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STATE OF INDIANA
LAKE COUNTY
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MICHAEL A. BROWN
RECORDER

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MALIBU WOODS SUBDIVISION**

This Declaration, made this day by Vista Properties LLC, an Illinois limited liability company (herein the "Subdivider").

RECITALS, INTENT AND PURPOSES

WHEREAS, the Subdivider holds the title to certain property in Lake County, Indiana, which is more particularly described as follows:

All of the North 1/2 of the Southwest 1/4 of the Northeast 1/4 of Section 24, Township 33 North, Range 9 West of the Second Principal Meridian in Cedar Creek Township, Lake County, Indiana except the East 32 rods thereof, and containing 12.33 acres more or less.

Taxing Unit 2, Key No. 3-75-10

Hereinafter the "Real Estate"; and

WHEREAS, Subdivider desires to create on the Real Estate a residential Community consisting of single-family residential dwelling lots (herein the "Lots").

Now, Therefore, The Subdivider hereby declares that the Real Estate shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Real Estate as part of a general plan of development and shall be binding on all parties having or acquiring any right, title or interest in the Real Estate, any Lot, or any part thereof, and shall inure to the benefit of each owner thereof.

1. DWELLING USE / STRUCTURES OR IMPROVEMENTS; PRIOR APPROVAL OF BUILDING PLANS

Each Lot shall be used, exclusively, as a site for a dwelling for private residence purposes only by a single family. No further re-subdivision shall be allowed. No modular or manufactured homes will be allowed, unless the Subdivider or the Subdivision Control Committee expressly approves the structure. No structure shall be erected, altered, placed or permitted to remain on any Lot other than a single-family dwelling not to exceed two and one half (2 1/2) stories in height. All "structures" or "improvements" mean buildings, fences, walls, decks, patios, planters,

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STEPHEN R. STIGLICH
LAKE COUNTY AUDITOR

terraces, swimming pools, tennis courts, garages, storage sheds or anything else constructed or placed on a Lot. Structures or improvements, whether temporary or permanent, must also meet all state, county and city codes, ordinances, and regulations.

For the purpose of further insuring the development of the Real Estate as an area of high standards, the Subdivider reserves the power to control the design, appearance, and location of each dwelling, and all other buildings, structures, and other improvements placed on each Lot, as well as to make such exceptions to this Declaration as the Subdivider shall deem necessary and proper. The Subdivider may waive in part the benefits of this Declaration. The Subdivider's written approval of building plans which vary from the this Declaration shall be conclusive evidence of waiver. Any such waiver shall permanently waive the burden of such part of the Declaration for the Lot benefited and shall be binding upon all of the owners of the Real Estate and their respective successors and assigns.

WHETHER OR NOT PROVISION IS SPECIFICALLY STATED IN ANY CONVEYANCE OF A LOT MADE BY THE SUBDIVIDER, ITS SUCCESSORS OR ASSIGNS, THE OWNER OR OCCUPANT OF EACH LOT, BY ACCEPTANCE OF TITLE TO OR BY TAKING POSSESSION OF A LOT, COVENANTS AND AGREES THAT NO DWELLING, BUILDING OR OTHER STRUCTURE (AS DEFINED IN PARAGRAPH 1) SHALL BE PLACED UPON SUCH LOT AND NO MODIFICATION OF ANY DWELLING, BUILDING OR STRUCTURE SHALL BE MADE UNLESS AND UNTIL THE PLANS AND SPECIFICATIONS AND SITE PLAN FOR EACH HAVE BEEN APPROVED IN WRITING BY THE SUBDIVIDER OR BY THE SUBDIVISION CONTROL COMMITTEE.

Each dwelling, building or structure shall be placed on the Lot, and each modification to each dwelling, building and structure on the Lot shall be made, only in accordance with the approval of plans and specifications by the Subdivider which may be based on any ground, including purely aesthetic grounds which, in the sole, absolute and uncontrolled discretion of the Subdivider shall seem sufficient. After approval, no alteration in the exterior appearance of the buildings or structures shall be made without the approval of the Subdivider. If there is a request for approval, and if the Subdivider shall fail to approve or disapprove the plans and specifications within ninety (90) days after written request, than such approval shall not be required, but shall be presumed; provided that no dwelling, building or other structure shall be erected which violates any provision of this Declaration. The Subdivider may assign Subdivider's rights and delegate Subdivider's duties.

2. CONSTRUCTION STANDARDS

- A. No one-story single-family dwelling shall have a fully enclosed and heated floor space area of less than 1,600 square feet, exclusive of below grade lower level, basement, garage and open or enclosed porches.
- B. No two-story single-family dwelling shall have a fully enclosed and heated, combined

two (2) floor area of less than 2,000 square feet, exclusive of below grade lower level, basement, garage, and open or enclosed porches.

C. No quad-level single-family dwelling shall have a fully enclosed and heated floor space area of less than 1,900 square feet, exclusive of below grade lower level, basement, garage, and open or enclosed porches.

D. No tri-level single-family dwelling shall have a fully enclosed and heated combined upper and middle level floor space area of less than 1,900 square feet, exclusive of below grade lower level, basement, garage, carport and open or enclosed porches.

E. No bi-level single-family dwelling shall have a fully enclosed and heated upper level living area of less than 1,700 square feet, exclusive of below grade lower level, basement, garage, carport and open or enclosed porches.

F. No cape cod style homes (or other one and one-half story single-family dwelling) shall have a fully enclosed and heated first floor level of less than 1,400 square feet, exclusive of below grade lower level, basement, garage, and open or enclosed porches.

The foregoing shall not be interpreted as allowing basements, garages, carports and open or enclosed porches without Subdivider's or the Subdivision Control Committee's approval as applicable.

For purposes thereof, the "fully enclosed and heated floor space" of a dwelling shall exclude below grade lower levels, basements, decks, patios, terraces, attached garages, detached garages, carports, accessory buildings, unheated storage areas and screened porches.

If a dwelling incorporates a basement, such basement shall not be considered a "level" or "story" and the level of the dwelling immediately above the basement shall be considered the "first level" or "first story" of such dwelling.

In order to assure that all structures will be located with regard to the topography of each individual Lot, taking into consideration the elevation contours of the Lot, the location of adjoining dwellings, and similar considerations, the Subdivider reserves unto itself, its successors and assigns the right to control absolutely and solely to decide the precise site and location of any structure, improvements, and utilities upon all Lots and every Lot within the Subdivision provided, however, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site, and in any event all buildings (excluding eaves, decks, patios and steps) shall be constructed beyond the minimum setback lines as shown on the recorded plats of the subdivision.

BRICK

All dwellings shall have brick, stone, or a combination thereof on at least the first level facing an interior subdivision street. Corner homes shall have brick, stone, or a combination thereof on at least the first level of the two sides facing interior subdivision streets. Sides facing Burr St. and 175th Street do not require brick or stone. "Brick" means a clay product which has been hardened by fire and heat and which has an approximate dimension of 7.75" x 3.75" x 2.25" per brick. "Stone" means naturally occurring rock or minerals. Man made products may be used with the approval of the Subdivider.

GARAGES

The Subdivider, in its sole discretion, may require any dwelling to have a minimum two (2) car attached garage with a minimum of (575) square feet as a condition to approval of building plans under Paragraph 1. A garage shall be considered attached only if the garage shares a wall with the dwelling.

DRIVEWAYS, WALKWAYS & PATIOS

Driveways and walkways shall be constructed of concrete, asphalt, brick or other suitable hard-top surface approved by the Subdivider or the Subdivision Control Committee.

EXTERIOR LIGHTING

Each Lot shall have an exterior post light fixture, which shall be placed on each Lot by the driveway and near the street easement line in a location to be approved by the Subdivider or the Subdivision Control Committee. Subdivider shall select and designate the type and/or design of such fixture. Each Lot owner shall be responsible for all costs and expenses associated with the purchase, installation and maintenance of such lighting. All repairs and replacements to such exterior light fixture shall be consistent in color, quality, and appearance with the originals thereof.

HOME CONSTRUCTION DEADLINE

All dwellings must be fully completed within seven (7) months from the date of excavation begins. Completion shall include, without limitation, driveways and sidewalks.

RECONSTRUCTION

Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building with reasonable promptness; provided, however, that any such reconstruction

must be commenced within six (6) months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within six (6) months of such destruction.

DAMAGE DONE DURING CONTRUCTION

Lot owners shall be responsible to pay for any and all damages done to subdivision infrastructure, including, without limitation, curbs, streets, sidewalks, and utilities by anyone working on the lot owner's lot and structures thereon. In the event of such damage, the lot owner shall pay upon demand from the Subdivider any and all reasonable repair costs. The Subdivider, in its sole discretion, may require that the lot owner furnish bond before approving building plans.

3. SATELLITE DISHES AND ANATENNAS

No satellite or communication dishes or antennas shall be permitted, except for a satellite dish, which does not exceed twenty-four inches (24") in diameter.

4. LANDSCAPE REQUIREMENTS

The owner of any Lot shall make provisions for the following to be installed on the Lot no later than twelve (12) months from the date of occupancy of any structure, unless the Subdivider waives any or all of the following in writing.

- A. A fully sodded or hydro seeded lawn (front, side, and rear yards). All lawns shall be kept mowed to a height not to exceed six (6) inches.
- B. All areas of the Lot which are not sodded or seeded as required above (including all wooded areas) shall be maintained with Landscape quality plants, landscape quality mulch, or landscape quality decorative stone. Areas where landscaping is not practical shall be kept mowed to a height not to exceed six (6) inches.
- C. There shall be a minimum of ten (10) foundation shrubs or evergreens, maintained in the front of each dwelling which is located on an interior Lot. There shall be a minimum of (20) foundation shrubs or evergreens maintained in the front of and on the side of the dwelling facing the street which is located on a corner Lot.
- D. Within twelve (12) months from the date of occupancy of any structure, the Owner of any lot shall plant at least two trees within the thirty foot strip adjacent to each street curb abutting the Lot, provided that no tree shall be planted within three and one half (3.5) feet of any curb or sidewalk. Such trees shall be not less than eight (8) feet in height from ground level and two and one half inches (2 1/2") in diameter, measured at a height six (6) inches above the finished ground level, and shall be chosen from the following list of

species:

Common Names

Little Leaf Linden (seedless)
Sugar Maple
Autumn Purple Ash
Marshall's Seedless Ash
Ginkgo (male only)
Thornless Honeylocust (seedless)
Red Oak
Norway Maple (seedless)
Purple or Copper Beech
Tulip Tree
Pin Oak
Burr Oak
Autumn Blaze Maple
Crimson King Maple
Bald Cypress

E. Within twelve (12) months from the date of occupancy of any structure, the owner of any Lot shall plant at least three additional trees or ornamental shrubs within the boundaries of the Lot. Such trees or ornamental shrubs shall be not less than 1-1/2 inches in the diameter, measured at a height of six inches above the finished ground level and shall be chosen from the following list of species and the species listed under paragraph D above:

Common Names

Red Maple (seedless)	White Oak
White Ash (seedless)	Redbud
Blue Ash (seedless)	Dogwood
Green Ash (seedless)	Beech - European (and all cultivars)
Japanese Maple	Beech - American
Douglas Fir	Concolor Fir
European Hornbeam	Bristlecone Pine
American Hornbeam	Black Gum
River Birch	Hickory
Flowering Crab	Flowering Plum
Viburnum	High Bush Cranberry
Serviceberry	Flowering Cherry
Bristlecone Pine	Smoke tree

Lot owners may plant other trees, provided that the following shall not be planted under any circumstances:

Common Names

- Box elder
- Silver Maple
- Osage Orange
- Willow (except pussy willow)
- Tree of Heaven
- Mulberry
- Black Walnut

5. MAINTENANCE

All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, dead, diseased or decaying trees, weeds, trash, rubbish, and debris and shall keep all Lots in a neat and attractive condition. No refuse pile or unsightly objects shall be allowed to be placed or remain on any Lot. All improvements and structures erected on Lots shall be maintained in a clean, neat, and orderly condition and in a good state of maintenance and repair. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain on any Lot which is occupied by a completed dwelling. The height of the weeds or grass shall not exceed six inches (6") at any time whether a dwelling is completed or not. In the event that any owner of any Lot shall fail or refuse to keep the Lot free of weeds, underbrush or refuse piles or other unsightly growths or objects in accordance with the foregoing, or to landscape the Lot as required by Paragraph 4, or to keep the grass at a height of less than six (6) inches, then the Subdivider may enter upon such lands and remove the same and/or to otherwise bring the Lot into compliance therewith at the expense of the owner and such entry shall not be deemed a trespass. In the event of such a lien shall arise and be created in favor of the Subdivider against such Lot for the full amount chargeable to such Lot and that amount shall be due and payable within thirty (30) days after the owner is billed.

6. ACCESSORY/STORAGE BUILDINGS

Accessory or storage buildings shall not be larger than (140) square feet and shall match the architecture and appearance as the home. The Subdivider or committee approval is required for all such buildings.

7. GARBAGE CONTAINERS

All outdoor trash, rubbish or garbage shall be screened or placed so as not to be visible from any street, other Lot, or Common Areas.

8. SWIMMING POOLS

All swimming pools must comply with all local Codes and ordinances and all requirements of Subdivider or the Subdivision Control Committee, and must be located behind the dwelling in the rear yard as much as possible in a location so as not to be visible from any street. All above ground pools will be a minimum twenty one (21) foot diameter. No pool or structure may be constructed over an easement.

9. CLOTHES LINES

No outside clothes lines, drying racks or similar type Devices shall be erected, raised or rigged or constructed on any Lot in any location where they may be visible from any street.

10. ANIMALS

No livestock, poultry, rabbits, reptiles, pigeons, or other birds or any other farm animal(s) shall be kept on any Lot. Only domesticated house pets kept in the residence are permitted. When outside the residence, house pets, including, without limitation, domestic cats, shall be kept on a leash or contained.

11. WEAPONS AND FIREWORKS

The use of firearms or other dangerous and/or deadly Weapons on any part of the Real Estate is strictly forbidden. "Weapons" shall be deemed to include, without limitation, arrows, knives, and cannon projectiles. No hunting, target practice or any other use of firearms or other weapons is allowed. No fireworks may be used on any part of the real estate except fireworks which may be lawfully possessed and used within the State of Indiana.

12. MODEL HOMES

No Lot model home or exhibit house is allowed without the prior written approval of the Subdivider or the Subdivision Control Committee, except as allowed and provided in Paragraph 24.

13. FENCES AND HEDGES

The erection or installation of fences and hedges may be undertaken only with the written approval of the Subdivision Control Committee. All fencing shall be located behind the front building line of the main dwelling; shall be composed of materials other than chain links; and shall in no event exceed six (6) feet in height. Decorative fences (meaning wooden fencing, split-rail fencing or wooden fencing which has holes in the posts with wood rails running from post to post) no more than 36 inches in height may be permitted in the front or side yards. Under

no circumstances may a fence be constructed without a staked survey dated within the six month period prior to the start of construction.

14. STORAGE AND PARKING OF VEHICLES

No commercial trucks, except pickup trucks not to exceed six thousand five hundred (6,500) pounds gross weight, semi-tractors, or semi-trailers of any kind shall be kept on or stored on any part of the Real Estate. All motor homes and other habitable motor vehicles, camping trailers, boats and boat trailers, and other large vehicles shall be parked as much as possible in a location so as not to be visible from any street, and shall not be located any closer to the street than the front building line of the dwelling. Furthermore, no wrecked or junked motor vehicles or vehicles with or without a current license plate and registration shall be placed upon the real estate, and no commercial vehicles (other than pickup trucks and vans not to exceed six thousand five hundred (6,500) pounds gross weight) shall be parked overnight in the subdivision.

15. SIGNS

No signs or other advertising shall be displayed on any Lot unless the size, form and number are first approved in writing by the Subdivider or Subdivision Control Committee, except "For Sale" signs for the sale of the Lot.

16. SUBDIVISION CONTROL COMMITTEE

The Subdivider may appoint one or more persons to a Subdivision Control Committee for the purpose of approving plans under Paragraph 1. After Dwellings have been constructed on all buildable lots, all privileges, powers, rights and authority of the Subdivider shall be exercised by and be vested in a committee of three (3) people to be selected by the owners of a majority of the Lots.

17. ENFORCEMENT

The Subdivider, the Subdivision Control Committee, or any Lot owner shall have the right to proceed at law or in equity to compel compliance with the terms, promises, and conditions of this Declaration or to prevent the violation or breach of any of them or to recover damages, or both, and shall be entitled to recover all expenses and costs thereof, including, without limitation, attorney's fees. In addition, the Subdivider shall have the right, whenever there shall have been built on any Lot any structure, which is in violation of this Declaration, to enter upon the Lot where such violation exists and summarily abate or remove the same at the expense of the owner. Any such entry and abatement or removal shall not be deemed a trespass. In the event of such legal action or abatement, a lien shall arise and be created in favor of the Subdivider or the prevailing Plaintiff and against such Lot for the full amount of such costs, expenses, and attorney's fees as well as for any and all damages recovered.

18. LIEN FORECLOSURE

Should a Lot owner fail, neglect or refuse to satisfy and discharge any lien arising hereunder within thirty (30) days, the holder of such lien and /or its successors and assigns, shall have the right to foreclose such lien, and to collect interest on the amount due at the maximum rate according to law from the date of the lien was created, and shall be entitled to receive all costs and expenses of collection, including, without limitation, attorney's fees. Such liens shall be foreclosed in the same manner as required for mechanic's liens under Indiana law.

19. SUBDIVIDER'S RIGHT TO AMEND DECLARATION

Subdivider reserves the right and power and without consent or approval of any of the owners of Lots or mortgagees of the Lots to amend or supplement this Declaration at any time prior to the time that the Subdivider has sold the last lot owned by Subdivider.

20. NON-WAIVER

The failure for any period of time to compel compliance with any restrictions, conditions or covenants shall in no event be deemed a waiver of the right to do so thereafter, and shall in no way be construed as a permission to deviate from the requirements of this Declaration.

21. TERMINATION AND AMENDMENT; EXTENSION

This Declaration shall run with the land and is not a personal agreement between the Subdivider and any Lot owner(s). Unless sooner terminated or amended, this Declaration shall inure to the benefit of and be enforceable by the Subdivider and the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty one (21) years from the date this Declaration is recorded. Unless terminated or amended as provided in this Paragraph 21, this Declaration shall be automatically extended for successive periods of ten (10) years. After Dwellings have been constructed on all buildable lots, this Declaration may be (a) amended by an instrument signed by the then owners of two-thirds (2/3) of the Lots or (b) terminated at any time by an instrument signed by all of the then owners of ninety percent (90%) of the Lots. Any amendment or termination shall not become effective until recorded in the Office of the Recorder of Lake County, Indiana. In the event that this Declaration is found by a court of competent jurisdiction to be subject to the rule against perpetuities, this Declaration shall terminate twenty one (21) years after the death of the last living descendant of the Queen of England who was alive on the date of execution of this Declaration.

22. NOTICES

Any notice required or permitted to be sent to any person under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, via certified mail with a return receipt requested to the last known address of the person who appears as owner on the records of the Lake County Auditor at the time of mailing.

23. SEVERABILITY

In the event that any part of this Declaration is construed or declared unenforceable by a court of competent jurisdiction, the remainder shall continue in force and effect as though the unenforceable portion or portions were not included herein.

24. CONSTRUCTION AND SALE

Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Subdivider to maintain and carry on upon any part of the Real Estate such facilities and activities as, in the sole opinion of Subdivider, may be reasonably required, convenient, or incidental to the construction or sale of such residences, including but not limited to, business offices, signs, model homes, and sales offices, and the Subdivider shall have an easement for access to such facilities and activities shall include specifically the right to use residences owned by the Subdivider as models and sales offices. This Paragraph may not be amended without the express written consent of the Subdivider.

25. LIMITATION ON SUBDIVIDER'S LIABILITY

Notwithstanding anything to the contrary herein, it is expressly agreed, and the owner of each Lot, by accepting title to a Lot, acknowledges and agrees that neither the subdivider nor any beneficiary, partner, director, member, officer or shareholder of Subdivider (nor any beneficiary, partner, officer, director, member or shareholder in any such assignee) shall have any liability to any Lot owner, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration.

26. MISCELLANEOUS

The underlined titles preceding the various paragraphs and subparagraphs are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter. The word "owner" shall be defined for purposes of this Agreement as a natural person, firm, corporation, limited liability company, limited liability partnership, partnership, association, trust or other legal entity, or any combination thereof, which owns a fee simple title to a Lot, and any executors, heirs, legatees, successors, and assigns thereof.

