, garage, barn, storage shed, outbuilding, or any other additional structure shall be used either temporarily or permanently as a dwelling or residence. The facade and the rear and side walls of any outbuilding, barn or storage shed shall be of the same material as utilized for the residence.
5. **BUILDING LOCATION.** All houses, garages, or other structure shall be located within the boundary lines of each Lot in accordance to the setback and side yard requirements provided by the land use ordinance of Lowell, Indiana.
6. **LANDSCAPING** Each Owner shall provide, at Owner's expense, and plant 4 trees on each Lot. Such trees shall have a minimum trunk diameter of 2 inches and shall be at least 6 feet in height.
7. **MAINTENANCE OF LOTS AND IMPROVEMENTS.** The Owner of any Lot in the Subdivision shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly; and, specifically, such Owner shall:
- (i) remove all debris or rubbish;
  - (ii) remove all weeds and unsightly growth in excess of 8 inches;
  - (iii) prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Subdivision; and
  - (iv) keep the exterior of all improvements in such state of repair or maintenance as to avoid their becoming unsightly.
8. **NUISANCES.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. No carport, driveway, or parking area on any Lot may be used as a habitual parking place for junk vehicles. Junk vehicles shall include any vehicle which requires a license to operate on, over or across any highway, road or street and which is incapable of moving under its own power, or which is not properly licensed for operation. No motor vehicle kept for racing or other competitive purpose shall be stored on any Lot, except such vehicles which are stored in a completely enclosed structure. No person shall engage in or conduct any trade, business or profession in any structure or on any Lot in the Subdivision. No waste, trash or garbage or any sort shall be allowed on any Lot.
9. **ANIMALS.** No livestock, poultry, or any other farm animal(s) shall be kept on any Lot. Only domesticated house pets shall be excepted from this provision.
10. **ANTENNAS AND SOLAR HEAT PANELS.** No exposed antennas with a mast in excess of 5 feet or solar heat panels shall be allowed on any Lot or on any residence on any Lot which is visible from outside such residence, except that a satellite dish (antenna) may be erected in the rear yard of each Lot subject to appropriate landscaping surrounding such, as approved by Declarant.
11. **SIDEWALKS.** Each Owner shall be responsible for installing and maintaining sidewalks at Owner's expense. Each sidewalk shall be located parallel and adjacent to each property line which fronts on a street in The Preserve. Each sidewalk shall be constructed of concrete and shall be 5 feet wide and 4 inches thick.
12. **UTILITY SERVICE.** All utility service, including electrical, telephone and cable television, shall be underground service.

13. **UTILITY SERVICE DEPOSITS.** All utility service deposits shall be the exclusive property of the Declarant. No Owner of any Lot shall be entitled to receive any such deposit which was paid by Declarant.
14. **CONSTRUCTION CONTROL.** All structures shall be constructed by a licensed general contractor, unless otherwise approved by the Developer. Erosion control during construction of residences shall be the responsibility of the Owner. Each Owner shall keep the Lot free of construction debris, by providing a dumpster or ensuring that all debris is kept inside the structure. No construction debris shall be disposed of by open burning.
15. The top of the Foundation must be 16 inches or more above the curb line.

#### **ARTICLE IV**

##### **GENERAL PROVISIONS**

1. **SEVERABILITY.** In the event that any part(s) of the Restrictive Covenants is construed or declared unenforceable by a Court of competent jurisdiction, the remainder shall continue in full force and effect as though the unenforceable portion or portions were not included herein.
2. **INITIAL TERM AND EXTENSIONS.** These Restrictive Covenants shall run with the land and shall be binding on all parties, persons and entities claiming under them or onto the land for a period of 20 years from the date of recording of this document, after which time said Covenants shall automatically extend for successive periods of 10 years, unless a signed agreement by 75 percent of the then property Owners of said Lots has been recorded, modifying these Covenants in whole or in part.
3. **REMEDIES.** The Declarant, the Owner or Owners, either jointly or severally, present or future, of any land or Lot included in said Subdivision shall be entitled to injunctive relief against any violation, or attempted violation, or the provisions hereof, and also damages for any injuries resulting from any violation thereof; but there shall be no right of reversion or forfeiture of title resulting from such violation.
4. **ASSIGNMENT.** Declarant reserves the right to assign all or any of the rights, privileges, easements, powers and duties herein retained or reserved by the Declarant by written instrument or instruments in the nature of an assignment which shall be effective when recorded in the Office of the Recorder of Lake County, Indiana, and Declarant shall thereupon be relieved and discharged from all such duties so assigned.
5. **FAILURE TO ENFORCE.** The failure by the Declarant, its agent(s) and/or assigns, or any property Owner to enforce any of the Covenants herein set forth as to any violation (by the Declarant, its agent(s) and/or assigns, or any property Owner) of any term, condition or covenant contained herein shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or different term.

condition or covenant herein. Moreover, no such failure to enforce shall entitle any Owner to claim, sue for, or receive any damages or other payment from Declarant. In addition, if Declarant is named by any Owner in any legal action, Declarant shall be entitled to recover from said Owner reasonable attorney fees in defending said action.

6. **AMENDMENT.** This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as Declarant owns any property in the Development or capable of being annexed thereto, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Owner.

7. **EASEMENTS FOR UTILITIES.** There is hereby reserved to the Declarant blanket easements upon, across, above, and under all property within the Development for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Development or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which may be installed to serve the Development. It shall be expressly permissible for the Declarant or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant shall have the right to grant such easement.

8. **LIMITATION ON DECLARANT'S LIABILITY.** Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner acknowledges and agrees, that neither Declarant (including without limitation any assignee or interest of Declarant hereunder) nor any director, officer or shareholder of Declarant (or any partner, officer, director or shareholder in any such assignee) shall have any personal liability to any Owner, or



other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration except, in the case of Declarant (or its assignee), to the extent of its interest in the Property; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets of the judgment debtor.

9. **DECLARANT'S RESERVED EASEMENTS.** (a) Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any property in the Development, for the benefit of Declarant, its successors, and assigns over, under, in and/or on the Development, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use, and enjoyment and/or otherwise dealing with the Development. The reserved easement shall constitute a burden on the title to all or any portion of the Development and specifically includes, but is not limited to:

- (i) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in all or any portion of the Development; and the right to tie into any portion of the Development with driveways, parking areas, streets, the sanitary sewer, the storm drainage system and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over all or any portion of the Development; and
  - (ii) the right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, sales offices, construction offices, and business offices as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction and sale by Declarant of residences in all or any portion of the Development.
  - (iii) No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property without the Development, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit-claim deed from Declarant releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Development.
- (b) This section may not be amended without the advance written consent of Declarant.

10. **MISCELLANEOUS.** The underlined titles preceding the various

