

PROTECTIVE COVENANTS AND LIMITATIONS FOR LINCOLN POINTE, COLUMBIA CITY, INDIANA.

All of the lots in the plat of Lincoln Pointe (hereinafter called the "Subdivision") shall be subject to and impressed with these easements and protective covenants, restrictions and limitations hereinafter set forth, which shall be considered a part of every conveyance of any lot or portion thereof in the Subdivision without being written therein. The provisions herein contained are for the mutual benefit and protection of the owners, present and future, of the land and shall insure to the benefit of, and be enforceable by the owner or owners of any lot or lots in the Subdivision and their respective legal representatives, heirs, successors, grantees and assigns. The owner or owners, present and future, of any lot or lots in the Subdivision shall be entitled to injunctive relief against any violation or attempted violation of the provisions hereof and damages for any injury resulting from any violation thereof, but there shall be no right of reversion, re-entry or forfeiture of title resulting from any violation.

1. DEFINITIONS - The terms hereinafter set forth shall have the following meanings:

- (a) "Developer" shall mean Site, Inc. and successors and assigns of Site, Inc.
- (b) "Lot" shall mean either any of said lots as platted or any tract or tracts of land as conveyed originally or by subsequent owners, which may consist of one or more lots or parts of one or more lots as platted upon which a dwelling or other structure may be erected in accordance with the restrictions hereinafter set forth.
- (c) "Living Unit" shall mean any portion of a building designated and intended for use and occupancy as a residence by a single family.
- (d) "Owner" shall mean and refer to the holder, whether one or more persons or entities, of the fee simple title to any lot or living unit situated in the Addition.
- (e) "Lessee" shall mean and refer to a person leasing from an Owner, whether one or more persons or entities, of any living unit situated in the Addition.
- (f) "Association" shall mean and refer to a duly established Community Association.
- (g) "Member" shall mean any person who may be entitled and obligated to hold one or more memberships in the Community Association.
- (h) "Membership" shall mean any membership in the Community Association entitled to one vote and one assessment as hereinafter set forth. A member may hold one or more memberships.
- (i) "Common Area" shall mean and refer to those areas of land shown on any recorded subdivision plat and intended to be devoted to the common use and enjoyment of the Owners and Lessees in the Addition. At the time of recording, there are no common areas pertaining to the Lincoln Pointe Subdivision.
- (j) "Street" shall mean any street, avenue, roadway, cul-de-sac or boulevard of whatever name which is shown on the recorded plat of said Addition, and which has been heretofore and is hereby, dedicated to the public for the purpose of a public street or boulevard purposes.
- (k) "Architectural Control Committee" shall mean the body designated herein to review plans and to grant or withhold certain other approvals in connection with improvements and developments.

2. ZONING. No lot shall be used except for residential purposes.

3. No dwelling shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling and dwelling shall not exceed two stories in height. (See #8, Out-buildings)

4. **SUBSEQUENT SUBDIVIDING OF A LOT.** A lot area may be subdivided to form units of less area only one (1) time, but only one (1) building for principal use may be erected on any lot with approval of the Whitley County Planning Commission. No combination of lots may be further subdivided unless approval thereof shall have been obtained by the Whitley County Planning Commission.

5. **DWELLING SIZE.** No dwelling constructed; placed or permitted to remain on a Building Site shall have a minimum ground floor area, exclusive of open porches, breezeway, and garage, of less than 1,100 square feet for a one story home, or 800 square feet for a one and one-half story home, or 700 square feet for a two-story home. Any dwelling of a type other than those specified above shall have a minimum ground floor area approved by the Architectural Control Committee.

6. **GARAGES, DRIVEWAYS, AND SIDEWALKS.** Each dwelling shall have a garage of a minimum size of 400 square feet and it shall be attached to the dwelling either directly or by a breezeway or porch. Each driveway from the street to the garage shall be paved with concrete or asphalt, and shall not be less than eighteen (18) feet in width. Sidewalks which comply with the Sidewalk Ordinance requirements set forth in Ordinance Number 683 shall be installed by the Builder on each lot and shall be installed as part of the construction of the residence. Such sidewalks shall be installed at the Builder's expense, and the Developer shall have no liability for installation of the sidewalk. All off-street parking must be confined to hard surface area the driveway.

7. **DWELLING LOCATION.** No dwelling or structure erected, placed or no dwelling or structure (including a fence or wall) shall be located on any lot nearer to the front line or nearer to the side street line than the minimum building set-back lines shown on the recorded Plat. No building shall be located nearer than a distance of ten feet to an interior lot line. No dwelling shall be located on any interior lot nearer than ten (10) feet to the rear lot line. No building shall be erected within the public easements indicated on the Plat, and in any event, no garage may be located nearer than ten (10) feet to the rear lot line. The removal of any obstructions by a utility company from a utility easement shall in no way obligate the utility company in damages or to restore said obstruction to its original form.

8. **ADDITIONAL BUILDING OR STRUCTURES.** No structure of a temporary character, trailer, boats, motor home, basement, tent, garage, or barn, shall be either used or located on any lot or used as a residence either temporarily or permanently. Variations from above with approval from the Architectural Control Committee. One 10' by 12' (120 square foot maximum size) outbuilding shall be allowed. Said outbuilding shall be of a pre-constructed variety, with color metal sides and roof or stained or painted wood siding with shingle roof. Said outbuilding must have concrete or wood flooring.

9. **FENCING.** No fences shall be constructed on any lot in said Addition nearer to front property line thereof than the building line as set forth in the plat of said Addition, but this

restriction shall not prevent the planting of shrubbery or hedges for ornamental and decorative purposes, said hedges or shrubbery, however, shall not exceed thirty-six (36) inches in height.

(a) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways 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 them at points thirty (30) feet from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway pavement. No tree shall be permitted to remain such distance from intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(b) No wire or metal fence will be permitted on any lot except a chain link fence, wrought iron fence or ornamental metal fence. All fencing to have approval of Architectural Control Committee

10. LANDSCAPING AND MASONRY. Within sixty days after the completion of the construction of a dwelling, or as soon thereafter as weather conditions permit, the owner shall have planted at least eight well-developed shrubs and there shall be two trees on the Building Site and shall have graded and seeded or sodded the entire yard on the Building Site. Each home must have a minimum of 100 square feet of masonry (brick or stone) on the front side of dwelling and any variation must be approved by the Architectural Control Committee.

11. USE OF SIGNS. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one (1) square foot in area, one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise property during the construction and sales period.

12. TRASH STORAGE. Equipment for the storage or disposal of rubbish, trash, garbage, or other waste shall be kept clean and sanitary.

13. EASEMENTS. Easements are hereby expressly reserved and dedicated with dimensions, boundaries and locations as designated on the attached plat for the installation and maintenance of public utilities (including, but not limited to, water, gas, telephone, electricity, cable T.V., and any other utilities of a public or quasi-public nature) and sewer and drainage facilities.

(a) Any utility company and the Developer, their successors and assigns, will have the right to enter upon said easement for any lawful purpose. All easements shall be kept free at all times of permanent structures except improvements installed by an authorized utility and removal of any obstruction by a utility company shall in no way obligate the company to restore the obligation to its original form. The utility will restore any improvements installed by an authorized utility.

(b) No building or structure located in the Addition shall be connected with distribution facilities provided by electrical, television or telephone services, except by means of wires, cables or conduits situated beneath the surface of the ground (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Addition, and except for such housings, pedestals or facilities as may be appropriate for connection of utility services for individual lot owners). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting services by underground wires or cables.

(c) The utility operating the sewer line and sewage disposal plant for said subdivision shall have jurisdiction over the installation of all sewer connections, and the same

shall be installed to the property lines of each lot by the Developers. No individual water supply system or individual sewage disposal system shall be installed, maintained or used in Addition. No rain or storm water runoff from roofs, street pavements or otherwise, or any other surface water, shall at any time be discharged into, or permitted to flow into the sanitary sewer system, which shall be a separate sewer system from the storm water and surface water runoff system. No sanitary sewage shall at any time be discharged or permitted to flow into the storm water and surface water runoff sewer system.

(d) All lots in said Addition shall be subject to the easements indicated upon the recorded Plat for any or all of the following purposes: For the construction and maintenance of poles, wires or conduits and necessary or proper attachments in connection therewith for the transmission of electricity or for the telephone or other purposes; also the construction and maintenance of surface and other purposes; also the construction and maintenance of surface and water drains, public sewers, pipe lines for supplying gas, water and heat; and for any other public or quasi-public utility or function maintained, furnished or performed by or through any method beneath the surface of the earth. Any municipal, public or quasi-public corporation engaged in supplying one or more of the above utilities shall have the right to enter upon the portions of land subject to said easements for any purpose for which said easements or right-of-way are herein reserved.

14. YARD LIGHTS. Each dwelling will cause an automatically controlled yard light or other illumination device to be installed in front yard fifteen (15) feet (plus or minus one foot) from the road right-of-way. Such yard lights or illuminating devices will be of such design and construction as shall be approved by the Architectural Control Committee; said committee shall also have the authority to approve a change in the location of said yard lights or illuminating devices.

15. NUISANCES. No use shall be permitted which is offensive by reason of odor, fumes, dust, smoke, noise, or pollution or which constitutes a nuisance or which is hazardous by reason of fire, explosion or in violation of the laws of the State of Indiana or any subdivision thereof.

(a) No lot shall be used for the purpose of raising, breeding or keeping animals, livestock or poultry except that dogs, cats or other quiet household pets may be kept, providing the same are not kept, bred or maintained for any commercial purpose.

(b) No above or below ground fuel or storage tanks shall be permitted.

(c) No radio or television antenna or satellite receiver (dish) nor solar panels or similar structures shall be allowed on any lot or attached to any residential structure located on any lot unless specifically approved by the Architectural Control Committee.

(d) Hot tubs allowed with Architectural Control Committee approval.

(e) No unlicensed, unregistered or inoperable automobiles or motorized vehicles may be parked or maintained on any lot. No motor vehicle may be disassembled or be allowed to remain in a state of disassembly on any lot but, instead, shall be equipped at all times for on-road driving. No off-road vehicles or snowmobiles will be allowed unless stored inside.

(f) No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste and shall be kept clean and sanitary. (Except during that time of new construction or remodeling.)

(g) No noxious or offensive trade or commercial activity may be performed or conducted on any lot at any time.

16. IMPROVEMENT APPROVAL BY ARCHITECTURAL CONTROL COMMITTEE.

In order to maintain harmonious structural design and lot grades, no dwelling or improvements shall be erected, permitted or altered on any lot (and construction shall not be commenced) until the construction plans and specifications, and a site plan showing the location of the structure on said lot and grade elevations, have been approved by the Architectural Control Committee. The Architectural Control Committee shall be composed of three (3) members to be designated by the Developer initially. The Developer shall have the right, at such time as it may elect, to relinquish its right to designate the members of the Architectural Control Committee to the Association. Two sets of plans of each improvement, with detailed front, side and rear elevations and floor plans showing square footage and grade elevations, shall be submitted to the Architectural Control Committee at the Developer's office or such other place as may be designated. The Committee's approval or disapproval of said plans shall be in writing; in the event the committee, or its designated representative, shall fail to approve or disapprove said plans within thirty (30) days after all necessary instruments, documents and other information have been submitted, then approval to the request as submitted shall be substantially completed before said building shall be used or occupied as a dwelling. All improvements shall be constructed in accordance with the plans and specifications as approved by the Architectural Control Committee and any improvements not so constructed shall be subject to immediate removal at Owner's expense. The provisions hereinbefore provided for violation or attempted violation of any of these covenants and restrictions shall be applicable hereto. In addition, before any lot or tract within the Addition may be used or occupied, said user or occupier shall first obtain the Improvement Location Permit and Certificate of Occupancy required by the Whitley County Zoning Ordinance. Further, before any living unit within the Addition shall be used and occupied, the Developer shall have installed all improvements serving the lot whereon said living unit is situated, as set forth in Developer's plans filed with the Whitley County Plan Commission.

17. CURRENT USE OF SURROUNDING AREA. Owners of said lot and their successors in title are on notice and understand that this Subdivision is in a predominantly agricultural and industrial area and that operations common with said business, including livestock operations will be practiced in the area of this subdivision. With this understanding all owners of a lot in this subdivision forego their right to bring claims against any farmers or manufacturers in the area who are practicing normal, reasonable and necessary functions to maintain an every day, on going operation.

18. LINCOLN POINTE HOMEOWNERS ASSOCIATION. There will be organized by the Developer when requested by the majority of the lot owners a not-for-profit association. Only one such association will be recognized and approved by the Developer, with the same to be known as The Lincoln Pointe Homeowners Association.

(a) Membership. One membership shall be created for each lot or living unit planned in Lincoln Pointe. Memberships will transfer from the Developer to the grantee upon deliver of the deed. With one such membership to be transferred for each living unit to be constructed upon the land conveyed.

(b) Membership Transfer. Memberships will pass from the Developer to his grantee with the conveyance of the land.

(c) Continuing Membership. The purchaser of any lot or living unit in Lincoln Pointe shall be a member of said Association, and shall continue to be a member of said

Association so long as he continues to be the owner of a lot or living unit in Lincoln Pointe for the purposes herein mentioned. Membership shall pass with the ownership of the land or living unit.

(d) **Transfer of Membership Rights and Privileges.** Each owner or, in lieu thereof (and with the written consent of such owner of the Association), each Lessee of a living unit, shall be a member of the Association and have the right to the owners vote and privileges. Membership, where assigned to a Lessee, will pass with the lease, except if the owner withdraws his consent in writing to the Association. The owner may withdraw his membership assignment to the Lessee at his discretion by a Sixty-day (60) notice in writing to the Association.

19. ASSESSMENTS. Developer, for each lot and/or living unit owned by it within the Addition, hereby covenants, and each owner of any lot or living unit, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or conveyance, shall be deemed to covenant and agree to pay to Lincoln Pointe Association Maintenance Fund, as hereinafter provided.

(a.) **Maintenance Fund.** The "Maintenance Fund" Assessment shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents of the Addition, and, in particular, for the improvements and maintenance of all other Common Areas, including insurance, taxes, and all other things necessary or desirable in the opinion of the Members of the Association in connection therewith.

(b.) **Maintenance Fund Assessments.** The Maintenance Fund Assessments as herein provided shall commence to accrue and become a lien upon any said lots or living units as soon as title thereto has been divested from Developer, or when a dwelling or living unit shall be erected thereon, whichever shall first occur, and shall be payable on the first day of January of each year thereafter. All assessments shall be determined by and paid to the Association, and the Association shall be responsible for carrying out the purposes of these assessments.

(c.) **Amount of Assessments.** The amount of said Maintenance Fund Assessment is established as follows:

(i) From and after _____, the annual assessment may be increased for the next succeeding three (3) years, by vote of the memberships of the Association as hereinafter provided and again at the end of each such period of three (3) years, for each succeeding three (3) year period. The Board of directors of the association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

(ii) Subject to the limitations hereinbefore set forth, the Association may change the maximum amount of the assessment for any such three (3) year period, provided that any such change shall have the assent of two-thirds (2/3) of the Memberships of the Association who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which has been sent to all Memberships at least thirty (30) days in advance, and with the purpose of the meeting set forth therein. At any such meeting, a quorum of not less than fifty (50) percent of all Memberships entitled to vote shall be required.

20. DURATION AND ALTERATION. These protective covenants, restrictions and limitations shall be construed as, and shall be, covenants running with the land, and shall be binding upon all Owners and Lessees of land in said Addition and all persons claiming under them. They shall continue in existence for a period of fifty (50) years from the date of the recording thereof, and thereafter shall be auto-matically extended successive periods of ten (10) years each. The protective covenants, restrictions and limitations (but not the easements)

may be changed, abolished, or altered in part by written instrument signed by the owners of not less than seventy-five (75) percent of the lots in Lincoln Pointe Addition other than land occupied by easements, public roadways and walkways; and with the approval of the Whitley County Plan Commission

21. **SEVERABILITY.** Invalidation of any one of these provisions shall in no way affect any of the other provisions which shall remain in full force and effect.

22. The covenants contained herein are to run with the land.

Site Inc. - Donald W. Langeloh, President

Date