

(14)

AMENDED AND REPEALED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OAK TRACE

THIS DECLARATION, made on the date hereinafter set forth by Richard Construction Co. Inc., hereinafter referred to as "Declarant,"

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Indianapolis, Marion County, Indiana, which is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof which property is subject to a Declaration entitled "Attachment C, Oak Park Subdivision RE D4 Zoning With The Following Covenants and Restrictions" recorded as Instrument #1995-0045458; and

WHEREAS, Declarant desires to amend and rescate said Covenants and Restrictions.

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit A shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. This Declaration shall repeal, amend and supercede any and all previous Declarations.

1.0 ARTICLE ONE - NAME AND USE

This subdivision shall be known and designated as "Oak Trace," a subdivision located in Marion County, Decatur Township, Indiana. The subdivision shall be developed for detached single-family residential homes only.

2.0 ARTICLE TWO - DEFINITIONS

2.1 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

RECORDED AND FILED IN PUBLIC RECORDS ON 30.00 APR 14
Inst # 1997-0066882

Ref. to: 95-P-24

95-0049353

2.2 "Properties" shall mean and refer to the real estate described in Exhibit A and such additions thereto as may hereafter be added, including, without limitation, that property described in Exhibit B.

2.3 "plat" shall mean and refer to the subdivision plat of the Properties recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented and which is incorporated herein by reference in its entirety.

2.4 "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties.

2.5 "Declarant" shall mean and refer to Richland Construction Company, Inc., its successors and assigns.

2.6 "Committee" shall mean and refer to the group of Lot Owners to whom Declarant turns over the responsibility for maintaining and enforcing these Declarations.

3.0 ARTICLE THREE - BUILDING AND IMPROVEMENTS REVIEW

3.1 Building and improvement review will be the responsibility of the Declarant until such time as the last Lot is sold by Declarant, its successor or assigns. After such time, all such reviews shall be the responsibility of the Review Committee which shall be elected annually by Lot Owners in such manner as such owners among themselves may determine. A majority of the members of the Committee constitutes a quorum for the transaction of business and the decision of a majority is controlling and final.

Any lot Owner seeking a waiver of or a variance from these Declarations must obtain the prior approval of the Declarant or Committee, as the case may be.

4.0 ARTICLE FOUR - USE AND ARCHITECTURAL RESTRICTIONS

4.1 Easements. There are areas of ground on the plat marked Utility Easements, Drainage Easements, and Landscape Easements, either separately or in combination. The Utility Easements are hereby created and reserved for the use of all utilities for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wire, cables, and other equipments, including cable television services. The Drainage Easements are hereby created and reserved (1) for the use of the Declarant during the development of the Subdivision for access to and for the installation, repair and removal of a drainage system and, either by surface drainage or appropriate underground installations, for the Properties and adjoining property and (ii) for the Department of Capital Asset Management of the

City of Indianapolis (DCAM) for access to maintenance, repair and removal of a drainage system. Provided, however, that the owner of any lot in this subdivision subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his lot free from obstructions so that the surface water drainage will be unimpeded. The Landscape Easements are hereby created and reserved for the use of the Declarant during the development of the Subdivision. The delineation of the Utility Easement, Drainage Easement and Landscape Easement areas on the plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this paragraph. No permanent structure shall be erected or maintained upon said easements, other than driveways and sidewalks. The owners of lots in this Subdivision shall take and hold title to the lots subject to the Utility Easements, Drainage Easements and Landscape Easements herein created and reserved.

4.2 Rights-of-Way. The rights-of-way of the streets, as shown on the Plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way.

4.3 Architectural Restrictions. No building, fence, wall or other structure, shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same and the drainage and landscaping shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by the Declarant or its successors or assignees as further set forth in this Article 4.

Notwithstanding the foregoing, the following architectural requirements shall apply to the Properties:

- (1) All homes in the subdivision shall have concrete driveways.
- (2) All homes in the subdivision shall have at least two (2) car attached garages.
- (3) All homes in the subdivision shall have dusk-to-dawn lights which shall be hard-wired on a decorative pole or hard-wired and mounted on the street side of the house.
- (4) Each home shall have a central heating and cooling system.

- (5) Each home shall be equipped with a mechanical device for the grinding of food wastes. Such device shall be located in the kitchen and connected to the sewer.
- (6) All homes shall be connected to the municipal sewer system.
- (7) All homes shall be seeded with grass and shall be landscaped with at least one two inch (2") diameter tree, and planting of shrubs around the residential dwelling.
- (8) No fences taller than four (4) feet may be built beyond the front or side building walls of the house. No fences taller than six (6) feet may be built beyond the back building wall of the house. No chain link fences shall be allowed in the subdivision. No fences shall be allowed without the approval of the Declarant or the Review Committee.
- (9) Homes shall have a minimum square footage of twelve hundred (1200) square feet for a one (1) story home, and eight hundred (800) square feet for the first story of a two (2) story home, and have at least twenty-five (25%) brick construction on the front face of the home.
- (10) The pitch of the roof on the residential dwellings and any improvements attached thereto shall be not less than a ratio of five inches (5") in height to twelve inches (12") in depth.
- (11) The colors of the siding on the residential dwellings shall be in shades of white, gray, tan, or beige. The siding colors of yellow, blue and green are specifically excluded. Roof colors allowed shall be gray and tan.
- (12) All mailboxes to be installed upon lots shall be uniform and shall be of a type, color, and manufacture and shall be installed upon posts in the type, size and location as approved by the Declarant or its successors or assigns.
- (13) In so far as practicable, the owner and builder of each lot will attempt to save from damage any trees over two (2) inches in diameter that do not conflict with the building or required parking areas.
- (14) All telephone, electrical, and cable television or similar connections shall be underground unless deemed impractical by the utility company in writing.
- (15) All below-grade foundations shall be constructed of concrete block or formed and poured concrete. All exposed parts of the foundation shall be covered with the same building materials as the structure or shall be painted to match or coordinate with the structure.

(16) No building, structure, or accessory building shall be erected between the building set back lines and right-of-way line of any street as set forth on the plat, nor shall any building, structure, or accessory building be erected within twenty (20) feet of the rear of any lot. No building, structure, or accessory building shall be erected closer than five (5) feet to the side of any lot, and with an aggregate side yard of not less than thirteen (13) feet. The maximum building height of a building or structure shall be not more than thirty-five (35) feet.

(17) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property line and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or ally line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

4.4 General Restrictions.

- (1) No truck larger than a one (1) ton pickup may be parked on any lot. No disabled or inoperable vehicle may be kept on said land for more than three (3) working days while arrangements are being made to have it repaired. Except for service vehicles, no parking of automobiles or trucks is permitted in the street.
- (2) No semi-truck, boat, mobile home, or trailers shall be allowed in the subdivision unless garaged.
- (3) No carports will be allowed in the subdivision.
- (4) Satellite dishes larger than twenty-four (24) inches in dish size will be allowed in the subdivision. However, the location of the dish shall be subject to approval by the Declarant or the Review Committee. Satellite dishes smaller than twenty-four (24) inches shall not require approval.
- (5) The only outbuildings allowed are a barn or shed, which cannot exceed 144 square feet and have a maximum height of 9 feet. The color of the barn or shed must match or coordinate with the color of the house, and the roofing material must match the roofing type and color of the house. No barn or shed shall be allowed without the approval of the Declarant or the Review Committee.

- (6) No duplexes will be allowed in the subdivision.
- (7) No aboveground pools will be allowed in the subdivision.
- (8) No manufactured housing shall be allowed in the subdivision.
- (9) No structure of a temporary character, such as trailers, basements, tents, shacks, barns, or other outbuildings shall be used on said lands at any time as a residence either temporarily or permanently. No residence shall be occupied prior to completion, and there shall be no temporary living quarters.
- (10) No manufacturing, noxious, illegal, or offensive activities shall be conducted on said lands nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.
- (11) All trash shall be kept in concealed sanitary containers and under cover except on days of trash collection. All equipment and containers for the storage or disposal of such material shall be kept in a clean, sanitary and functional condition. No trash shall be burned. No yard incinerator for the disposal of trash is permitted.
- (12) No animals, birds or reptiles of any kind shall be raised, bred or kept for commercial purposes. No animals except dogs, cats and other common domestic household pets may be kept on the premises. All pets must be supervised and under control at all times. Staking of animals without supervision is not allowed. All pet owners are required to pick up after their pets and pet owners are responsible for any damages caused by their pets.
- (13) There shall be no subdivision of any lot, or lots, nor any sale thereof in parcels, except a portion of a lot may be sold to an adjoining lot, owner if no new lot or subdivision lot is created. For the purpose of these conditions and restrictions, all adjoining lots, or parts thereof, owned and used as a single building site, shall be considered one lot, and the boundaries so established by such common ownership shall be considered the only lot lines for the purpose of these conditions and restrictions. All such subdivisions must comply with local zoning ordinances and regulations.
- (14) Lot owners shall maintain the ditches and banks along property lines adjacent to any street and maintain culvert pipe, if any, under his/her driveway clear of mud and debris so as not to impede the flow of water. The size and placement of any such culvert pipe shall be adequate to

allow the passage of water without blocking the drainage ditch.

(15) Once construction of any building on any lot is begun, it shall be completed within nine (9) months. No improvement which has been partially or wholly destroyed by fire, abandoned, or left unfinished at any stage of construction shall be permitted to remain in such a state for more than a period of four (4) months from the time of damage or completion. It shall be the responsibility of the building contractor and/or owner, at all times during construction, to confine all debris, materials, motorized equipment and laborers to the boundaries of the lot upon which construction work is being done, and to remove same as soon as practical. No debris shall be piled on any lot.

(16) No signs of any nature, kind or description shall be erected, placed or maintained on or in any lot which identify, advertise or in any way describe the existence or conduct of a home occupation. No sign of any kind shall be displayed to the public view on any lot, except one sign not more than five (5) square feet, or the maximum size sign allowed by the City of Indianapolis ordinance, whichever is smaller, for advertising the property for sale, or for rent, or signs used by builders to advertise the property during the construction and sales period. However, the Declarant may use, and may permit builders to use, larger signs during the initial sale and development of this Subdivision.

5.0 ARTICLE FIVE - ASSESSMENTS

5.1 Assessments. Entrance ways, common areas, signs, fencing and related landscaping, landscaping mounds, and water retention areas may be installed, within easements and areas shown on the plat, by Declarant. If installed, it is the intention of Declarant to maintain the above-mentioned areas in a neat and attractive fashion until one-fourth (1/4) of the lots have been sold. After the sale of one-fourth (1/4) of the lots, it shall become the responsibility of all the lot owners to share equally, based on the number of lots owned divided by the total number of lots, in the responsibility and expense of above-mentioned areas in regard to the care and maintenance of said areas. Notwithstanding the foregoing, unless public access to a water retention area is granted to all lot owners, only those lot owners abutting such water retention area shall share in the responsibility and expense of caring for and maintaining such water retention area.

The Review Committee shall have the authority to collect any fees necessary to maintain the above-mentioned areas. The Committee shall have the right to and be responsible for the assessment and collection of any and all fees from each lot owner on a timely basis as the Committee shall determine.

All assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the lot against which each assessment is made until paid in full.

Each assessment, together with interest thereon and costs of collection thereof shall be the responsibility of the person who was the owner of the lot at the time when the assessment became due. Assessments shall become due within thirty (30) days after a written statement is delivered to the lot owner. The thirty (30) days shall run from the date of the statement and not the date received.

5.2 Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment is not paid on the date when due (pursuant to 5.1 hereof), then the unpaid assessment shall become delinquent and shall become, together with such interest thereon and costs of collection thereof as hereinafter provided, a continuing lien on such lot, binding upon the then owner, his heirs, devisees, successors and assigns.

If the assessment is not paid within (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of interest allowed by law on judgments, but, in no event, less than 18% per annum, and the Committee may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fees to be fixed by the court, together with the costs of the action in favor of the prevailing party.

No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot.

5.3 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Committee in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

6.0 ARTICLE SIX - DECLARANT'S RIGHTS

6.1 Use of Property. Declarant reserves the right to use and allow builders to use any of the Lots as models and to sell, assign or conduct other businesses in connection with the construction and development of this project from any of such Lots prior to their being sold. This reservation of right or privilege in Declarant and builders includes, but is not limited to, the right to maintain a model, erect signs, maintain an office, staff the office with employees, and to show Lots then unsold. Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of buildings and other improvements.

7.0 ARTICLE SEVEN - EASEMENTS

7.1 Easements to Run With Land. All easements and rights described herein are easements appurtenant running with the land and, so long as the Properties are subject to the provisions of this Declaration, shall remain in full force and effect, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any Lot Owner, purchaser, mortgagee and other person having an interest in the Properties, or any part or portion thereof. Reference in the respective deeds of conveyance, or in any mortgage or other evidence or obligation, to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to respective grantees, mortgagees and trustees of such Lot Ownership as full and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

7.2 Additional Easement Rights. Declarant further reserves unto itself an easement and the full right, title and authority to relocate, alter or otherwise change the location of any drainage, utility, and sewer easement or any street and to grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots or any portion of the Properties. Declarant further reserves the right to more specifically describe or to change the description of any street or any drainage, utility and sewer easement, or other easement, license or right-of-way by written instrument, amended plat or amendment to the plat recorded in the Office of the Recorder of Marion County, Indiana and any Owner of any Lot shall take title subject to the rights and easements reserved herein; provided, however, the rights reserved in 7.2 shall not be exercised in a manner which unreasonably and adversely affects any Lot or portion thereof or any Owner's use or enjoyment thereof or which

unreasonably restricts the rights of ingress and egress to any lot. The rights and easements reserved by Declarant in this 7.2 shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate one (1) year after Declarant shall have conveyed the last lot within the Properties.

8.0 ARTICLE EIGHT - GENERAL PROVISIONS

8.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the lots, the Committee and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without, proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys fees and the costs and expenses incurred as a result thereof. However, the Declarant shall not be liable for damages of any kind to any person for failing to enforce or carry out such covenants or restrictions.

The Marion County Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority, to enforce any covenants, commitments, restrictions or other limitations contained in this Declaration other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the subdivision control ordinance, as amended, or any conditions attached to approval of the plat by the Plat Committee.

8.2 Amendment. This Declaration may be amended or changed at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, signed or approved by at least two-thirds (2/3) of the then lot owners; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Until all lots are sold by Declarant, this Declaration may also be amended by Declarant, at any time, without the need to seek approval of the Lot Owners.

This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-five (25) years from the date of recordation in the

Office of the Recorder of Marion County, Indiana, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as herein above provided. However, no amendment or termination of said covenant and restrictions shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto. Any such amendment or termination shall be evidenced by a written instrument, signed and acknowledged by the Lot Owner or Owners concurring therein, which instrument shall set forth facts sufficient to indicate compliance with this paragraph and shall be recorded in the Office of the Recorder of Marion County, Indiana.

8.3 Annexation. The additional residential property described in Exhibit B may be annexed to the Properties without the consent of the Owners of the Lots by the recording of a declaration applicable to such annexed real estate which incorporates the terms of the Declaration herein. Any other additional residential property may be annexed to the Properties with the consent of a majority of ownership of the Lots by the recording of a declaration applicable to such annexed real estate which incorporates the terms of the Declaration herein.

8.4 Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

8.5 Non-liability of Declarant. Declarant shall not have any liability to a Lot Owner or to any other person or entity with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a residence is constructed and of the builder of such residence; and a Lot Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed.

IN WITNESS WHEREOF, the Declarant has caused its name to be signed this 14 day of May, 1997.

RICHLAND CONSTRUCTION CO., INC.

BY:

James B. Wray
(Signature)

James B. Wray
(Printed)

Pres. Elect
(Title)

STATE OF INDIANA)
COUNTY OF MONROE)

SS:

Before me, a Notary Public and for said County and State, personally appeared William J. Finch, duly authorized in the premises, who duly acknowledged the execution of the foregoing Declaration on behalf of Richland Construction Co., Inc., as President, who after being duly sworn stated that he was authorized to execute and deliver said Acknowledgment and Acceptance of Declaration by said Corporation.

Witness my hand and notarial seal this 14th day of May, 1997.

Signature:

William J. Finch

Printed:

WILLIAM J. FINCH

My County of Residence: MONROE

My Commission Expires: 8/20/98

This Document prepared by:

William J. Finch
403 East Sixth Street
Bloomington, Indiana 47408
(812) 332-5757



EXHIBIT A

OAK TRACE SUBDIVISION SECTION ONE

Part of the Northwest quarter of Section 13, Township 14 North, Range 2 East, Marion county, Indiana, more particularly described as follows:

Commencing at a P.K. nail found at the Southeast corner of said Northwest quarter; thence North 00 degrees 00 minutes 32 seconds West along the East line of said quarter section 1456.22 feet to the point of beginning; thence leaving said quarter section line South 87 degrees 01 minutes 31 seconds West 189.81 feet; thence South 00 degrees 00 minutes 48 seconds East 125.00 feet; thence South 87 degrees 01 minutes 31 seconds West 1144.85 feet; thence North 00 degrees 02 minutes 30 seconds East 615.88 feet; thence North 87 degrees 01 minutes 31 seconds East 187.443 feet; thence South 00 degrees 02 minutes 30 seconds East 35.05 feet; thence North 87 degrees 01 minutes 31 seconds East 916.20 feet; thence South 36 degrees 20 minutes 58 seconds East 69.96 feet; thence South 00 degrees 00 minutes 48 seconds East 337.35 feet; thence North 87 degrees 01 minutes 31 seconds East 189.82 feet to a point on the East line of said quarter section; thence South 00 degrees 00 minutes 32 seconds East along said East line 60.00 feet to the point of beginning, containing 15.63 acres, more or less.

Richard E. Waltrip

Richard E. Waltrip, LS29500010
Byrum Fanyo & Associates, Inc.
528 North Walnut Street
Bloomington, Indiana 47404

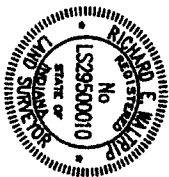


EXHIBIT 2

Legal Description for Oak Trace Section Two

Part of the Northeast quarter of the Northwest quarter of Section 13, Township 14 North, Range 2 East in Marion County, Indiana, more particularly described as follows:

Beginning at the Northeast corner of said quarter quarter section; thence South 00 degrees 00 minutes 32 seconds East along the East line of said quarter quarter section 804.35 feet; thence South 87 degrees 01 minute 31 seconds West 189.84 feet; thence North 36 degrees 20 minutes 58 seconds West 69.96 feet; thence South 87 degrees 01 minute 31 seconds West 916.20 feet; thence North 00 degrees 02 minutes 30 seconds West 35.05 feet; thence South 87 degrees 01 minute 31 seconds West 187.43 feet to the West line of said quarter quarter section line; thence North 00 degrees 02 minutes 30 seconds West along said line 713.72 feet to the Northwest corner of said quarter quarter section; thence North 87 degrees 09 minutes 05 seconds East along the north line of said quarter quarter section 1335.27 feet, containing 23.01 acres, more or less.

Witness my hand and seal this 13th day of May, 1997.

Richard E. Waltrip

Richard E. Waltrip
L.S. 29500010
Bynum, Faryo & Associates, Inc.
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(812)332-8030

