

2005-0093775

BY-LAWS

OF

MISTY WOODS

HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

IDENTIFICATION AND APPLICABILITY

SECTION 1.01. Identification and Adoption. These By-Laws are adopted to govern the administration of Misty Woods Homeowners Association, Inc., a Home

Owners Association created to govern the use of common areas, and partly to govern the use of lots, for the maintenance, repair, replacement, administration, operation and ownership of the Common Areas as and to the extent provided herein, to pay taxes assessed against and payable with respect to the Common Areas, to pay any other necessary expenses and costs in connection with the Common Areas, and to perform such other functions as may be designated for it to perform under this Declaration, in a residential subdivision located in the City of Indianapolis, Indiana, known as Misty Woods residential subdivision.

The Articles of Incorporation of the Association are incorporated herein by reference, and all of the covenants, rights, restrictions, and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. The Provisions of these By-Laws shall apply to the administration and conduct of the affairs of the Association. Declarant and each Owner of a Lot 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, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot.

SECTION 1.02. Individual Application. All of the Lot Owners, future owners, mortgagees, tenants, future tenants, or their guests and invitees, and any other person who may use or occupy a Lot or any common areas in the subdivision, shall be subject to the terms and conditions of all documents affecting such Lot and the common areas, as well as by the Articles of Incorporation of the Association, these By-Laws, and any Rules and Regulations adopted by the Association.

ARTICLE II

Meeting of Association

SECTION 2.01. Meetings. At least annually and at such other times as may be necessary, a meeting of the Lot Owners shall be held for the purpose of electing the Board of Directors, approving the Annual Budget, and for such other purposes as may be appropriate or required.

SECTION 2.02. Annual Meetings. The annual Meeting of the Lot Owners shall be held on the first Monday on or after March 15 in each calendar year or as soon thereafter as is practicable. The Board of Directors may change the date for the Annual Meeting, but is shall give written notice to Owners of any change in the date of the Annual Meeting. At the Annual Meeting the Lot Owners shall elect the Board of Directors of the Association in accordance with the provisions of these By-Laws, shall consider the Annual Budget, and shall transact such other business as may properly come before the meeting.

SECTION 2.03. Special Meetings. A Special Meeting of the Lot Owners may be called by the President, by request of two (2) Directors, or upon written request of not less than fifteen percent (15%) of the Lot Owners. The request shall be presented to the President or Secretary of the Association and shall state the purposes for which the meeting is to be called and such purposes shall be stated in the notice thereof which is sent to the Lot Owners. No business shall be transacted at a Special Meeting except as stated in the notice of the meeting, unless all the Lot Owners are present.

SECTION 2.04. Notice of Place of Meetings. Any meetings of the Lot Owners may be held at any suitable place, as may be designated by the Board of Directors. Written notice stating the date, time and place of any meeting, and in the case of a Special Meeting the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each Owner. The notice shall be mailed or delivered to the Lot Owners at their address as it appears upon the records of the Association and to any Mortgagee who requests the same in writing at its address as appears on the records of the Association. Attendance at any meeting by a Lot Owner or their authorized representative, in person or by proxy, shall constitute waiver of notice of such meeting.

SECTION 2.05. Voting and Voting Rights.

(a) **Class A.** Each Lot Owner other than the Declarant shall be a Class A Member of the Association, and shall be entitled to cast one (1) vote on each matter coming before the meeting. Declarant and all successors and assigns of Declarant designated by Declarant.

(b) **Class B.** The Declarant shall be the sole Class B Member and shall be entitled to ten (10) votes for each Lot owned and ten (10) votes for each single parcel of land shown upon, and identified as a Lot on, any recorded subdivision plat of the Real Estate 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, on all matters requiring a vote of the members of the Association.

The Class B membership shall cease and terminate upon the

applicable date, whichever shall be the first to occur;

1. At least ninety-five percent (95%) of the homes in Misty have been built and occupied. At that time the Declarant and all Successors and Assigns of Declarant will turn over the management to the Homeowners Association, or; (i) the date Declarant no longer owns any Lots nor any portion of any single numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Properties, nor any property adjacent to the Properties intended to become a future section of Misty Woods.

2. At the Declarant's sole discretion or the written resignation of Class B members.

3. 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 single numbered parcel of land shown upon, and identified as a Lot on, any recorded subdivision plat of the Properties 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) **Multiple Owner.** Where the Owner of a Lot constitutes more than one (1) person, or is a partnership, there shall be only one (1) voting representative entitled to cast the vote allocable to that Lot.
 - (d) **Voting by Corporation or Trust.** Where a corporation or trust is a Lot Owner or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust and the agent or other representative of a corporation who is duly empowered to vote shall cast any votes to which the corporation is entitled.
 - (e) **Proxy.** A Lot Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Lot Owner shall duly designate his attorney-in-fact in writing, and such written designation shall be delivered to the Association prior to or at the commencement of the meeting.
 - (f) **Quorum.** Except where otherwise expressly provided in these By-Laws, one-third (1/3) of the Lot Owners shall constitute a quorum at all meetings.
 - (g) **Conduct of Annual Meeting.** The President of the Association shall serve as Chairman of the Annual Meeting and in his absence the Vice President shall serve. The Chairman shall call the Annual Meeting to order at the duly designated time and business will be conducted normally in the following manner:
 - (1) **Reading of the Minutes.** The Secretary shall read the minutes of the last Annual Meeting and the minutes of any Special Meeting held subsequent thereto, but such reading may be waived upon motion.
 - (2) **Treasurer's Report.** The Treasurer shall report to the Lot Owners concerning the financial condition of the Association, and answer relevant questions of the Lot Owners concerning the Common

SECTION 3.01. Number and Duties. The affairs of the Association shall be governed and managed by the Board of Directors (herein collectively called the "Board")

BOARD OF DIRECTORS

ARTICLE III

- (6) Adjournment.
of the meeting.
Secretary of the Association at least three (3) days prior to the date Meeting, or which is pursuant to written request submitted to the meeting only if accepted and ruled in order by the Chairman of the
- (5) Other Business. Other business may be brought before the receiving the highest number of votes shall be elected.
may cast more than one vote for any nominee. Those persons one vote for as many nominees as are to be elected. No Lot Owner nominated to serve as a Board Member. Each Lot Owner may cast form of voting. The ballot shall contain the name of each person Owners present waive voting by paper ballot and approve another Directors will be by paper ballot unless a majority of the Lot prior to the date of the Annual Meeting. Voting for the Board of presented to the Secretary of the Association at least three (3) days eligible to serve. Such nominations must be in writing and Directors may be made by any Lot Owner from those persons
- (4) Election of Board of Directors. Nominations for the Board of with the Annual Budget, including reserve requirements.
the year at such amount as will raise the funds required to comply then the board of Directors shall set the Annual Assessments for current fiscal year at the time they approve the Annual Budget,
If the Lot Owners do not approve the annual Assessments for the shall be presented to the Lot Owners for approval or amendment.
- (3) Budget. The proposed Annual Budget for the current fiscal year Annual Budget for the current year.
Expenses and financial report for the prior year and the proposed

or "Directors"; and individually called "Director"). The Board of Directors shall be composed of seven (7) persons. No person shall be eligible to serve as a Director unless he is a Lot Owner or unless he is appointed by the Declarant. Also, any Lots Owner who is thirty (30) days or more in arrears in his Annual or Special Assessments, will not be eligible to serve or to continue to serve as a Director.

SECTION 3.02. Initial Board of Directors. The initial Board of Directors will

consist of the persons designated or to be designated in the Articles, to-wit Amarjeet Luthra (herein referred to as the "Initial Board"), who has been or shall be appointed by Declarant. Notwithstanding any other provisions in the By-Laws, the initial Board of Directors shall hold office until the applicable date. Until such date, the Declarant or its appointees shall perform the management duties of the Homeowners Association. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Special member of the Association 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 3.03. Additional Qualification. Where an Owner consists of more

than one person or is a partnership, corporation, trust or other legal entity, then one of the person constituting the multiple Lot Owner, or an officer or trustee, shall be eligible to serve on the Board of Directors. No Lot Owner other than the Declarant may be represented on the Board of Directors by more than one person at a time.

SECTION 3.04. Term of Office and Vacancy. The Board of Directors shall be

elected at each annual meeting of the Association. At the first annual meeting of the Board, one Director shall be elected for one (1) year, one Director for two (2) years and one Director for three (3) years. At each subsequent annual meeting one Director shall be elected for a term of three (3) years (since the term of one of the Directors will be

expiring), and any other vacancies in the Board of Directors shall be filled by electing a Director to serve for the remainder of the term of the Director who did not serve for his whole term of office.

Any vacancy or vacancies occurring in the Board of Directors shall be filled until the annual meeting of the members by a vote of a majority of the remaining Directors or by vote of the Lot Owners if a Director is removed in accordance with Section 3.05 of this Article III.

SECTION 3.05. Removal of Director. A director or Directors, except the

initial Directors, may be removed with or without cause by majority vote of the Lot

Owners at a meeting duly called and constituted. In such case, a successor Director shall be elected at the same meeting from eligible Lot Owners. A Director so elected shall

serve until the next Annual Meeting of the Lot Owners or until his successor is duly

elected and qualified. An initial Director may be removed and replaced at the discretion

of the Declarant.

SECTION 3.06. Duties of the Initial Board of Directors. The Board of

Directors shall provide for the management, administration, operation, maintenance,

repair, upkeep and replacement of the common areas in Misty Woods, and the collection

and disbursement of the common expenses. These duties include, but are not limited to:

- (a) management, maintenance, repair and replacements of the common areas, and particularly maintaining the lake and keeping it clear;
- (b) procuring of utilities used in connection with the common facilities,
- (c) removal of garbage and waste, and snow removal from the common areas;
- (d) landscaping, painting, decorating, and furnishing of the common areas;
- (e) assessment and collection from the Owners of their pro rata share of the common expenses;
- (f) preparation of annual budget;
- (g) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner as soon as possible after the end of each fiscal year;
- (g) keeping a current, accurate and detailed record of receipts and

expenditures affecting the property, specifying and itemizing the common expenses. All records and vouchers shall be available for examination by an owner upon reasonable notice during normal business hours; and

- (h) to procure fire and extended coverage insurance covering any improvements on or to the common areas to the full replacement value thereof and to procure public liability and property damage insurance and workmen's compensation insurance, if necessary, for the benefit of the Lot Owners and the Association.
- SECTION 3.07. Powers of the Initial Board of Directors and the Board of Directors.** The Board of Directors shall have all powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to:
- (a) to employ a managing agent or a real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties;
 - (b) to purchase for the benefit of the Association such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
 - (c) to employ legal counsel, architects, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
 - (d) to include the costs of all of the above and foregoing as a common expense;
 - (e) to open and maintain one or more bank accounts in the name of the Association;
 - (f) to determine rules and procedures for hiring and firing of personnel necessary for the maintenance, repair and replacement of common areas and for approving the payment of vouchers, invoices and the like;
 - (g) to adopt, revise, amend and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the common areas and facilities;
 - (h) to grant easements and other rights over the common areas;
 - (i) to impose non-discriminatory fines upon any Lot Owner or Lot Owners if they, or any members of their family, guests, or invitees, shall violate any

held at such time and place as shall be determined from time to time by the President.
SECTION 3.10. Meetings. Regular meetings of the Board of Directors may be

Common Expense.
shall be entitled to reasonable compensation for its services, the cost of which shall be a
incurred for the benefit of the Association. The Managing Agent, if any is employed,
compensation. Each Director shall be reimbursed for his reasonable costs and expenses
for his services unless a majority of the Lot Owners shall approve paying such

SECTION 3.09. Compensation. No Director shall receive any compensation

increased.
also reallocate items in the budget, if the total budget will not be
Items within the budget need not be approved separately. The Board may
approved by the Lot Owners and contributions to reserve accounts.

maintenance contracts, contracts for improvements which have been
compensation of the managing agent, ongoing contracts of all kinds,
annual meeting, which shall include but not be limited to the
provided for in the annual budget as approved by the Lot Owners at the
proposed contracts and proposed expenditures expressly set forth as

(b) destroyed;
or destroyed by fire or other casualty unless all the buildings are totally
contracts for replacing or restoring portions of the common areas damaged
(a) meeting thereof, except in the following cases:

of less than \$10,000.00 without obtaining the prior approval of the Lot Owners at a
Directors to enter into contract shall be limited to contracts involving a total expenditure

SECTION 3.08. Limitation on Board Action. The authority of The Board of

Lot Owners and which are not contrary to law.
(j) to do such other acts and things as are in the best interest of a majority of
a late payment of the annual assessment; and

Owner's Lot and subject to late charges and interest to the same extent as
annual assessment is collectible, and shall be secured by a lien on the
collectible by the Association in the same manner as payment of the
rules or regulations adopted by the Association and such fine shall be

The Secretary shall give notice of the regular meetings of the Board to each Director personally or mailed by United States Mail at least three (3) days prior to the date of such meeting.

The President or any two (2) members of the Board may call special meetings of the Board of Directors. The person or persons calling such meetings shall give written notice thereof to the Secretary, who shall either personally or by mail at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called.

SECTION 3.11. Waiver of Notice. Any Director may, in writing, waive notice of a meeting and such waiver shall be deemed equivalent to the receipt of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place and purpose thereof. If all Directors are present at the meeting of the Board, or if those not present shall waive notice of the meeting or shall consent to the actions taken at the meeting, notice shall not be required and any business may be transacted at such meeting.

SECTION 3.12. Quorum. At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

SECTION 3.13. Non-Liability of Directors. The Directors shall not be liable to the Lot Owners or any other persons for any error or mistake in judgment exercised in carrying out their duties and responsibilities as Director, except for their own individual willful misconduct, bad faith or gross negligence. The Association may indemnify and hold harmless each of the Directors against any and all liabilities 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 or contrary to the provisions of law. The Association shall if reasonably available carry liability insurance for the Board of Directors. The cost of such insurance shall be included as part of the common expenses. It is intended that the Directors shall have no personal liability with respect to any contract made by them in good faith on behalf of the Association. The Lot Owners

shall be subject to special assessments for sums necessary for the Association to pay the Managing Agent on behalf of the Association. Every contract made by the Board or the Association may indemnify any person, his heirs, assigns and personal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director or an Officer of the Association, against the reasonable expenses, including attorney fees, actually and necessarily incurred by him in connection with the defense of such actions, suit or proceeding, or in connection with any appeal thereon, 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 person is liable for gross negligence or willful misconduct in the performance of his duties. The Association may also reimburse to any such Director or Officer of the Association the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority of the Lot Owners that such Director or Officer was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit, or proceeding against a Director or an Officer, no Director or Officer shall be considered or deemed to be guilty of or liable for negligence or willful 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 or any Officer or employee thereof, or any Accountant, Attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director or Officer be deemed guilty of or liable for negligence or willful misconduct solely by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

SECTION 3.14. Additional Indemnity of Directors and Officers. The

Managing Agent on behalf of the Association shall be in the name of the Association. The Association may indemnify any person, his heirs, assigns and personal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director or an Officer of the Association, against the reasonable expenses, including attorney fees, actually and necessarily incurred by him in connection with the defense of such actions, suit or proceeding, or in connection with any appeal thereon, 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 person is liable for gross negligence or willful misconduct in the performance of his duties. The Association may also reimburse to any such Director or Officer of the Association the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority of the Lot Owners that such Director or Officer was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit, or proceeding against a Director or an Officer, no Director or Officer shall be considered or deemed to be guilty of or liable for negligence or willful 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 or any Officer or employee thereof, or any Accountant, Attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director or Officer be deemed guilty of or liable for negligence or willful misconduct solely by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

SECTION 3.15. Bond. The Board of Directors shall give bond and shall require

the Treasurer and such other Officers as the Board deems necessary to give bond, 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 determined to be proper by the

Board of Directors, or by the Lot Owners at a duly constituted meeting thereof, and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bond shall be a common expense.

SECTION 3.16. Books and Records. The Board of Directors shall itself, or through the Managing Agent, make available to Lot Owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Plat Covenants, the Declaration of Additional Covenants, Conditions and Restrictions, these By-Laws, any rules and regulations concerning Misty Woods and the books, records and financial statements for the Association. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

SECTION 3.17. Initial Management. Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have, and Declarant 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 Association, until the Applicable Date. Declarant may, at its option, engage a Managing Agent affiliated with it to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services.

SECTION 3.18. Initial Working Capital. Any expenses paid by the Declarant on behalf of the Association for its early period of operation of the Real Estate, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board shall be reimbursed to the Declarant.

ARTICLE IV OFFICERS

SECTION 4.01. Officers of the Association. The principal Officers of the Association shall be the President, Vice President, Secretary, and Treasurer, all of whom shall be elected by the Board. The same person may hold any two or more offices, except that the same person shall not perform the duties of the President and Secretary. Only one person per lot may serve at the same time as an elected officer.

SECTION 4.02. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the initial meeting of each new Board.

Upon an affirmative vote of a majority of all members of the Board, any Officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any Special Meeting of the Board called for such purpose.

SECTION 4.03. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. He shall preside as Chairman at all meetings of the Association and of the Board, shall have and discharge all of the general powers and duties usually vested in the office of President or Chief Executive Officer of an Association or a Stock Corporation organized under the laws of Indiana, including, but not limited to the power to appoint committees from the Lot Owners as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

SECTION 4.04. The Vice President. A Vice President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. In the absence of the President the Vice President shall preside at all meetings of the Lot Owners and of the Board of Directors. The Vice President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be delegated to him by the Board or by the President.

SECTION 4.05. The Secretary. The Secretary need not be elected from among the Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meeting, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association of the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

SECTION 4.06. The Treasurer. The Board shall elect a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incident to the office of the Treasurer. He shall be the Legal Custodian of all monies, notes, securities and other valuables which may from time to time come into the possession of the Association. He shall immediately deposit all funds of the Association coming into his hands in some

responsible for the maintenance of all portions of his Lot, except for such portions thereof Dwelling Unit, both interior and exterior. In addition, each Owner shall furnish and be need therefore arises, all maintenance, repairs, decoration and replacement of his own SECTION 6.01. By the Owner. Each Owner shall be responsible for, if the

MAINTENANCE AND REPAIR

ARTICLE VI

Association.

and paid as part of the Common Expenses, unless otherwise determined by the which are not separately metered to an Owner's Lot or Dwelling Unit shall be treated as the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities SECTION 5.02. Utilities. Each Owner shall pay for his own utilities which, to as a Common Expense.

other assessments against the Common Areas shall be paid by the Association and treated taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or Dwelling Unit or other improvements on each Lot, are to be separately assessed and SECTION 5.01. Real Estate Taxes. Real estate taxes on each Lot, and on any

REAL ESTATE TAXES; UTILITIES

ARTICLE V

Secretary and/or Treasurer may be delegated to a Managing Agent if one is then serving.

SECTION 4.08. Delegation to Management Agent. The duties of the

Laws or the Board of Directors may prescribe.

lected to assist shall delegate to them, and such other powers and duties as these By- Assistant Treasurer shall have such powers and duties as the Officer whom they are powers and duties as are set forth herein for such offices. The Assistant Secretary and Presidents and an Assistant Secretary and Assistant Treasurer who shall have such to time, designate and elect additional Officers, including but not limited to Vice

SECTION 4.07. Additional Officers. The Board of Directors may, from time

account in the name of the Association. The Treasurer need not be a Lot Owner. reliable bank or other depository to be designated by the Board and shall keep such bank

as may, in accordance with the terms of this Declaration, be designated as a part of the Common Areas for purposes of maintenance only. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot of Dwelling or any part of the Common Areas. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances and other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

SECTION 6.02. By the Association. Maintenance, repairs, replacements and upkeep of the Common Areas shall (except to the extent provided herein as the obligation of Owners) be furnished by the Association, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

In addition to the maintenance of the Common Areas, the Association, as part of its duties, and as a part of the Common Expenses, shall provide maintenance for the following items, which shall be considered part of the Common Areas for purposes of maintenance only:

(a) those portions of the Real Estate, whether or not said portions are part of any of the Lots, which are located outside any perimeter fencing, (including walls) originally installed by Declarant as part of the perimeter treatment of the Real Estate, but only to the extent that the same are not maintained by or the responsibility of a public authority; provided, however, that the Association shall have no obligation to maintain any public street, road or highway located within any public right-of-way on or abutting the Real Estate. For purposes of this subparagraph (a), "outside any perimeter fencing" means the areas between such fencing and the nearest property line of the Real Estate;

(b) any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the Real Estate; and

(c) any equipment, such as water wells or fountains, installed by Declarant to

serve the entire project to be developed on the Real Estate, whether or not located on

Lots.

(d) the storm water drainage system for the Real Estate, including but not limited to, the maintenance of all lakes, inlets, open ditches, pipes, swales, manholes and detention ponds. The costs and expenses of such maintenance of the storm water drainage system shall be assessed as part of the general assessment against the Owners as provided in the Declaration and shall be secured by a lien against all lots in this subdivision. Gravity drains and other drains serving individual residences on Lots shall outfall only into drainage swales included in the storm water drainage system for Misty Woods Subdivision.

(e) discharging of the water from the sump pumps must be connected to the under drainage system. No homeowner will be allowed to discharge the water from the sump pumps into the drainage swales or onto the street.

(f) all fences, walls, landscaping, screening material, street directories and signs, water wells and irrigation systems and other improvements within the Landscape Easements.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Areas as it deems necessary, provided that the same are not inconsistent with the express provisions of this Declaration.

Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Areas (or items deemed Common Areas for purposes of

maintenance), if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas (or items deemed as such for purposes of maintenance), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon

SECTION 7.01. Ownership of Lakes. Each Lake area as shown on the plats of the subdivision shall be owned and controlled as tenants in common by the Owners of Lots proposed to about the Lake subject to the restriction set forth herein and on the Site Plan or Plat applicable to the Real Estate.

SECTION 7.02. Rights to Use Lakes. Subject to the easement rights with respect to the Lake described in the Plat or Site Plan applicable to the Real Estate, the Owners of said Lake Lots together with guests in their presence, shall have the exclusive rights to use and enjoyment of such Lake provided that they may not interfere with the drainage system of the subdivision of which the Lakes are a part.

SECTION 7.03. Temporary Maintenance by Declarant. Until all Lots abutting the Lakes are sold, it shall be the responsibility of the Declarant, its successors and assigns, for the maintenance, repair and upkeep of said Lakes.

SECTION 7.04. Stormwater BMP. This subdivision has been designed to include a Stormwater quality best management practice (BMP(s)) that must be maintained by the BMP(s) owner. Said BMP(s) is currently maintained by the Declarant; however, upon the activation of the homeowners association, the Operations and Maintenance Manual for such BMP(s), which has been recorded will become the responsibility of said association subject to all fees and other city requirements.

SECTION 7.05. Limitations on Use of Lakes. No person shall do or permit to be done any action or activity which could result in pollution of the Lakes, diversion of

LAKE COVENANTS

ARTICLE VII

The authorized representatives of the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and items deemed as Common Areas for purposes of maintenance, including, but not limited to, access to any easements reserved, granted or created by any subdivision plat of any portion of the Real Estate for such purposes.

demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

water, elevation of Lake levels, earth disturbance resulting in siting or any conduct which could result in an adverse affect upon water quality, drainage of the subdivision or proper Lake Management.

The Lakes are and will be an integral part of the storm water drainage system serving the Real Estate and are intended to be used for such purpose and primarily as visual and aesthetic amenities and not as recreational amenities. Accordingly, no use shall be made of any of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system.

The Lakes shall be kept free and clean of rubbish, debris and other unsightly materials. No structure of any kind shall be placed in the Lakes or on the Lake property without the prior written approval of the Committee.

No boating, swimming, diving, skiing or ice-skating shall be permitted in or on said Lakes except as permitted by the Board of Directors.

No sewage, garbage, refuse or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into said lakes, except the Board of Directors may take steps to clean and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same.

Fishing from the shores of such lakes adjacent to an Owner's Lot by the Owner thereof and his invited guests and family shall be permitted subject to obedience and compliance with all applicable fishing and game laws, ordinances, rules and regulations.

SECTION 7.06. Costs of Maintenance. Estimated costs of maintenance and repair of the Lake property related to the storm water drainage system shall be included in the Common Expenses subject to general assessment for all Lots in Misty Woods.

Any other expenses for maintenance, upkeep and repair of the Lake property including the easement adjacent thereto shall be shared pro rate by each Lake Lot Owner based on the frontage owned by each respective Lake Lot Owner.

ARTICLE VIII
ACCOUNTING, BUDGETS, AND ASSESSMENTS

SECTION 8.01. Annual Accounting. Annually, as soon as practicable after the close of each fiscal year, the Board shall cause to be prepared and furnished to each Lot

Owner a financial statement prepared by an independent Public Accountant, which statement shall show all receipts and expenses received, incurred, and paid during the preceding calendar year. The Association shall furnish such financial statement for the preceding fiscal year free of charge to any holder, insurer or guarantor of a first mortgage who shall so request in writing.

SECTION 8.02. Proposed Budget. Annually, on or before the date of the

Annual Meeting of the Association, the Board of Directors shall cause to be prepared a proposed Annual Budget for the ensuing or current fiscal year estimating the total amount of the common expenses for such fiscal year. The Board of Directors shall furnish a copy of such proposed Annual Budget to each Lot Owner prior to or at the Annual Meeting of the Association for adoption, and, if so adopted, shall be the basis for the Annual Assessment for the following fiscal year. At the Annual Meeting of the Lot Owners, the Budget may be approved in whole or in part or may be amended in whole or in part, by a majority vote of those persons voting in person or by proxy; provided, however, that the Board of Directors may adopt a tentative Annual Budget for each year until an Annual Budget is approved by the Lot Owners.

SECTION 8.03. Annual and Special Assessments. Common expenses shall be

assessed to the Lot Owners, either as an Annual Assessment, or as a Special Assessment, equally with respect to each Lot which is subject to assessment, all as set forth below:

(a)

An annual assessment shall be made for each fiscal year of the Association for all anticipated ongoing operating expenses of the Association,

including reserves. The annual assessment shall be paid in one (1) annual installment which shall be due and payable in advance on the first day of the month of February. The amount of the aggregate annual assessment shall be equal to the total amount of expenses provided for in the Annual Budget, including reserve items. Annual assessment shall be due and payable automatically on the due date without any notice from the Board or the Corporation and neither the Board nor the Corporation shall be responsible for providing any notice or statement to the Lot Owners for the same.

Special assessments may be made for any unusual and/or extraordinary items, including capital expenditures, and any unanticipated items. Special assessments shall be payable in such amounts and at such times as may be provided in the resolution or other formal proposal setting forth the terms of such Special Assessments

- (b) The annual assessment and all special assessments, together with interest, late charges, costs and reasonable attorney's fees, shall be a continuing lien on the lot upon which each such assessment is made as each installment thereof becomes payable. Each such assessment, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the assessment was payable.
- (c) Annual assessment prior to the applicable date with respect to each lot (that is not owned by Declarant) shall commence on the date of conveyance by Declarant to such new owner. Any lot conveyed by Declarant after June 30 to a new owner, the assessment amount will be half of the annual assessment. Thereafter, payment of the annual assessment shall be due and payable in advance on the first day of the month of February. The portion of the annual assessment collected by Declarant prior to the applicable date will be used toward the expenses limited to maintaining the common areas, such as grass mowing, irrigation, lighting and landscaping.
- (d) Lots owned by the Developer and all Successors and Assigns of Declarant or Class B Members shall be exempt from the annual dues of Misty Woods Homeowners Association, Inc. These lots shall also be exempt from any kind of special assessment.
- (e) **SECTION 8.04. Fiscal Year.** The Fiscal year of the Association shall commence on January 1 and end on December 31, but the Board of Directors may change such Fiscal Year. If the fiscal year is so changed, the annual assessment for the prior fiscal year shall continue to be assessed during any short fiscal year, unless the Board of

Directors shall submit an interim or modified Budget and annual assessment for such period to the Lot Owners.

SECTION 8.05. Limitation on Assessments. During the Fiscal Years ending on or prior to December 31, 2003, the maximum annual assessments shall be \$300.00 per lot per year payable in advance on the first day of the month of February of each year. The Assessment shall be prorated for part of a quarter where applicable.

So long as the Developer is developing the property in the Subdivision, the Annual Assessment shall not be increased more than a cumulative average of ten percent (10%) per year unless such larger increase is approved by a vote of more than fifty percent (50%) of the Lot Owners other than the Developer who vote in person or by proxy at a meeting duly held after the Lot Owners have been notified that such meeting would consider the Annual Budget for the following year and that an increase averaging more than ten percent (10%) per year may be necessary. Such maximum percentage increase shall be computed by compounding the annual assessment for the fiscal year ending December 31, 2003, at the rate of ten percent (10%) per year until the then current fiscal year.

(a) Maintenance, Repairs and Replacements. The Homeowners Association of Misty Woods shall furnish maintenance, repairs, replacements and upkeep of the common areas and the retention ponds.

SECTION 8.06. Vote for Special Assessments. No Special Assessment shall be adopted unless voted by sixty-six and two thirds percent (66 2/3%) of the members of the Association who are voting in person or by proxy at a meeting called for this purpose. However, Special Assessments required because of an insufficiency of insurance shall not be subject to any vote by the Lot Owners.

SECTION 8.07. Notice of Meeting for Assessments. Written notice of any meeting other than the Annual meeting which is called for the purpose of approving the Annual Budget and Annual Assessment or a Special Assessment, shall be given or sent to all members and such notice shall state that the Annual Budget and/or a Special Assessment will be considered at such meeting.

SECTION 8.08. Commencement of Assessments. The Annual Assessments provided for herein shall be made for each fiscal year of the Association, and shall be

payable in an annual installment as provided above. The Annual Assessment shall be set for each fiscal year of the Association. If the Annual Assessment has not been set by the first day of the fiscal year, then the payments due on the Annual Assessment shall be based upon a Tentative Annual Budget set by the Board of Directors, and if none is set, then the Assessments shall be based on the prior years Assessments until the Annual Budget and Annual Assessment for such fiscal year is approved. The first payment of the annual Assessment payable after the Annual Budget is approved shall be adjusted to compensate for any prior payments which were too high or too low.

SECTION 8.09. Delinquent Assessment. Any payment of any Assessment

which is not paid within fourteen (14) days of the date due shall automatically be subject to a late charge of \$100.00. The Board of Directors shall have the right to change the amount of the late charge, the time period before such charge is imposed, and to make other provisions for late charges and/or for imposing interest on late payments. The Association may bring an action of law against the Lot Owner personally obligated to pay the same; it may foreclose its lien against the Owner's Lot; or it may assert both rights and/or any other remedy available to it in law or in equity.

SECTION 8.10. Lien of Assessments. 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 cost of collection thereof, shall constitute a lien on the Owner's 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 become 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 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 Lot 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 Lot 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.

SECTION 8.11. Liability of Grantee. In a voluntary conveyance of a Lot other than a deed in lieu of a foreclosure, the grantee of the Lot shall be jointly and severally liable to the grantor for all unpaid assessments by the Association against the latter for his share of the common expenses or for special assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. Upon the request of any Lot Owner, purchaser or Mortgagee, the Secretary or other authorized Officer of the Association or the Managing Agent shall provide within seven (7) days of the request, against a particular Lot. The Association may charge a reasonable charge for such statement if permitted by law and it may require the Lot Owner to confirm that the person requesting the statement is a Mortgage or purchaser of or from the Lot Owner. Once having been furnished with such a statement, such person (other than the delinquent Lot Owner) shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth, plus costs of collection of such sums, if applicable.

ARTICLE IX

ARCHITECTURAL CONTROL COMMITTEE

SECTION 9.01. Creation. There shall be, and hereby is, created and established an Architectural Control Committee to perform the functions provided for herein. The Committee shall consist of Amarjeet Luthra and two (2) other members appointed, from time to time, by Developer and who shall be subject to removal by Developer at any time with or without cause, until homes have been started on all the Lots. After such time, the Committee shall be a standing Committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association.

(ii) Power of disapproval. The Committee may refuse to grant permission to repair, construct, place or make the requested improvement, when, Committee acknowledging the approval thereof.

Improvement location permit shall bear the stamp or signature of the Architect shall prepare plot plans. Plot plans submitted for the required by the Committee, either a registered Land Surveyor, Engineer or one foot; or to such other scale as the Committee may require. When drawn to a scale of 1" equals 10'; or one quarter or one-eighth inch equals require. All plans and drawings submitted to the committee shall be together with any other material or information which the Committee may all exterior materials proposed to be used and any proposed landscaping, Such plans and specification shall set forth the color and composition of constructed or placed upon the Lot, each properly and clearly designated. existing upon the Lot and the location of the improvement proposed to be plans shall include plot plan showing the location of all improvements specifications for any such proposed construction or improvement. Such improvement, shall be accompanied by two (2) complete sets of plans and by the Committee and, in case of construction or placement of any application shall be in the manner and form prescribed from time to time Committee has made written application to the Committee. Such written only after the owner of the Lot requesting authorization from the prior written approval of the Committee. Such approval shall be obtained or kind shall be repainted, constructed or place on any Lot without the

(i) In general. No residence, building, structure or improvement of any type structures and the natural vegetation and topography.

real estate for the benefit of each owner and to maintain a harmonious relationship among or any Lot, in such manner as to preserve and enhance the value and desirability of the or other improvements placed on any Lot, and the installation and removal of landscaping regulate the external design, appearance and location of residences, buildings, structures

SECTION 9.02. Purposes and Powers of Committee. The Committee shall

The plans, specification, drawings or other material submitted are inadequate or incomplete, or show the proposed improvement to be in violation of any restrictions in this declaration or any subdivision plat of the real estate recorded in the Office of the Recorder in Marion County, Indiana;

(a) The design or color scheme of a proposed repainting or improvement is not in harmony with the general surroundings of the lots or with adjacent buildings or structures; or
(b) The proposed repainting or improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of any other owner.

(iii) Rules and Regulations. The Committee may, from time to time, make, amend and modify such additional rules and regulations as it may deem necessary or desirable to guide owners as to the requirements of the committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those sent forth in these By-Laws, the subdivision plat of the real estate recorded in the Office of the Recorder of Marion County, Indiana, and in the Declaration of Architectural Covenants, Conditions and Restrictions, as long as the same are not inconsistent with said documents.

SECTION 9.03. Duties of Committee. The Committee shall approve or disapprove proposed repainting, construction or improvements within fifteen (15) after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notification to applications shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

SECTION 9.04. Liability of Committee. Neither the Committee, Developer, and the Association nor any agent of any of the foregoing shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

SECTION 11.01. Notice to Mortgages. Any Lot Owner who places a first mortgage lien upon his lot may notify the Secretary of the Association or the Managing Agent and provide the name and address of the Mortgagee, or the Mortgagee may do so, with a statement as to whether notices are to be sent to the Mortgagee. A record of such Mortgagee and its name and address shall be maintained by the Secretary or the Managing Agent and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration or these By-Laws shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided, or as to which the Association is later notified in writing. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary or the Managing Agent, either by the owner of the Mortgagee, no notice to the Mortgagee as may otherwise be required by these By-Laws shall be required.

ARTICLE XI
NOTICES

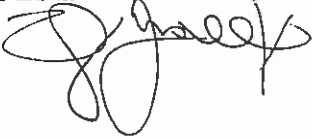
SECTION 10.01. These By-Laws may be amended by a vote of not less than sixty-six and two-thirds percent (66 2/3%) of the Lot Owners voting in person or by proxy at a duly constituted meeting called for such purpose, or at an Annual Meeting.

ARTICLE X
AMENDMENT TO BY-LAWS

SECTION 9.06. Nonapplication to Developer. Notwithstanding the provisions of this Article VI or any other provision of the covenants of the subdivision plat, or the Declaration of additional Covenants, Conditions and Restrictions, requiring the approval of the Committee, the Developer, or any entity related to Developer, shall not be required to apply for or secure the approval of the Committee in connection with any construction, installation, painting or repainting by Developer, or any entity related to Developer, of any residence, building, structure, or other improvement on the real estate or the installation or removal of any trees, shrubs or other landscaping on the real estate.

SECTION 9.05. Inspection. The Committee may inspect work being performed to assure compliance with this declaration and the materials submitted to it pursuant to the Article VI.

Amarjeet S. Luthra
President
Rainco Development Corporation

BOARD OF DIRECTORS:
 , Bd.

Misty Woods.

persons who merely build homes on any of the Lots. The term "Subdivision" means who succeed as the Developer of Misty Woods or any part thereof but shall not include "Developer" means Rainco Development Corporation and its successors and assigns describe such person in his capacity as a member of the Association. The term capacity as a member of the Association, and sometimes the term Lot Owner is used to where applicable include the plural. The term "Member" means a Lot Owner in his and/or mean the feminine and neuter gender as the case may be and the singular shall Article VIII of these By-Laws. The masculine pronoun shall be construed to include Budget" shall mean the Budget adopted, or in context proposed for adoption, pursuant to Directors, and the term "Board" refers to the Board of Directors. The term "Annual Indiana (the "Restrictions"). A "Director" as used herein is any member of the Board of Instrument _____ in the Office of the Recorder of Marion County, Covenants, Conditions and Restrictions governing the Subdivision which was filed as in the covenants in the Misty Woods Subdivision Plat and the Declarations of Additional **SECTION 12.01.** All terms used herein shall have the same meaning as defined

DEFINITIONS

ARTICLE XII

has no address.

duty to send notice to any Lot Owner, to any other address or to whom the Association delivered to that address shall be proper notice hereunder. The Association shall have no to notify the Association of his address for notice purposes and all notices duly mailed or **SECTION 11.02. Notice to Lot Owners.** Each Lot Owner shall have the duty

This instrument prepared by: Amarjeet S. Luthra
Rainco Development Corporation
14 David Lane
Indianapolis, Indiana 46227

Johnson

My County of Residence is:

4/13/09

My Commission Expires:

Personally appeared before me, the undersigned, a notary public in and for said county and state, Amarjeet S. Luthra who acknowledged the execution of the above and foregoing certificate as his voluntary act and deed for the use and purposes therein expressed.

STATE OF INDIANA)
COUNTY OF JOHNSON)
)SS:
)

Gynthia A. Parsley
Printed Notary Public

Gynthia A. Parsley
Notary Public Signature

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

MISTY WOODS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR MISTY WOODS ("Declaration"), made this 27th day of February, 2003, by Rainco Development Corporation, an Indiana Corporation (hereinafter referred to as ("Declaration").

WITNESSETH THAT:

WHEREAS, Declarant Rainco Development Corporation is the owner of certain real estate located in Marion County, Indiana, more particularly described in the Plat for Misty Woods Subdivision, and/or the Legal Description attached hereto as Exhibit A, (if recorded separate from the Plat), and any amendments to same (the "Real Estate"); and

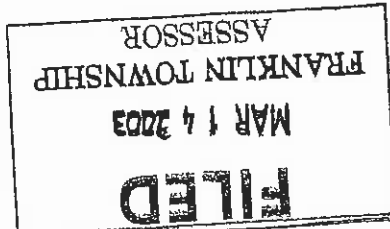
WHEREAS, Declarant intends to sell and convey the residential facilities and lots within Misty Woods and desires to subject the Real Estate to certain covenants, conditions, and restrictions (the "Covenants") in order to insure that the development and use of the various lots on the Real Estate are harmonious and do not adversely affect the value of surrounding lots on the Real Estate; and

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community with public streets, lakes, landscaped areas, open spaces, walls, fences and other common areas and amenities for the benefit of such residential community, to be known as "Misty Woods Subdivision: and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common areas therein contained, and, to this end, Declarant desires to subject the Real Estate and any additional property which is hereafter made subject to this Declaration by Supplemental Declaration to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each Owner of all or part thereof: and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency/entity to which shall be delegated and assigned the powers of supervising, maintaining and administering any common areas located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the Owners of the Real Estate, and all parts thereof; and

WHEREAS, Declarant has caused, or will cause, such agency/entity to be incorporated under the Indiana Code 23-17-1, et seq, under the name "Misty Woods Homeowners Association, Inc.,";



SECTION 2. COMMON AREAS. Declarant hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common

SECTION 1. DECLARATION. Declarant hereby expressly declares that the Properties shall be held, transferred and occupied subject to the Restrictions. The Owners of any Lot subject to these Restrictions, and all other Persons, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of Declarant, the Architectural Review Committee (the "Committee") and the Misty Woods Homeowner's Association (the "Association") with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, the Owners, agree and consent to and with Declarant, the Committee, the Association, and keep, observe, comply with and perform such Restrictions and agreement.

Common Areas and Rights Therein

ARTICLE II

The Real Estate is hereby subjected to the Covenants herein declared to preserve the value of the Real Estate, to ensure proper use and appropriate improvement of the Real Estate, to encourage the construction of attractive structures and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may be inharmonious with other improvements on the Real Estate to preserve and maintain proper setbacks from streets and adequate free space between structures, to provide for adequate and proper maintenance of the Real Estate so as to ensure a high quality appearance an condition of the Real Estate and so as to meet the requirements of certain governmental agencies, all for the purpose of preserving the values of all lots within Misty Woods and to ensure desired high standards of maintenance of the Real Estate, to the benefit of all Owners within Misty Woods.

General Purpose of This Declaration

ARTICLE I

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, is subject to the following Covenants. All of the covenants shall run with the Real Estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any part of parts thereof.

Areas (except for such portions of the Common Areas, if any, as to which, in accordance with other provisions hereof, the use, enjoyment and benefit is limited to the Owners of certain designated Lots to the exclusion of other Lots) subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot.

ARTICLE III

Obligations of Declarant as to Common Areas

Declarant has constructed or provided for, or will prior to the Applicable Date construct or provide for, Common Areas consisting of the following items:

(a) a storm drainage system for the Real Estate, which may include lakes, inlet pipes, open ditches, swales, pipes and other structures and drainage courses;

(b) the installation, in common areas or landscape easements of landscaping and other screening materials;

(c) the installation of entrance walls and other masonry fences in common areas or landscape easements;

(d) the installation, within the street rights-of-way, of street lighting, street directories and street signs in common areas or in landscape easements.

Upon final construction or provision of the Common Areas described in this Section I, Declarant covenants to convey by quitclaim deed all of its right, title and interest in and to said Common Areas to the Association and all such right, title and interest in and to said items (whether owned in fee, by leasehold, by contract or in the nature of an easement or license) shall then be the property of the Association, whether or not the same may be located entirely or partially on any one or more of the Lots. As to any of such items of and constituting the Common Areas located entirely or partially on any one or more of the Lots, the Owners of such Lots shall have only non-exclusive easement rights therein as described in Article II of this Declaration.

ARTICLE IV

General Restrictions

SECTION 1. FIELD TILE. Any field tile or underground drainage which is encountered in construction or any improvement within this subdivision shall be perpetuated, and all owners of Lots in this subdivision and their successors shall comply with all applicable drainage codes.

SECTION 2. DRAINAGE SWALES. Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be

SECTION 5. MAINTENANCE OF PREMISES. In order to maintain the standards of the property, no weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. All Lot Owners, for the good of the community, will maintain their lots in good condition to the curb line of the street.

SECTION 4. DRAINAGE AND UTILITY EASEMENTS. Areas designated as utility easements on the Plat are dedicated as easements for the installation and maintenance of public utilities reasonably and conveniently required, such as lines, ducts, gas or water mains and laterals, electric lines, telephone lines and cable television lines, fiber-optic lines, or the like, but not including transportation facilities or any overhead or underground electrical transmission lines intended to serve properties other than the Platted property and/or the immediate surrounding properties. No structures shall be erected on or maintained within such areas. Maintenance of the easement area itself is the responsibility of the lot owner.

SECTION 3. MAINTAINING DRAINAGE SWALES. Any property owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice by certified mail to repair said damage, after which time if no action is taken, DPW will cause said repairs to be accomplished and the bill for said repairs will be sent to the affected property owner for immediate payment. Failure to pay will result in a lien against the property. The maintenance of the storm drainage system for this subdivision by the Homeowners Association shall, to the extent not maintained by DPW, include but not be limited to, the maintenance of all inlet pipes, open ditches, pipes and swales. The costs and expenses of such maintenance which is not provided by the DPW shall be assessed as part of the general assessment against the owners of all lots in this subdivision as provided in the Declaration and shall be secured by a lien against all lots in this subdivision. Sump pumps, gravity drains and other drains serving individual residences on lots shall outfall only into drainage swales or storm structures included in the storm drainage system for the subdivision. It shall be the Lot Owner's responsibility to maintain and comply with all building and site finish ground elevations and erosion control as finally required and approved by the DPW and the Department of Metropolitan Development ("DMID") as evidenced upon the final construction plans for the development of this subdivision.

altered, dug out, filled in, tiled or otherwise changed without the written permission of the Marion County Department of Public Works or its successor ("DPW"). Property owners must maintain these swales as sodded grassways, or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough before being out-letted into the ditch so that it will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the DPW.

In the event that any Owner of a Lot shall fail to maintain his/her Lot and any improvement, or remove any unauthorized item or structure, situated thereon in accordance with the provisions of these Restrictions and the provision of any recorded plat of the Real Estate, the Declarant, until the Applicable Date, and, thereafter, the Association through its agents and employees or contractors, should have the right to enter upon said Lot and repair, mow, clean, remove or perform such other acts as may be

Each Owner shall be responsible for, if the need therefore arises, all maintenance, repairs, decoration and replacement of his/her own Dwelling Unit, both interior and exterior. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his/her Lot, except for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Areas for purposes of maintenance only. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling or any part of the Common Areas. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances and other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his/her Dwelling Unit or Lot.

(vi) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

(v) Where applicable, prevent debris and foreign material from entering drainage areas; and

(iv) Cut down and remove dead trees;

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;

(ii) Remove all debris or rubbish;

(i) Mow the Lot at such times as may be reasonably required in order to keep the grass no longer than five inches and prevent the unsightly growth of vegetation and noxious weeds;

It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. No waste shall be committed in or about any Dwelling or on any Lot. Each Owner shall:

reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions and the provisions contained in any such plat. The cost thereof to the Declarant or the Association shall be collected as a special assessment against such Owner and/or his/her Lot in the manner provided for herein for the collections of Common Expenses. Neither the Declarant nor 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.

SECTION 6. MODEL HOMES. No Owner of any Lot shall build or permit the building upon his Lot or any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Declarant.

SECTION 7. SALES OFFICE. To the extent deemed necessary or desirable by Developer, Developer and/or a builder approved by Developer, may place sales office(s) and place construction and storage facilities for uses attributable to the construction, development, marketing and maintenance of the subdivision on any unsold lot or on any Common Area in the subdivision until 210 days following the sale, closing and deed transfer to a lot owner other than Developer of the last lot in the subdivision.

SECTION 8. PROHIBITION OF USED STRUCTURES. All structures constructed or placed on any Lot shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.

SECTION 9. QUIET ENJOYMENT. No portion of the Properties shall be used, in whole or in part, for the storage or any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious illegal, or offensive activity shall be carried on upon any portion of the Properties. For greater clarification, no Owner shall knowingly or willfully make or create any unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet and/or comfort of any other Owner, or allow any such unnecessary, excessive or offensive noise or disturbance to be made on his/her Lot, including but not limited to any noise by the use of musical instruments, radio, television, loud speakers, electrical equipment, amplifiers, other machines or equipment, animals, or pets. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence is in any way obnoxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties.

SECTION 10. RESIDENTIAL PURPOSES. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted on any lot other than a dwelling. Each dwelling shall have an attached garage of a size to accommodate at least two (2) cars.

SECTION 16. SIGNS. No sign of any kind shall be displayed to the public view on any Lot, except one (1) professionally manufactured sign of not more than five square feet advertising the property for sale, subject to the prior written approval of the Declarant, until the Applicable Date, and, thereafter, the Association, as to the size, color (s), lettering and placement of such sign. Any sign advertising any residence for rent are specifically prohibited. Violation of the foregoing sign restriction will result in the

SECTION 15. NUISANCES. No noxious, obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. This provision may be construed to prohibit extremely audible music or activities. No outside toilets shall be permitted on any Lot (except during a period of construction and then only with the consent of the Association or the Committee, as applicable); and in such case no sanitary waste or other wastes shall be permitted to be exposed.

SECTION 14. TRUCKS, BOATS, RECREATIONAL VEHICLES. Commercial vehicles, vehicles with commercial advertising and/or company names or similar commercial lettering or pictures on their exteriors, vehicles primarily used or designed for commercial purposes, large machinery or equipment, tractors, mobile homes, recreations vehicles, trucks rated in excess of a ton, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft and boat trailers, may not be parked anywhere on the Properties unless parked in an enclosed garage. Notwithstanding the foregoing, service and delivery vehicles may be parked on the Properties for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot. Any vehicle parked in violation of this Section or any parking rules promulgated by the Association may be towed, with the costs assessed to the Owner, or otherwise in accordance with the By-Laws.

SECTION 13. PARKING. With the exception of occasional events where an Owner has a social event and the invited guests cannot reasonably be expected to park on the Owner's driveway, or unless approved in advance in writing by the Association, parking on the public street(s) is prohibited. No overnight parking shall be permitted on any public street. No unlicensed or inoperative vehicle shall be permitted to be parked or stored on any Lot, easement or Common Area unless kept entirely within a garage. Any vehicle parked in violation of this Section or any parking rules promulgated by the Association may be towed, with the costs assessed to the Owner, or otherwise in accordance with the By-Laws.

SECTION 12. MASONRY REQUIREMENTS. The entire ground floor, excluding the doors, windows, and garage door opening, of the homes in Misty Woods must be comprised of brick, stone or masonry.

SECTION 11. EXTERIOR. The exterior facing of dwellings placed on lots in Misty Woods shall be comprised of brick, stone, masonry, cedar, redwood or comparable wood of the same quality, concrete board product (such as "Hardi-Plank") or drivet. However, the soffits may be constructed of vinyl in addition to wood.

Owner being responsible for paying One Hundred Dollars (\$100.00) per day in liquidated damages to the Declarant, until the Applicable Date, and, thereafter, the Association. Notwithstanding the foregoing, the Declarant, until the Applicable Date, and, thereafter, the Association, shall have the right to erect signs as each, in their discretion, deem appropriate.

SECTION 17. FUEL TANKS. Above and/or below ground fuel storage tanks, including but not limited to oil, propane, diesel fuel, gasoline, and the like, are prohibited, with the exception that propane tanks not exceeding 20 lbs. in capacity, used for outdoor grills, shall be permitted.

SECTION 18. ANIMALS AND PETS. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats or other usual and common household pets not to exceed a total of two (2) may be permitted on a Lot. However, those pets which are permitted to freely roam outside the boundaries of the Owner's Lot, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Properties, shall be removed from the Properties upon request of the Association. If the owner fails to honor such request, the Association, at the expense of the pet's owner, may remove the pet. No pets shall be kept, bred, or maintained for any commercial purpose. Pets shall at all times, whenever they are outside the boundaries of a Lot, be confined on a leash held by a responsible person. All solid waste from any Pet shall be cleaned up and collected by the pet owner, and properly and regularly disposed of by the pet owner.

SECTION 19. RUBBISH, TRASH AND GARAGE. All rubbish, trash, garbage or any other waste shall be stored in appropriate containers subject to the approval of the Committee or Association as applicable, and shall regularly be removed from the Properties and shall not be allowed to accumulate thereon. No Owner shall burn or permit burning out-of-doors of garage or other refuse. Garbage and trash shall be kept in appropriate containers which are not visible from the street, except on collection day. All clothes, sheets, blankets, rugs, laundry, clothing, clotheslines, garbage cans, mechanical equipment, and other similar items on Lots shall be located or screened so as to be concealed from view of neighboring Lots, streets, and any property located adjacent to the Lot.

SECTION 20. CORNER LOT. No fence, wall, hedge, tree or shrub planting or other similar item which obstructs sight lines at elevation between two and one-half (2 1/2) feet and twelve (12) feet above the street, shall be permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting points 25 feet from the intersection of said street lines (25 feet for minor streets and 50 feet for arterial streets), or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended.

The same sightline limitations shall apply to any lot within 10 feet from the intersection of a street right-of-way line with the edge of a driveway pavement or alley

line. No driveway on a corner lot shall be located within 70 feet of the intersection of two street centerlines.

SECTION 21. MINIMUM LIVABLE SPACE. Each Dwelling Unit in Misty Woods shall contain livable space, not including porches, garages or basements, of not less than

- (a) 2,000 square feet for single story dwellings; and
- (b) 3,000 square feet for dwellings that exceed a single story.

SECTION 22. FOUNDATION REQUIREMENTS. With the exception of porch(es) and garage(s), each Dwelling Unit shall use as a foundation a crawl space and/or basement.

SECTION 23. ADDRESS BLOCKS. Each Dwelling Unit shall have the street number of its address permanently affixed to the front of the home in a prominent place, utilizing numbers at least three (3) inches in height.

SECTION 24. CUTSOM HOMES. Each Dwelling Unit constructed shall be a "custom home", as that term is generally used in the industry.

SECTION 25. OUTBUILDINGS. Except as may be permitted by the Declarant or the Committee during initial construction within the Properties, no tent, utility shed, shack, trailer, detached garage or other structure of a temporary nature shall be placed upon a Lot or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events for a period not longer than 48 hours, and similar temporary structures may be permitted if approved in advance in writing by the Declarant, until the Applicable Date, and, thereafter, the Association.

SECTION 26. EXTERIOR ATTACHMENTS. No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his or her Dwelling Unit or placed on the outside walls of any building, and no awning, canopy, shutter or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Committee unless otherwise expressly authorized herein, or in any recorded subdivision plat, or by the rules, regulations and guidelines of the Committee.

SECTION 27. DRIVEWAYS AND CARPORTS. All driveways must be paved with concrete or an acceptable alternate approved by the Committee. No gravel or stone driveway will be permitted. All driveways serving each single-family dwelling shall be hard surfaced; and the driveway shall be a minimum of sixteen feet (16') wide for the entire length of the driveway. No carports will be permitted.

SECTION 28. COMMUNICATION DEVICES. Satellite dish/disc exceeding two feet in diameter, free standing antennas, or any other such visible communication

SECTION 32. SIDEWALKS. The Builder/Lot Owner must construct a four-foot (4') concrete sidewalk along the entire street frontage of each lot, in compliance with the approved construction plans for the subdivision, all applicable laws and codes, and the sidewalk plan approved by DPW. Any Common Area sidewalks shall be constructed by the Developer, as designated on the final development/sidewalk plan. All sidewalks to be constructed by the Builder/Lot Owner shall be completed at such times as the driveway to service the Dwelling Unit on the lot is constructed. All sidewalks shall be poured concrete, with expansion joints; and such sidewalk construction shall be perpetual and continuous along the street frontages and across the driveway of each Lot. The sidewalk shall be substantially level across the Lot, and especially as it crosses the

SECTION 31. LANDSCAPING AND LIGHTING. Two (2) trees (Four (4) trees on a corner Lot), each not less than two (2) caliper inches in size as measured 6 inches above the ground, will be planted on each Lot as a part of the initial landscaping of the Dwelling Unit. The trees planted to satisfy this Covenant must be of a species approved by the Committee. No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with express prior written permission from the Association. Each Lot Owner shall provide reasonable landscaping on his Lot including, at a minimum, suitable foundation landscaping along the entire front of the Dwelling Unit. All landscaping plans are subject to Committee approval in accordance with the guidelines and procedures promulgated by the Committee. The Committee may, in its discretion, modify such plans to promote the integrity and the aesthetic appearances of this subdivision. Finished grading of all yards must be completed within 15 days after the exterior of the Dwelling Unit is substantially complete, weather permitting, and all yards must be seeded or sodded with grass within ten days after the completion of the finish grading, weather permitting. Owner will protect any trees provided by the builder or the Declarant, if any, during construction; and will replace any tree provided by the Declarant or the builder, or which is planted to satisfy the above minimum tree covenant, within thirty (30) days of the such damage or death of the tree, weather permitting. Except for seasonal Christmas decorative lights, which may be displayed between December 1 and January 15 only, all exterior lighting shall be subject to the review/approval in advance of the Committee.

SECTION 30. TREE PRESERVATION. With the exception of trees which must be removed in order to develop the property as proposed in the conceptual site plan, any specimen trees greater than six (6) inches caliper shall be preserved to the greatest extent possible. Appropriate protection measures to protect any such specimen trees which are to be preserved will be taken during construction.

SECTION 29. MAILBOXES. All mailboxes in Misty Woods shall be uniform in appearance. The Committee shall determine the style, type and location.

receiving or transmitting devices are prohibited, excepting antennas attached to the dwelling which do not rise above the peak of the roof. A satellite disk/disc less than two feet in diameter is permitted on the Properties so long as it is mounted on the side or rear of a Dwelling Unit, or is screened from street view.

driveaway. Any curb cuts on corner lots, and the connecting sidewalks from the curb to the sidewalk to allow for crossings, shall also be installed by the applicable Builder/Lot Owner.

SECTION 33. REPAIRS. All owners and their builder and/or contractors shall be responsible for and repair or restore any damage to any real or personal property during construction, whether or not inadvertent or unavoidable, including but not limited to curbs, sidewalks, gutters, street, storm drainage area, utilities, mailboxes, yards, Common Areas, landscaping, or other improvements.

SECTION 34. WELLS AND SEPTIC TANKS. No water wells shall be drilled on any lot. Septic tanks shall be prohibited.

SECTION 35. SWIMMING POOLS. Only in-ground pools with a concrete patio shall be permitted. Swimming pools must have the prior written approval of the Committee before any work is undertaken. Above-ground pools are prohibited. The Committee will approve permanent backyard pools only after careful consideration of the potential effect of such a pool upon neighboring properties.

SECTION 36. PLAYGROUND. No permanently installed playground equipment, tree houses, or similar structures shall be erected on any Lot without prior approval of the Committee; provided, however, children's play equipment such as sandboxes, swing and slide sets, and tents shall not require approval by the Committee provided such equipment is not more than eight (8) feet high, is maintained by the lot owner in good repair (including painting as necessary) and every reasonable effort has been made by the lot owner to screen or shield such equipment from view of adjacent lot owners.

SECTION 37. TENNIS COURTS, RACQUETBALL COURTS, PADDLE BALL COURTS, BASKETBALL GOALS, ETC. Tennis courts, racquetball courts, paddle ball courts, squash courts, and other recreational or sporting facilities shall not be built without prior written approval of the Committee. The Committee may approve such improvements only after thorough consideration of the potential effect of such a structure or use upon neighboring properties. The Committee will not approve non-battled lighted courts or facilities.

All basketball backboards or any other fixed games and play structures shall be located behind the front foundation line of the main structure and within Lot set-back lines unless otherwise approved by the Committee. The Committee reserves the right to approve or disapprove the location and type of basketball goals.

SECTION 38. CONSTRUCTION. No construction, significant earth moving, or excavation work of any nature may be conducted on any Lot after completion of the initial Dwelling Unit, without the prior approval of the Committee. No construction of shacks or outhouses shall be erected or situated on any Lot herein. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall

There are portions of ground marked "Common Areas" or "Blocks" on the Plat which, upon final construction or provision thereof, shall be conveyed by the Declarant to the Homeowners Association. All Common Areas, including additional Common

Common Areas

ARTICLE V

SECTION 41. COMPLETION OF CONSTRUCTION. All construction commenced on any lot within the development shall be completed within one hundred and/or owner prevent completion. 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. The Declarant and/or Homeowners Association shall have standing and authority to seek an injunction or order for the removal of any materials and partially completed structures in violation of this covenant.

SECTION 40. PROSECUTION OF VIOLATIONS. It shall be lawful for the Declarant, until the Applicable Date, and, thereafter, the Association, the Committee (as to matters for which it has responsibilities) or any other person owning any real property situated in this subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any covenant, conditions, provisions, or restrictions contained herein either to prevent such person or persons from doing, or to recover damages or other dues for such violation, or to require the removal of structures erected in violation hereof. All costs of litigation and attorneys' fees resulting from violation of these covenants and restrictions shall be the financial responsibility of the lot owner or owners found to be in violation.

SECTION 39. FENCES, WALL, BARRIERS. No fences, walls, barriers or like structures may be constructed without prior written approval of the Committee. Only wrought iron fences will be permitted. No such structures shall exceed six (6') feet in height. Any fence which is constructed on any platted Lot shall be constructed only in the rear yard; and shall not extend any closer to the public street in front of the dwelling than the applicable rear corner of the dwelling. No fences of any kind will be allowed in certain areas of Misty Woods. No hedges, walls, pet runs, animal pens, or kennels of any kind shall be permitted on any Lot except as approved in advance in writing by the Committee.

be permitted to remain on any Lot or used on any Lot at any time as a residence, either temporarily or permanently. All job sites, and abutting public streets and Common Areas, must remain neat and clean during construction. If the Declarant or the Association is not satisfied with the appearance of a construction site or abutting areas, after ten (10) days notice thereof to the Owner of the respective Lot, the Declarant or the Association may cause the site, affected streets, abutting areas to be cleaned, and may assess such charges specifically against the Owner.

The Lakes are and will be an integral part of the storm water drainage system serving the Real Estate; and are intended to be used for such purpose. A secondary purpose for the Lakes shall be as visual and aesthetic amenities. However, the lakes are not intended as active recreational amenities, unless the Declarant, until the Applicable

SECTION 4. LIMITATION ON USE OF LAKE(S). No person shall do or permit to be done any action or activity which could result in pollution of the Lake(s), diversion of water from the Lake(s), elevation of Lake level(s), earth disturbance resulting in silting, or any conduct which could result in an adverse affect upon water quality, drainage of the subdivision or proper management of the Lake(s).

SECTION 3. TEMPORARY MAINTENANCE BY DECLARANT. Until all Lots abutting each of the Lakes are sold, it shall be the responsibility of the Declarant and/or the Association, for the maintenance, repair and upkeep of each Lake(s). At any point in time thereafter, the Declarant shall have the right to elect at its discretion to surrender all or any portion of the responsibility for maintaining, repairing, and keeping up each of the lake(s) to the Lot Owners of the Lots abutting each such Lake, as applicable, as described in Section 5 of this Article.

SECTION 2. RIGHTS TO USE LAKES. Subject to the easement rights with respect to the Lakes described in the Plat or Site Plan applicable to the Real Estate, the Owners of said Lake Lots together with guests in their presence, shall have the exclusive rights to use and enjoy such Lake(s), subject to the provisions of Section 4 of this Article.

SECTION 1. OWNERSHIP OF LAKES. Each Lake area as shown of the plats of the subdivision shall be owned and controlled as tenants in common by the Owners of Lots proposed to about the Lake subject to the restrictions set forth herein and on the Site Plan or Plat applicable to the Real Estate.

Lake/Lake Areas

ARTICLE VI

“Common Areas” shall mean and refer to (i) all portions of the Real Estate shown on any recorded subdivision plat of the Real Estate which are not dedicated to the public, which are not Lakes and which are not identified as Lots on any such plat, whether such plat is heretofore or hereafter recorded, (ii) such portions of Real Estate as are herein declared to be Common Areas on the plat of the Real Estate even though located on or constituting part of one or more such Lots shown on any such plat, (iii) to the extent hereinafter established, such improvements located, installed or established in, to, on, under, across or through the Real Estate as are herein declared to be Common Areas whether located, installed or established entirely or partially on Lots (as herein defined) or portions of the Real Estate which are not Lots, or both.

Areas at the Declarant's option, shall be subject to the applicable covenants and restrictions contained in the Declaration.

Nothing, including but not limited to any home, home addition, fence, deck, porch, dock, pool, recreational equipment (including but not limited to basketball goals), structure, storage shed, doghouse, pet run, or any other improvement or structure

Misty Woods Architectural Control Committee

ARTICLE VII

Applicable Date, and, thereafter, the Association. Owners for each Lake, as determined reasonably in each case by the Declarant, until the which is owned by each respective Lake Lot Owner, or equally between all the Lake Lot based either on the either the lineal footage of actual lake frontage on the respective lake including the easement adjacent thereto shall be shared pro rata by each Lake Lot Owner Woods. Any other expenses for maintenance, upkeep and repair of the Lake property included in the Common Expenses subject to general assessment for all Lots in Misty and repair of the Lake property related to the storm water drainage system shall be

SECTION 5. COSTS OF MAINTENANCE. Estimated costs of maintenance

In any case, neither the Declarant nor the Association shall be liable in any fashion for any injury or damage of any type resulting from the use of the Lake(s).

Fishing from the shores of such lakes adjacent to an Owner's Lot by the Owner thereof and his invited guests and family shall be permitted subject to obeyance and compliance with all applicable fishing and game laws, ordinances, rules and regulations; and/or any rules and regulations established by the Declarant, until the Applicable Date, and, thereafter, the Association.

No sewage, garbage, refuse or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into said lakes, except the Declarant, until the Applicable Date, and, thereafter, the Association, may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same.

No boating, swimming, diving, skiing or ice-skating shall be permitted in or on said Lakes except as permitted by the Declarant, until the Applicable Date, and, thereafter, the Association.

The Lakes shall be kept free and clean of rubbish, debris and other unsightly materials. No structure of any kind shall be placed in the Lakes or on the Lake property without the prior written approval of the Committee.

Date, and, thereafter, the Association, approves in advance any proposed active recreational use of same. In any case, no use shall be made of any of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system.

SECTION 2. CONSTRUCTION APPROVALS. Prior to any construction on any Lot, the approval of the Committee must be obtained after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be made in the manner and form prescribed from time to time by the Committee in its guidelines and procedures which will contain requirements to promote the standard of quality of workmanship and design and harmony of external design with existing structures, location in relation to surrounding structures, topography and finish grade elevation as determined by the Committee. The plans and specifications of and location of all construction submitted by applicant to the shall be verified by the applicant as already being in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also in compliance with all zoning covenants and restrictions which are applicable to the Real Estate. Any approval by the Committee shall be subject to such compliance; and the subsequent discovery of any such lack of compliance shall be grounds for the Committee to void its prior approval. The Committee's refusal to approve any proposal,

SECTION 1. APPOINTMENT OF ARCHITECTURAL CONTROL COMMITTEE. Declarant shall appoint an Architectural Control Committee to be composed of three (3) members at the discretion of the Declarant. There shall be, and hereby is, created and established the "Misty Woods Architectural Control Committee" ("Committee") which shall have exclusive jurisdiction over all construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to purchasers in the normal course of development and sale, the Declarant, or not more than three, nor less than two, persons designated by it, shall constitute the Committee, and they shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by the Declarant. After the sale of 100% of the Properties, the Committee shall be a standing committee of the Association, consisting of not more than five, nor less than two, persons as may, from time to time, be provided in the Bylaws. If the Bylaws do not at any time provide for the Committee, then the Association Board of Directors shall be and constitute the Committee.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration.

This Article shall not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

been obtained pursuant to Section 2 below. requirements below have been fully met, and until the approval of the Committee has shrubs shall take place except in strict compliance with this Article, until the modification of existing improvements, and no plantings or removal of plants, trees, or staking, clearing, excavation, grading, and other site work), no exterior alteration or be erected on any Lot; and no construction (which term shall include within its definition described in any portion of these Covenants or any document incorporated herein, shall

plans and specifications, location and/or plot plan submitted may be based on any reason, including purely aesthetic grounds, in the sole and absolute discretion of the Committee.

The plans and specifications submitted to the Committee for approval shall include at a minimum a plot plan to scale (showing any and all existing and proposed structures, and distances of all such structures from the Lot lines), existing and proposed landscaping, renderings or pictures of any proposed structure, a list of proposed exterior materials, identification of the colors of any painted or stained areas, colors of exterior siding and roofing and any other information reasonably necessary to evaluate the proposal. The decision as to whether to approve, deny, request additional or supplemental information or verifications, and the like, shall be at the sole discretion of the Committee. In addition, the Committee may place any conditions or requirements on its approval, including but not limited to changes to the proposed improvement, time frames for construction and completion of all or portions of the project, protective measures for other improvements and/or surrounding property, and the like

SECTION 3. DUTIES OF COMMITTEE. The Committee shall approve,

disapprove, or request additional or supplemental information, on any proposed improvement, within fifteen (15) days after all required information shall have been submitted to it. One copy of all submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall reasonably specify the reason or reasons therefore. The typical grounds upon which the Committee may refuse to grant permission to construct, place or make the requested improvement, when:

- (a) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of these Declarations, the plat restrictions, or any rules, regulations or guidelines adopted by the Committee;
- (b) the design or color scheme of a proposed improvement or the materials proposed to be used are not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Committee; or
- (c) the proposed improvement, or any part thereof, would, in the sole opinion of the Committee, be contrary to the interest, welfare or rights of all or part of other Owners.

However, the foregoing shall not act to limit to discretion of the Committee to make decisions on any other basis.

SECTION 4. LIABILITY OF COMMITTEE. Neither the Committee nor any

agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, for any defects in any work done, or for any injury or damage to any person or property related in any way thereto.

SECTION 5. INSPECTION. The Committee and the Declarant or its agent

may inspect work being performed to assure compliance with the approved plans and this Declaration. However, to emphasize again the full and broad release described in Section

SECTION 2. RULES GOVERNING BUILDING AND LOTS HAVING ONE OWNER. Whenever the same Person shall own two or more contiguous Lots, and

Covenants, the zoning commitments shall control the case of any conflict between the terms of said zoning commitments and these Recorder of Marion County, Indiana, are hereby incorporated herein by this reference. In were recorded as Instrument No. _____ in the Office of the zoning commitments approved in the rezoning case No. 2001-ZON-899, which **SECTION 1. INCORPORATION OF ZONING COMMITMENTS.** The

Miscellaneous

ARTICLE IX

The planned Association of homeowners shall have appointed from among its members (being the Declarant until after the initial build out period has occurred), an Architectural Control Committee which shall have the power to approve or disapprove all house designs, additions or alterations thereto, together with any permitted accessory structure and or appurtenances.

The Declarant shall establish a Homeowner's Association ("Association"), created and controlled by the Declarant or its designee until the subdivision is substantially built out, and thereafter turned over to the homeowners, which shall be responsible for mandatory membership, mandatory lien enforced assessments and the collection of said assessments upon improved Lots to support the Association in, among other things, the expense of maintenance and taxes of the common areas such as retention ponds, open space, perimeter landscaping, snow removal from subdivision streets to supplement city snow removal, and payment of utility expenses for interior and entry lights. The Declarant will provide the Franklin Township Civic League with the name, address and telephone number of the initial contact for the homeowner's association, at the time control of the subdivision is turned over to the homeowners.

Homeowner's Association

ARTICLE VIII

SECTION 6. NO COMPENSATION. Neither the Committee nor any of its members shall be entitled to any compensation for performing its duties or obligations set forth in this Declaration.

4 of this article, neither the Committee, nor any member thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Committee or the Declarant, shall be liable or responsible for defects, nonconformity or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Committee or the Declarant shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

such Owner shall desire to use two or more of said Lots as a site for a single Dwelling Unit, he shall apply in writing to the Committee for permission to do so. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as, and only so long as, the Lots remain improved with one single Dwelling Unit; **provided, however,** that any dues fees or other charges shall be assessed against each Lot individually.

SECTION 3. COVENANTS RUN WITH THE LAND. The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law of any structure or part thereof, is hereby dedicated to the public and also specifically reserved to the Declarant, until the Applicable Date, and, thereafter, the Association, the owner(s) of any abutting Lot(s) (if the Association determines not to proceed or is not in existence at the time) and the several owners of the several lots in this subdivision and to their heirs and assigns.

The foregoing covenants and restrictions are to run with the land and shall be binding on all parties and persons claiming them until January 1, 2024, at which time said covenants and restrictions shall be automatically extended for successive ten year periods, unless by a majority vote of the then current owners of the Lots, it is agreed to change such covenants and restrictions in whole or in part.

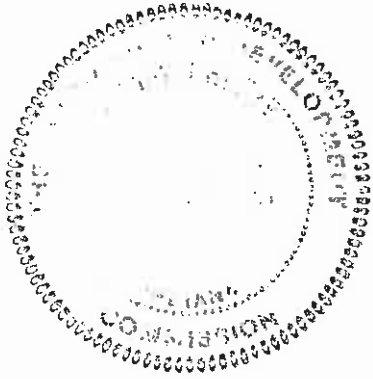
Invalidation of any one of these covenants or restrictions by judgment on a Court Order shall in no way affect any of the other provisions hereof which shall remain in full force and effect.

IN WITNESS WHEREOF, Rainco Development Corporation, by its President Amarjeet S. Luthra, has caused the execution of the foregoing covenants on this 27th day of February, 2003.

Rainco Development Corporation
By: Amarjeet S. Luthra, President

David A. Retherford, Attorney at Law
3416 S. Post Road
Indianapolis, Indiana 46239
(317) 862-5744

This document was prepared by:



Marlon

My County of Residence:

Cynthia A. Parsley
Notary Public Printed Name

April 13, 2009

My Commission Expires:

Cynthia A. Parsley
Notary Public Signature

Personally appeared before me, the undersigned, a notary public in and for said county and state, Arnyet S. Luttra, as President of Rainco Development Corporation who acknowledged the execution of the above and foregoing certificate as its voluntary act and deed for the use and purposes therein expressed.

STATE OF INDIANA)
()
COUNTY OF JOHNSON)
()
)SS:
()

Exhibit "A"

DESCRIPTION

A part of the Northeast Quarter of Section 15, Township 14 North, Range 4 East of the Second Principal Meridian, located in Franklin Township, Marion County, Indiana being more particularly described as follows:

Commencing at the Northeast Corner of said Quarter Section; thence South 88 degrees 02 minutes 05 seconds West (bearings based upon survey completed by The Schneider Corporation recorded as Instrument Number 010117560 in the Office of the Marion County Recorder) along the north line of said Quarter Section 1434.73 feet to the Point of Beginning of the herein described parcel, said point also being the northwest corner of the land of Hendricks recorded as Instrument Number 99-105920 in said Recorders Office; thence South 00 degrees 00 minutes 44 seconds East along the west line of the land of Hendricks 475.00 feet to the southwest corner of the land of Hendricks; thence North 88 degrees 03 minutes 37 seconds East along the south line of Hendricks 104.00 feet to the southeast corner of Hendricks also being the west line of Gibson recorded as Instrument Number 99-105920 in said Recorders Office; thence South 00 degrees 00 minutes 44 seconds East along the west line of Gibson 2208.85 feet to the south line of said Quarter Section; thence South 87 degrees 49 minutes 07 seconds West along said south line 664.84 feet to the southeast corner of Sycamore Run Section Two recorded as Instrument Number 2000-000088704 in said Recorders Office; thence North 00 degrees 01 minutes 31 seconds West along the east line of said Sycamore Run 2386.37 feet to the southwest corner of the land of Schaler recorded as Instrument Number 90-111233 in said Recorders Office; thence North 88 degrees 02 minutes 05 seconds East 95.30 feet to the southeast corner of Schaler; thence North 00 degrees 01 minutes 31 seconds West along the east line of Shaler 300.00 feet to said North line; thence North 88 degrees 02 minutes 05 seconds East 466.07 feet to the Point of Beginning containing 39.18 acres more or less.

Subject to all easements, restrictions and rights-of-way.

MARTHA A. WOMACKS
PUBLIC AUDITOR

467280 APR 15 08

FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER



My Commission Expires: 2-17-08
Residing County: Johnson

Notary Public Angelika E Dakes

SUBSCRIBED AND SWORN to before me on this 8 day of April, 2003

Before me, a Notary Public in and for said County and State, personally appeared Aramjeet S. Luthra as President of Rainco Development, Corp. who acknowledged the execution of this Amendment, and who, having been duly sworn, stated that any representations contained therein are true.

Aramjeet S. Luthra
Aramjeet S. Luthra, President
Rainco Development Corp.

I, Aramjeet S. Luthra, President, Rainco Development Corp., have requested the language listed above to be added to the Declaration of Covenants, Conditions and Restrictions for Misty Woods.

This subdivision has been designed to include a Stormwater quality best management practice (BMP(s)) that must be maintained by the BMP (s) owner. Said BMP(s) is currently maintained by the developer; however, upon the activation of the homeowners association, the Operations and Maintenance Manual for such BMP(s), which has been recorded will become the responsibility of said association subject to all fees and other city requirements.

The following language shall be added to the Declaration of Covenants, Conditions and Restrictions for Misty Woods, which is recorded as Instrument Number 2003-0055579 in the Office of the Marion County Recorder.

**AMENDMENT
To the DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS for
MISTY WOODS**