

- A Lake Property B-1 - Lake Access Parcels - Parcel A B-2 - Lake Access Parcels - Parcel B
- C-1 Lake Mccess Farcers Farcers Parties Control of the Resslerwood, Section One (Plat recorded as Instrument No. 82-37306)
 C-2 Lake Kesslerwood, Section Two (Proposed Plat not recorded) (includes B-1)
 C-3 Lake Kesslerwood, Section Three (Proposed Plat not recorded)
- D (Omitted intentionally)
- E-1 Boardwalk Development, Tract I (Proposed Plat not recorded)
 E-2 Boardwalk Development, Tract II (Proposed Plat not recorded)
 E-3 Boardwalk Development, Tract III (Proposed Plat not recorded)
 E-3 Boardwalk Development, Tract III (Proposed Plat not recorded)
- F Aaron Parcel G - Brammer Parcel
- H Lake Easement Parcel Line

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RULES AND REGULATIONS OF KESSLERWOOD LAKE ASSOCIATION RELATING TO WATER USAGE

890041456

The Declaration of Covenants and Restrictions of Kesslerwood take Association, Inc. dated July 29, 1983, (the "Declaration") was recorded in the office of the Recorder of Marion County, Indiana on August 4, 1983, as Instrument No. 83-55225.

Art_cle VII(f)(2) of the Declaration provides as follows:

"Owners shall not remove or drain from the Lake Property any lake waters contained therein except for reasonable residential purposes as may be further specified in the Rules and Regulations from time to time."

The Board of Directors of Kesslerwood Lake Association, Inc. and its Architectural Review Board have adopted the following Rules and Regulations prohibiting the removal and draining of water from the lake property except as follows:

 Un January 1, 1989, the owners of record of the following lake properties (the "Existing Users") had pumping systems installed in the lake property:

> 4933 Fall Creek Road Indianapolis, IN 46220

4939 Fell Creek Road Indianapolis, IN 46220

4951 Fell Creek Road Indianapolis, IN 46220

5107 Fall Creek Road Indianapolis, IN 46220

5876 Wycombe Lane Indianapolis, IN 46220

Só8 Wycombe Lane Indianapolis, IN 46220

5858 Wycombe Lane Indianapolis, IN 46220

5852 Wycombe Lane Indianapolis, IN 46223

- No new pumping systems may be installed in the lake property.
- The Existing Users may continue to use their pumping systems for reasonable residential purposes as long as they continue to own the property, subject to the following limitations:

no Exhibit"A" attached of Recording.

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- (a) A staff gage has been installed at the east and of the lake property (near the boat ramp) calibrated to indicate the normal pool level of the lake property (732.4 feet above sea level) and the pumping ban level (731.4 feet above sea level) see Exhibit A attached;
- (b) As long as the level of the lake property is 731.4 feet above sea level, or greater, pumping for reasonable residential purpose is permitted for Existing Users;
- (c) If at any time the level of the lake property is lower than 731.4 feet above sea level, pumping is banned and no water may be removed from the lake property.
- 4. When the property of each Existing User is sold, or title to the property otherwise transferred, the pumping system must be removed from the lake property.

KESSLERWOOD LAKE ASSOCIATION, INC.

By: Philip E. Frank 5/1/89
Philip E. Frank President

Attest:

By James F. White Secretary

STATE OF INDIANA)
COUNTY OF MARION)

Before me, a Notary Public in and for said State and County, personally appeared Philip E. Frame and James F. Chile, the President and Secretary, respectfully, of Kessierwood Lake Association, Inc., who acknowledged the execution of the foregoing Rules and Regulations of Kessierwood Lake Association, Inc. Relating to Water Usage.

WITNESS my hand and Notarial Seal this \sT day of \tu a \tu . 1989.

Printed: James 10. Stilwell Notary Public, whose residence is <u>Marion</u> County, Indiena

My Commission Expires:

890041456

This instrument prepared by James W. Stilwell, Attorney at Law.

890048242



RULES AND REGULATIONS OF KESSLERWOOD LAKE ASSOCIATION RELATING TO WATER USAGE



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- When the property of each Existing User is sold, or title to the property otherwise transferred, the pumping system must be removed from the lake property.

IN WITNESS WHEREOF, the President and Secretary of the Kesslerwood Lake Association, Inc. have executed these Rules and Regulations the 15T day of MAY, 1989.

KESSLERWOOD LAKE ASSOCIATION, INC.

is E. Franc 5/1/89 President Phillip E.

Attest:

F. white

STATE OF INDIANA 55: COUNTY OF MARION

Before me, a Notary Public in and for said State and County, personally appeared Philip E. Frame and James F. White the President and Secretary, respectfully, of Kesslerwood Lake Association, Inc., who scknowledged the execution of the foregoing Rules and Regulations of Kesslerwood Lake Association, Inc. Relating to Water Usage.

WITNESS my hand and Noterial Seal this 157 day of

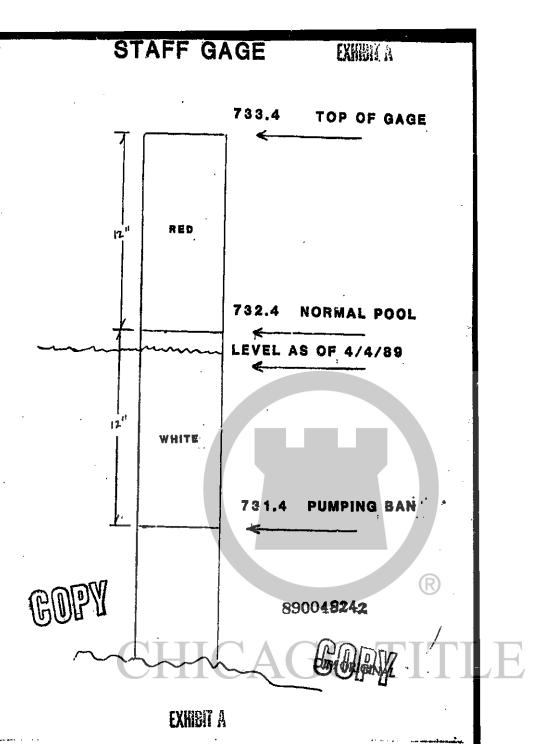
_, 1989. MUA

Printed: James W. Stilwell Notary Public, whose residence is Warren County, Indiana

My Commission Expires: 8 22 91

890048242

This instrument prepared by James W. Stilwell, Attorney at Law.



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AMENDMENT OF THE

DECLARATION OF COVENANTS AND RESTRICTION

OF RESSLERWOOD LAKE ASSOCIATION, INC.

THIS AMENDED DECLARATION, made this IGTH day of September, 1993, by the KESSLERWOOD LAKE ASSOCIATION, INC., an Indiana Corporation with its principal place of business at 4909 Fall Creek Road, Indianapolis, Indiana 46220, (the "Association").

WITNESSETH:

Whereas, on August 4, 1983, Lake Kesslerwood, Inc., an Indiana Corporation (the "Declarant") recorded the "DECLARATION OF COVENANTS AND RESTRICTIONS OF KESSLERWOOD LAKE ASSOCIATION, INC." (the "Original Declaration") in the office of the Recorder of Marion County, Indiana, as instrument number 83-55255; and

Whereas, the Original Declaration referred to various tracts of real estate, including, but not limited to, those tracts commonly referred to as the "Lake Property", the "Lake Access Parcels", the "Lake Kesslerwood Addition", the Boardwalk Development", the "Aaron Parcel", and the "Brammer Parcel" (the "Properties") and by its terms and provisions set forth and established certain rights and obligations; and

Whereas, the Original Declaration is incorporated herein by reference and specifically referred to for all matters relating to legal descriptions of the Properties, and the rights and obligations of the Association, as the successor of the Declarant, and the rights and obligations of the various lot owners to the extent not specifically amended, or otherwise provided for in this Amended Declaration.

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Whereas, on July 14, 1982, the Owners Of Record of the Properties platted and subdivided the same into lots and streets subject to the Plat and certain Covenants relating to the Lots in Lake Kesslerwood, all of which was recorded on July 14, 1982, as Instrument \$82-37306, in the office of the Recorder of Marion County, Indiana. Such Plat and Covenants are incorporated herein by reference and specifically referred to for all matters relating thereto. A copy of the Covenants is attached hereto and made a part hereof as Exhibit "A"; and

Whereas, upon the completion of the development of Lake Kesslerwood, the Declarant was the owner of certain "common" and "limited common" areas (the "Common Area"); and

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Whereas, to provide for the efficient preservation of the values and amenities of the Properties, including the Common Area, the Declarant delegated, transferred and assigned to the Association the powers of owning, maintaining and administering the Common Area, enforcing the covenants and restrictions of the Original Declaration, collecting and disbursing the assessments and charges and promoting a recreation, health, safety and welfare of the residents of the Lake Kesslerwood and preserving the natural and man-made environment.

Whereas, by Corporate Warranty Deed dated March 29, 1993, and recorded in the office of the Recorder of Marion County, Indiana on June 8, 1993, as instrument number 1993-66508, LKI Holdings, Inc. conveyed a portion of the levee at the east end of Lake Kesslerwood (the "Levee Parcel") to the Association. A copy of such corporate warranty deed is attached horeto and made a part hereof as Exhibit "B"; and

Whereas, as a result of the LKI conveyance, the Leves Parcel became a part of the "Common Area" of the Association.

Whereas, the Association desires to amend the Original Declaration to comply and conform with the Indiana Non-Profit Corporation Act of 1991, and with the current wishes and practices of the members of the Association; and

Whereas, this Amended Declaration has been approved by the vote of seventy-five percent (75%) of the members of the Association, as required by the Original Declaration; and

Now, therefore, the Association declares that the Original Properties and the Common Area are and shall be owned, maintained, administered, held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens (sometimes referred to as "Covenants and Restrictions") of the Original Declaration as modified by the terms and provisions of this Amended Declaration, all of which are declared to be in furtherance of a plan for the preservation and enhancement of the Properties and the Common Area:

ARTICLE_I

DEFINITIONS

Section 1. The following words and terms, when used in this Declaration, or in any amendment hereof or supplement hereto, shall, unless the context shall prohibit, the following meanings:

- "Declaration" shall mean the Original Declaration and all of the covenants, conditions and restrictions and all other terms and provisions herein set forth in such document, as the same may from time to time be amended or supplemented by this Amended Declaration and any subsequent Amendments.
- "Association" shall mean and refer to the Kesslerwood Lake Association, Inc., its B. successors and assigns.
- "Developer" shall mean and refer to Boardwalk Associates, LTD., an Indiana limited partnership, and any successors and assigns. "Declarant" shall mean and refer to Lake Kesslerwood, Inc., an Indiana corporation, and any successors and assigns. c.

- "The Properties" shall mean and refer to all real property located in the Lake Kesslerwood Ε. Addition and the Boardwalk Development, plus the "Levee Parcel", and such other real property as may be annexed or added hereto under the provisions of Article II hereof.
- "Common Area" shall mean and refer to the Lake. P. Property, the easements of access, ingress and eggess over and across the Lake Access Parcels herein granted, declared and created, and any other property or interests herein, real or personal, acquired by the Association which are intended and devoted to the common use and are intended and devoted to the common use and enjoyment of the Members; provided, however, that Common Area does not and shall not include any "common area" or common property located in or on the Properties unless the same is expressly conveyed or granted to the Association by the owner thereof.

- G. "Levee Parcel" shall mean the parcel of real outate conveyed to the Association by LKI Holdings, Inc., by Corporate Warranty Deed, a copy of which is attached hereto and made a part hereof as Exhibit "B".
- "Limited Common Area" shall mean that portion of the Lake Property which adjoins the boundary lines of any Lot located in the Lake Resslerwood Addition (but not the Boardwalk Development) which extends from the boundary line of such Lot to the shoreline of the lake located on the Lake Property, the use of which Limited Common Area shall be limited to the Owner of the Lot which it adjoins, subject, however, to the Rules and Regulations of the Association adopted by its Board of Directors, which may provide for a lake shoreline walkway that is a common selk available to the Owner of all (or substantially all) Lots in the Lake Resslerwood Addition, their families, guests and invitees, so long as said parties do not unreasonably infringe upon the use and enjoyment of such Limited Common Area by the Owner of the Lot to which the same is appurtenant.
- I. "Living Unit" shall mean and refer to any portion of a structure situated upon the Properties designed and intended for use and occupancy as a residence by a single housekeeping unit.

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J. "Lot" shall mean and refer to any plot of land included in the Properties which is shown and designated as a lot upon any recorded subdivision map or plat of any portion of the Properties and which is designed and intended for use as a site for a Living Unit. The term shall include a condominium Living Unit if any portions of the Properties are developed under the condominium form of ownership. However, "Lot" shall not include any "common areas" or "common properties" located upon the Properties which are not designed or intended for use as sites for Living Units.

- K. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having such interest morely as security for the performance of an obligation.
- L. "Occupant" shall mean and refer to the occupant of a Living Unit who shall be either the Owner of such Living Unit or a lessee who occupies such Living Unit under a written lesse having an initial term of at least twelve (12) months.
- M. "Member" shall mean and refer to any person or entity holding membership in the Association as provided in Article IV hereof.

<u>Section 2</u>. Other terms and words defined elsewhere herein (including the recital clauses hereof) shall have the meanings herein attributed to them.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO; ASSOCIATION'S RESERVED RIGHTS

Section 1. Declaration. The Association hereby expressly ratifies and confirms the Original Declaration that the Properties shall be held, transferred, sold, conveyed and occupied subject to all terms, covenants, conditions, restrictions and provisions of this Declaration. The Owner of any Lot subject to this Declaration, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant, Developer or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed, execute such contract and undertake such occupancy subject to all of the terms, covenants, conditions, restrictions and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking such occupancy, each Owner acknowledges the rights and powers of Declarant, of Developer and of the Association with respect to or under this Declaration, and, for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, Developer and the Association, and the Owners and subsequent Owners of each of the Lots affected by this Declaration, to keep, observe, perform and comply with this Declaration.

Section 2. Mergers. The Properties, rights, and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Covenants and Restrictions established by this Declaration within the existing Properties, together with any covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the existing Proportion except as hereinafter expressly provided.

ARTICLE III

COMMON AREA

Section 1. Obligations as to Common Areas. The Association hereby grants and confirms a non-exclusive exament in favor of each Owner for the use, enjoyment and benefit of the Common Area, subject to all of the terms and provisions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot.

Section 2. Common Area and Obligations of the Association. Subject to the provisions herein, every Owner shall have a right and easement of enjoyment in and to the Common Area which right and easement shall pass with the title to every Lot. The Association, subject to the rights and obligations of the Gwners, set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

Section 3. Easement of Enjoyment Under Limited Common Areas for Owners of Lots in Lake Kesslerwood Additions. Each Owner of a Lot within the Take Kesslerwood Addition is hereby granted an exclusive (except as heroin otherwise provided) easement for the use and enjoyment of the Limited Common Area and adjoining the boundary of the Owner's Lot nearest the Lake Property. Said easement is and shall be subject to the Rules and Regulations of the Association from time to time in force which may provide for a common shoreline walkway for all (or substantially all) Owners of Lots in the Lake Kesslerwood Addition, their families, guests and invitees. While the Association may allow this common walk under certain regulations, no such privilege shall unreasonably infringe upon an Owner's use and enjoyment of his Limited Common Area.

Soction 4. Extent of Member's Fascments. Each Owner's casements of enjoyment in and to the Common Area and, where applicable, Limited Common Area, created hereby shall be subject to the following:

- (a) the rights of the Association to establish reasonable rules and regulations for the use of the Common Area and limited Common Area:
- (b) the right of the Association, after reasonable notice and an opportunity to be heard, to suspend the right of an Owner to vote and/or to use the Common Area or Limited Common Area for any period during which any assessment against his Lot remains unpaid for more than thirty (30) days after notice, and the right of the Association to suspend the right of a member to use the recreational facilities (if any) included in the Common Area for a period not to exceed sixty (60) days for any other infraction of this beclaration or any Rules and Regulations premulgated by the Association.

Section 5. Delegation of Use. Any Owner in good standing with the Association may delegate his right of enjoyment to the use of the Common Area (and, where appropriate, his Limited Common Area) to members of his family or occupants, and their guests and invitees, subject to such general regulations as may be established from time to time by the Association.

Section 6. Damage or Destruction of Common Area by Owner. In the event any Common Area is damaged or destroyed by an Owner or any of his Occupants, guests, tenants licensees, agents or members of his family, such Owner chall be responsible for the repair of such damage and such Owner does hereby authorize the Association to repair such damaged area; the Association shall repair said damaged area in a good and workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. The amount necessary for such repairs shall became a special assessment upon the Lot of said Owner.

ARTICLE IV

NEMBERSHIP AND VOTING RICHTS

Section 1. Memborship. Every Owner of a Lot subject to assessment, except us herein provided to the contrary, shall be entitled and required to be a Member of the association. If title to a Lot is held by more than one person, each of such persons shall be a Member. An Owner of more than one Lot shall be entitled to, and there shall be required, one membership for each such Lot. Each such membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot. Except as herein otherwise expressly provided, no person or entity other than an Owner, may be a Member of the Association, and a membership in to Association may not be transferred except in connection with the transfer of title to a Lot.

Section 2. Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of the record title of a Lot and then only to such transferee, by assignment, intestate succession, testamentary disposition, foreclosure of mortgage of record or other logal process. It shall be the responsibility of each owner, upon becoming entitled to membership, to so notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a Member in its sole discretion. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any lot should fail or refuse to transfer the membership registered in his name to the transferee title of such Lot, the association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

<u>Section 3.</u> <u>Voting.</u> The Association shall have two (2) classes of voting membership as follows:

A. Class A. Class A Members shall be all Owners of Lots located in the Lake Kesslerwood Addition and shall be entitled to one (1) vote for each Lot owned with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one person holds title to any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among

themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-owner or other person entitled to a vote at such meeting, unless such co-Owner or other persons have filed a general voting authority (i.e., proxy) with the Secretary applicable to all votes until rescinded.

B. Class B. Class B Members shall be all Owners of Lots located in the Boardwalk Development and shall be entitled to one (1) vote for each Lot owned with respect to each matter submit to a vote of Members upon which the Class B Members are entitled to vote. When more than one person holds title to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to vote at such meeting, unless such co-Owner or other person entitled to vote at such meeting, unless such co-Owner or other persons have filed a general sting authority (i.e., proxy) with the Secretary applicable to all votes until rescinded.

Section 4. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of thirty (30) days, or shall be in default in the performance of any of the terms of this Declaration for a period of thirty (30) days, after reasonable notice and an opportunity to be heard, as provided for in I.C. 23-17-8-2, such Owner's right to vote as a member of the association may be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

Section 5. Equal Representation. Notwithstanding anything to the contrary contained herein, the owners of the real estate in the Lake Kesslerwood Addition, in the aggregate, shall have equal representation with the owners of the real estate in the Boardwalk Development, in the aggregate, in all matters dealing with or affecting the affairs of the Association, regardless of the number of Members of either of the respective Classes. By way of example of the foregoing, but not in limitation of the generality thereof, each such group of owners, taken in the aggregate, shall at all times have the right to elect, appoint or designate one half (1/2) of the total number of members of the Board of Directors of the If there is a separate homeowners association comprised solely of owners of property located in Lake Kesslerwood Addition or the Boardwalk Development, then the respective boards of directors of such separate homeowners associations shall appoint the members to represent such associations on the Board of Directors of the Association.

ARTICLE V

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a dead thereof, whether or not it shall be so expressed in such deed, shall be deemed to have covenanted and agreed, to pay to the Association such assessments and charges as established herein and which are to be paid in a manner hereinafter provided.

All such assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. General Assessment.

Purpose of Assessment. The general assessment Parpose of Assessment. The general assessment levied by the association shall be used exclusively to defray the expenses of the Association, to promote the recreation, health, safety and welfare of the residents of the Properties, and, in particular, for the improvement, maintenance, replacement and

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operation of the Common Area and facilities, and to preserve the natural and man-made environment of the Common Areas.

- (b) <u>Basis for Assessment</u>. The annual general assessment rate shall be the same for all "assessable units", which is hereby defined to mean each Lot which has been conveyed to an Owner, whether said Lot is vacant, or is improved with a detached dwelling, attached dwelling, condominium living unit or other structure.
- (c) Maximum Annual General Assessment.
 - (1) Each year the Board of Directors may increase the maximum annual general assessment rate by not more than the greater of (A) ten percent (10%, or (B) the annual increase on a percentage basis in the National Consumer Price Index (Wage Earner's Index—All Cities) as most recently published by the United States Bureau of Labor Statistics (measured from November of one year through October of the following year) above the annual general assessment for the Prior year without a vote of the membership.
 - (2) The maximum annual assessment may be increased above the increase permitted under the immediately preceding subsection (2) only by a vote of two-thirds of the votes in the aggregate of the Class A and Class B Members which are cast on the question.
- (d) Method of Assess ant. By a vote of two-thirds of the Directo, the Board shall fix the annual general assessment upon the provided above and at an amount not in excess of the permitted maximum; provided, however, that the annual general assessments in the aggregate shall be sufficient to meet the financial obligations of the Association imposed by this Declaration. The Board shall set the date or dates when such assessment shall be payable, and shall determine whether the same shall be payable in one sum or in installments.

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section 3. Special Assessment. In addition to the annual general assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only and payable as determined by the Board of Directors for the purpose of defraying, ir whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and any extraordinary operating expenses, providing that any such special assessment shall have the assent of two-thirds of the votes in the aggregate of the Class A and Class B Members which are cast on the question.

Section 4. Effect of Monpayment of Assessments; Remedies of the Association. Any installment of any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at a percentage rate to be established by the Board of Directors, no greater than twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or an action to foreclose the lien therefor against the Lot of such Owner. If the Association has provided for collection of assessments in installments, upon default in the payment of any one or more installments, the Association may accelerate payment and declare the entire balance of said assessment due and payable in full, plus interest and costs of collection, including but not limited to reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 5. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage upon any Lot. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage, or pursuant to any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due and payable prior to such sale or transfer. No such sale or transfer shall, however, relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof or relieve or release any person who was personally liable for such assessments.

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ARTICLE VI

ARCHITECTURAL CONTROL

Section 1. The Architectural Review Board. An Architectural Review Board, consisting of two (2) persons, shall be appointed by thee Board of Directors of the Association. One of such persons shall be the owner of property in the Lake Kesslerwood addition and the other person shall be the owner of property in the Boardwalk Development.

Section 2. Purpose. The Architectural Review Board shall regulate the Common Area and maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography of the Lake Property.

Section 3. Conditions. No improvements, excavation, changes in grade or other work shall be done upon the Common Areas by any Owner, nor shall the Lake Property be changed by any Owner from its natural or improved existing state without the prior written approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration.

Section 4. Procedures. In the event the architectural Review Board fails to approve, modify or disapprove in writing an application for approval within thirty (30) days after full and complete written plans and specifications detailing the proposed work, alteration or other improvement have been submitted to it in accordance with procedures it has adopted for such purposes, approval will be deemed granted unless the Architectural Review Board requests additional time, not to exceed an additional thirty (30) days. The applicant may appeal an adverse Architectural Review Board decision to the Board of Directors who may reverse or modify such decision by a two-thirds vote of the Directors.

USE OF PROPERTY

Section 1. Protective Covenants.

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(a) <u>General Restriction</u>. No person other than those who are Owners and Members in good standing with the Association, or such an Owner's Occupants, tenants, guests or invitees, may use the Common Areas.

- (b) <u>Nuisances</u>. No nuisance shall be permitted to exist or operate upon any property so as to be detrimental to any other property in the vicinity thereof or to its occupants.
- (c) Restrictions on Further Subdivision. No Lot upon which a Living Unit has been constructed shall be further subdivided or separated into smaller lots by any Owner without the written consent of the Architectural Review Board. Vacant Lots may not be subdivided beyond that which is permitted under the plats, if any, from time to time filed and in effect as to the affected portions of the Properties. No portion less than all of any such Lot shall be conveyed or transferred by an owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments.
- The Lake Property has constructed and improved (d) Drainage. improved by developed, Declarant in accordance with plans and specifications approved by, and permits and approvals issued by, appropriate governmental authorities and includes design aspects relating to volumes of water which may safely be drained into the same. Accordingly, in order to protect the capability of the Lake Property as a drainage facility, neither the Declarant, the Developer nor any Owner shall grant to any third name to be start to the capability of the Lake Property as a drainage facility. grant to any third party any right such as an easement, license or any other right) to drain water or any other substance into the Lake Property unless the granting of such right is first approved in writing by the Association's Architectural Review Board, and the use of the Lake Property for drainage purposes shall be strictly limited to those persons having a legal right on the date of the original Declaration to so use the Lake Property for such purposes, and such right shall be limited to the extent the same is or may be so limited as of the date of the original Declaration. the foregoing, Notwithstanding Architectural Review Board shall give its approval to any proposal for such additional drainage requested by an Owner if there is presented to it a written opinion from a

registered professional engineer licensed in the State of Indiana who is also qualified under the Drainage Code of Indianapolis, Marion County, Indiana to certify plans for drainage permits issued under said Code, certifying that the 'dditional drainage proposed to be introduced into the Lake Property will not adversely affect any of the properties, or buildings and improvements thereon, bordering the Lake Property. Provided, however, no such approval by the Architectural Review Board shall be deemed to constitute an endorsement or approval of the viability of the proposed drainage, nor release the party utilizing the right or permission thereby approved from any liability for damages caused by the actual use of such right or from liability for pollution of the Lake Property. In addition, any such party utilizing such right or permission shall comply with all governmental rules, regulations, requirements, statutes, laws and ordinances governing such matters.

(e) Other Restrictions. The Architectural Review Board shall adopt general rules to implement the purposes set forth in Section 2 of Article VI hereof and interpret the covenants of said Section, including, but not limited to, rules to regulate use of the Common Area, storage and use of recreational facilities on the Lake Property, maintenance and removal of trees and vegetation on the Common Area, and other matters incidental to the Lake Property and its use. The Architectural Review Board shall adopt general rules as soon as possible. All general rules may be amended only by a unanimous vote of the Architectural Review Board or pursuant to an affirmative vote of two-thirds of the Board of Directors. All general rules, and any subsequent amendments thereto, shall be furnished to all Owners by personal delivery or mail (addressed to the Owners' addresses appearing on the books and records of the Association) as soon as possible after they are adopted.

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- (f) The following Rules and Regulations are hereby declared to be in full force and effect:
 - (1) Owners shall not put into the Lake Property any sewage, garbage or refuse or floating material and shall not discolor or empty any effluent or any foul or odorous substance or liquid into the Lake Property, nor allow any of such items or matters to be added from his premises, except the Absociation and/or Architectural Review Board may take steps to clear and purify the water of said Lake Property by the addition of chemicals or substances commonly used for that purpose.
 - (2) Owners shall not remove or drain from the Lake Property any lake waters contained therein except for reasonable residential purposes as may be further specified in the Rules and regulations from time to time.
 - (3) The privilege of boating upon the Lake Property shall be restricted to the immediate household family of the Owners, Occupants, Declarant, Developer and their guests and invitees. Boats generally shall be operated to sail or shall be manually operated types, but a motor boat or a boat propelled by another type of power plant may be used on said lake if written permission for the use of the same is obtained from the Architectural Review Board after an investigation of the equipment has been made, but a motor no larger than 6 H.P. may be authorized for a fishing boat, and an electric start motor no larger than 10 H.P. may be authorized for use on a specific pontoon boat. In the absence of written permission, no motor boat or boat propelled by another type of power plant shall be used on said lake, and even though a permit is obtained, no motor boat or boat propelled by another type of power plant shall be operated on said lake between midnight and six o'clock A.M., prevailing local time.
 - (4) Pishing, swimming, and skating shall be restricted to the immediate household families of Owners, Occupants, Declarant, Developer and their guests and invitees. No swimming or

skating shall be permitted on the lake between midnight and six o'clock A.M., prevailing local time.

- (5) All applicable fishing and game laws must be obeyed as to size, number and season.
- (6) Piers and floating rafts of a removable nature will be permitted only with written approval of the Architectural Review Board. Only temporary piers and floating rafts will be permitted. They shall be painted or stained, maintained in good order at all times, and shall be in length not to exceed 24 feet from the shoreline.
- (g) Exceptions. The Architectural Review Board may issue temporary permits except any prohibitions expressed or implied by this section, provided such Board can show good cause and acts in accordance with adopted guidelines and procedures.

Section 2. Special Easements for Kesslerwood Development. Each Owner that owns a Lot in the Lake Kesslerwood Addition is hereby granted a permanent and irrevocable easement across his Limited Common Area to build and maintain a boat landing and/or retaining wall upon his Limited Common Area and to extend a dock therefrom into the Lake Property, provided such construction is properly submitted to and approved by the Architectural Review Board which shall approve only structures of a substantial and workmanlike character, and particular attention shall be given by said Board as to the appearance and durability of the structures to without the action of rising and receding water and ice, and none of which structures will extend more than 24 feet from the presently constituted shoreline of the lake as reflected on the Parcel Drawing.

gection 1. Special Easement For Boardwalk Development. As part of its development of the Boardwalk Development, Developer was given authority to install a pedestrian path, boardwalk or other walkway along all or major portions of the boundary of the Boardwalk Development bordering the Lake Property, which installation may be made partially on the property included in the Boardwalk Development and partially on the Lake Property, but no such extension into the Lake Property shall exceed fifteen (15) feet unless otherwise approved by the Architectural Review Board. Developer was hereby granted a permanent and irrevocable easement and right to build and maintain such a pedestrian path, boardwalk or other walkway (within the limits hereinabove set forth) which may also be used for the purpose of docking boats.

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Section 4. Responsibility for Maintenance of Certain installations.

- Any boat landing, pier, dock or similar item constructed or installed by the Owner of a Lot in the Lake Rosslorwood Additions in his Limited Common Area shall, at all times, be maintained and kept in good repair by the Owner of such Lot and at his sole cost and expense.
- B. Any walkway or similar item constructed or installed along portions of the shoreline of the Lake Property bordering the Lake Kesalerwood Addition shall be maintained and kept in good repair by the Owners of the Lots upon which or through whose Limited Common Areas the same is located, at their sole cost and expense.
- C. Any pedestrian paths, boardwalks, walkways, docks or other similar items installed along the boundary of the Boardwalk Development adjoining the Lake Property shall be maintained and kept in good repair by the Owners of the Lots therein or a homeowners association of such Owners.

ARTICLE VIII

AMENDMENT OF DECLARATION

Section 1. Generally. Except as otherwise provided in this Declaration, Amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (b) <u>Resolution</u>. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

- (c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws of the Association.
- (d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot or Living Unit is subject to a first mortgage, the mortgagee therounder shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the mortgagee has given prior written notice of its mortgage interest to the Association.
- (e) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for assessments, or the method of determining the same, cr (2) the provisions of this Declaration establishing the Architectural Review Board and providing for its functions, without, in each and any of such circumstances, the unanimous approval of all Owners and of all mortgages whose mortgage interests have been made known to the Association.
- (f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Duration. The Covenants and Restrictions of this Declaration shall run with and bind the Properties and the Common Areas for a term of twenty (20) years from the date this Declaration is executed, after which time they shall be automatically extended for successive periods of ten (10) years each, unless at the expiration of the twenty-year term or of any

ten-year extension period, the Covenants and Restrictions are expressly terminated by instrument signed by not less than seventy-five percent (75%) of the Owners.

Section 2. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event he deemed a waiver of the right to do so thereafter. Attorneys' fees and costs of any such actions to enforce, or enjoin or restrain the violation or attempted violation of, this Declaration, or to recover damages for the breach or violation hereof, shall be assessed against and payable by any persons violating the terms hereof.

Section 3. Severability. Invalidation of any or more of these Covenants and Restrictions by legislation, judgment or court order shall in no way affect any other provision which shall semain in full force and effect.

Section 4. Arbitration. In the event of any dispute arising among the Members which cannot be decided by the Board of Directors or the Architectural Review Board, as appropriate, under the provisions of this Declaration, each party to the dispute having as individual and distinctly opposing position shall choose one (1) arbitrator and such arbitrators shall choose one (1) additional arbitrator, and the decision by the three (3) arbitrators, made by a majority of all the arbitrators, shall be binding on each of the disputing parties.

IN WITNESS WHEREOF, KESSLERWOOD LAKE ASSOCIATION, INC. has oxecuted this instrument, or caused the same to be executed by duly authorized officers, as of the day and year first hereinabove set forth.

KESSLERWOOD LAKE ASSOCIATION, INC.

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Byt

Robert Sauter, President

Attest:

Paul Benedict, Secretary

STATE OF INDIANA)
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Robert Sauter and Paul Benedict, the President and Secretary, respectively, of the Kesslerwood Lake Association, Inc., an Indiana corporation, who acknowledged the execution of the above and foregoing instrument for and on behalf of said corporation for the uses and purposes therein set forth.

Witness my hand and Notarial Seal this GTH day of September,

James W. Stilwell Notary Public

County of Residence --- Marion My commission expires --- 9/24/95



This instrument prepared by James W. Stilwell, Attorney at Law Stilwell, McCrosson & Life, 1811 North Meridian Street, Indianapolis, Indiana 46202, (317) 923-4711

dwelling walls and on multi floor level dwellings the vertical projection of the exterior wall lines less the open porches and garages shall enclose the minimum floor area.

- J. No building shall be erected, placed or altered herein until the building plans, specifications and plot plans showing the location of such building have been approved in writing as to the conformity and harmony of external design with existing structures in the neighborhood, as to conformity with the plat, including these restrictions, and as to location of the building with respect to topography and finished ground elevations, by a committee composed of three to five persons chosen from among lot owners in Lake Kesslerwood and elected annually by a majority vote of said lot owners. In the event of death or resignation of any member of said committee, the remaining members shall have full authority to approve or disapprove such design and location, or to designate a representative with like authority. In the event said committee fails to approve or disapprove such design or location within 30 days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection of such building or the making of such building or the making of such alterations have been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with. The members of such committee shall not be entitled to any compensation for services performed pursuant to this covenant. The powers and duties of said committee as set forth in this deed will cease on and after 20 years from the Cate of the signing of this covenant or upon the erection of a building on each lot in said addition, whichever occur sooner.
- K. No fence, wall hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within 10 feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.
- L. Enforcement: The right to enforce the within provisions, restrictions and covenants by injunction together with the right to cause the removal by due process of law of structures erected or maintained in violation therein is hereby dedicated and reserved to the owners of the several lots in this subdivision, their heirs or assigns, and the Metropolitan Plan Commission, their successors or assigns, who shall be entitled to such relief without being required to show any damage of any kind to any such owner or owners, by or through any such violation or attempted violation. Said provisions shall be in full force and effect until July 1, 2007, at which time said covenants shall be automatically extended

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for successive period of ten (10) years, unless by a majority of the then owners of the lots it is agreed to change the covenants in whole or in part. Invalidation of any one of the covenants by judgment or court order shall in no wise effect any of the other provisions which shall remain in full force and effect.

M. Covenants run with the land: The foregoing covenants, limitations and restrictions are to run with the land and are binding on all persons and parties claiming under chem.

These are the Covenants of the Lots in Lake Kesslerwood, Section One, an Addition to the City of Indianapolis, as per plat thereof, recorded July 14, 1982, as Instrument #82-37306, in the Office of the Recorder of Marion County, Indiana.



CHICAGO TITLE

EXHIBIT "A"

COVENANTS OF LAKE KESSLERWOOD

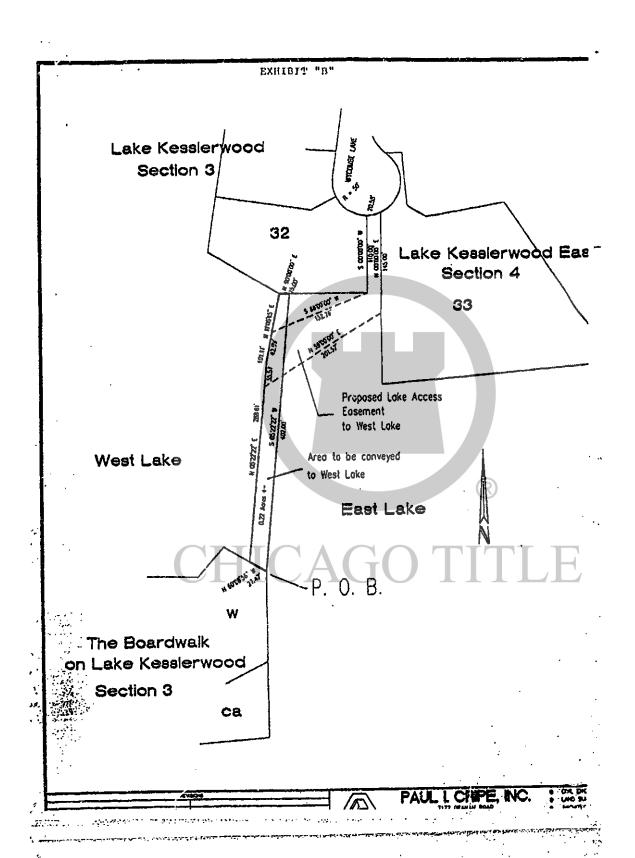
This subdivision shall be known and designated as LAKE KESSLERWOOD - SECTION ONE, an addition in Indianapolis, Marion County, Indiana.

- A. Street Dedication: All streets shown and not heretofore dedicated are hereby dedicated to the public for public use, except "Rucker Road" which is vacated by this platting.
- B. All lots shall be designated as residential lots. On said residential lots, only one single family dwelling with garage and accessory building may be eracted.
- C. No structure, other than fences or attached open porches, shall be erected nearer to the front of the lot than the building line shown in the plat and no building shall be nearer than 7 feet to each side lot line, except Lot Number One in which case each side yard shall be no less than five feet.
- D. No residence shall be erected on any lot which has an area of less than 15,000 quare feet, or a width of less than 80 feet at the front building set back line.
- E. Driveway Access All lots having frontage on Fall Creek Road shall contain a driveway with a turnaround paved area to permit vehicles to exit each lot without backing out onto the public roadway.
- F. No noxious or offensive trade or activity shall be carried on nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.
- G. No trailer, tent, basement, shack, garage, barn or other outbuilding erected hereon shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.
- H. No private sewage disposal method shall be employed or maintained on any lot in this addition.
- I. No dwelling shall be permitted unless the ground floor area of the main structure, exclusive of open porches and garages, shall be not less than 1,700 square feet, in the case of one-story structures, or not less than 1,200 square feet in the case of one and one-half, two, or two and one-half story structures. The minimum ground floor area shall be measured at the exterior of the

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EXHIBIT "B" CORPORATE WARRANTY DEED

THIS INDENTURE WITNESSETH, That	Crantor"), a corporation organized and exist-
ing under the laws of the State of . ISBNABA	• •
KESSLEENCOH LAKE ASSOCIATION 180	
MARION County, in the Sinte of	
	Dollars (\$ 10.00 }
and other valuable consideration, the receipt of which is i	•
real estate in	County, in the State of Indiana;
FART OF THE SOUTHWEST QUARTER OF SECTION 3, TOU COCHT, INGIANA, DESCRIPED AS FOLLOWS:	
DECIMATING AT THE MODIFICAST CONTER OF BLOCK WINTERSECTION OF SECTION THREE MITHER STROBERS OF PROBLEM OF PROB	IN INSTRUCENT NO. 33-45978 IN THE ANAL THERSE ALONG THE MORTH LINE OF NOWS URST 21.47 FEFT, THERSE IDAM SET THERSE REATH IN DESCRIES OS COUNTE OF LOT 32 IN THE PLAT OF LACE HISTORIANT NO. 88-75357 THERSE LESS TO LAKE RESULTMOOD LEMINOD AND WILD SUCCESSORS ARBJOR 1479. LESTRECTIONS, AGREEMENTS AND RICHTS- EROES INCOME TALES DUE AT THIS THIS. If of Lizable represent and restlip that they nevered Up proper resolution of the Board of Grands has follower on all results in seconds:
conveyance has been taken and done. IN WITNESS WIFEREOF, Granter has caused to	
day of BARCH 19 93	LKI HOLDINGS, INC
(SEAL) ATTRECT:	(Name of Corporation)
"	
By Kiele Side House Dy Signature	Signature
Richard G. Hall, Vice President Prioted Name, and Office STATE OF INDIANA SS: COUNTY OF MARION	Printed Name, and Office
Before me, a Hotars Public in and for said County and State, p	erranaily appeared
Richard O. Hall	the
Vice President	, respectively of
IKI_HOLDINGS_INC	, who otknowledged
execution of the foregoing Deed for and on behalf of said Granter, and therein contained are true.	who, having been duly sworn, stated that the representations
execution of the foregoing Deed for and on behalf of said Granter, and therein contained are true.	who, having been duly swern, stated that the representations ARCIA
execution of the foregoing Deed for anion behalf of said Granter, and therein contained are true.	
execution of the foregoing Deed for anton behalf of said Granter, and therein contained are true. Witness my hand and Notarial Seal this 29, day of My Commission Expires Signature	ARCIA



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