

DRAFT OF PROPOSED

**DECLARATION OF COVENANTS and
RESTRICTIONS for 2004**

Cherry Lake Section 1-12

DECLARATION OF COVENANTS AND RESTRICTIONS

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This Declaration made this **1st day of JANUARY 2004** by **Cherry Lake Homeowners Association**

WITNESSETH,

WHEREAS, the following facts are true,

- A. Declarant is the sole owner of the fee simple title to the real estate located in Marion County, Indiana, more particularly described on Exhibit A attached hereto and incorporated herein by this reference, upon which Declarant may, but is not obligated to, construct residential facilities.
- B. Declarant desires to provide for the preservation and enhancement of the property values in Cherry Lake, and to this end desires to subject the Property to the covenants, restrictions and easements set forth herein, each and all of which is and are for the benefit and compliment of the lands in the Property and the future owners thereof.

NOW, THEREFORE, Declarant hereby declares that all of the lands in the Property as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following restrictions, all of which are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole, All of the restrictions shall run with the land and shall be binding upon the Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the Property or any part or parts thereof subject to such Restrictions, and shall injure to the benefit of the Declarant and every one of the Declarant's successors in title to the Property or any part or parts thereof.

- 1. Definitions. The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:
 - (a) **"Assessment"** shall mean that share of the Common Expenses imposed upon each Lot, as determined and levied pursuant to the provisions of this document.
 - (b) **"Association"** shall mean Cherry Lake Homeowners Association, Inc. or an organization of similar name, its successors and assigns, and shall be created as an Indiana not-for-profit corporation. Its membership shall consist of **Owners who pay mandatory assessments**.
 - (c) **"Common Expense"** shall mean the actual and estimated cost to the Association for maintenance, management, operation, repair, improvement and replacement for the Subdivision.
 - (d) **"Board"** shall mean the Board of Directors of the Association.
 - (e) **"D.M.D"** means the Department of Metropolitan Development of Marion County, Indiana, its successors or assigns of any or all of its rights under this Declaration.
 - (f) **"Cherry Lake"** means the name of the Declarant's development of which the Property is a part thereof.

- (g) **“Owner”** means every person or persons or entity or entities who is/are the record owner/s of a fee or undivided fee interest in the Property, their heirs, successors, legal representatives or assignee.
 - (h) **“Property”** means the real estate described on sheet 1 and 2.
 - (i) **“Lot”** shall mean and refer to any lot or other tract in the Subdivision, together with any and all improvements thereon.
 - (j) **“Subdivision”** shall mean and refer to all such existing properties and additions there to and less and excepting any restrictions there from, are subject to this Declaration and any supplemental Declaration or Declarations.
 - (k) **“Restrictions”** means the covenants, conditions, easements and restrictions and all other provisions set forth in this Declaration, as the same may from time to time be amended.
2. Enforcement. *The Covenants contained in this document are applicable to all properties at Cherry Lake. These Covenants supersede all previous Covenants.*
 3. Right of Entry. *The Association, through their duly authorized employees and contractors, shall have the right, after reasonable notice to the Owner thereof, to enter any Lot or tract of real estate at any reasonable hour on any day to perform such maintenance as may be authorized herein.*
 4. Maximum Annual Assessments. *Except as hereinafter provided, the annual assessment, excluding any special assessment for capital improvements or major repairs shall in no event exceed Forty Dollars (\$40.00), per Lot, per annum. The Board shall fix the assessments, which shall be in amounts determined in accordance with the projected financial needs of the Association as to which the decision of the Board shall be dispositive. By the vote of two-thirds (2/3) of the members of the Board, the maximum amounts of the assessments may be increased or decreased from the amount hereinabove set forth.*
 5. Effective of Non-Payment of Assessment; The lien, Personal Obligations, Remedies of Association. *If any assessment is not paid on the date when due, such assessment shall then become delinquent and shall, together with interest thereon, and the cost of collection thereof, become a continuing lien on the Lot or Lots against which such assessment is made that shall bind such Lot in the hands of the Owner, and the Owner’s heirs, devisees, personal representatives and assigns, and shall be a continuing personal obligation of the Owner against whom the assessment is levied.*

If the assessment is not paid within thirty (30) days after the delinquency date the assessment shall bear interest from the date of the delinquency at the rate of ten (10%) percent annum, and the Association may, at any time thereafter, bring an action to foreclose the lien against the Lot or Lots in like manner as a foreclosure of a mortgage on real property and/or a suit on the personal obligation against the Owner, and there shall be added to the amount of such assessment the cost of any action (including reasonable attorneys’ fee), and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys’ fee to be fixed by the Court, together with the costs of the action.

6. Exterior Maintenance. *In addition to maintenance upon the Common Area, the Association may provide upon any Lot requiring same, when necessary in the opinion of the Board to preserve the beauty, quality and value of the neighborhood, maintenance, including paint, repair, roof repair and replacement, gutters, down-spouts, exterior building surfaces, and yard clean-up and/or maintenance; provided, however, that then (10) days written notice must first be given to the Owner of any such Lot or Lots of the need of such clean-up and/or maintenance.*

The cost of such maintenance shall be assessed against the Lot or Lots upon which such maintenance is performed, or, in the opinion of the Board, against the Lot or Lots benefiting from the same. The assessment shall be apportioned among the Lots involved in the manner determined to be appropriate by the Board. If no allocation is made, the assessment shall be uniformly assessed against all of the Lots in the affected area. The exterior maintenance assessments shall not be considered a part of the annual or special assessments. Any exterior maintenance assessment shall be a lien on the Lot or Lots and the personal obligation of the Owner and shall become due and payable in all respects, together with interest, reasonable attorney's fees, and cost of collection as provided for the other assessments of the Association and shall be subordinate to mortgage liens as provided for herein.

For the purpose of performing the maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice, to the Owner, to enter upon any Lot or Lots or the exterior of any improvements thereon at reasonable hours of any day except Sunday.

7. Utility easements. There is hereby reserved for the purpose of installing and maintaining municipal and public utility facilities and for such other purposes incidental to the development of the Property, to be perpetual hereof, from the date of this instrument by the Declarant, its successors and assignees, full right and authority to lay, operate and maintain such drainage, electrical lines, communications lines (which shall include cable TV), and such other further public service facilities as Declarant may deem necessary. Provided, however, Declarant shall restore the disturbed areas as nearly as possible to the condition in which it was found. No permanent structures shall be constructed within an easement area.
8. Plans, Specification and Locations of Buildings. No building or structure of any kind, including but not in limitation thereof, additions, alterations, fences, screens, walls, mini-barns, outbuildings, above-ground and ground surface swimming pools and decks, patios, dog runs or dog houses shall be erected or altered on the Property until the plans and specifications, location and three plot plans thereof, in detail and to scale, shall have been submitted to and approved by Declarant in writing before any construction has begun. The plans and specifications of and location of all construction shall be in compliance with the building, plumbing and electrical requirements of all applicable regulatory codes. Refusal of approval of plans and specifications, location and plot plan by Declarant may be based on any ground including purely aesthetic grounds, in the sole and absolute discretion of Declarant. Declarant shall not be responsible for any structural defects in such plans or specifications or in any building or structure erected according to such plans and specifications.

The plans and specifications submitted to Declarant shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees

and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of Declarant. The required landscaping and all parking strips and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit. Approval of plans shall be designated on two site plans and returned to the builder for purposes of obtaining an Improvement Location Permit from D.M.D

All areas not covered by buildings, structures, paved parking facilities or sidewalks shall be maintained as landscaped areas and shall be maintained in tile pavement edge of any abutting streets.

9. Use and Size Restrictions. No use shall be permitted on the Property other than the uses permitted in the D-3 (Dwellings District) Zoning Ordinance of Marion County, Indiana. No one-story house shall be erected on any lot in this addition having a main floor area of less than nine hundred (900) square feet with one or two-car attached garage and paved drive, and no residence with more than one story shall have a main floor area of less than six hundred sixty (660) square feet with a one or two-car attached garage and paved drive. Open porches, patios, garage and basements shall be excluded in the computation of main floor area.
10. Signs. No billboards or advertising signs of any character shall be exhibited in any way or above the Property or any part hereof or on any improvement thereon without the written approval of Declarant except one professional sign not more than one (1) square foot, or one sign of not more than six (6) square feet advertising the parcel for sale or rent.
11. Setback Lines. Front building setback lines are hereby established on this plat. No building shall be erected or maintained between the established setback lines and the property lines of the street.

No residence or attached accessory building shall be erected closer to the side of any lot than six (6) feet, with a total aggregate of sixteen (16) feet at the building line, whichever is the lesser, except fences, nor shall any residence or attached accessory building be erected closer than twenty (20) feet to the rear yard line. In the event a building is erected on more than one single lot, this restriction shall apply to the sidelines of the extreme boundary of the multiple lots.

12. Utility Lines, Antennas and Air Conditioners. All electrical service, telephone and other utility lines shall be placed underground, but Declarant may waive this restriction in writing. No outside antennas, poles, mast, solar panels or towers shall be permitted unless approved in writing by Declarant, and in no event shall such structures extend more than five (5) feet above the highest point of the roof. Windows air conditioning units shall be allowed only on the rear of the residence and not be visible from the street.
13. Basketball Goals and Similar Structures. *To preserve the natural quality and aesthetic appearance of the Development, basketball goals shall be permitted. These units must be maintained in good condition and appearance. Additionally, these units may not be positioned on or adjacent to any street or public thoroughfare.*

14. Swimming Pools. *Both above ground and in-ground swimming pools are allowed in Cherry Lake. Prior to installation of any pool approval must be received from the Board. Additionally, a six-foot (6') security fence must enclose the yard containing the pool. This fence must be posted with appropriate "No Trespassing" signs. The gate / entry to the pool area must be locked at all times when the pool is unattended. Annual inspections of all pools by the Board are required.*
15. Security Lighting. *All homes within the Subdivision were provided with dusk-to-dawn security lights at the time of construction. It is the responsibility of each owner to maintain these lights in working condition at all times. The only exception to this will be during holiday season when colored lights are used. During this time porch lights may be left on in place of a standard light.*
16. Accessory or Temporary Buildings. *No trailers or tents and no accessory or temporary buildings or structures shall be permitted upon any lot within the Property accepting temporary mobile structures and parking for construction and marketing purposes.*
17. Nuisances. *No nuisance shall be permitted to exist or operate upon the property.*
18. Site Visibility. *No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of rounded property corner, from the intersection of the street lines extended. The same sight limitations shall apply to any lot within ten (10) feet from the intersection of the street line with the edge of a driveway pavement or alley lines. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.*
19. Lot Access. *All lots shall be accessed from the interior streets of this subdivision. No direct lot access is permitted from 30th street.*
20. Parking and Motor Vehicles. *No boats, recreational vehicles or other motor vehicles, except four-wheel passenger automobiles, shall be placed, parked or stored upon any Lot or in the Common Area. All automobiles and motor vehicles shall not be parked on any street, Common Area, or Lot, except in an enclosed garage or the drive associated with the dwelling, for more than Forty-eight (48) hours. It is the intent of this provision to restrict vehicular parking in the Subdivision to automobiles regularly used by the residents and occupants of the dwellings in the Subdivision. Guest vehicles shall be permitted on public streets for a period not to exceed twenty-four (24) hours; however, this shall not include vehicles parked on public streets on a frequent (in excess of 24 hours per month) basis. Commercial vehicles of any type are not to be parked on the streets overnight.*
21. Trash and Garbage Containers. *All trash and garbage containers must be placed in walled-in areas so that they shall not be visible from the street or adjacent lots except on days of collection. Additionally, no trash or refuse shall be placed or left at the curb more than twenty-four (24) hours prior to trash pick up. If large items are not picked up during regular trash collection, they must be removed from sight the same day.*

22. Clothes Drying Area. No outdoor clothes drying area or apparatus shall be allowed unless screened from view of public streets and adjoining property owners.
23. Animals. No farm animals, fowl or domestic animals for commercial purposes shall be permitted on the Property. General recognized house pets are permitted in reasonable numbers. Kenneling operations are prohibited. All pets when outside must be kept under control by their owners and must not become a nuisance to other residents. All residents are required to “pick up” after their pets. No pets shall be allowed to run free.
24. Drainage. It shall be the duty of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the grading and drainage plan as approved for this plat by the Department of Public Works of the City of Indianapolis and the requirements of all drainage permits issued for any lot or parcel of land within this plat.
25. Duration. The foregoing covenants and restrictions and any amendments thereto are for the mutual benefit and protection of all present and future Owners of the Property or any part thereof and shall run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2024, at which time the said covenants and restrictions shall be automatically extended for successive period of ten (10) years unless changes in whole or in part by majority vote of those persons who are the Owners of the Property.
26. Burning. In accordance with Marion County ordinances, burning of rubbish and leaves is prohibited.
27. Severalty. Every one of the Restrictions are hereby declared to be independent of, and separate from the rest of the Restrictions and from every other one of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or shall lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or “running” quality of any other of the restrictions.
28. Mopeds, Go-karts and other similar vehicles. *All mopeds, go-karts or similar vehicles shall be operated in accordance with all state and local laws. No vehicles of this type shall be permitted to operate on the sidewalks. Additionally, all vehicles shall comply with the posted neighborhood speed limit.*
29. Remedies. *In the event of a violation, or threatened violation, of any of the Covenants herein recited, Declarant, the Owners and all other parties claiming under them, individually or through the Association, shall have the right to enforce the Covenants contained herein, and may pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damage, and including the right to secure injunctive relief or to secure removal by due process of any structure not in compliance with the Covenants, contained herein, and shall be entitles to recover reasonable attorneys’ fees and the cost and expense incurred as a result thereof.*

The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority to enforce any Covenants contained in this Declaration other than those Covenants which expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein

shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance, 58-AO-3, as amended, or any conditions attached to approval of the plat of Cherry Lake Subdivision.

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 Covenants shall be held to be a waiver by that party (or any estoppels of that party to assert) of any right available to him upon the occurrence, recurrence or continuation of such violation of these Convents.

IN TESTIMONY WHEREOF, witness the signature of Declarant this **1st day of JANUARY, 2004**.

CHERRY LAKE HOMEOWNERS ASSOCIATION, INC.

President

Treasurer