

47.00
(20)

200000029838
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 06-20-2000 At 11:03 am.
DEC COV RES 47.00

THE OVERLOOK AT BEAVER RIDGE

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this 20th day of June, 2000, by Loma Logan Limited (hereinafter referred to as the "Developer"),

WITNESSETH:

WHEREAS, the Developer is the owner of all the lands contained in the area shown on Exhibit "A", attached hereto and made a part hereof, which lands will be subdivided and shall be known as THE OVERLOOK AT BEAVER RIDGE (hereinafter referred to as the "Development"), and will be more particularly described on the plat thereof which will be recorded in the office of the Recorder of Hamilton County, Indiana; and

WHEREAS, the Developer is about to sell and convey the residential lots situated within the platted areas of the Development mutual and beneficial restrictions, covenants, and conditions and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit of the lots and lands in the Development and the future owners thereof;

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having an interest in and to the real property or any part or parts thereof subject to such Restrictions, and shall insure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the Development. The Developer specifically reserves unto itself the right and privilege, prior to the recording of the plat by the Developer of a particular lot or tract within the Development as shown on Exhibit "A", to exclude any real estate so shown from the Development, or to include additional real estate in the Development.

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

A. "Committee" shall mean the The Overlook At Beaver Ridge Architectural Review Committee, composed of two (2) members appointed by the Developer, who shall be subject to removal by the Developer at any time, with or without cause. Any vacancies from time to time shall be filled by appointment of the Developer. The Developer may, at its sole option, at any time hereafter, relinquish to the Association the power to appoint and remove one or more members of the Committee.

B. "Association" shall mean the The Overlook At Beaver Ridge Homeowners Association, Inc., a not-for-profit corporation, the membership and power of which are more fully described in paragraph 9 of the Declaration.

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

D. Approvals, determination, permissions, or consents required herein shall be deemed given if they are given in writing, signed, with respect to the Developer or the Association by the President or a Vice President thereof, and with respect to the Committee, by one (1) member thereof.

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

F. "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

G. "Residence" means any structure intended exclusively for occupancy by single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

H. "Town" shall mean Town of Fishers, Hamilton County, Indiana.

I. "Tract" mean the land described in Exhibit "A" and such other real estate as may from time to time be annexed thereto according to the provisions of Paragraph 2B hereof.

2. CHARACTER OF THE DEVELOPMENT

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

B. Additions to the Development. Developer shall have the right to bring within the scheme of this Declaration and add to the Development real estate that is contiguous to the Development. In determining contiguity, public rights of way shall not be considered.

The additions authorized under this Paragraph shall be made by filing of record of one or more Supplemental Declarations with respect to the additional real estate. For purposes of this Paragraph a Plat depicting a portion of the Development Area shall be deemed a Supplementary Declaration.

C. No Storage Sheds. Notwithstanding anything contained herein or in the Articles or By-Laws to the contrary, and in addition to all restrictions set forth in the Plat of the Development, any and all forms of outbuilding, shed, storage shed, large animal quarters, etc., which are intended to not be directly connected to the main house on any Lot are hereby strictly prohibited.

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

E. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions, and limitations of record appearing on the recorded plat and amendments thereto of the subdivision, on recorded easements, rights-of-way, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

F. General Easement. There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Developer or the providing utility or service company to install and maintain facilities and equipment on the Tract and to excavate for such purposes if Developer or such company restores the disturbed area as nearly as is to practicable to the condition in which it was found. No sewers, electrical lines, waterlines, or other utility service lines or facilities for such utilities may be installed or relocated in a Section except as proposed and approved by Developer prior to the conveyance of the first Lot in a Section to an Owner or by the Architectural Review Committee prior to the conveyance of the first Lot in a Section to an Owner or by the Architectural Review Committee thereafter. Should any utility furnishing a service covered by the general easement herein provided require a specific easement by separate recordable document, Developer or the Association shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

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

A. Minimum Living Space Areas. The minimum square footage of living space of dwelling units constructed on all Lots shall be eighteen hundred (1,800) square feet for single-story dwelling unit and two thousand two hundred (2,200) square feet for two (2) story dwelling units. The square footage of living space of a dwelling unit shall not include porches, terraces, garages, carports, accessory buildings or basements.

B. Residential Set-Back Requirements.

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

(ii) **Side Yards.** The side yard set-back lines shall not be less than ten (10) feet from the side line of the lot with a twenty-five (25) foot aggregate, unless approved by the Committee.

(iii) **Rear Yards.** The rear set-back line shall be at the least thirty (30) feet from the rear lot line, unless approved by the committee.

C. Mailboxes. All mailboxes shall be standard as to size, location, height and composition and at an attractive appearance and shall be approved by the Committee installed by Developer upon the payment on an appropriate fee at the Lot closing.

D. Fences. It is the goal of the Developer to keep all fencing or screening as harmonious as possible with the architectural character of the community. No fence or screen will be approved if its installation will obstruct necessary sight lines for vehicular traffic. Undue obstruction of view or other amenities from adjoining properties will be taken into consideration by the Developer when reviewing fences for approval. Fences shall not be nearer to the front of a home than the rear foundation line of a home. No front yard or side yard fences shall be allowed. The Developer discourages fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other property owners. Fences may be privately installed but must be constructed to professional levels of quality. Non-professionally installed fences will be inspected by the Developer after completion in order to ensure that the final product is of a professional quality and final approval of the fence shall be deemed withheld until successful completion of this final review. All fences shall be kept in good repair.

(i) Height Restriction.

The Developer is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the community is damaged by a proliferation of fences of excessive height. The Developer, therefore, will consider rear perimeter fences only up to 6 (six) feet in height which otherwise meet these guidelines. The use of 6 (six) foot fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio or to enclose an in ground pool area will be permitted. The specific fence height restrictions are as follows:

A) Lot fencing and walls above grade shall not exceed 6 (six) feet above grade.

B) Patio screens/privacy fences shall not exceed 6 (six) feet in height.

(ii) Materials and Finish.

A) Wood fencing or screening is the only fencing which will be allowed. All wood fencing shall be shadow box design.

B) The installation of a chain link or other galvanized metal fencing will not be permitted.

C) Walls above grade must be constructed of natural stone, masonry or shadowbox fencing.

(iii) Approval.

The exact location, material, color and height of the fence shall be submitted to the Developer for written approval prior to construction.

E. Sidewalks, Driveways. Each home shall have a continuous concrete or brick sidewalk from the driveway to the front porch. In addition, each Lot shall be serviced by a 3' (three foot) concrete walk on all portions of the lot with street frontage. Sidewalk to be installed by the builder and included in the purchase price. Driveways shall be of concrete construction. If the home is completed in the winter then the sidewalks and driveway shall be installed no later than April 30th of the following spring.

F. No heat pumps, air conditioning units or gas meters will be installed on the front of the house.

G. Windows-Doors. If storm doors are installed, they must be painted to match exterior of the home. No unfinished aluminum doors or windows will be allowed. All windows must be vinyl or wood frame or wood frame windows with clad exterior.

H. All metal and PVC roof or range vents will be painted to blend with roof color. Every effort should be made to locate such vents to the rear of the house.

I. Plumbing. All plumbing vent stacks to be on rear of house. Sump pump lines shall be connected to underground laterals or storm sewers as provided in the development plan.

J. Street Cleaning. Builder to finish cleaning in front of his house upon completion and rough clean the street periodically during construction. Rough cleaning should be done immediately after foundation excavation and basement pouring and all other times when mud is carried into the street.

K. Awnings. No metal, fiberglass or similar type material awnings or patio covers will be permitted in the development.

L. Swimming Pools. Only permanent, in-ground pools with professional construction will be permitted. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design. See fencing Section 3D for further details.

M. Tennis Courts, Racquetball Courts, Paddle Ball Courts, etc. Tennis courts, racquetball courts, paddle ball courts, squash courts, and other recreational facilities or sporting facilities will be permitted, provided that all fencing shall be vinyl coated variety and that all views of adjacent properties in the Development be screened by pines of at least 6 (six) feet in height. All lighting must be of a baffled variety so as to minimize the effect on other properties in the Development.

N. Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth less than 24 inches, swing and slide sets, playhouses and tents shall not require approval by the Developer, provided such equipment is not more than six (6) feet high and maintained by the lot owner in good repair (including painting). Equipment higher than six (6) feet shall require approval of the design, location, color, material and use by the Developer.

O. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding or any other similar material. No aluminum frame or metal frame windows shall be allowed. No aluminum or vinyl siding shall be allowed. No house shall have metal prefabricated chimney flues other than gas flues. Exterior chimney chases shall be of masonry construction. The exterior of every dwelling unit shall contain a minimum of fifty percent (50%) of brick; provided, however, the architectural styles commonly referred to as New England "Saltbox" design, Victorian design, Plantation style or Virginia style which are typically constructed of wood rather than masonry shall be acceptable.

P. Garages Required. All residential dwellings in the Development shall include at least a two car enclosed garage. Detached garages are not permitted.

Q. Dusk-To-Dawn Lighting. Each lot shall maintain at least two (2) continuous dusk-to-dawn lights to be controlled by a photocell, in lieu of public street lighting to be installed by the builder.

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

S. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

T. Sales of Lots by Developer. Every lot within the Development shall be sold to a builder approved by the Developer.

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

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

(i) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.

(ii) Remove all debris or rubbish.

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the esthetic appearance of the Development.

(iv) Cut down and remove dead trees.

(v) Within sixty (60) days following completion of a house on a lot, the Owner shall landscape the lot, weather permitting.

W. Association's Right to Perform Certain Maintenance. In the event that the Owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these restrictions. The cost therefore to the Association shall be added to and become a part of the annual assessment to which said lot is subject and may be collected or a lien placed upon the Lot. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

X. Yards, Trees, Tree Preservation.

a) Following the Construction of a dwelling unit on a Lot, the front yard of each such Lot shall be smoothly graded and properly seeded or sodded with a clay based Kentucky bluegrass and Ryegrass mixture.

b) The front yard of each Lot within the Development shall continually contain a minimum of two (2) trees, with a minimum height of eight (8) feet with a 2.5 inch caliper.

c) In areas of the Development where trees are existing on a Lot, every effort must be made to save as many trees as possible with only those trees to be removed as required for the placement and construction of residences.

d) An easement running parallel along the east property line of the Tract ten (10) feet wide (to the west) is hereby created for tree preservation.

e) Pine trees shall be planted on the east side of the entry to act as a buffer.

Y. Owner's Responsibility for Tree and Shrub Maintenance. The Town of Fishers shall require all owners to respect the following with regard to the maintenance of trees and shrubs:

(i) The owner of the dominant real estate adjacent to the area between the street and the sidewalk and/or right-of-way easement line on which any tree or shrub is planted shall be responsible for the maintenance and removal or the tree or shrub if such removal is necessary.

(ii) If, after notice from the Town, the said owner fails to maintain or remove a dead tree or shrub or any dead or dangerous limbs or branches thereon, the Town may remove said shrub or limbs and collect the costs thereof from the owner.

(iii) The Town of Fishers and all public utilities retain their ownership and right to access to the area between the street and the right-of-way easement line of the dominant owner and retains the right to reasonably remove any tree or shrub impeding necessary work to be performed by the Town of Fishers and/or all public utilities, or other properly authorized users.

(iv) Neither the Town of Fishers nor any public utility or other properly authorized user of the Town's property located between the street and the sidewalk and/or right-of-way easement line shall be liable to the owner of the dominant real estate for any damages done to trees or shrubs located upon Town property between the street and the sidewalk and/or right-of-way easement line as a result of actions of the Town of Fishers or any public utility or other authorized user or their agents or employees in the performance of their duties.

(v) No fence, wall, hedge, tree or shrub planting which obstructs sight lines and elevations between three (3) and twelve (12) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and line connecting points forty (40) feet from the intersection of said street lines or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended.

(vi) The same sight line limitations shall apply to any lot within ten (10) feet of the intersection of a street right-of-way line with the edge for the driveway pavement or alley line.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

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

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the Hamilton Southeastern Utilities. No storm water (subsurface or surface) shall be discharged into sanitary sewers.

5. GENERAL PROHIBITIONS.

A. In General Nuisances. No noxious or offensive activities shall be permitted on any lot in the Development, nor shall anything be done on any of said lots which may be or may become an annoyance or nuisance to the neighborhood. Barking any dogs shall constitute a nuisance.

B. Exterior Antenna. No television, radio or other antennas may be erected by any lot Owner on the exterior of a house or on a Lot. No satellite dishes will be permitted which exceed eighteen (18) inches in diameter.

C. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development, except entry signs and home or lot sales signs, except with the approval of the Developer.

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

E. Vehicle Parking. No trucks one (1) ton or larger in size, campers, trailer, boats, or similar vehicles shall be parked on any street in the Development. Any motor or recreational vehicle or trailer, camper, or boat which is not used for normal transportation shall not be permitted to remain on any driveway or lot except within a closed garage and shall not be regularly parked upon unpaved areas.

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

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

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

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

J. Electric Bug Killers. Electric bug killer, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

K. Home Occupations. No lot or lots shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows, may be permitted: any use conducted entirely within the residence dwelling and participated in solely by a member of the immediate family residing in said residence, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof and in connection with which there is: a) No sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling; b) No commodity sold upon the premises; c) No person is employed other than a member of the immediate family residing on the premises; and d) No manufacture or assembly operations are conducted. In no event shall the following or similar activities be conducted: a barber shop, styling salon, animal hospital, or any form of animal care or treatment such as dog trimming, or any other similar activities.

L. Open Drainage, Ditches and Swales.

(i) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tilled, or otherwise changed, without the written permission of the Hamilton County Highway Department or appropriate jurisdictional agency. Property owners must maintain these swales as sodden 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 Hamilton County Highway Department or appropriate jurisdictional agency. Culverts must be protected, especially at the ends, by head walls or metal end sections, and, if damaged enough to retard the water flow, must be replaced.

(ii) Any property owner altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which time, if no action is taken, Hamilton County Highway Department or Developer will cause said repairs to be accomplished and the bill for such repairs will be sent to the affected property owners for immediate payment.

M. Utility Services. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No utility services shall be installed, constructed, repaired, removed, or replaced under finished streets, except by jacking, drilling or boring.

N. Wells and Septic Tanks. No water wells shall be drilled on any of the lots (other than for heating or cooling purposes) nor shall any septic tanks be installed on any of the lots in the Development, unless public tap-in is unavailable.

6. ARCHITECTURAL REVIEW COMMITTEE.

A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon subject to these Restrictions in such a manner as to preserve and enhance values and maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) **Generally.** No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any Lot in the Development without the prior approval of the Committee. Such approval shall be obtained only 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 in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location and height elevation of the improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require.

(ii) **Power of Disapproval.** 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 Restrictions;

(b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings or the lot or with adjacent buildings or structures;

(c) The proposed improvement, or any part thereof, would in the sole opinion and absolute discretion of the Committee be contrary to the interests, welfare or rights of all or any part of other Owners.

(iii) **Power to Grant Variances.** The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship (in the opinion of the Committee), but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Development.

B. 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.

C. Liability of Committee. Neither the Committee nor any agent thereof, nor the Developer, shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it nor shall the Committee 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. Further, the Committee does not make any

representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

D. Exercise of Discretion. Developer intends that the members of the Architectural Review Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Committee is raised as defense, abuse of discretion may be established only if a Reasonable Person, weighing the evidence and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse of discretion.

E. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these restrictions and applicable regulations.

F. Continuation of Committee. When the Developer notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the actions of the Committee with like powers.

7. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER. Whenever two or more contiguous lots in the Development shall be owned by the same person, and such owner shall desire to use two or more of said lots as a site for a single-dwelling house, he shall apply in writing to the Committee for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single-dwelling houses.

8. OWNERSHIP, USE AND ENJOYMENT OF COMMONS. "Commons" and "Common Areas" shall mean those areas so designated on the plat and other common areas designated on future plats of the Development. Any commons depicted on the recorded plats of the Development shall remain private, and neither the Developer's execution or recording of the plats nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as, a dedication to the public of the commons.

A license upon such terms and conditions as the Developer, and successor, assigns or licensees of the Developer, shall from time to time grant, for the use and enjoyment of the Commons, is granted to the persons who are from time to time members of the Association, provided, however, that no residential development shall occur in the Commons. Ownership of any Commons shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion.

Such conveyance shall be subject to easements and restriction of record, and such other conditions as the Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such Commons to the Association.

9. THE OVERLOOK AT BEAVER RIDGE HOMEOWNERS ASSOCIATION, INC.

A. Membership. Each owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

B. Powers. The Association shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law.

C. Classes of Members. The Association shall have two (2) classes of voting membership:

Class A. Every person who is an Owner shall be Class A member.

Class B. Developer shall be a Class B member. No other Person, except a successor to substantially all of the interest of Developer shall hold a Class B membership in the Association. The Class B membership shall terminate upon the resignation of the Class B member, when all of the Lots have been sold, or on December 31, 2015, whichever first occurs.

D. Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Area. In determining the amount, the Board shall take into consideration the expected useful life of the Common Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Developer or such consultants as the Board may employ.

F. Limitations on Action by the Association. Unless the Class B Member and at least two-thirds of the Class A members have given their prior written approval, the Association, the Board of Directors and the Owners may not: (i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area shall not be deemed transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount at least on hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of the Common Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and upkeep of the Common Area; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration.

F. Termination of Class B Membership. Wherever in this Declaration the consent, approval or vote of the Class B member is required, such requirement shall cease at such time as the Class B membership terminated, but no such termination shall affect the rights and powers of Developer set forth in Paragraphs 16 and 17.

10. ASSESSMENTS.

A. Creation of Lien and Personal Obligation of Assessments. Each Owner of any lot in the Development, except the Developer, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and operation deficits, such assessments to be established and collected as hereinafter provided.

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 also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

B. General Assessment. Commencement.

(i) The annual assessment provided for herein shall be \$400.00 per year and shall commence for each lot on the date of conveyance to the Owner by deed or on the date the Owner signs a land contract to purchase a lot. Annual dues for the calendar year shall be pro-rated to year end. The Board of Directors shall fix any increase in the amount of the annual assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be established by the Board of Directors; however, the initial due date for annual assessments shall be January 31.

(ii) Purpose of Assessments. The annual assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the owners of the Lots and for the improvement, maintenance and operation of the Common Area.

(iii) Basis for Assessment.

a) Lots Generally. Each Lot owned by a person other than Developer shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

b) Lots Owned by Developer. No Lot owned by Developer shall be assessed by the Association except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (i) above.

c) Change in Basis. The basis for assessment may be changed with the assent of the Class B member and of (i) two-thirds (2/3) of the Class A members who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(iv) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (iii), fix the General Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Board of Directors shall establish the date (s) the General Assessment shall become due, and the manner in which it shall be paid.

C. Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Association may levy in any fiscal year a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operation deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority or the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

D. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at ten percent (10%) per annum. The Association shall be entitled to institute in any court of competent jurisdiction any lawful action to collect delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Association in collecting such Assessment. If the Association has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Association may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

E. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien or any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months prior to such sale or transfer. No sale transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

F. Certificates. The Association shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Association that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

G. Annual Budget. By majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations will be met.

H. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the

Association, of any member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member remains unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws, or regulations of the Association.

I. Limitations on Rights of the Association. As long as there is a Class B Member, the Association may not use its resources nor take a public position in opposition to future phases of The Overlook At Beaver Ridge proposed by the Developer or changes to current phases of The Overlook At Beaver Ridge proposed by the Developer. Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Association or identify themselves as acting in the name, or on the behalf, of the Association.

11. REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, or to force compliance with these Restrictions and Covenants, together with the right to collect costs and reasonable attorney's fees, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce, or carry out any of these Restrictions.

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

C. Enforcement by Town of Fishers Plan Commission. These Restrictions may be enforced by the Plan Commission of the Town of Fishers, Indiana, or its successors or assigns, pursuant to whatever powers or procedures are statutorily available to it for such purposes.

12. EFFECT ON BECOMING AN OWNER.

The Owners of any lot subject to these Restrictions by acceptance of a deed conveying title hereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Developer, Committee and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with the Developer, committee and the Association and to and with the Owners and subsequent Owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

13. TITLES.

The titles preceding the various paragraphs and subparagraphs of the Restrictions are for convenience of reference only and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

14. DURATION.

The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2030, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the Owners of seventy-five percent (75%) of the numbered Lots in the Development.

15. SEVERABILITY.

Every one of the Restrictions is hereby declared to be independent of and severable from the rest of the Restrictions and of and from every other one of the Restrictions and of said from every combination of the Restrictions.

Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the Restrictions.

16. AMENDMENT.

A. Generally. This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Association acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Class A members cast at a meeting duly called for the purpose of amending this Declaration and, to the extent required by Paragraph 17, (ii) Developer.

B. By Developer. Developer hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to December 31, 2015. Such amendments shall be in writing, executed by Developer, and recorded with the Recorder of Hamilton County Indiana. No such amendment, however, shall materially restrict or diminish the rights or materially increase or expand the obligations of the Owners with respect to Lots conveyed to such owner prior to the amendment or materially adversely affect the rights and interests of Mortgagees holding first mortgages on residences at the time of such amendment. Developer shall give notice in writing to such Owners of any amendments. Except to the extent authorized in Paragraph 2(F), Developer shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Developer has previously conveyed without the consent of the Owner of such Lot.

C. Effective Date. Any amendment shall become effective upon its recordation in the Office of the Recorder of Hamilton County, Indiana.

17. Approvals by Developer. As long as there is a Class B Member, the following actions shall require the prior approval of Developer: the addition of real estate to the Tract; dedication or transfer of the Common Area; mergers and consolidations of Sections within the Tract or of the Tract with other real estate; mortgaging of the Common Area; and amendment of this Declaration and any Supplemental Declaration.

18. Non-Liability of Developer. Developer shall not have any liability to an Owner or to any other Person 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 an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Developer 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. Developer shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Developer and no duty of, or warranty by, Developer shall be implied by or inferred from any term or provision of this Declaration.

19. ROADS. All roads shown on the Plat not heretofore dedicated are hereby dedicated to the public.

IN TESTIMONY WHEREOF, witness the signature of the Developer this 20th day of June, 2000.

LOMA LOGAN LIMITED

By: 

Roger L. Kessler (Printed)

Vice President (Title)
"DEVELOPER"

STATE OF INDIANA, COUNTY OF HAMILTON, ss:

Before me, a Notary Public, in and for said County and State, personally appeared Roger L. Kessler the Vice President of Loma Logan Limited Declarant/Developer herein, and acknowledged the execution of the foregoing instrument this 20th day of JUNE, 2000.

My commission expires:

County of Residence:


Notary Public

Printed



LISA A. TAYLOR
Res. of Hamilton Co.
Comm. Exp. 3-31-08

This instrument prepared by:

Roger L. Kessler, Attorney-At-Law
10200 Lantern Road
Fishers, IN 46038

EXHIBIT A

TRACT #1

Part of the Northwest Quarter of Section 7, Township 17 North, Range 5 East, located in Delaware Township, Hamilton County, Indiana, being more specifically described as follows:

BEGINNING at the Northeast corner of the Northwest Quarter of Section 7, Township 17 North, Range 5 East; thence South 00 degrees 37 minutes 46 seconds West (assumed bearing) 1324.33 feet to the Southeast corner of the Northeast Quarter of said Northwest Quarter; thence North 89 degrees 04 minutes 38 seconds West 353.14 feet on and along the South line of the Northeast Quarter of said Northwest Quarter; thence North 00 degrees 37 minutes 46 seconds East 425.98 feet; thence South 89 degrees 04 minutes 38 seconds East 278.14 feet; thence North 00 degrees 37 minutes 46 seconds East 898.45 feet to the North line of said Northwest Quarter; thence South 89 degrees 00 minutes 00 seconds East 75.00 feet to the **POINT OF BEGINNING**. Containing 5.00 acres more or less, being subject to all easements and rights-of-ways of record.

TRACT #2

Part of the Northwest Quarter of Section 7, Township 17 North, Range 5 East, located in Delaware Township, Hamilton County, Indiana, being more specifically described as follows:

BEGINNING at a point on the North line of the Northwest Quarter of Section 7, Township 17 North, Range 5 East, said Point of Beginning being North 89 degrees 00 minutes 00 seconds West (assumed bearing) 75.00 feet from the Northeast corner of said Northwest Quarter; thence South 00 degrees 37 minutes 46 seconds West 898.45 feet parallel with the East line of the Northeast Quarter of said Northwest Quarter; thence North 89 degrees 04 minutes 38 seconds West 278.14 feet parallel with the South line of the Northeast Quarter of said Northwest Quarter; thence North 00 degrees 37 minutes 46 seconds East 713.83 feet; thence South 89 degrees 00 minutes 16 seconds East 174.46 feet; thence North 00 degrees 13 minutes 12 seconds East 185.00 feet to the North line of said Northwest Quarter; thence South 89 degrees 00 minutes 00 seconds East 105.00 feet to the **POINT OF BEGINNING**. Containing 5.00 acres more or less, being subject to all easements and rights-of-ways of record.

C.brownlegal

10.00
①
1.00
NWC

**FIRST AMENDMENT TO THE OVERLOOK AT BEAVER RIDGE
DECLARATION OF COVENANTS AND RESTRICTIONS**

This First Amendment to Declaration of Covenants and Restrictions of The Overlook at Beaver Ridge subdivision is executed as an amendment to that certain The Overlook at Beaver Ridge Declaration of Covenants and Restrictions as filed with the Recorder of Hamilton County on or about June 20, 2000, as Instrument Number 2000-29838. This First Amendment is filed for Record in HAMILTON COUNTY, INDIANA MARY L CLARK 06-21-2002 03:14 pm. AMENDMENT 10.00

M. Utility Services. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No utility services shall be installed, constructed, repaired, removed, or replaced under finished streets, except by jacking, drilling or boring other than repairs to the sanitary sewer system.

All other terms and conditions of The Overlook at Beaver Ridge Declaration of Covenants and Restrictions as originally filed with the Recorder of Hamilton County shall remain in full force and effect without amendment.

Date 6/19/02

Roger L. Kessler, President
Loma Logan Limited

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

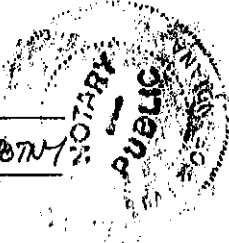
200200044421
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
06-21-2002 03:14 pm.
AMENDMENT 10.00

Before me, a Notary Public in and for said County and State, personally appeared Roger L. Kessler, the President of Loma Logan Limited, an Indiana Corporation, who acknowledged the execution of the foregoing document as such officer for and on behalf of said corporation and who having been duly sworn, under the penalties of perjury stated that the facts and matters therein set forth are true and correct.

WITNESS my hand and Notarial Seal this 19th day of June, 2002.

Commission Expires: 1/17/09
County of Residence: HANCOCK

Anne T Novotny
Printed ANNE T NOVOTNY



This instrument prepared by Roger L. Kessler, Attorney at Law

Return to: Roger L. Kessler, Attorney at Law
10200 Lantern Road, Fishers, IN 46038