

X-REF 2004-56995

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MAGNOLIA

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE MAGNOLIA ("Declaration"), made this 20th day of February, 2004, by Rainco Development Corporation, an Indiana Corporation (hereinafter referred to as ("Declarant").

WITNESSETH THAT:

WHEREAS, Declarant Rainco Development Corporation is the owner of certain real estate located in Marion County, Indiana, more particularly described herein ("Real Estate"); and

WHEREAS, Declarant intends to sell and convey the residential facilities and lots within The Magnolia and desires to subject the Real Estate to certain covenants, conditions, and restrictions ("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

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.

ARTICLE I

General Purpose of This Declaration

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 Brookston and to ensure desired high standards of maintenance of the Real Estate, to the benefit of all Owners within The Magnolia

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ARTICLE II

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 the Indiana Drainage Code of 1965.

SECTION 2. DRAINAGE SWALES. Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiles or otherwise changed without the written permission of the Board of Public Works and Safety. 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 so that said drainage swales or ditches 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 Board of Public Works and Safety.

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, the Board of Public Works and Safety 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 Associated shall, to the extent not maintained by Marion County Drainage Board, include but shall 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 Marion County Drainage Board of the storm drainage system 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.

SECTION 4. DRAINAGE AND UTILITY EASEMENTS. Areas designated as utility easements on this plate are dedicated as easements for the installation and maintenance of public utilities reasonably and conveniently required. Such as lines, ducts, gas or water mains or sewer mains and laterals, electric lines, telephone lines and cable television lines, not including transportation and transmission company lines. No structures shall be erected on or maintained within such areas. Maintenance of the easement area is the responsibility of the lot owner.

SECTION 5. MAINTENANCE OF PREMISES. In order to maintain the standards of the property, no weeds, underbrush or other unsightly growths 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 6. 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 not to exceed two (2) stories in height. A dwelling shall have an attached garage of a size to accommodate at least two (2) cars.

SECTION 7. EXTERIOR. The exterior facing of dwellings placed on lots in The Magnolia shall be comprised of at least twenty-five (25%) percent masonry with the remaining dwelling either cedar, redwood or comparable wood of the same quality, or horizontal vinyl, except dwellings built on lots 17 through 19 which shall be comprised of not less than fifty (50%) masonry. Any residence built on Lot 20 shall contain brick of not less than 90% of the first floor exterior walls, exclusive of doors, windows, covered porches, and architectural features

SECTION 8. STREET PARKING. On street parking is prohibited. No licensed or unlicensed, inoperative or operative vehicle shall be permitted on the streets, on any lot, common area or easements unless kept entirely within a garage.

SECTION 9. TRUCKS, BOATS, RECREATIONAL VEHICLES. No semi-truck, trailer, boat or trailer, mobile home, or recreational vehicle, or any similar equipment shall be permitted to be kept on any lot unless kept entirely within a garage.

SECTION 10. 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.

SECTION 11. OUTDOOR STORAGE. No large machinery or equipment shall be permitted to be kept or stored on any lot except with the dwelling.

SECTION 12. 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 or rent.

SECTION 13. MINING OPERATIONS. No oil drilling, oil development operation, oil refining quarrying, or mining operations of any kind shall be permitted upon or in any lot nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

SECTION 14. ANIMALS. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not bred, kept or maintained for any commercial use.

SECTION 15. RUBBISH, TRASH AND GARAGE. Rubbish, trash, garbage or any other waste shall not be allowed to be compiled, accumulated or dumped on any lot. Garbage and trash shall be kept in appropriate containers which are not visible from the street, except on collection day.

SECTION 16. 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 ½) 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 shall be located within 40 feet of the intersection of two street centerlines or within 70 feet for corner lots.

SECTION 17. MINIMUM LIVING SPACE. The minimum footage of living space of dwellings within The Magnolia, exclusive of porches, garages or basements shall be no less than:

- (a) 1,300 square feet for single story dwellings
- (b) 750 square feet for the ground floor of two-story dwellings
- (c) At least three different floor plans; and plans for both a ranch style residence and a two story residence will be offered
- (d) Dimensional shingles shall be used on the shingled portions of the roof on each residence.

SECTION 18. OUTBUILDINGS. No outbuildings of any kind, detached garages, sheds, shacks or tents shall be maintained on any lot, except a storage building not less than 8' x 10' and no larger than 10' 16'. The style, type and location shall be determined by the Architectural Control Committee (ACC). The appearance of the building shall be compatible with the dominant structure.

SECTION 19. DRIVEWAYS AND CARPORTS. All driveways must be paved with concrete or asphalt. No carports are permitted.

SECTION 20. COMMUNICATION DEVICES. Satellite dishes, free standing antennas, or any other such visible communication receiving or transmitting devices are prohibited, excepting antennas attached to the dwelling which do not rise above the peak

of the roof. An RCA 30" disc or equivalent is permitted. This disc must be mounted on the rear of the dwelling. All power and telephone lines are to be underground.

SECTION 21. MAILBOXES. All mailboxes in The Magnolia shall be uniform in appearance. The style, type and location shall be determined by the Architectural Control Committee (ACC).

SECTION 22. LANDSCAPING. One (1) two-inch (2") caliper tree will be planted on each lot and a minimum of two (2) trees for the corner lot of street frontage.

SECTION 23. SIDEWALKS. Builder must construct a four-foot (4') concrete sidewalk on each lot as per the approved construction plan of The Magnolia. Sidewalks shall be provided along both sides of all interior streets. All interior streets within the development shall be dedicated to the City of Indianapolis, Department of Capital Asset Management for public use and maintenance.

SECTION 24. REPAIRS. All owners and their builder and/or contractors shall be responsible for and repair or restore any damage during construction whether or not inadvertent or unavoidable including but not limited to curbs, sidewalks, gutters, street, storm drainage area, utilities or other improvements.

SECTION 25. WELLS AND SEPTIC TANKS. No water wells shall be drilled on any lot. Septic tanks shall be prohibited.

SECTION 26. SWIMMING POOLS. Only in-ground pools with a concrete patio shall be permitted. Aboveground pools are strictly prohibited.

SECTION 27. CONSTRUCTION, EARTH-MOVING, EXCAVATION. No construction, significant earth moving, or excavation work of any nature may be conducted on any lot. No construction 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 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 must remain neat and clean during construction. If the Developer is not satisfied with the appearance of a construction site, after ten (10) days notice thereof to the owner of the respective lot, the Developer may cause the site to be cleaned and may assess such charges specifically against the owner thereof.

SECTION 28. FENCES, WALL, BARRIERS. All fences, walls, barriers or like structures must be approved in writing by the Architectural Control Committee prior to their construction. No such structures shall exceed six (6') feet in height. No fences of any kind will be allowed in certain areas of The Magnolia. 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 residence than the applicable rear corner of the residence. Notwithstanding the foregoing language, any fence built on the East side of Lots 9 and/or 10 may be built along all or any portion of the East side of such

Lot(s) until such time (if ever) that the stub street to the East property line of the subdivision is extended into the abutting undeveloped property to the East of said Lots, and homes are built on lot(s) which abut said Lot(s) to East. In such case, any existing fence along this East line shall still be allowed to remain unless the lot(s) abutting this East line are similarly restricted with fencing limitations that prohibit fencing in front of the rear corner of the home, in which case the above fencing restrictions contained in the first sentence shall be applicable to the East line of Lots 9 and 10, unless waived by the abutting property owner(s) to the East. Any fencing installed by the homeowners(s) along the North property lines of Lots 1 through 9 shall be of a uniform style, design, color and height. Any fencing installed by the homeowner's along the South property lines of proposed Lots 10 through 16 shall be of a uniform style, design, color and height. Any fencing installed by the homeowner's along the East property lines of Lots 9 and 10 shall be of a uniform style, design, color and height.

SECTION 29. PROSECUTION OF VIOLATIONS. It shall be lawful for the Homeowners 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 30. COMPLETION OF CONSTRUCTION. All construction commenced on any lot within the development shall be completed within one hundred eighty (180) days, unless circumstances beyond the reasonable control of the builder and/or owner prevent completion. The undersigned and/or Homeowners Association shall have standing authority to seek an injunction or order for the removal of any materials and partially completed structures in violation of this covenant.

SECTION 31. HOMEOWNERS ASSOCIATION. The platted portion of the development will include the establishment of The Magnolia Homeowners Association; a homeowner's association created and controlled by the developer or its designee until the acreage is platted and substantially built out. Membership in the Association shall be mandatory for all homeowners, and all residences shall be required to pay annual assessments enforced by lien rights in favor of the Association. The collection of said assessments upon improved lots shall support the Association in, among other things, the expense of taxes upon, and the repair, maintenance, replacement, and/or improvement of, the common areas such as the retention pond, open space, common area landscaping, and the like. In addition, the Association shall have the responsibility for the snow removal from subdivision streets as necessary to supplement City service, the payment of utility expenses for interior and entry lights, and other similar expenses or duties.

ARTICLE III

Common Areas

There are portions of ground marked "Common Areas" on the within plat which, upon final construction or provision therefor, shall be conveyed by the Developer to the Homeowners Association. All Common Areas, including additional Common Areas at the Developer's option, shall be subject to the applicable covenants and restrictions contained in the Declaration.

ARTICLE IV

The Magnolia Architectural Control Committee

SECTION 1. APPOINTMENT OF ARCHITECTURAL CONTROL COMMITTEE. Declarant shall appoint an Architectural Control Committee to be composed of two (2) members at the discretion of the developer.

SECTION 2. CONSTRUCTION APPROVALS. No construction of any building or structure of any kind, including additions, alterations, fences, screens and walls shall begin within The Magnolia until the plans and specifications, locations and plot plan thereof, in detail and to scale have been submitted to and approved by the Architectural Control Committee. The plans and specifications of and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also comply with all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location and plot plan by Declarant may be based on any reason, including purely aesthetic grounds, in the sole and absolute discretion of the Architectural Control Committee. Declarant shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

The plans and specifications submitted to Declarant shall contain a plot plan to scale with adequate provisions for landscaping, including the planting of trees and shrubs. The determination of whether adequate provisions have been made for landscaping shall be at the sole discretion of the Architectural Control Committee. The required landscaping and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit.

SECTION 3. DUTIES OF COMMITTEE. The Committee shall approve or disapprove proposed improvements within thirty (30) days 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 notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

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, nor for any defects in any work done according thereto.

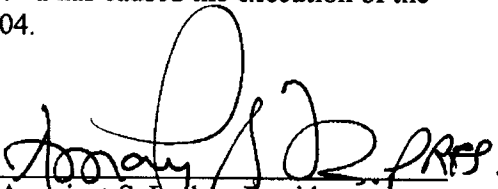
SECTION 5. INSPECTION. The Committee or its agent may inspect work being performed to assure compliance with the approved plans and this Declaration.

SECTION 6. 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 reserved to 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, 2020, 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, Amarjeet S. Luthra has caused the execution of the foregoing covenants on this 20th day of February, 2004.

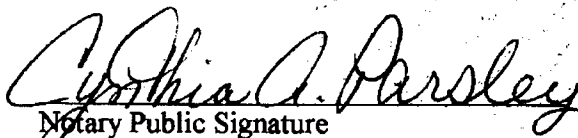

Amarjeet S. Luthra, President
Reainco Development Corporation

STATE OF INDIANA)
)SS:
COUNTY OF JOHNSON)

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.

My Commission Expires:

April 13, 2009


Notary Public Signature

Cynthia A. Parsley
Notary Public Printed Name

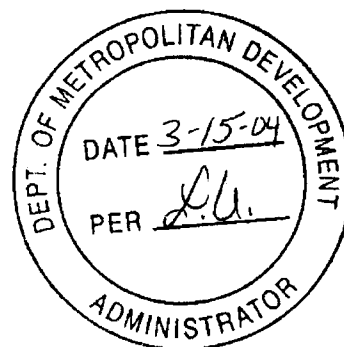
My County of Residence is:

Johnson

MARTHA A. WOMACKS
MARION COUNTY AUDITOR

516368 MAR 15 2009

DUPLICATE FOR REGISTRATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER



This instrument prepared by: Amarjeet S. Luthra, President
Reainco Development Corporation
905 Fry Road
Greenwood, Indiana 46142

APPROVED THIS 10th
DAY OF March 20 09
PERRY TOWNSHIP ASSESSOR
John P. George GIS MANAGER

EXHIBIT "A"

THE MAGNOLIA DESCRIPTION

A part of the Southwest Quarter of Section 24, Township 14 North, Range 3 East of the Second Principal Meridian, Perry Township, Marion County, Indiana more particularly described as follows:

Commencing at the Northwest Corner of said Quarter Section, Thence North 89 degrees 10 minutes 49 seconds East along the North line of said Quarter Section 115.03 feet to the Point of Beginning of the herein described parcel; thence continuing North 89 degrees 10 minutes 49 seconds East along said North line 793.57 feet to the northwest corner of the land of Kenworthy recorded as instrument Number 1986-1272283 in the Office of the Marion County Recorder; thence South 00 degrees 14 minutes 48 seconds West along the west line of said Kenworthy 326.19 feet to the southwest corner of said Kenworthy said point also lies on the northerly boundary of German Park Heights recorded as Plat Book 30 Page 284 in said Recorder's Office; thence South 89 degrees 10 minutes 49 seconds West along last said north line 502.57 feet to the northeast corner of Lot Number One of said German Park Heights; the next three courses follow the eastern and southern boundary of said Lot Number One; 1) thence South 00 degrees 04 minutes 40 seconds East 151.90 feet to the northern right-of-way of David Lane; 2) thence north 78 degrees 06 minutes 14 seconds West along last said right-of-way 100.00 feet; 3) thence South 89 degrees 09 minutes 28 seconds West along said right-of-way 238.89 feet; thence North 00 degrees 14 minutes 32 seconds East 242.31 feet to the eastern right-of-way of State Road #135; thence North 16 degrees 56 minutes 29 seconds East along last said right-of-way 34.81 feet; thence North 11 degrees 10 minutes 02 seconds East along said right-of-way 184.72 feet to the Point of Beginning containing 7.19 acres more or less.

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

