

WHISPER CREEK

**Luxury-style Micro-community w/Premiere Estate Lots, Approved Outbuildings allowed,
Cedar Creek Township, Leo Zip Code & Schools**

For Recorded Plat with Covenants & Restrictions visit: <https://bit.ly/3ACqHFZ>

Section 2 - secure now to build within 30 days of plat recording - available to build spring 2026:

LOT #	Square Feet	ACRES	SALE PRICE	BUILDER	STATUS
1	55,251	1.268	\$ 185,000		Pre-Plat Available
2	40,698	0.934	\$ 195,000		Pre-Plat Available
3	40,335	0.926	\$ 205,000		Pre-Plat Available
4	43,137	0.990	\$ 205,000	Private	Pending
5	57,778	1.326	\$ 215,000	Private	Pending
6	83,365	1.914	\$ 355,000		Pre-Plat Available
7	57,936	1.330	\$ 215,000		Pre-Plat Available
8	40,356	0.926	\$ 180,000		Pre-Plat Available
9	40,850	0.938	\$ 180,000		Pre-Plat Available
10	40,850	0.938	\$ 180,000		Pre-Plat Available
11	41,509	0.953	\$ 180,000		Pre-Plat Available
12	42,868	0.984	\$ 165,000		Pre-Plat Available

Section 1

Build Now

13	40,921	0.939	\$ 165,000	DiYanni	SOLD
14	40,516	0.930	\$ 170,000		Available
15	51,620	1.185	\$ 195,000		Available
16	45,552	1.046	\$ 210,000		Available
17	119,574	2.745	\$ 500,000		Available
18	46,894	1.077	\$ 200,000	Private/Buescher	SOLD
19	45,632	1.047	\$ 200,000	Private/MBN	SOLD
20	49,577	1.138	\$ 150,000		Available

Section 1, Lots 13-20 are available to build now. All lots allow option for an approved outbuilding w/matches to home's exterior finishes. A minimum 3 car attached garage with a minimum home square feet area: Ranch 2200 / Two Story 2750. Prices exclude sewer taps, individual well (for water), and all assessments related thereto. Lot 17 requires a grinder. **Section 2**, Lots 1-12 coming spring 2026, so bring an offer or 1st-right offer now to lock in your desired future lot. Holds are strictly limited to 7 days. Inactive holds automatically return to market without notice. Sales are cash/conventional financing with \$10,000 down and closing within 30 days or final plat recording. Builders considering spec options call to discuss. All marketing material, information, drawings, prices, and the like, are subject to change without notice. This is a wonderful luxury micro-community opportunity.

**For more information:
Builders and Private Parties Call
Ken Steury 260-417-5777**

REALTOR:
Ken Steury
Real Estate's Information Central
ABR, CRS, ePRO, GRI, SFR
Call: Cell/text: (260) 417-5777

OFFICE:
11625 Coldwater Road
Fort Wayne, IN 46845



TONKEL ROAD

PENDING

SOLD

SOLD

SOLD

GRAPHIC SCALE

1 IN FEET
1 inch = 300 ft.

See Col. 19 1/4, Sec. 18 - 1226 - 8132 Map No. 104 (2002)

North - 10.22 Az. Sec. # 20721641 part of Whisper Creek POND ADDRESS

SEC - 19 1/4, Sec. 18 - 1226 - 8132 17' rad. R. Street-off center point (-0.01)

East Street - Sec. 18 (Dist Book 16, page 25)

1

AUDITOR'S OFFICE
Duly entered for taxation. Subject
to final acceptance for transfer.

2024035959
RECORDED: 07/16/2024 12:58:41 PM
NICOLE KEESLING
ALLEN COUNTY RECORDER
FORT WAYNE, IN

JUL 16 2024

2024
AUDITOR OF ALLEN COUNTY

DocId:9051154
TX:4677075

**DEDICATION AND DECLARATION OF PROTECTIVE RESTRICTIONS,
COVENANTS, LIMITATIONS, EASEMENTS, AND APPROVALS APPENDED
TO AS PART OF THE DEDICATION AND PLAT OF
WHISPER CREEK, SECTION I, A SUBDIVISION OF
CEDAR CREEK TOWNSHIP, ALLEN COUNTY, INDIANA**

SCHWARTZ DEVELOPMENT LLC, an Indiana limited liability company, hereby declares that it is the Owner and Developer of real estate which includes Whisper Creek, Section I, and does hereby layoff, plat and subdivide said real estate in accordance with the information shown on the final plat, being the certified plat appended hereto and incorporated herein. The Subdivision shall be known and designated as Whisper Creek, Section I, a Subdivision in Cedar Creek Township, Allen County, Indiana.

The Lots shall be subject to and impressed with the covenants, agreements, restrictions, easements and limitations hereinafter set forth, and they shall be considered a part of every conveyance of land in Whisper Creek, Section I, without being written therein. The provisions herein contained are for the mutual benefit and protection of the owners present and future of any and all land in the Subdivision, and they shall run with and bind the land and shall inure to the benefit of and be enforceable by the owners of land included therein, their respective legal representatives, successors, grantees and assigns.

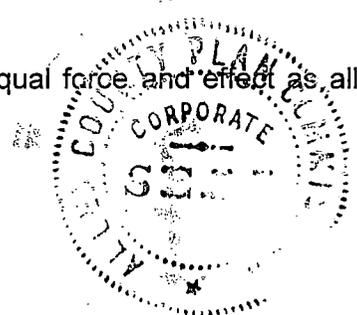
The Lots are numbered 13 thru 20, inclusive in the Whisper Creek development; and all dimensions are shown in feet and decimals of a foot on the plat. All streets and easements specifically shown or described are hereby expressly dedicated to public use for their usual and intended purposes.

PREFACE

Whisper Creek, Section I, is a portion of a tract of real estate which has been and will be ultimately subdivided into approximately eight (8) residential Lots, , numbered 13-20, all to be included in and known as Whisper Creek, Section I. All Owners of Lots in Whisper Creek, Section I also be members of the community association known as Whisper Creek Community Association, Inc., and shall be bound by the Articles of Incorporation and By-Laws of those corporations, as the case may be.

It shall be the obligation of Whisper Creek Community Association, Inc., to make provision for the maintenance of the common areas designated on the face of the Plat, and the common areas in all sections of Whisper Creek, Section I.

This Preface and its statement shall be deemed a covenant of equal force and effect as all others herein set forth.



17

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ARTICLE I
Definitions

The terms hereinafter set forth shall have the following meanings:

Section 1. "Architectural Control Committee" shall mean the body designated herein to review plans and to grant or withhold certain approvals in connection with improvements and developments. The Committee shall be composed of at least two (2) members initially appointed by the Developer. Any vacancies from time to time shall be filled pursuant to the terms of these Restrictions.

Section 2. "Association" shall mean and refer to Whisper Creek Community Association, Inc., its successors and assigns.

Section 3. "By-Laws" shall mean the By-Laws initially adopted by Whisper Creek Community Association, Inc., and all amendments and additions thereto.

Section 4. "Common Area" shall mean all real property owned by or intended to be turned over by the Developer to the Association for the common use and enjoyment of the Owners in the Subdivision, as shown on the respective plat of each section of said Subdivision, and as may be added in accordance with Article II, Section 3 of these Restrictions.

Section 5. "Developer" shall mean Schwartz Development, LLC, an Indiana limited liability company, its assigns, successors or successors in interest, and any person, firm or corporation designated by it or its said successor or successor in interest.

Section 6. "Dwelling Unit" shall mean and refer to the structure used as a residential living unit located upon a Lot, including the garage and any appurtenances.

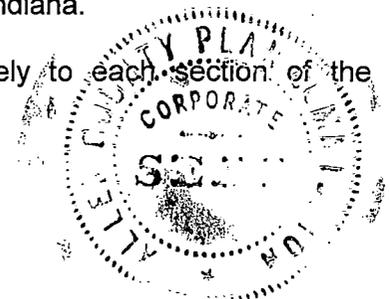
Section 7. "Lot" shall mean any of said Lots in Whisper Creek, Section I, as platted or any tract of land as conveyed originally or by subsequent Owners, which may consist of one or more Lots or parts of one or more Lots, upon which a dwelling may be erected in accordance with the restrictions hereinafter set forth.

Section 8. "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 plat, including contract sellers, excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Restrictions" shall mean and refer to the Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals appended to as part of the Dedication and Plat of Whisper Creek, Section I.

Section 10. "Subdivision" shall mean Whisper Creek, Section I and all of its various sections, a Subdivision located in Cedar Creek Township, Allen County, Indiana.

Section 11. "Whisper Creek" shall mean and refer collectively to each section of the Whisper Creek development.



ARTICLE II
Property Rights

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against said Owner's Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction by said Owner, or the Owner's family, tenants, contract purchasers or invitees of its published rules and regulations after hearing by the Board of Directors of the Association;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members of the Association agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, said Owner's right of enjoyment to the Common Area and facilities to the members of his/her family, his/her tenants, or contract purchasers who reside on the property.

Section 3. Additions to Common Area. The Developer reserves the right so long as Class B members of the Association exist, to convey and transfer to the Association such additional real and/or personal property as the Developer within its sole discretion deems appropriate, and the Association shall accept such transfer and shall hold such property as a part of the Common Area of the Subdivision.

ARTICLE III
Architectural Control

No building, improvement, construction, excavation, fence, wall, swimming pool or spa, exterior lighting, swing set, play equipment, statues, lawn ornaments or other non-living landscaping ornamentation device, living landscaping or structure shall be commenced, erected, installed, altered or maintained upon any Lot, nor shall any exterior addition to or change or alteration of any Dwelling Unit be made until two (2) sets of plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to (1) harmony of external design and location in relation to surrounding structures and topography, and (2) the standards and guidelines established by the Architectural Control Committee from time to time. All approvals shall be requested by submission to the Architectural Control Committee of plans and specifications in duplicate, showing the following:

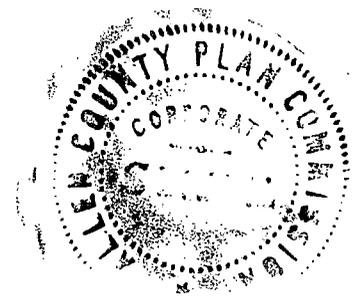
- (a) The Dwelling Unit, and other improvements, access drives, and other improved areas, and the locations thereof on the site;



- (b) All mail boxes and exterior ornamentation;
- (c) Plans for all floors and elevations, including projections and wing walls;
- (d) Exterior lighting plans;
- (e) Walls, fencing, and screening;
- (f) Patios, decks, pools, hot tubs spas, and porches;
- (g) Landscaping;
- (h) Outbuildings;
- (i) Exterior structures and swingsets; and
- (j) Circle drive curb cuts.

Neither the Developer, the Architectural Control Committee, the Association, nor any member, officer or director thereof, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence, or nonfeasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or any drainage problems resulting therefrom. Every person and entity who submits plans to the Architectural Control Committee agrees, by submission of such plans, that he or it will not bring any action or suit against the Committee, the Association, or the Developer to recover any damages or to require the Committee or the Developer to take or refrain from taking, any action whatever in regard to such plans or in regard to any building or structure erected in accordance therewith. Neither the submission of any complete sets of plans to the Developer's office for review by the Architectural Control Committee, nor the approval thereof by that Committee, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no adjacent Lot Owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described therein.

The original Architectural Control Committee shall consist of one (1) member; namely Nathan Schwartz. The Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. The Developer shall serve as the Architectural Control Committee until residences are constructed on all Lots in the Subdivision at which time the Board of Directors of the Association shall serve as the Architectural Committee. In the event said Board, or the Architectural Control Committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed satisfied.



ARTICLE IV
Whisper Creek Community Association, Inc.

Section 1. Organization. There has been organized in connection with the development of Whisper Creek, Section I, and its various sections, an incorporated not-for-profit association known as Whisper Creek Community Association, Inc. (the "Association").

Section 2. Membership and Voting Rights. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 3. Classes of Membership. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, exclusive of the Developer. Owners shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B member(s) shall be the Developer, and shall be entitled to twenty-one (21) votes for each Lot owned in the Subdivision. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

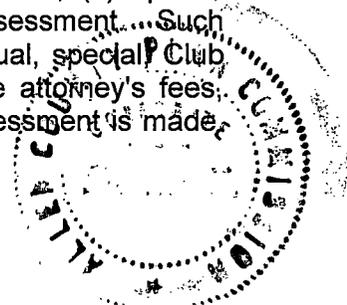
- (a) when title to all lots in all sections of the Subdivision has been conveyed, or
- (b) on December 31, 2034

Section 4. Membership Transfer. Membership in the Association will transfer from the Developer or its successor in interest to the Owner upon delivery of the Deed to Owner's Lot.

Section 5. Continuing Memberships. The Owner of any Lot shall continue to be a member of the Association so long as such Owner continues to be the Owner of a Lot for the purpose herein mentioned. Membership shall pass with the transfer of title to the Lot.

Section 6. Transfer of Membership Rights and Privileges in the Association. Each Owner, and in lieu thereof, (and with the written consent of such Owner to the Association) each lessee of a Lot shall be a member of the Association and have the right to the Owner's vote and privileges. Membership, where assigned to a lessee, will pass with the lease, except if the Owner withdraws his/her consent in writing to the Association. The Owner may withdraw his/her membership assignment to any lessee in his/her discretion by issuing a sixty (60) day notice in writing to the Association. No assignment of membership shall relieve an Owner of the Lot from the obligation to pay any assessment authorized by these Restrictions.

Section 7. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, excepting Developer (or any builder temporarily exempted from assessments by the Developer), by acceptance of a deed therefor, 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; (2) special assessments; (3) Club assessment (if applicable); and (4) Tax Recoupment Assessment. Such assessments shall be established and collected as hereinafter provided. The annual, special, Club and Tax Recoupment assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment is made.



Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 8. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, and welfare of the owners in all sections of Whisper Creek, Section I, including, but not limited to, the improvement and maintenance of the Common Area, maintenance of street lighting, maintenance of mail boxes and mailbox stands, maintenance of the sprinkling system situated on the Common Area, if any, storm water detention basins, outlet pipes and water level control structures, and removal of snow from the streets.

Section 9. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be _____ and 00/100 Dollars (\$ _____) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may not be increased each year more than ten percent (10%) above the maximum annual assessment for the prior year, without the vote or written assent of fifty-one percent (51%) of each class of members of the Association.

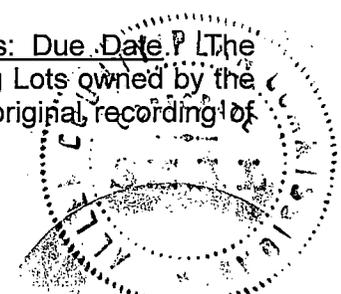
(b) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum without the vote or written assent of fifty-one percent (51%) of each class of members of the Association.

Section 10. Special Assessments. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, (1) the cost of any construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; (2) any budget shortfall; or (3) emergency need of the Association, provided that any such assessment shall have the vote or written assent of fifty-one percent (51%) of each class of members of the Association.

Section 11. Notice and Quorum for Any Action Authorized Under Section 9 and 10. Any action authorized under Sections 9 and 10 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one percent (51%) of each class of members, members who were not present in person or by proxy may give their assent in writing, providing the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

Section 12. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or yearly basis as the Board of Directors may determine from time to time.

Section 13. Date of Commencement of Annual or Club Assessments: Due Date. The annual assessments provided for herein shall commence as to all Lots (excepting Lots owned by the Developer) on the date of the close of escrow on the sale of the Lot after the original recording of



these Restrictions with the Recorder of Allen County. The Club Assessment, as hereafter defined, shall be assessed initially after an Occupancy Permit has been secured and the unit has not been declared a model or a spec unit by the builder. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot for each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 14. Tax Recoupment Assessments. In addition to all other assessments provided for in this Article, the Association may levy in any assessment year, an assessment ("Tax Recoupment Assessment") applicable to that year only for the purpose of defraying, in whole or in part, any cost or expense incurred by the Association in the form of a tax, and/or penalty and/or interest on a tax imposed upon, assumed by or assessed against the Association or its properties, and arising out of or in any way related to the acceptance of title to, the ownership of and/or operation or maintenance of any plant or equipment (including utility lines, lift stations and other property) for the transmission, delivery or furnishing of water, or for the collection, transmission and disposal of liquid and solid waste, and sewage, and/or the ownership of any real estate or easements or other rights with respect to real estate owned and/or possessed in connection with such plant or equipment.

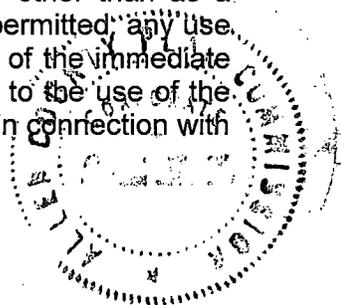
Section 15 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment (Annual, Special, or Tax Recoupment) not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twenty percent (20%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. In any successful action, the Association shall be entitled to recover all of its costs and expenses, including attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Owner's Lot.

Section 16. Subordination of the Lien to Mortgages. The lien of the assessments shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceedings in lieu thereof, shall extinguish the lien for such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V **General Provisions**

Section 1. Residential Purposes. No Lot shall be used except for residential purposes. No dwelling shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) detached single-family dwelling not to exceed two (2) stories in height. Each dwelling shall include an attached three-car garage and basements may be constructed as a part of the dwelling. All Lots may contain an Outbuilding subject to the restrictions and limitations set forth in Section 4, Outbuildings.

Section 2. Home Occupations. No Lot 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 Dwelling Unit and participated in solely by a member of the immediate family residing in said Dwelling Unit, which use is clearly incidental and secondary to the use of the Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with



which there is: (a) no sign or display that indicates from the exterior that the Dwelling Unit is being utilized in whole or in part for any purpose other than that of a Dwelling Unit; (b) no commodity is sold upon the Lot; (c) no person is employed in such home occupation other than a member of the immediate family residing in the Dwelling Unit; and (d) no mechanical or electrical equipment is used; provided that, in no event shall a barber shop, styling salon, beauty parlor, tea room, licensed child care center or other licensed or regulated babysitting service, animal hospital, or any form of animal care or treatment such as dog trimming be construed as a home occupation.

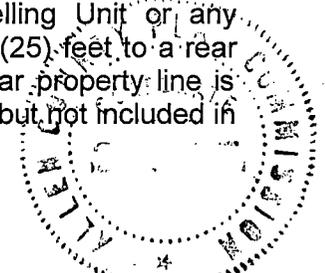
Section 3. Building Sizes. No Dwelling Unit shall be built on any Lot having the living area of the main structure, exclusive of one-story open porches, breezeways or garages of less than 2,200 square feet for a one-story dwelling, nor less than 2,750 square feet for a two (2) story dwelling. The second story of any two-story Dwelling Unit shall be designed and constructed in a manner that includes variations of the roof height and includes a varied combination of angles, pitches and elevations that are complimentary and consistent with the design of other two-story Dwelling Units in Whisper Creek, Section I. No Dwelling Unit shall be built on any Lot without the prior written consent and approval of the Architectural Control Committee.

Section 4. Outbuildings. Outbuildings shall be permitted on all Lots for the following uses: indoor storage of sport and recreational equipment and vehicles such as boats, cars and motorcycles, recreational vehicles, and camping trailers. The Architectural Control Committee shall have the right to approve or disapprove any proposed Outbuilding. All exterior outbuilding surfaces, materials and colors, shall be harmonious and compatible with colors of the natural surroundings and shall match the Dwelling Unit located on the Lot. The Architectural Control Committee shall have the right to approve or disapprove materials and colors so controlled. The exterior of the Outbuildings shall, at all times, be maintained in a neat and orderly manner. All Outbuildings shall be stick framed. Outbuildings may not exceed a two (2) story maximum height. Maximum door height for an Outbuilding shall be twelve (12) feet. Outbuilding floor space inclusive of the first floor and the attic shall not exceed a total of 1,500 square feet.

Section 5. Exterior Structures. An Owner may erect exterior structures which may include, but are not necessarily limited to, a pool house, outdoor kitchen, outdoor fireplace and pergolas ("Exterior Structure"). The Architectural Control Committee shall have the right to approve or disapprove any proposed Exterior Structure. All Exterior Structure surfaces, materials and colors shall be harmonious and compatible with the colors of the natural surroundings and the Dwelling Unit located on the Lot. The Architectural Control Committee shall have the right to approve or disapprove materials and colors so controlled. No driveway to access an Exterior Structure shall be permitted.

Section 6. Garages. All Dwelling Units must have a minimum of a three-car attached garage.

Section 7. Building Setback. No Dwelling Unit or any improvements or structures shall be located on any Lot nearer to the front Lot line or nearer to the side street line or the rear property line than the minimum building setback lines shown on the recorded plat. In any event, no Dwelling Unit or any improvements or structures shall be located nearer than a distance of forty (40) feet from the front lot line setback for Lots 13 through 20 (the front setback line of Lot 16 on the cul-de-sac portion of that Lot shall be twenty-five (25) feet as shown on the plat). In addition, no Dwelling Unit or any improvements or structures shall be located nearer than a distance of ten (10) feet to a side Lot line for Lots 13 and 20 and twenty feet (20') for Lots 14 through 19. No Dwelling Unit or any improvements or structures shall be located nearer than a distance of twenty-five (25) feet to a rear property line, or nearer than fifteen (15) feet to a rear property line where the rear property line is adjacent to a Common Area or is adjacent to a park or a natural area contiguous to but not included in



the plat.

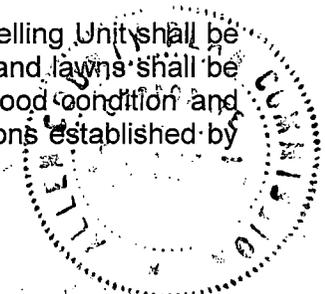
Section 8. Minimum Lot Size. No Dwelling Unit shall be erected or placed on any Lot having a width of less than one hundred (100) feet at the minimum building setback line, nor shall any Dwelling Unit be erected or placed on any Lot having an area of less than 40,000 square feet.

Section 9. Utility and Drainage Easements. Easement for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No Owner of any Lot shall erect or grant to any person, firm or corporation, the right, license or privilege to erect or use or permit the use of overhead wires, poles or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. All easements for public and municipal utilities and sewers as dedicated on the face of the plat shall be kept free of all permanent structures and any structure, shrubbery, trees, or other installation thereon, whether temporary or permanent, shall be subject to the paramount right of the entities for which such easements are intended to benefit, to install, repair, maintain or replace their utility or sewage facilities. The removal of any such obstructions by utilities or sewage treatment works shall in no way obligate them in damages or to restore the obstruction to its original form. Electrical service entrance facilities installed for any house or other structure connecting the same to the electrical distribution system of any electric public utility shall be provided by the Owners of all Lots and shall carry not less than three (3) wires and have a capacity of not less than 200 amperes.

Section 10. Surface Drainage. Surface Drainage Easements and Common Areas used for drainage purposes as shown on the plat and lot swales, and water quality features, and storm water detention basins located within easements and Common Areas shown on the plat shall be used for drainage purposes are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the land surface shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the County Surveyor or a proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstruction exists and to repair and maintain, or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed and operable. It shall be the responsibility of a homebuyer or such homebuyer's builder to inspect rear and side swales for positive drainage conditions prior to the purchase or transfer of a Lot. The Association shall be responsible for the maintenance of storm water detention basins. The Developer shall be relieved of any responsibility or liability for repair of the swales on a Lot following the sale or transfer of a Lot to a homebuyer or builder.

10.1. Wetlands Areas. No person shall make or allow to be made, any alteration, improvement, of disturbance in, to or about the soils, vegetation, or hydrology of the delineated wetland without first obtaining the express written consent in the form of a 401 Water Quality Certification from IDEM. Nothing herein shall constitute a waiver of the obligation of any person to comply with all applicable laws and regulations including, without limitation, the applicable laws and regulations of the State of Indiana. Alteration, improvement, or disturbance in, to or about soils, vegetation, or hydrology without express written consent of IDEM will result in enforcement action against the responsible party by IDEM.

Section 11. Maintenance of Lots and Dwelling Units. No Lot and no Dwelling Unit shall be permitted to become overgrown, unsightly or to fall into disrepair. All landscaping and lawns shall be properly maintained at all times. All Dwelling Units shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by



the Architectural Control Committee. The Owners of Lots Numbered 13 through 20, inclusive, for himself/herself and his/her successors and assigns, hereby grants to the Association, jointly and severally, the right to make any necessary alterations, repairs or maintenance approved by the Architectural Control Committee to carry out the intent of this provision and they further agree to reimburse the Association for any expenses actually incurred in carrying out the foregoing. The Association may assess and collect such reimbursement in the same manner as it assesses and collects yearly assessments pursuant to Article IV, above, and such amounts shall become a lien upon the Lot and be subject to the same collection rights and remedies granted to the Association in Article IV. The Owners of Lots, inclusive, for himself/herself and his/her successors and assigns, hereby grants to the Association, jointly and severally, the right to make any necessary alterations, repairs or maintenance approved by the Architectural Control Committee to carry out the intent of this provision and they further agree to reimburse the Association for any expenses actually incurred in carrying out the foregoing.

Section 12. Landscaping. All shrubs, trees, grass and plantings of every kind shall be kept well maintained, properly cultivated and free of trash and other unsightly material. The Lot shall be graded and seeded. Landscaping shall be installed and Lot grading and seeding no later than one hundred eighty (180) days following occupancy of or completion of the Dwelling Unit, whichever occurs first. The Owner shall be responsible to submit a professionally prepared landscape plan to the Architectural Control Committee. The landscaping set forth in the landscape plan shall provide for professionally designed and installed substantial Lot landscaping that is harmonious with the Dwelling Unit and surrounding Lots.

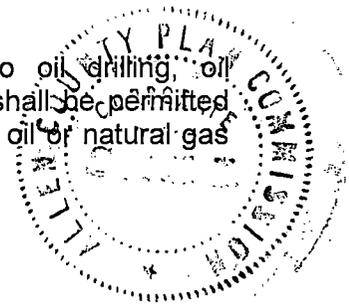
Section 13. Nuisances. No noxious or offensive activity may be carried upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Without limiting any of the foregoing, no exterior lights, the principal beam of which shines upon portions of a Lot other than the Lot upon which they are located, or which otherwise cause unreasonable interference with the use and enjoyment of a Lot by the occupants thereof, and no speakers, horns, whistles, bells or other sound devices, shall be located, used or placed on a Lot which are audible, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof.

Section 14. Temporary Structures and Outdoor Storage. No structure of a temporary character, trailer, boat trailer, truck, commercial vehicle, recreational vehicle (RV), camper shell, all-terrain vehicle (ATV), camper or camping trailer, detached basement, tent, shack, detached garage, barn or other outbuilding shall be either stored outdoors on or adjacent to any Lot or used as a residence either temporarily or permanently.

Section 15. Signs. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five (5) square feet, advertising such Lot for sale, or signs used by a builder to advertise such Lot during the construction and sales period.

Section 16. Radio and Television Antennas/Solar Panels. No radio or television antenna shall be attached to any Dwelling Unit. No free standing radio or television antenna shall be permitted on any Lot. No television receiving disk or dish that exceeds two (2) feet in diameter shall be permitted on any Lot or on any Dwelling Unit. Solar panels shall only be permitted if installed on rear side of the roof of a Dwelling Unit.

Section 17. Drilling, Refining, Quarrying and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for the use in boring for oil or natural gas



shall be erected, maintained or permitted upon any Lot.

Section 18. 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 kept, bred or maintained for any commercial purposes.

Section 19. Building Materials. All Dwelling Units and other permitted structures shall be constructed in a substantial and good workmanlike manner and of new materials. The front exterior of each residence shall be constructed of all natural materials and/or vinyl, as may be approved by the Architectural Control Committee. The use of masonry materials, including stone or brick, is strongly encouraged for all homes. No roll siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any Dwelling Unit or other permitted structure on any Lots of said Subdivision and no roll roofing of any description or character shall be used on the roof of any Dwelling Unit or other permitted structure on any of said Lots. No standard D-4 or D-5 vinyl siding shall be permitted on the front elevation of the exteriors of the Dwelling Unit.

Section 20. Driveways. All driveways from the street to the garage shall be poured concrete or masonry and not less than sixteen (16) feet in width. The Developer has installed a private driveway for means of ingress and egress to Lot 17; provided, however, the Owner of Lot 17 shall be solely responsible for all upkeep, maintenance, repair and replacement of the driveway serving Lot 17 and the Association shall have no responsibility for snow removal, maintenance, replacement or the repair of the driveway.

Section 21. Circle Drive Curb Cuts. The location of curb cuts for a circle drive on any Lot is subject to the prior written consent and approval of the Architectural Control Committee.

Section 22. Individual Water and Sewage Systems. Each Owner of a Lot shall be required to install, maintain, repair and replace an individual water supply system for the purpose of serving the Dwelling Unit and any Outbuilding situated on a Lot. No individual sewage disposal system shall be installed, maintained or used on any Lots in this Subdivision. Notwithstanding the foregoing, individual grinder pumps may, when necessary, be permitted upon a Lot by the Architectural Control Committee.

Section 23. Geothermal Systems.

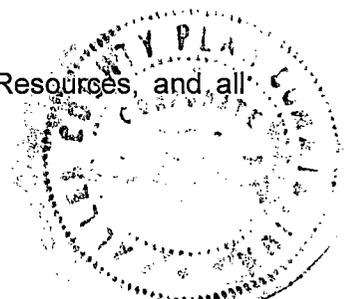
23.1. An Owner whose Lot is immediately adjacent to Common Area containing a retention or detention pond shall have the right to install and maintain the following described types of geothermal heating and cooling systems ("Systems") to service the Dwelling Unit located on the Lot, and the right to use the Association property described below.

23.1.1. A System with a closed loop heat exchanger designed to use retention or detention ponds located in Common Areas adjacent to such Lot.

23.1.2. A System which uses and discharges well water from the System into retention or detention ponds located in Common Areas adjacent to such Lot.

23.2. Any Systems so installed must:

23.2.1. Satisfy regulations of the Indiana Department of Natural Resources, and all applicable federal, state, and local laws, ordinances, and regulations.



23.2.2. Satisfy reasonable requirements of the Allen County Surveyor or other applicable governmental agency regarding surface water drainage and erosion control; and obtain written approval from The Association.

23.2.3. Be installed according to approved guidelines of, and by technicians certified by, the International Ground Source Heat Pump Association.

23.3. Any Owner using Common Area owned by the Association for the purpose described in Section 23.1 agrees to be responsible for and shall indemnify and hold the Association harmless from and against all claims, losses, damages, and judgments (including reasonable attorney fees and litigation expenses) caused by, or resulting from, the Owner's use of Association property in connection with the Systems.

Section 24. Use of Public Easements. In addition to the utility easements herein designated, easements in the streets, as shown on this plat, are hereby reserved and granted to the Developer, the Association and any public or quasi-public utility company engaged in supplying one or more of the utility services contemplated in Sections 9 and 10 or this Section 24 of Article V, and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove all and every type of gas main, water main and sewer main (sanitary and/or storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction thereof as to maintenance and repair of said streets.

Section 25. Sanitary Sewer Restrictions. No rain and storm water runoff or such things as roof water, street pavement and surface water, caused by natural precipitation, shall at any time be discharged into or permitted to flow into the Sanitary Sewage System, which shall be a separate sewer system from the Storm Water and Surface Water Runoff Sewer System. No sanitary sewage shall at any time be discharged or permitted to flow into the above-mentioned Storm Water and Surface Water Runoff Sewer System.

Section 26. Improvements. Before any Dwelling Unit on any Lot in this Subdivision shall be used and occupied as a dwelling or otherwise, the Developer or any subsequent Owner of such Lot shall install improvements serving such Lot as provided in the plans and specifications for such improvements filed with the appropriate governmental authorities, together with any amendments or additions thereto which said governmental authorities may authorize or require. This covenant shall run with the land and be enforceable by any governmental authority having jurisdiction over the Subdivision, by the Association, or by any aggrieved Lot Owner in this Subdivision.

Section 27. Permits and Certificates. Before any Dwelling Unit located on any Lot may be used or occupied, such user or occupier shall first obtain from the Allen County Zoning Administrator, or its successor agency, an Improvement Location Permit and a Certificate of Occupancy as required by the Allen County Zoning Ordinance.

Section 28. Pools and Hot Tubs. No above ground pool, regardless of size, shall be placed or maintained on any Lot. No in ground swimming pool or hot tub or spa may be placed or maintained on any Lot without the prior written approval of the Architectural Control Committee in accordance with Article III herein and such proposed in ground pool or hot tub must be in compliance with all Allen County Zoning Ordinances.

Section 29. Swing Sets and Play Equipment. No swing sets or play equipment will be permitted on any Lot without prior written approval from the Architectural Control Committee in



accordance with Article III herein.

Section 30. Fencing. All proposed fencing shall be wrought iron or powder coated aluminum fencing and must be submitted to and approved by the Architectural Control Committee in writing in accordance with Article III herein and such proposed fencing must be in compliance with all Allen County Zoning Ordinances. Any submission to the Architectural Control Committee must include a plot plan for the fencing. All fencing must be installed no less than three (3) feet from the Lot lines for each Lot. The submission must include the color, style, and a picture of the actual fencing to be installed.

Section 31. Storage Areas. Garbage and refuse shall be placed in containers, which shall be concealed and contained within the Dwelling Unit. Firewood must be placed adjacent to the Dwelling Unit behind a visual barrier screening this area so that it is not visible from neighboring streets. The visual barrier screening and the area to be used must be approved by the Architectural Control Committee.

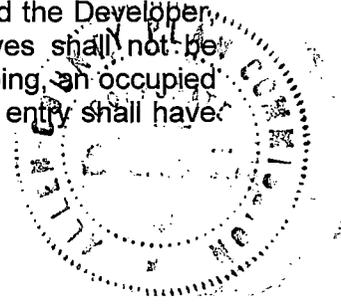
Section 32. Mailboxes. The type, location, and installation of mailboxes will be approved by the Developer.

Section 33. Time for Building Completion and Restoration. Every Dwelling Unit on any Lot shall be completed within twelve (12) months after the beginning of such construction. 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.

Section 34. Single Owner Contiguous Lots. Whenever two (2) or more contiguous Lots shall be owned by the same person, and such Owner shall desire to use two (2) or more of said Lots as a site for a single Dwelling Unit, said Owner shall apply in writing to the Architectural Control Committee or Board of Directors of the Association 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 Unit 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 Unit. Notwithstanding the foregoing, each of the Lots constituting the site for such single Dwelling Unit shall remain as individual Lots for purposes of all assessments permitted by the terms of these Restrictions. As such, the Owner will be assessed for each Lot used as a site for a single Dwelling Unit.

Section 35. Enforceability. The Association, any Owner and the Developer shall each have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these Restrictions. Failure by the Association, or the Developer to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, and shall not operate to deprive an Owner from enforcing said covenant or restriction.

Section 36. Right of Entry. The Developer, the Architectural Control Committee, and the Association, acting through their respective representatives, shall have the right, during reasonable hours, to enter upon and inspect the Lot and Dwelling Unit, whether prior to, during, or after the completion of, any construction, for purpose of determining whether or not the provisions of these restrictions are being complied with and exercising all rights and powers conferred upon the Developer, the Architectural Control Committee, and the Association with respect to the enforcement or correction or remedy of any failure of the Owner to observe these restrictions, and the Developer, the Architectural Control Committee, and the Association and such representatives shall not be deemed to have committed a trespass as a result thereof. Notwithstanding the foregoing, an occupied Dwelling Unit may not be entered hereunder unless written notice of such proposed entry shall have



been given to the Owner at least five (5) days prior to such entry.

Section 37. Partial Invalidation. Invalidation of any one of these Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 38. Covenants, Restrictions and Extensions. The covenants and restrictions herein contained shall run with the land, and be effective for a term of twenty (20) years from the date these Restrictions are recorded, after which time they shall automatically be extended for successive periods of ten (10) years; provided these Restrictions may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, and provided further, the Developer, its successors or assigns shall, with the approval of the Allen County Plan Commission, have the exclusive right for a period of two (2) years from the date of recording of these Restrictions to amend any of the Covenants and Restrictions.

Section 39. Subdivision of Lots. No Lot or combination of Lots may be further subdivided unless seventy-five percent (75%) of the Lot Owners have approved by signing an instrument of approval and until said approval has been obtained from the Allen County Plan Commission.

Section 40. Exterior Building Surfaces. All exterior building surfaces, materials and colors shall be harmonious and compatible with colors of the natural surroundings and other Dwelling Units. The use of masonry materials, including stone or brick, is strongly encouraged. The Architectural Control Committee shall have the right to approve or disapprove materials and colors so controlled.

Section 41. Dwelling Unit Exterior. All windows, porches, balconies and exteriors of all Dwelling Units shall at all times be maintained in a neat and orderly manner. No clotheslines or other outside drying or airing facilities shall be permitted.

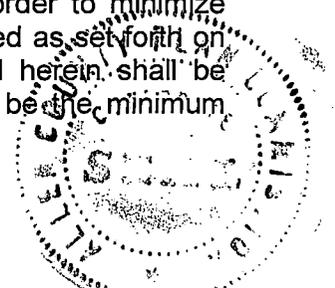
Section 42. Yard Lights. A dusk to dawn light (or gas light) of type and location approved by the Architectural Control Committee shall be installed by the builder or Lot Owner on each Lot in front of the front building line and shall at all times be maintained and operational. The light post shall be wood or masonry. No metal only pole lights will be permitted.

Section 43. Fires. No outside incinerators shall be kept or allowed on any Lot. A small fire for the purpose of burning leaves and brush shall be allowed on a Lot.

Section 44. Cost and Attorney's Fees. In the event the Association or Developer is successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien, assessment or charge now or subsequently imposed by the provisions of these Covenants, they shall be entitled to recover from the party against whom the proceeding was brought, the attorney fees and related costs and expenses incurred in such proceeding.

Section 45. Annexation. Additional properties may be annexed by Developer and made subject to this Declaration. Said additional properties may be developed for condominiums, villas and single family residences. Said annexation may be perfected without the consent of the Owners.

Section 46. Flood Protection Grade. The minimum flood protection grades referenced on the plat shall establish the minimum sill or window opening to the structure. In order to minimize potential damages from surface water, flood protection grades (FPG) are established as set forth on the attached plat. All Dwelling Units to be constructed on the Lots designated herein shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum.



elevation of a first floor or the minimum sill elevation of any opening below the first floor as shown on the recorded plat of this Subdivision. All Dwelling Units shall be constructed in accordance with the current FEMA regulations.

