

9500687

COVENANTS, CONDITIONS AND RESTRICTIONS

SPRING CREEK

IN REFERENCE TO PLAT RECORDED INSTRUMENT NO. 9500686

The undersigned, Langston Development Company, Inc., an Indiana Corporation (hereinafter referred to as the "Developer"), the owner of the real estate shown and described herein, do hereby certify that they have laid off, platted and subdivided and do hereby lay off, plat and subdivide said real estate in accordance with the within plat. The following restrictions, limitations and covenants are hereby imposed upon and shall be run with the land contained in such plat.

This subdivision shall be known and designated as Spring Creek subdivision in Hamilton County, Indiana (hereinafter referred to as the "Development"). All streets shown and not heretofore dedicated are hereby dedicated to the public.

DEFINITIONS. The following are the definitions of the terms as they are used in this Declaration:

A. "Committee" shall mean the Spring Creek Development Control Committee, composed of three members appointed by the developer who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the Developer. The Developer may at its sole option, at any time hereafter relinquish to the Association the power to appoint and remove one or more members of the Committee.

B. "Association" shall mean the Spring Creek Property Owners' Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in Article II herein.

C. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Developer or the Association, by the President or a Vice President thereof, and with respect to the Committee, by two members thereof.

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MARY L. CLARK

HAMILTON COUNTY RECORDER

ARTICLE I

Section 101. Property Lines and Lot Dimensions

The front and side yard building setback lines are hereby established; between which line and the property lines of the street, there shall erected or maintained no building or structure. The front setback shall be a minimum of twenty-two (22) feet and the minimum back setback shall be twenty (20) feet. Side setbacks shall be a minimum of five (5) feet each side excluding elements such as fences, walls, and trellises

No lot or combination of lots may be further subdivided until approval therefore has been obtained from the Carmel Planning Commission; excepting, however, the Developer and its successors in title shall have the absolute right to increase the size of any lot by joining to such lot a section of an adjoining lot (thereby decreasing the size of such adjoining lot) so long as the effect of such joining does not result in the creation of a "lot" with frontage of less than sixty-five (65) feet at the front setback building line or less than eight thousand four hundred (8,400) square feet.

Section 102. Easements

There are strips of ground as shown on this plat and marked Drainage and Utility Easement, which are reserved for the use of public utilities for the installation of water and sewer mains, poles, ducts, lines and wires, subject at all times to the proper authorities and to the easement herein reserved. No permanent or other structures are to be erected or maintained upon said strips of land, but owners of lots in this subdivision shall take their titles subject to the rights of public utilities.

Areas shown on this plat and marked as Detention/ Retention shall be recorded as drainage easements, reserved for the installation and maintenance of storm sewer structures and subject at all times to proper City and/or County authorities and the easement herein reserved. These areas shall be maintained free of weeds, trash or other obstruction by the homeowner or Homeowner's Association.

Section 103. Lot Use

All lots in this subdivision are reserved for residential use and no building other than a one-family residence or structure or facility accessory in use thereto shall be erected thereon. All plans for such structures are to be submitted to the Committee for approval prior to any construction.

Not more than one building shall be erected or used for residential purposes on any lot in this subdivision.

No trailer, tent, shack, attached shed, basement, garage, barn, or other out-building or temporary structure shall be used for temporary or permanent residence on any lot in this subdivision. An attached garage erected or used as an accessory to a residence in this subdivision shall be of permanent construction and shall conform to the general architecture and appearance of such residence. Any such structure must first be approved by the Committee before it is to be erected.

Section 104. Structure Dimensions

The total area of the main structure, exclusive of porches and garages, shall not be less than one thousand five hundred fifty (1,500) square feet in the case of a one-story structure, nor less than one thousand seven hundred (1,700) square feet in the case of a one and one half story structure, nor less than one thousand seven hundred (1,700) square feet

in the case of a two story structure. All garages shall be attached to the residence dwelling and be a minimum of two (2) car size. No structure in this subdivision, without special approval from the Committee, shall exceed two and one-half (2 1/2) stories or twenty-five (25) feet in height measured from finished grade to the underside of the eave line.

Section 105. Structure Character and Appearance

All buildings shall be constructed in a substantial and good workmanlike manner and of new materials. No roll siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any building or any lots of said subdivision and no roll roofing of any description or character shall be used on the roof of any dwelling house or attached garage on any of said lots. All homes exterior colors including but not limited to shingles, paint, and brick must be approved by the Committee. All driveways from the street to the garage shall be concrete.

Section 106. Sidewalks

Plans and specifications for this subdivision, on file with the Carmel Planning Commission, require the installation of concrete sidewalks within the street rights-of-way in front of all lots as shown on the approved plans. Installation of said sidewalks shall be the obligation of the builder of any such lot, exclusion of the Developer, and shall be completed upon completion of the home on said lot or within 12 months of the purchase of the lot which ever occurs first and in accordance with said plans and specifications. The cost of said installation shall be a lien against any such lot enforceable by the Planning Commission or its successor agency.

Section 107. Fences

All fences erected in this subdivision must meet the specifications of the Developer or Committee. No fence shall be erected in this subdivision without prior written approval of the Developer or Committee. No fences shall be constructed in areas designated for Retention or Detention nor shall fences be constructed in the Floodway.

Section 108. Yard and Other Equipment

Geo-thermal heat pumps shall be of the closed loop type only.

All lot owners will be required to install at least a \$1,000 landscape package. This package is to include hydro-seeded front and side yards and the planting of bushes and two trees, at the minimum.

Lot owners must install or have installed at least one (1) gas or electric "dusk to dawn" yard light and mailbox in the front yard by the time the construction of the home on the lot is complete. The design of the yard light and mailbox is subject to the approval of the Committee. The Committee may require, for the purpose of uniformity and appearance, that the mailbox be purchased from the Developer or its designee.

No clothesline or clothes poles, or any other free-standing semi-permanent poles, rigs or devices, regardless of purpose, shall be constructed, erected or located or used on any lot.

No sign of any kind shall be displayed to the public view on any lot except one (1) professional sign of not more than one (1) square foot or one (1) sign of not more than five (5) square feet advertising the property for sale or rent. Signs used by a builder to advertise the property during the construction and sales periods are exempt from this requirement.

No radio or television antenna on outside of roof shall be attached to any dwelling house. No free standing radio or television antenna, television receiving disk or dish shall be permitted on any lot without written committee approval. No solar panels attached or detached shall be permitted.

Section 109. Placement of Vehicles or Equipment

No boat, trailer or camper of any kind (including but not in limitation thereof, house trailers, camping trailers or boat trailers,) or any disabled vehicle shall be kept or parked on any lot except within a garage or other approved structure.

Section 110. Drainage of Storm or Other Water

In the event storm water drainage from any lot flows across another lot, provision shall be made to permit such drainage to continue, without restriction or reduction, across the downstream lot and into the natural drainage channel or course, even though no specific drainage easement for such flow of water is provided on said plat.

No rain or storm water runoff or such things as roof water, street pavement or surface water caused by natural precipitation, shall at any time be discharged into or permitted to flow into the Sanitary Sewer System, which shall be a separate sewer system from the Storm Water and Surface Water Runoff Sewer System. No sanitary sewage shall at any time be discharged or permitted to flow into the above mentioned Storm Water and Surface Water Runoff Sewer System.

Section 111. Unacceptable Activities

No noxious, unlawful or other offensive activity shall be carried out on any lot in this subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 112. Animals

No animals, livestock or poultry of any description shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes.

Section 113. Use and Maintenance of Lots

No lot in this subdivision shall be used or maintained as a dumping ground for rubbish, trash, grass clippings, garbage or other waste and such rubbish or trash shall not be kept, except in sanitary containers. Trash shall not be burned except in suitable incinerators.

It shall be the duty of the owner of each lot in the subdivision to keep the grass on the lot properly cut and to keep the lot free from weeds and trash and otherwise neat and attractive in appearance. Should any owner fail to do so, the Developer and Homeowners Association may take such action as it deems appropriate in order to make the lot neat and attractive and the owner shall upon demand reimburse Developer and Homeowners Association for the expense incurred in so doing.

Section 114. Architectural Control Committee

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

No building, fence, wall or other improvement of any kind shall be commenced, erected or maintained upon any lot, nor shall any exterior addition to or change or alteration therein be made without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the committee by the owner of the lot. The manner of application shall be in the form as prescribed from time to time by the Committee, and shall be accompanied by two sets of plans and specifications. Such plans shall include plot plan showing location of proposed improvements, specification of all exterior materials and colors and any proposed landscaping. In the event said Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 115. Enforcement of Restrictions and Conditions

The Developer, and any owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these covenants and restrictions. Failure by the Developer, or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

In the event the Developer or owner shall be successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien or charge now or hereinafter imposed by the provisions of the Restrictions, Covenants, Limitations, Easements and Approvals appended to and made a part of the Plat of the community, it shall be entitled to recover from the party against whom the proceeding was brought all of the attorneys' fees and related costs and expenses it incurred in such proceeding.

The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law, or any structure or part thereof erected or maintained in violation hereof, is hereby dedicated to the public and reserved to the several owners of the several lots in this subdivision and to their heirs and assigns.

Section 116. Invalidation of Covenant

Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 117. Term of Covenants and Restrictions

The foregoing covenants or restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date of this plat, at which time said covenants or restrictions shall be automatically extended for successive periods of ten (10) years unless changed by vote of 75% of the then owners of the buildings covered by these covenants or restrictions in whole or in part.

Section 118. Waiver of Rights to Remonstrate

Lot owners, upon taking title, agree to waive all rights to oppose future zoning changes and special permits necessary to complete the Master Plan of Spring Creek. No owner of any lot shown herein shall have the right to remonstrate against annexation of that lot to the City of Cannel.

Section 119. Ownership, Use, Enjoyment, and Maintenance of Commons

"Commons" and "Commons Area" shall mean those areas set aside for conveyance to the Association, as shown on the plats. Any commons depicted on the recorded plats of the Development shall remain private, and neither the Developer's

execution of recording of the plats nor the doing of any other act by the Developer is, or is intended to be, a dedication to the public of the commons. Ownership of any of the Commons shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as the Developer at the time of conveyance deems appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall be members thereof from time to time.

Developer shall be responsible for improving and or maintaining all Common Areas until such time as the Commons are conveyed to the Association at which time the Association shall be responsible for the maintenance and repair of the Commons.

ARTICLE II

Spring Creek Homeowners' Association

There has been or will be created, under the laws of the State of Indiana, not-for-profit corporation to be known as the "SPRING CREEK PROPERTY OWNERS' ASSOCIATION.

Section 201. Membership in Association

Each lot owner shall, automatically upon becoming an owner, be and become a member of the Association and shall remain a member until such time as his ownership of a lot ceases. Membership in the Association 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 in this subdivision 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 Association.

Section 202. Voting Rights

The Association shall have the following classes of membership, with the following voting rights:

a. **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 the 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 Association, 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.

b. **Class B.** Class B members shall be Developer and all successors and assigns of Developer designated by Developer as Class B members in a written notice mailed or delivered to the President of the Association. Each Class B member shall be entitled to five (5) votes for each lot of which it is the owner and five (5) votes for each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the subdivision, or any part thereof, of which it is the owner (either as to the entire numbered parcel or any part thereof) which is not a "lot" as defined in this declaration of Covenants, Conditions and Restrictions, on all matters requiring a vote of the members of the Association. The Class B membership shall cease and terminate upon the first to occur of (i) the date upon which the written resignation of the Class B members as such is delivered to the President of the Association, (ii) the date Developer no longer owns any lots nor any portion of any individually numbered parcel of land shown upon and identified as a lot on, any recorded subdivision plat of the subdivision, or any part thereof, or (iii) January 1, 1999, (the "Applicable Date").

After the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B member shall be entitled to one (1) class A membership for each lot owned and for each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the subdivision, or any part thereof, of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein.

c. **Special.** Until the Applicable Date, there shall be three (3) additional Special members of the Association, being the persons from time to time appointed by Developer to serve on the Architectural Control Committee, pursuant to Section 114 of Article I hereof. Persons who are Special members shall not be deemed or considered members of the Association nor owners of lots for any purpose other than to qualify to act as members of the Architectural Control Committee. Special members shall have no voting rights on any matters submitted to a vote of the members (unless such Special member is also a Class A member, in which event his voting rights shall be governed by subsection (a) of this Section).

Section 203. Functions

A. The Association shall maintain the entrance landscaping, signage and the landscape easements shown on the plat(s) and shall keep such area in a neat, clean and presentable condition at all times.

B. The Association shall maintain and repair the Common Areas shown on the plat (s) including improvements thereon.

C. The Association shall maintain the water retention areas shown on the plat (s) as part of the overall drainage system to serve the development.

D. The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance and such other insurance as it deems necessary or advisable.

E. The Association may contract for such service as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

F. Owning all Common Areas when deeded to and paying taxes and assessments levied and assessed against, and payable with respect to, the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas

Section 204. Assessments

A. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot in the subdivision, except the Developer, by acceptance of a deed therefor, whether or not it shall be expressed in such a deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land until paid in full and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment was due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

B. Date of Commencement of Annual assessment. The annual assessment provided for herein shall commence for each lot on the date of conveyance to the owner by deed. The Board of Directors shall fix any increase in the amount of the yearly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of annual assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject hereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specific lot have been paid or that certain assessments against said lot have not been paid, as the case may be.

C. Special Assessments: In addition to the annual operating assessment, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose. Written notices for such meetings shall be sent 30-60 days in advance of the meeting and at least 60% of all possible votes must be cast to constitute a quorum.

D. Remedies for Non-Payment: Any charge assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the owner or owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of 12% per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonable period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the owing in any court of competent jurisdiction. The owner of the lot or lots shall, in addition to charges owed, be obligated to pay all costs incurred by the Association, including attorney's fees, in collecting the charges due. Every owner of a lot in the Development and any person who may acquire any interest in any lot in the Development, whether as owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to this subparagraph of the Restrictions.

E. Subordination of the lien to Mortgagee. The lien of the assessments provided herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien.

Section 205. Management of Board of Directors

The business and affairs of the Association 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 Section 202 of this Article II.

Section 206. Initial Board of Directors

The initial Board of Directors shall be composed of the persons designated or to be designated by the Developer. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration or these Articles, (a) the Initial Board shall hold office until the first meeting of the members of the Association occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Developer, who shall thereafter be deemed a member of the Initial Board. Each owner, by acceptance of a deed to a lot with, or by acquisition of any interest in a dwelling house by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Developer as such owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date

determined as provided above, to exercise all of said owner's right to vote, and to vote as Developer determines, on all matters as to which members of the Association are entitled to vote under the Declaration, these Articles or otherwise. This appointment of Developer 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 Developer to fill a vacancy, shall be deemed a Special 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 Association nor an owner of a lot for any other purpose (unless he is actually the owner of a lot and thereby a member of the Association).

Section 207. Additional Qualifications of Board of Directors

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 house may be represented on the Board of Directors by more than one person at a time.

Section 208. Term of Office and Vacancy of Board of Directors

Subject to the provisions of Section 205 of this Article II, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first meeting of the members occurring on or after the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 206 of this Article II 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 Section 209 of this Article II. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified.

Section 209. 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.

Section 210. Duties and Powers of the Board of Directors

The Board of Directors shall be the governing body of the Association representing all of the owners and being responsible for the functions and duties of the Association. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of these duties. After the Applicable Date, the Board may, on behalf of the Association, 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. The Board of Directors are also responsible for the assessment and collection from the owners of the owners' respective shares of the expenses necessary to carry out all the functions of the Association. Board of Directors shall notify all lot owners of any increase in the amount of the yearly assessment a minimum of thirty (30) days before the increase is in effect; to include the cost of performing all of its functions, duties and obligations as Common Expense and to pay all of such costs therefrom.

Section 212. Limitation of Board Action

After the Applicable 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 without obtaining the prior approval of a majority of the cumulative vote of the owners, except that in the following cases such approval shall not be necessary:

- a. contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;
- b. proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the owners at the annual meeting; and
- c. 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.

Section 213. Compensation of Board of Directors

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.

Section 214. Non-Liability of Directors and Officers

The Directors and officers of the Association shall not be liable to the owners or any other persons for any error or mistake of judgement exercised in carrying out their duties and responsibilities as Directors and officers, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors and officers against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors and officers shall have no personal liability with respect to any contract made by them on behalf of the Association.

Section 215. Additional Indemnity of Directors and Officers

The Association 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 or officer of the Association, 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 or officer is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director or officer the reasonable costs of settlement of or judgement rendered in any action, suite or proceeding, if it shall be found by a majority vote of the owners that such Director or officer was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director or officer, no Director or Officer 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 Director or officer relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any other officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advise or service unless such director or officer had actual knowledge of the falsity or incorrectness thereof, nor shall a Director or officer be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

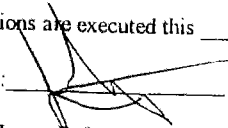
Section 216. Bond of Board of Directors

The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and any other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association 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 and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

Section 217. Initial Management

Notwithstanding anything to the contrary contained in this Declaration, Developer shall have, and Developer hereby reserves to itself, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas, and to perform all the functions of the Corporation, until the Applicable Date. Developer may, at its option, engage the services of a Managing Agent affiliated with it to perform such functions and, in either case, Developer or such Managing Agent shall be entitled to reasonable compensation for its services. Developer may, at its option, assess lot owners a fee for maintenance of the Common Areas.

These Covenants, Conditions And Restrictions are executed this 6 day of January, 1995.

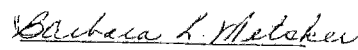
Langston Development Company, Inc. By: 
James R. Langston

State of Indiana)
) SS:
County of Hamilton)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, personally appeared

JAMES R. Langston, for and on behalf of Langston Development Company, Inc., who acknowledged the execution of the foregoing instrument to be his voluntary act and deed.

WITNESS my hand and seal, this 6th day of Jan, 1995.


Notary Public
BARBARA L. Melsker
(Printed Name)

My County of Residence: Hamilton

My Commission expires: 9-22-97

This instrument prepared by James R. Langston

9500687
COVENANTS, CONDITIONS AND RESTRICTIONS

SPRING CREEK

IN REFERENCE TO PLAT RECORDED INSTRUMENT NO. 9500686
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This subdivision shall be known and designated as Spring Creek subdivision in Hamilton County, Indiana (hereinafter referred to as the "Development"). All streets shown and not heretofore dedicated are hereby dedicated to the public.

DEFINITIONS. The following are the definitions of the terms as they are used in this Declaration:

A. "Committee" shall mean the Spring Creek Development Control Committee, composed of three members appointed by the developer who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the Developer. The Developer may at its sole option, at any time hereafter relinquish to the Association the power to appoint and remove one or more members of the Committee.

B. "Association" shall mean the Spring Creek Property Owners' Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in Article II herein.

C. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Developer or the Association, by the President or a Vice President thereof, and with respect to the Committee, by two members thereof.

ARTICLE I

Section 101. Property Lines and Lot Dimensions

The front and side yard building setback lines are hereby established; between which line and the property lines of the street, there shall erected or maintained no building or structure. The front setback shall be a minimum of twenty-two (22) feet and the minimum back setback shall be twenty (20) feet. Side setbacks shall be a minimum of five (5) feet each side excluding elements such as fences, walls, and trellises

No lot or combination of lots may be further subdivided until approval therefore has been obtained from the Carmel Planning Commission; excepting, however, the Developer and its successors in title shall have the absolute right to increase the size of any lot by joining to such lot a section of an adjoining lot (thereby decreasing the size of such adjoining lot) so long as the effect of such joining does not result in the creation of a "lot" with frontage of less than sixty-five (65) feet at the front setback building line or less than eight thousand four hundred (8,400) square feet.

Section 102. Easements

There are strips of ground as shown on this plat and marked Drainage and Utility Easement, which are reserved for the use of public utilities for the installation of water and sewer mains, poles, ducts, lines and wires, subject at all times to the proper authorities and to the easement herein reserved. No permanent or other structures are to be erected or maintained upon said strips of land, but owners of lots in this subdivision shall take their titles subject to the rights of public utilities.

Areas shown on this plat and marked as Detention/ Retention shall be recorded as drainage easements, reserved for the installation and maintenance of storm sewer structures and subject at all times to proper City and/or County authorities and the easement herein reserved. These areas shall be maintained free of weeds, trash or other obstruction by the homeowner or Homeowner's Association.

Section 103. Lot Use

All lots in this subdivision are reserved for residential use and no building other than a one-family residence or structure or facility accessory in use thereto shall be erected thereon. All plans for such structures are to be submitted to the Committee for approval prior to any construction.

Not more than one building shall be erected or used for residential purposes on any lot in this subdivision.

No trailer, tent, shack, attached shed, basement, garage, barn, or other out-building or temporary structure shall be used for temporary or permanent residence on any lot in this subdivision. An attached garage erected or used as an accessory to a residence in this subdivision shall be of permanent construction and shall conform to the general architecture and appearance of such residence. Any such structure must first be approved by the Committee before it is to be erected.

Section 104. Structure Dimensions

The total area of the main structure, exclusive of porches and garages, shall not be less than one thousand five hundred fifty (1,500) square feet in the case of a one-story structure, nor less than one thousand seven hundred (1,700) square feet in the case of a one and one half story structure, nor less than one thousand seven hundred (1,700) square feet

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MARY L. CLARK

HAMILTON COUNTY RECORDER

in the case of a two story structure. All garages shall be attached to the residence dwelling and be a minimum of two (2) car size. No structure in this subdivision, without special approval from the Committee, shall exceed two and one-half (2 1/2) stories or twenty-five (25) feet in height measured from finished grade to the underside of the eave line.

Section 105. Structure Character and Appearance

All buildings shall be constructed in a substantial and good workmanlike manner and of new materials. No roll siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any building or any lots of said subdivision and no roll roofing of any description or character shall be used on the roof of any dwelling house or attached garage on any of said lots. All homes exterior colors including but not limited to shingles, paint, and brick must be approved by the Committee. All driveways from the street to the garage shall be concrete.

Section 106. Sidewalks

Plans and specifications for this subdivision, on file with the Carmel Planning Commission, require the installation of concrete sidewalks within the street rights-of-way in front of all lots as shown on the approved plans. Installation of said sidewalks shall be the obligation of the builder of any such lot, exclusion of the Developer, and shall be completed upon completion of the home on said lot or within 12 months of the purchase of the lot which ever occurs first and in accordance with said plans and specifications. The cost of said installation shall be a lien against any such lot enforceable by the Planning Commission or its successor agency.

Section 107. Fences

All fences erected in this subdivision must meet the specifications of the Developer or Committee. No fence shall be erected in this subdivision without prior written approval of the Developer or Committee. No fences shall be constructed in areas designated for Retention or Detention nor shall fences be constructed in the Floodway.

Section 108. Yard and Other Equipment

Geo-thermal heat pumps shall be of the closed loop type only.

All lot owners will be required to instal at least a \$1,000 landscape package. This package is to include hydro-seeded front and side yards and the planting of bushes and two trees, at the minimum.

Lot owners must install or have installed at least one (1) gas or electric "dusk to dawn" yard light and mailbox in the front yard by the time the construction of the home on the lot is complete. The design of the yard light and mailbox is subject to the approval of the Committee. The Committee may require, for the purpose of uniformity and appearance, that the mailbox be purchased from the Developer or its designee.

No clothesline or clothes poles, or any other free-standing semi-permanent poles, rigs or devices, regardless of purpose, shall be constructed, erected or located or used on any lot.

No sign of any kind shall be displayed to the public view on any lot except one (1) professional sign of not more than one (1) square foot or one (1) sign of not more than five (5) square feet advertising the property for sale or rent. Signs used by a builder to advertise the property during the construction and sales periods are exempt from this requirement.

No radio or television antenna on outside of roof shall be attached to any dwelling house. No free standing radio or television antenna, television receiving disk or dish shall be permitted on any lot without written committee approval. No solar panels attached or detached shall be permitted.

Section 109. Placement of Vehicles or Equipment

No boat, trailer or camper of any kind (including but not in limitation thereof, house trailers, camping trailers or boat trailers,) or any disabled vehicle shall be kept or parked on any lot except within a garage or other approved structure.

Section 110. Drainage of Storm or Other Water

In the event storm water drainage from any lot flows across another lot, provision shall be made to permit such drainage to continue, without restriction or reduction, across the downstream lot and into the natural drainage channel or course, even though no specific drainage easement for such flow of water is provided on said plat.

No rain or storm water runoff or such things as roof water, street pavement or surface water caused by natural precipitation, shall at any time be discharged into or permitted to flow into the Sanitary Sewer System, which shall be a separate sewer system from the Storm Water and Surface Water Runoff Sewer System. No sanitary sewage shall at any time be discharged or permitted to flow into the above mentioned Storm Water and Surface Water Runoff Sewer System.

Section 111. Unacceptable Activities

No noxious, unlawful or other offensive activity shall be carried out on any lot in this subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 112. Animals

No animals, livestock or poultry of any description shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes.

Section 113. Use and Maintenance of Lots

No lot in this subdivision shall be used or maintained as a dumping ground for rubbish, trash, grass clippings, garbage or other waste and such rubbish or trash shall not be kept, except in sanitary containers. Trash shall not be burned except in suitable incinerators.

It shall be the duty of the owner of each lot in the subdivision to keep the grass on the lot properly cut and to keep the lot free from weeds and trash and otherwise neat and attractive in appearance. Should any owner fail to do so, the Developer and Homeowners Association may take such action as it deems appropriate in order to make the lot neat and attractive and the owner shall upon demand reimburse Developer and Homeowners Association for the expense incurred in so doing.

Section 114. Architectural Control Committee

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

No building, fence, wall or other improvement of any kind shall be commenced, erected or maintained upon any lot, nor shall any exterior addition to or change or alteration therein be made without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the committee by the owner of the lot. The manner of application shall be in the form as prescribed from time to time by the Committee, and shall be accompanied by two sets of plans and specifications. Such plans shall include plot plan showing location of proposed improvements, specification of all exterior materials and colors and any proposed landscaping. In the event said Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 115. Enforcement of Restrictions and Conditions

The Developer, and any owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these covenants and restrictions. Failure by the Developer, or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

In the event the Developer or owner shall be successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien or charge now or hereinafter imposed by the provisions of the Restrictions, Covenants, Limitations, Easements and Approvals appended to and made a part of the Plat of the community, it shall be entitled to recover from the party against whom the proceeding was brought all of the attorneys' fees and related costs and expenses it incurred in such proceeding.

The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law, or any structure or part thereof erected or maintained in violation hereof, is hereby dedicated to the public and reserved to the several owners of the several lots in this subdivision and to their heirs and assigns.

Section 116. Invalidation of Covenant

Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 117. Term of Covenants and Restrictions

The foregoing covenants or restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date of this plat, at which time said covenants or restrictions shall be automatically extended for successive periods of ten (10) years unless changed by vote of 75% of the then owners of the buildings covered by these covenants or restrictions in whole or in part.

Section 118. Waiver of Rights to Remonstrate

Lot owners, upon taking title, agree to waive all rights to oppose future zoning changes and special permits necessary to complete the Master Plan of Spring Creek. No owner of any lot shown herein shall have the right to remonstrate against annexation of that lot to the City of Carnel.

Section 119. Ownership, Use, Enjoyment, and Maintenance of Commons

"Commons" and "Commons Area" shall mean those areas set aside for conveyance to the Association, as shown on the plats. Any commons depicted on the recorded plats of the Development shall remain private, and neither the Developer's

execution of recording of the plats nor the doing of any other act by the Developer is, or is intended to be, a dedication to the public of the commons. Ownership of any of the Commons shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as the Developer at the time of conveyance deems appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall be members thereof from time to time.

Developer shall be responsible for improving and or maintaining all Common Areas until such time as the Commons are conveyed to the Association at which time the Association shall be responsible for the maintenance and repair of the Commons.

ARTICLE II Spring Creek Homeowners' Association

There has been or will be created, under the laws of the State of Indiana, not-for-profit corporation to be known as the "SPRING CREEK PROPERTY OWNERS' ASSOCIATION."

Section 201. Membership in Association

Each lot owner shall, automatically upon becoming an owner, be and become a member of the Association and shall remain a member until such time as his ownership of a lot ceases. Membership in the Association 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 in this subdivision 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 Association.

Section 202. Voting Rights

The Association shall have the following classes of membership, with the following voting rights:

- a. **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 the 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 Association, 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.
- b. **Class B.** Class B members shall be Developer and all successors and assigns of Developer designated by Developer as Class B members in a written notice mailed or delivered to the President of the Association. Each Class B member shall be entitled to five (5) votes for each lot of which it is the owner and five (5) votes for each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the subdivision, or any part thereof, of which it is the owner (either as to the entire numbered parcel or any part thereof) which is not a "lot" as defined in this declaration of Covenants, Conditions and Restrictions, on all matters requiring a vote of the members of the Association. The Class B membership shall cease and terminate upon the first to occur of (i) the date upon which the written resignation of the Class B members as such is delivered to the President of the Association, (ii) the date Developer no longer owns any lots nor any portion of any individually numbered parcel of land shown upon and identified as a lot on, any recorded subdivision plat of the subdivision, or any part thereof, or (iii) January 1, 1999, (the "Applicable Date").

After the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B member shall be entitled to one (1) class A membership for each lot owned and for each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the subdivision, or any part thereof, of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein.

- c. **Special.** Until the Applicable Date, there shall be three (3) additional Special members of the Association, being the persons from time to time appointed by Developer to serve on the Architectural Control Committee, pursuant to Section 114 of Article I hereof. Persons who are Special members shall not be deemed or considered members of the Association nor owners of lots for any purpose other than to qualify to act as members of the Architectural Control Committee. Special members shall have no voting rights on any matters submitted to a vote of the members (unless such Special member is also a Class A member, in which event his voting rights shall be governed by subsection (a) of this Section).

Section 203. Functions

- A. The Association shall maintain the entrance landscaping, signage and the landscape easements shown on the plat(s) and shall keep such area in a neat, clean and presentable condition at all times.
- B. The Association shall maintain and repair the Common Areas shown on the plat (s) including improvements thereon.
- C. The Association shall maintain the water retention areas shown on the plat (s) as part of the overall drainage system to serve the development.
- D. The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance and such other insurance as it deems necessary or advisable.

E. The Association may contract for such service as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

F. Owning all Common Areas when deeded to and paying taxes and assessments levied and assessed against, and payable with respect to, the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas

Section 204. Assessments

A. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot in the subdivision, except the Developer, by acceptance of a deed therefor, whether or not it shall be expressed in such a deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land until paid in full and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment was due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

B. Date of Commencement of Annual assessment. The annual assessment provided for herein shall commence for each lot on the date of conveyance to the owner by deed. The Board of Directors shall fix any increase in the amount of the yearly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of annual assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject hereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specific lot have been paid or that certain assessments against said lot have not been paid, as the case may be.

C. Special Assessments: In addition to the annual operating assessment, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose. Written notices for such meetings shall be sent 30-60 days in advance of the meeting and at least 60% of all possible votes must be cast to constitute a quorum.

D. Remedies for Non-Payment: Any charge assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the owner or owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of 12% per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the owing in any court of competent jurisdiction. The owner of the lot or lots shall, in addition to charges owed, be obligated to pay all costs incurred by the Association, including attorney's fees, in collecting the charges due. Every owner of a lot in the Development and any person who may acquire any interest in any lot in the Development, whether as owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to this subparagraph of the Restrictions.

E. Subordination of the lien to Mortgagee. The lien of the assessments provided herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien.

Section 205. Management of Board of Directors

The business and affairs of the Association 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 Section 202 of this Article II.

Section 206. Initial Board of Directors

The initial Board of Directors shall be composed of the persons designated or to be designated by the Developer. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration or these Articles, (a) the Initial Board shall hold office until the first meeting of the members of the Association occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Developer, who shall thereafter be deemed a member of the Initial Board. Each owner, by acceptance of a deed to a lot with, or by acquisition of any interest in a dwelling house by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Developer as such owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date

determined as provided above, to exercise all of said owner's right to vote, and to vote as Developer determines, on all matters as to which members of the Association are entitled to vote under the Declaration, these Articles or otherwise. This appointment of Developer 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 Developer to fill a vacancy, shall be deemed a Special 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 Association nor an owner of a lot for any other purpose (unless he is actually the owner of a lot and thereby a member of the Association).

Section 207. Additional Qualifications of Board of Directors

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 house may be represented on the Board of Directors by more than one person at a time.

Section 208. Term of Office and Vacancy of Board of Directors

Subject to the provisions of Section 205 of this Article II, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first meeting of the members occurring on or after the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 206 of this Article II 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 Section 209 of this Article II. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified.

Section 209. 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.

Section 210. Duties and Powers of the Board of Directors

The Board of Directors shall be the governing body of the Association representing all of the owners and being responsible for the functions and duties of the Association. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of these duties. After the Applicable Date, the Board may, on behalf of the Association, 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. The Board of Directors are also responsible for the assessment and collection from the owners of the owners' respective shares of the expenses necessary to carry out all the functions of the Association. Board of Directors shall notify all lot owners of any increase in the amount of the yearly assessment a minimum of thirty (30) days before the increase is in effect; to include the cost of performing all of its functions, duties and obligations as Common Expense and to pay all of such costs therefrom.

Section 212. Limitation of Board Action

After the Applicable 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 without obtaining the prior approval of a majority of the cumulative vote of the owners, except that in the following cases such approval shall not be necessary:

- a. contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;
- b. proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the owners at the annual meeting; and
- c. 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.

Section 213. Compensation of Board of Directors

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.

Section 214. Non-Liability of Directors and Officers

The Directors and officers of the Association shall not be liable to the owners or any other persons for any error or mistake of judgement exercised in carrying out their duties and responsibilities as Directors and officers, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors and officers against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors and officers shall have no personal liability with respect to any contract made by them on behalf of the Association.

Section 215. Additional Indemnity of Directors and Officers

The Association 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 or officer of the Association, 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 or officer is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director or officer the reasonable costs of settlement of or judgement rendered in any action, suite or proceeding, if it shall be found by a majority vote of the owners that such Director or officer was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director or officer, no Director or Officer 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 Director or officer relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any other officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advise or service unless such director or officer had actual knowledge of the falsity or incorrectness thereof, nor shall a Director or officer be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

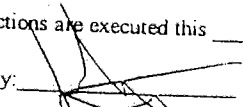
Section 216. Bond of Board of Directors

The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and any other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association 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 and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

Section 217. Initial Management

Notwithstanding anything to the contrary contained in this Declaration, Developer shall have, and Developer hereby reserves to itself, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas, and to perform all the functions of the Corporation, until the Applicable Date. Developer may, at its option, engage the services of a Managing Agent affiliated with it to perform such functions and, in either case, Developer or such Managing Agent shall be entitled to reasonable compensation for its services. Developer may, at its option, assess lot owners a fee for maintenance of the Common Areas.

These Covenants, Conditions And Restrictions are executed this 6 day of January, 1995.

Langston Development Company, Inc. By: 
James R. Langston

State of Indiana)
) SS:
County of Hamilton)

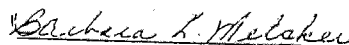
BEFORE ME, the undersigned, a Notary Public in and for said County and State, personally appeared

James R. Langston, for and on behalf of Langston Development Company, Inc., who acknowledged the execution of the foregoing instrument to be his voluntary act and deed.

WITNESS my hand and seal, this 6th day of Jan 1995.

My County of Residence: Hamilton

My Commission expires: 9 22 97


Notary Public
BARBARA L. MIELKE
(Printed Name)

This instrument prepared by James R. Langston

Use of Motorized Vehicles on Common Ground Resolution

We, the members of the Board of Directors of the Spring Creek Property Owners' Association, Inc. (hereinafter referred to as "Association"), having the responsibility and authority to maintain, repair and protect the Common Areas of Spring Creek and other assets of the Association, upon motion duly made and seconded, do hereby adopt the following resolution:

WHEREAS, the paved path that surrounds the subdivision on the common ground was not constructed to support motorized vehicles; and

WHEREAS, the path is consistently used by families with small children in strollers and on small tricycles; walkers, joggers, seniors and residents walking their pets; and

WHEREAS, it is the Board of Directors' interpretation that the paved path be used for walking, jogging and bicycling; and


WHEREAS, the operation of most motorized vehicles on the paved path constitutes a high risk of unnecessary bodily injury for all path users; now

THEREFORE BE IT RESOLVED, no motorized vehicle of any type will be permitted to operate on or about the paved path or on any portion of the subdivision common ground with the following exceptions:

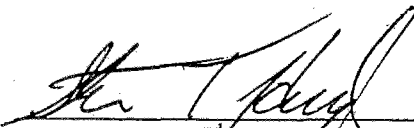
- Motorized wheelchairs for the physically challenged; or
- Utility or landscape/pond maintenance vehicles during the course of their work; or
- Any other vehicle(s) as authorized by a majority vote of the Board of Directors


CERTIFICATION


The foregoing resolution was adopted on 1 day of FEBRUARY, 2004 at a regular Board of Directors meeting with a quorum present.


David Spiller, President

Karen Reidman, 1st Vice President


Steven Heyl, 2nd Vice President


Frank LaPlante, Secretary


Denis Beaudoin, Treasurer

Reserve Fund Account Resolution

We, the members of the Board of Directors of the Spring Creek Property Owners' Association, Inc. (hereinafter referred to as "Association"), having the responsibility and authority to maintain, repair and protect the Common Areas of Spring Creek and other assets of the Association, upon motion duly made and seconded, do hereby adopt the following resolution:

Whereas, the Board of Directors anticipate future large expenditures for repair, maintenance and/or replacement of certain of the Common Areas of Spring Creek (hereinafter referred to as "Major Capital Expenses"), which in all probability cannot be funded out of the regular assessments for the annual operating budgets; and

Whereas, it is in the best interest of the Association and its member/owners that a Reserve Fund be established and contributed to on an annual basis to provide funding of such Major Capital Expenses, thereby eliminating or reducing the need for major special assessments against the member/owners.

THEREFORE BE IT RESOLVED, the Board of Directors hereby create a Reserve Fund and direct the Treasurer of the Association to create a separate interest bearing bank account for such purpose at the Association's current banking institution; and

THEREFORE BE IT ALSO RESOLVED, the operating budget and the annual regular assessment for each fiscal year of the Association shall include an extra amount or percentage of the normal operating budget, as determined from time to time by the Board of Directors, (hereinafter referred to as the "Reserve Fund Amount") for accumulation in the Reserve Fund; the Board of Directors shall from time to time review the future capital needs of the Association in determining the Reserve Fund Amount; and

THEREFORE BE IT ALSO RESOLVED, the Treasurer is directed and authorized to deposit the Reserve Fund Amount in to the Reserve upon the receipt by the Association of the annual regular assessments, and to report to the Board of Directors monthly the status of the Reserve Fund; and


THEREFORE BE IT ALSO RESOLVED, the Board of Directors, may, but is not required to, use funds from the Reserve Account for any and all Major Capital Expenses and/or for operating deficits of the Association. In the event of any such use of the Reserve Fund for operating deficits, the Board of Directors shall replace such monies so used as soon as practical from future budgets and annual assessments.

THEREFORE BE IT ALSO RESOLVED, the RESERVE FUND shall require the signature of two authorized board ~~members~~members to ~~wirhdraw~~withdraw funds directly, by check, from said account; however, the treasurer or president will have authority to transfer funds from the Reserve Fund to the General Operating Checking account without dual authorization.

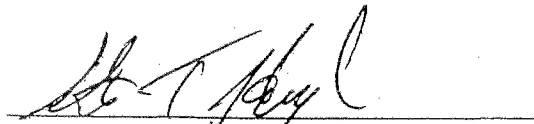
Reserve Fund Account Resolution

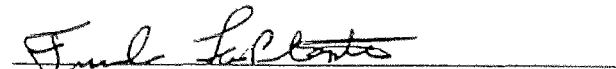
CERTIFICATION

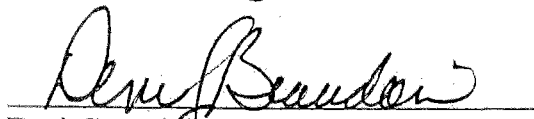
The foregoing resolution was adopted on 1 day of February, 2004 at a regular Board of Directors meeting with a quorum present.


David Spiller, President


Karen Reidman, 1st Vice President


Steven Heyl, 2nd Vice President


Frank LaPlante, Secretary


Denis Beaudoin, Treasurer

Water Retention Areas Use Resolution

We, the members of the Board of Directors of the Spring Creek Property Owners' Association, Inc. (hereinafter referred to as "Association"), having the responsibility and authority to maintain, repair and protect the Common Areas of Spring Creek and other assets of the Association, upon motion duly made and seconded, do hereby adopt the following resolution:

WHEREAS, the Association shall maintain the water retention areas (ponds) shown on the plat(s) as part of the overall drainage system to serve the development (Article II; Section 203, Functions (D)); and

WHEREAS, the Association shall procure and maintain casualty insurance for the common areas, liability insurance and such other insurance as it deems necessary or advisable (Article II; Section 203, Functions (D)); and

WHEREAS, the physical construction and maintenance of said water retention areas was not intended for recreational use by property owner, guests or others on or in the water; rather as temporary holding areas for the management of surface water drainage into area streams; and

WHEREAS, there is an exponentially heightened risk of unnecessary liability to the Association when anyone is in or on the waters of said retention areas; now

THEREFORE BE IT RESOLVED, no person(s) shall be permitted in or on the water retention areas shown on the plat(s) of Spring Creek subdivision. This shall include, but not be limited to; swimming, boating, ice skating or any other activity that includes being in or on the waters, as described above;

THEREFORE BE IT FURTHER RESOLVED, that this resolution shall not prohibit person(s) from being in or on the water retention areas for the purpose of maintaining the Association owned fountains and all associated wiring and mountings;

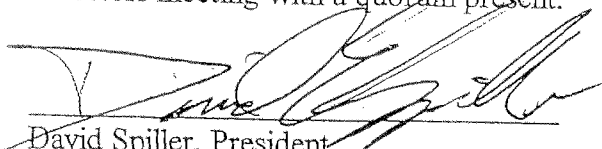
THEREFORE BE IT FURTHER RESOLVED, that this resolution shall not prohibit person(s) from being in or on the water retention areas for the purpose of maintaining the water quality as in the reduction of algae and weed growth;

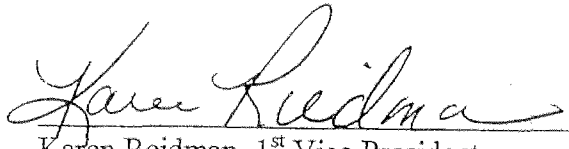
THEREFORE BE IT FINALLY RESOLVED, that a majority vote of the Board of Directors may permit exceptions to this resolution

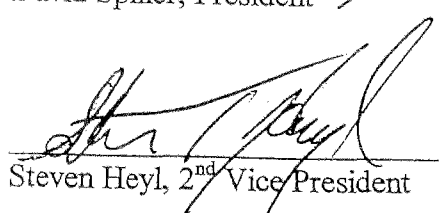
Water Retention Areas Use Resolution


CERTIFICATION

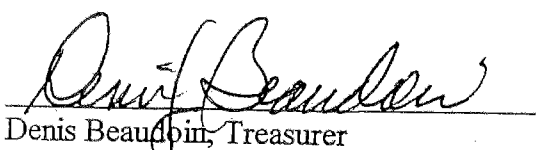
The foregoing resolution was adopted on 1 day of February, 2004 at a regular Board of Directors meeting with a quorum present.


David Spiller, President


Karen Reidman, 1st Vice President


Steven Heyl, 2nd Vice President


Frank LaPlante, Secretary


Denis Beaudoin, Treasurer