

JOHN R. VON ARX

**DECLARATION OF RESTRICTIONS  
FOR CLAYBROOKE**

196968 AUG 20 5

(10)

THIS DECLARATION, made this 19<sup>th</sup> day of Feb, 1997, by Lucas Development, LLC (hereinafter referred to as the "Developer");

**WITNESSETH:**

WHEREAS the Developer is the owner of all the land contained in the area shown on Exhibit A, attached hereto and made a part hereof, which lands are part of a Development to be known as Claybrooke (hereinafter referred to as the "Development") and as more particularly described on the plat thereof as Instrument No. 97-114666 recorded in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the Developer is about to sell and convey the residential lots situated within the platted areas of the Development and, before doing so, desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit of the lots and lands in the Development and the future owners thereof, while including the Development in the Association and under the jurisdiction of the Committee of the Development;

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the Development. For a period of five years after the sale of the last lot in the Development, Developer specifically reserves unto itself the right and privilege to include additional real estate as a part of the Development.

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

A. "Committee" shall mean the Claybrooke Development Committee composed of the Developer or three members appointed by the Developer who shall be subject to removal by the Developer at any time. The Developer may, at its sole option, at any time hereafter, relinquish to the Association the power to appoint and remove members of the Committee.

B. "Association" shall mean the Claybrooke Homeowners Association, Inc., a not-for-profit corporation.

C. "Lot" shall mean any parcel of residential real estate described by the plat of the Development which is recorded in the office of the Recorder of Marion County, Indiana.

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

E. "Owner" shall mean a person, partnership, trust or corporation who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

## 2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every numbered lot platted as part of the Development is for residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single family dwelling house. No double occupancy dwelling shall be permitted on any part of the Development. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded Plat shall be used in a manner generally consistent with the zoning and use designated in the plan filed by the Developer in a rezoning or approval proceedings before the applicable development approval body in the City of Indianapolis, or Marion County, Indiana. However, the Developer reserves unto itself the right to change the character of such designated use at any time in the future by applying to the applicable approval body and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Developer's planned use.

B. Prohibited Improvements. Sheds, outbuildings, above ground pools, antennae, satellite disks which exceed twenty-four (24) inches in diameter, or clothes lines shall not be erected or placed on any lot. Solar panels may not be erected or placed on the front or side roof of any house. Lawn ornaments are permitted in rear yards only.

C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed.

## 3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the development, exclusive of porches, terraces, garages, carports, accessory buildings or basements, or portions thereof, or similar facilities not modeled and decorated for regular and continuous habitation, shall be designated on the recorded plat within the Development, but shall in no case contain less than 1200 square feet of living area for a one-story dwelling and 1600 square feet of living area for a two-story dwelling.

B. Residential Setback Requirements.

(i) Front Setbacks. Unless otherwise provided in these Restrictions or on the recorded plat, all dwelling houses and above-grade structures shall be constructed or placed on residential lots in the Development so as to comply with the set-back lines, as established on the plat of the Development.

(ii) Side Yards. The side yard setback lines shall not be less than 8 feet.

(iii) Rear Yards. The rear setback line shall be at least 20 feet from the rear lot line.

C. Fences. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence must be approved by the Committee as to size, location, height and composition before it may be installed, and all fences shall be wooden or of a synthetic material which has the appearance of wood. All fences shall be constructed so that the finished side thereof shall face the adjacent lots. Except for temporary decorative fences in the yards of model homes while being used as model homes, fences shall not be erected beyond the setback lines in the front yard. However, corner lots (those with two (2) frontages) may erect a fence up to five feet (5') beyond the side yard setback line which faces a street.

D. Tree Preservation. No live tree with a trunk diameter of 4 inches or more when measured 4 feet above the ground may be removed without the prior written consent of the Committee.

E. Mailboxes and Post Lamps. Mailboxes and post lamps are required to be installed by the builder on each lot. The approved mailbox shall be only a standard United States Postal Service receptacle.

F. Landscaping. A minimum of two (2) trees, with shade trees at least two and one-quarter inches (2 1/4") in caliper and ornamental or evergreens trees at least six feet (6') in height.

G. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding or any other similar material. All driveways must be paved with asphalt or concrete.

H. House Approval. All houses in the development shall first be approved by the Developer or its designee.

I. Committee Approval. All fences, awnings, satellite dishes less than 24 " in diameter (as to screening, location and landscaping), additions and other improvements shall be approved by the Committee prior to erection. Prior to construction, the builder or Owner shall submit to the Committee a plot plan, print or brochure and a color scheme.

J. Garages Required. All residential dwellings in the Development shall include an enclosed garage.

K. Heating Plants. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house.

L. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within six (6) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

M. Sales of Lots by Developer. Every lot within the Development shall be sold to an approved builder or developed by the Developer.

N. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

O. Maintenance of Lots and Improvements. The Owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly; and, specifically, such Owner shall:

- (i) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.
- (ii) Remove all debris or rubbish.
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (iv) Cut down and remove dead trees.
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

A. Outside Toilets. No outside toilets shall be permitted on any lot in the Development (except during a period of construction).

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the Marion County Board of Health. No storm water (subsurface or surface) shall be discharged into sanitary sewers. Furthermore, a private lift station shall be located within the Development and the maintenance and upkeep thereof shall be the ultimate responsibility of the Association.

5. GENERAL PROHIBITIONS.

A. In General. No noxious or offensive activities shall be permitted on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another lot in the Development.

B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development, except entry signs and home or lot sales signs.

C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

D. Vehicle Parking. No trucks, campers, trailers, boats or similar vehicles shall be parked on any street or on any lot in the Development.

E. Garbage and Other Refuse. No Owner of a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in subparagraph F below. All houses built in the Development shall be equipped with a garbage disposal unit.

F. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

G. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.

H. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot.

I. Ditches and Swales. It shall be the duty of every Owner of every lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection. Further, drainage easements shall not be altered in any fashion.

J. Wells and Septic Tanks. No water wells shall be drilled on any of the lots nor shall any septic tanks be installed on any of the lots in the Development, unless public sewer tap-in is unavailable.

6. OWNERSHIP, USE AND ENJOYMENT OF COMMON FACILITIES.

The Development may be platted under the cluster provisions of the applicable zoning ordinance. Each common facility depicted on the recorded plat of the Development shall remain private; and the common area shown on the plat can never be separated from the plat, nor developed. The Developer's execution or recording of the plat or the doing of any other act by the Developer is not, nor is intended to be, or shall be construed as, a dedication to the public of the common facilities. Ownership of the common facilities shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion as provided in this Declaration of Restrictions of Claybrooke. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as the Developer may at the time of such conveyance deem appropriate.

7. REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but, except for negligence or unworkman like product or services, neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions. In the event of any legal action being taken under the terms of this paragraph, the prevailing party shall be entitled to recover reasonable attorneys fees.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

C. Association's Right to Perform Certain Maintenance. In the event that the Owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of the Restrictions. The cost therefore to the Association shall be added to and become a part of the annual charge to which said lot is subject, and may be collected in any manner in which such annual charge may be collected. Furthermore, the Developer, Association or any public or governmental division or entity shall have the right to enter upon lots which abut or encroach a pond for purposes of maintenance or upkeep. Except for negligence or unworkmanlike products or services, neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

8. EFFECT OF BECOMING AN OWNER.

The Owners of any lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Developer and of the Association with respect to these

Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners covenant and agree and consent to and with the Developer, the Association and to and with the Owners and subsequent owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

9. TITLES.

The underlined titles preceding the various paragraphs and subparagraphs of the Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Restrictions. 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.

10. DURATION.

The foregoing covenants and 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, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years.

11. AMENDMENT.

This Declaration may be amended at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, executed by the Association and at least 75% of the lot owners. Modification or waiver of any provisions of this Declaration shall be done one at a time and not as a whole.

12. SEVERABILITY.

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

13. LIEN OF ASSESSMENT.

All sums assessed by the Association, but unpaid, including installments of the Annual Assessment and Special Assessments, and any fines duly imposed by the Association, together with late charges, interest, attorney's fees and the costs of collection thereof, shall constitute a lien on the Owners lot prior to all other liens, except only:

- (a) Tax liens on the lot in favor of any assessing unit or special district; and
- (b) All sums unpaid on a first mortgage of record.

The sale or transfer of any lot by foreclosure or by deed in lieu of foreclosure (but not any other transfer), shall extinguish the Assessment lien for payments which became due prior to the date of such sale or transfer, but shall not extinguish the personal liability of the lot Owner for such assessments. No such sale or transfer shall relieve the lot Owner from liability for any assessments thereafter becoming due or from the lien thereof. The lien for sums assessed may be foreclosed by a suit by the Association or the Managing Agent on its behalf in like manner as a mortgage of such property. In any such foreclosure the Owner shall be required to pay a reasonable rental for the use and occupancy of the lot. The Association, upon the affirmative vote of 90% of all the Owners (so authorizing and setting up a special assessment to pay for the same), shall have the power to bid on the lot at any foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

The initial assessment for Owners in the Development shall be \$ 120.00 per year, subject to changes as provided for in the By-Laws of the Association.

IN TESTIMONY WHEREOF, witness the signature of the Declarant this 19<sup>th</sup> day of FEBRUARY, 1997.

LUCAS DEVELOPMENT, LLC

BY: James R. Lucas  
James R. Lucas, Managing Member



CHICAGO TITLE



**LEGAL DESCRIPTION**

Land being part of the East Half of the Southeast Quarter of Section 36, Township 15 North, Range 2 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the East Half of said Southeast Quarter Section, thence North 00 degree 15 minutes 26 seconds East along the West line thereof 525.00 feet to the Point of Beginning of this description; thence continuing North 00 degrees 15 minutes 26 seconds East along said West line 328.50 feet; thence North 89 degrees 56 minutes 14 seconds East 1293.44 feet; thence South 00 degrees 28 minutes 21 seconds West 319.47 feet; thence South 88 degrees 25 minutes 42 seconds West 342.87 feet; thence North 00 degrees 15 minutes 26 seconds East 25.01 feet; thence South 88 degrees 25 minutes 42 seconds West 950.00 feet to the Point of Beginning containing 9.441 acres, more or less subject to highways, right-of-way and easements.

Inclusive of an ingress-egress (driveway easement area) easement described as follow:

Commencing at the Southwest corner of said East Half, thence North 00 degrees 15 minutes 26 seconds East along the West line of said Half-Quarter 893.50 feet to the point of Beginning; thence North 89 degrees 56 minutes 14 seconds East 129.59 feet; thence south 00 degrees 28 minutes 21 seconds West 40.00 feet; thence South 89 degrees 56 minutes 14 seconds West 1293.44 feet to said West line; thence North 00 degrees 15 minutes 26 seconds East along said line 40.00 feet to the Point of Beginning.

This subdivision consists of 28 lots, with streets as shown on the plat. All lot corners are as shown thereon, with dimensions in feet and decimal parts thereof.

I certify that I am a Registered Land Surveyor Licensed under the Laws of Indiana; that this represents a survey made under my direction on the 21st day of January, 1992; and that the above plat and description are a true and accurate representation of the described real estate.



Steven B. Williams  
Registered Land Surveyor No. S0390  
State of Indiana



CHICAGO TITLE

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared James R. Lucas, managing member of Lucas Development, LLC, who acknowledged the execution of the foregoing Declaration of Restrictions for and on behalf of the limited liability company.

Witness my hand and seal this 19 day of February, 1997.

Ronanne L Bell  
Signature

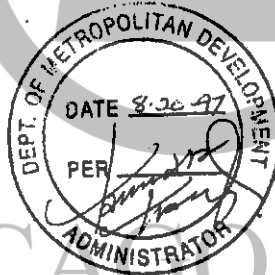
Ronanne L Bell  
Printed

NOTARY PUBLIC

My Commission Expires: Sept 1, 1998

County of Residence: Marion

APPROVED THIS 18<sup>TH</sup>  
DAY OF AUGUST 1997  
DECATUR TOWNSHIP ASSESSOR  
Charles E. Colman DRAFTSMAN



CHICAGO TITLE

This instrument was prepared by Stephen D. Mears, Attorney at Law,  
50 East 91st Street, Suite 206, Indianapolis, Indiana 46240