

2004 032862

## DECLARATION OF COVENANTS AND RESTRICTIONS

APPLICABLE TO LOTS IN FEATHER ROCK, PHASE I, AN ADDITION TO THE CITY OF CROWN POINT, LAKE COUNTY, INDIANA.

THIS DECLARATION, ("Declaration") made this 27<sup>th</sup> day of October, 2004, by Captiva Development Corp., an Indiana corporation, by its President and Secretary, hereinafter referred to as "Declarant".

### RECITALS, INTENT AND PURPOSES

**WHEREAS**, Declarant is the owner of the real estate located in the City of Crown Point, Lake County, Indiana, described in Exhibit "A", upon which Declarant intends to develop a residential subdivision to be know as Feather Rock.

**WHEREAS**, Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Feather Rock, and in order to accomplish same, desires to subject said residential subdivision to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the lots and lands comprising said residential subdivision and the future owners thereof.

**NOW, THEREFORE**, Declarant hereby declares that all of the real property described in Exhibit "A", except for OUTLOTS B, C & D, and all publicly owned rights-of-way (sometimes referred to as the "property") shall be held, conveyed, sold, encumbered, leased, rented, used, occupied and improved subject to the easements, restrictions, covenants and conditions contained herein (sometimes referred to as the "restrictions"), all of which are declared to be in furtherance of a plan for the improvement and sale of residential lots in Feather Rock, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of said residential subdivision as a whole and of each of the residences, lots and lands situated therein. Said easement, restrictions, covenants and conditions shall run with the real property described in Exhibit "A" and shall be binding upon Declarant, its successors and assigns, and upon all parties having or acquiring any right, title or interest in Feather Rock or any part thereof, and shall inure to the benefit of Declarant and each owner of lots or lands therein.

Declarant hereby expressly declares that the property shall be held, transferred, and occupied subject to the easements, restrictions, covenants and conditions contained herein. The owner of any lot subject to these restrictions, by (1) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such lot, or (2) the act of occupancy of any lot, shall accept such deed and

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STEPHEN R. STIGLICH  
LAKE COUNTY AUDITOR

such contract subject to each restriction and agreement contained herein. By acceptance of such deed or execution of such contract, each owner acknowledges the rights and powers of Declarant with respect to these restrictions, and also consents to and with Declarant, and the owners and subsequent owners of each of the lots affected by these restrictions to keep, observe, comply with and perform such restrictions and agreement.

## **ARTICLE I**

### **ARCHITECTURAL CONTROL**

No building shall be commenced, erected or maintained on the property until the plans, specifications, square footage of structure, lot development plan showing grading and drainage, and exterior elevations have been submitted to and approved in writing by the Architectural Control Committee as to the compliance with this Declaration and the harmony of external design with existing structures.

Architectural Control Committee: The Declarant, or its duly authorized agents, shall be considered the Architectural Control Committee until it resigns the responsibility to the record owners. At that time, the Declarant will designate a committee comprised of record owners. Neither the members of the committee, nor its designated representative, shall be entitled to compensation for the services performed pursuant to this Declaration. At any time, following the Declarant's designation of a committee from the record owners, the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee, or to withdraw from the committee or restore to it, any of its powers and duties.

Neither the Developer nor the Architectural Control Committee, nor any member thereof, shall be liable for any damage, loss or prejudice suffered or claimed by any owner or contractor who submits such plan on account of (a) any defects in any plans or specifications submitted, revised, or approved in accordance with the foregoing provisions; (b) any structural or other defects in any work done according to such plans and specifications; (c) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (d) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, and (e) the development of any property within the subdivision. Any person submitting plans to the Architectural Control Committee shall hold the Declarant, the Architectural Control Committee, or any member thereof, harmless from all damage, loss or prejudice suffered or claimed by any third party including attorneys' fees incurred.

Each record owner shall hold the Architectural Control Committee harmless for any act, performed or not performed, in good faith by the Architectural Control Committee

## **ARTICLE II**

### **USE RESTRICTIONS**

- A. **CONVEYANCE.** Each lot shall be conveyed as a separately designated and legally described freehold interest subject to the terms, conditions and provisions hereof.
- B. **USE.** All lots within Feather Rock, Phase 1, shall be used for one-family residential purpose only. No portion of any lot may be sold or subdivided such that there will be thereby a greater number of lots in the property than the number of original lots depicted in the plat of subdivision. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no lot may be used for any "special use" that is not clearly incidental and necessary to single-family dwellings.
- C. **MINIMUM FLOOR AREA.** No residence may be constructed on any lot unless such residence shall have a minimum usable floor area as set forth below. The computation of square footage shall exclude porches, breezeways, garages and basements. All construction shall be in accordance with R-1 zoning requirements then effective in the City of Crown Point.
- a. All one-story residential structures shall have a minimum total usable floor area of 2000 square ft.
  - b. All 1 1/2 story & two-story residential structures shall have a minimum total usable floor area of 2500 square ft.
  - c. The following types of structures will not be permitted: Bi-Level, Tri-Level, Quad-Level, or any type of home constructed on a slab or crawlspace.
- D. **TEMPORARY STRUCTURES.** No structure of a temporary character, such as a trailer, tent, shack, garage, barn, or other building shall be used on the property at any time as a residence, either temporary or permanent.
- E. **VEGETATION.** An owner shall not permit the growth of weeds and volunteer trees and bushes on his or her lot, and shall keep said lot reasonably clear from such unsightly growth at all times.
- F. **GARBAGE AND REFUSE DISPOSAL.** No lot shall be used or maintained as a dumping ground for trash, rubbish, garbage or other waste shall be kept in sanitary containers out of public view until the designated times for removal of same.
- G. **FENCES.** Chain link fencing is not permitted on any lot within the subdivision.
- H. **TYPE OF CONTRUCTION.** No building previously constructed elsewhere shall be moved upon any lot within this subdivision
- I. **APPEARANCE.**
- a. A reasonable attempt shall be made by the builder to locate all plumbing stacks, roof vents or ventilators in the rear of the building roof.
  - b. Roof pitches are to be a minimum of 8:12 unless otherwise approved by the Architectural Control Committee.

- c. At least 50% of the front exterior and street facing sides of the house shall be masonry brick, stone or like material.

J. **CONSTRUCTION TIME.** Construction must be completed within three years of acceptance of deed or contract of sale. An extension may be issued by the sole discretion of the Declarant.

K. **SATELLITE DISHES.** No exterior antenna or satellite dish over 3 ft. in diameter is permitted.

L. **GRADING & EXCESS MATERIAL.**

- a. Grading of lots shall be in compliance with the City of Crown Point requirements and master grading plan prepared for this development plus grading shall be performed so as not to damage the adjacent lot, lots, streets, or curbs.
- b. All excess material that is to be removed from any lot by reason of construction purposes shall not be removed from this subdivision unless instructed or approved in writing by the Declarant. All such materials shall be used for fill purposes on any lot or lots within Feather Rock whose existing grades are lower than the adjacent top of street curb as determined at the expense of the party charged with removing said material. A builder/lot owner who is removing/depositing excess material is responsible to level out material and for any damage caused to infrastructure, street, or curbing when doing so.
- c. No building debris or concrete, including washouts, is to be placed on any lot other than the lot they are working on at present time. All infrastructure and curbing is the responsibility of the builder/lot owner until the City of Crown Point accepts the subdivision. Owners are to maintain a mowed, debris free lot with erosion control measures in place.

M. **SIDEWALKS.** Any residence or dwelling house erected on any lot shall provide a five (5) foot public sidewalk of poured concrete along all street frontages and within the public right of way.

N. **LANDSCAPING.**

- a. Front, rear (except areas of forestry being left natural), and side yards must be sodded. Sod must be planted within 90 days of occupancy, weather permitting.
- b. Two trees shall be planted by the lot owner in the area between the sidewalk and street as required by the City of Crown Point. Newly planted trees must have at least one and one-half inch caliper, measured one foot from the ground.
- c. A minimum six additional trees, whether existing or new, with a minimum diameter of 2 ½ inches & minimum 8 feet in height are required throughout yard.
- d. A minimum of 20 shrubs is required.

- e. An underground irrigation system must be installed, maintained, and operated by the owner. Irrigation system must service entire lot (except areas of forestry being left natural).

**O. NON-LIABILITY OF DECLARANT FOR DRAINAGE.** Declarant shall not have any liability to an owner or to any other person or corporation with respect to drainage on, over or under a lot. Such drainage shall be the responsibility of the owner of the lot upon which a residence is constructed and of the builder of such residence. An owner, by an acceptance of a deed to a lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder, and no duty of or warranty by Declarant shall be implied by or inferred from any term or provision of this Declaration.

**P. POOLS.** No above ground pools are permitted.

**Q. MAILBOX REQUIREMENTS.** Each Owner of a lot in the Development shall install a post-type mailbox at the time of occupancy. The mailbox must be approved by the Architectural Control Committee.

**R. COMPLIANCE WITH EROSION CONTROL.**

- a. Lots must be sodded within nine (90) days of issuance of Certificate of Occupancy (weather permitting). Furthermore, all owners of record shall be responsible for Erosion Control maintenance of their lot from date of contract sale.
- b. The Declarant has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 or 327 IAC 15, Storm Water Runoff associated with construction activity. Builder agrees to comply with the terms of the Declarant general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control practices and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.
- c. The builder shall indemnify and hold Declarant harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or connected with, any work done by builder, builder's employees, agents, or subcontractors which is not in compliance with the erosion control plan.

**ARTICLE III**

## AMENDMENTS OR CHANGES

Amendments or changes to this Declaration be proposed and adopted as follows:

- a. **NOTICE.** Notice of the subject matter of the proposed amendment in reasonable detailed form shall be included in a notice of a meeting to be held and shall be given to all owners of lots within the subdivision.
- b. **RESOLUTION.** A resolution adopting a proposed amendment following such meeting must be adopted by not less than seventy-five (75) percent of the total number of unit owners within the subdivision. Unit owners not present at a meeting considering such amendment may vote by proxy.
- c. **RECORDING.** Owners may execute a power of attorney designating an attorney-in-fact to execute documents indicating the adoption of amendments. Such amendments shall be reduced to writing and executed in such manner either by said attorney-in-fact or by the respective lot owners in such form as to be recordable in the Office of the Recorder of Lake County, Indiana.

## ARTICLE IV EXISTENCE AND TERMINATION

The covenants and restrictions herein set forth shall continue in perpetuity and shall be terminated, if at all, by the agreement of a majority of the unit owners and their respective mortgagees, which agreement shall be evidenced by an instrument or instruments executed in the manner required for the recording of instruments. The termination shall become effective when such agreements have been recorded in the Office of the Recorder, Lake County, Indiana.

## ARTICLE VI PROPERTY OWNERS ASSOCIATION

As soon as is practicable after Developer causes any area to be subject to these covenants, Developer shall cause the Feather Rock Property Owner's Association, Inc., an Indiana not-for-profit corporation, to be formed to which the real estate designated on the plat as outlots or common areas shall be conveyed. Prior to the appointment of the Board of Directors by the Developer, responsibility for the control and maintenance of the land designated on the plat as outlots or common areas shall remain the exclusive responsibility and obligation of the Developer or its designated agents.

- a. **ASSOCIATION PURPOSE.** The purpose of the association shall be to insure high standards of maintenance and operation of all property in the development, including that property designated by Developer as for the common use of all residents and owners of property therein and to insure the provision of any maintenance and promote the desired character of the development. In addition, the Association shall consider its purpose to manage and support financially all outlots and common areas, if any.

- b. **BOARD OF DIRECTORS.** The association shall have a Board of Directors. The Directors of the association shall not be liable to the record owners for any mistake of judgement or any acts or omissions made in good faith by such Directors on behalf of the owners of the Association, unless any such contracts shall have been made in bad faith or contrary to the provisions of this Declaration.
- c. **MEMBERSHIP & VOTING.** Each owner of a lot in Feather Rock, Phase I shall be a member of the Association and shall be entitled to cast one (1) vote at all meetings for each lot that is owned.
- d. **ASSOCIATION POWERS & DUTIES:** The Board of Directors of the Association shall have all the powers set forth in its articles of incorporation, together with all other powers that belong to it by law and shall among other things, arrange for the following services, to the extent such services are not provided by any governmental body:
  - a. To own, maintain, service, insure and otherwise manage any common area or outlot including the mowing of grass, removal of rubbish, weed, trim, plant, and to do any other things necessary or desirable in the judgment of the Officers of the Association.
  - b. To care for, supply utility service, repair, replace, and maintain all improvements constructed by the Developer upon the common areas including, but not limited to landscaping, signage, landscaped entryways, fountains, and entry monuments.

Until such time as the Board of Directors is duly elected, all the powers and duties enumerated above shall be exercised exclusively by the Board of Directors, as appointed by the Declarant. The Declarant at his discretion may appoint lot owners to serve on the Board of Directors as such time as it deems appropriate. The first elected Board will be elected not later than one (1) year after ninety percent of those lots which have been subject to the Covenants or are able to be subjected to these Covenants pursuant to the terms hereof have been sold and title has been conveyed from Declarant to Owner.

The Declarant shall have the right, at any time in the future, to convey to the Association any areas which are now or may be in the future, designated as common areas; and the Association shall accept such conveyance and shall be responsible for the maintenance thereof after such conveyance.

- e. **MAINTENANCE ASSESSMENTS.** Each owner of a lot, by acceptance of a deed or other conveyance from the Declarant, its successors or assignees, is deemed to covenant and agree to pay to the Association annual assessments or charges and special assessments for capital improvements and unforeseen expenses, to be collected from time to time as hereinafter provided in this Declaration, together with the By-laws of the Association.

All assessments levied shall be for the purpose of insuring the high standards of maintenance and operation of the property and, in general, to promote the character of the property. Such purposes and uses of assessments shall include (but are not limited to) the

cost for the Association of all taxes, insurance, replacement, repair, and maintenance, and other charges by this Declaration of Covenants, Restrictions and Easements or that the Board of Directors of the Association shall determine to be necessary or desirable or meet the primary purposes of the Association.

The Declarant shall have the right to determine and set the annual Assessment for the calendar years 2005 and 2006. The Assessment for each year shall be a sum reasonably necessary as deemed by the Developer to defray the expenses of the Association for each year. From and after the expiration of 2006, the Assessment may be adjusted upward or downward as herin provided.

The Declarant shall not be required to pay any annual or special assessments.

The regular annual assessment shall be determined by the affirmative vote of two-thirds (2/3) of the Board of Directors of the Association.

Special Assessments may be levied by the Association to defray the expense, in whole or in part, of any capital improvement or unforeseen expenses. Such capital improvements shall include the construction, reconstruction, or unexpected repair or replacement of any capital improvements on the property or as may be required pursuant to this Declaration.

Whenever the Board of Directors shall determine there exists a need for levying a special assessment as herein provided, the Board of Directors shall adopt a resolution setting forth the need, amount, period of payment and due date or dates for the proposed special assessment. All special assessments must be approved by a two-thirds (2/3) vote of the voting members of the Association. Such vote shall be taken at a meeting called by the Board of Directors for that purpose.

Each lot owner, by acceptance of its deed, is deemed to accept these covenants and restrictions and agrees to pay these assessments.

Until such time as the Association and the Board provided for in this declaration is formed, the Declarant shall exercise any of the powers, rights, duties, and functions of the Board.

## **GENERAL PROVISIONS**

- A. **SEVERABILITY.** Invalidity of any one (1) of these covenants or restrictions by judgment or court order shall in no manner affect or invalidate any of the other provisions, which other provisions shall remain in full force and effect.
- B. **ENFORCEMENT.** Any owner of a unit or any mortgagee of property within the subdivision, shall have the right to enforce any provision of this Declaration by any proceeding of law or equity. Any owner found to be in violation by a court of competent jurisdiction of any provisions of this Declaration shall also be liable for reasonable attorney fees incurred in prosecuting such action and in enforcing the terms



and conditions hereof. The failure to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter. **The Declarant has no personal liability, obligation or responsibility to enforce the Declaration of Restrictive Covenants, or any part thereof, detailed herein.**

IN WITNESS WHEREOF, Captiva Development Corp., an Indiana corporation, by its President and Secretary, has caused this instrument to be signed on this 27<sup>TH</sup> day of October, 2004.

CAPTIVA DEVELOPMENT CORP.  
An Indiana corporation:

By: J.W. Hawk  
J. W. Hawk, President

Attest: J.W. Hawk  
J. W. Hawk, Secretary

STATE OF INDIANA )  
  ) SS:  
COUNTY OF LAKE    )

Before me, a Notary Public in and for said County and State, personally appeared the within named J.W. Hawk, the President and Secretary of Captiva Development Corp., an Indiana corporation, who acknowledged execution of the foregoing instrument as his free and voluntary act for the uses and purposes therein set forth.

WITNESS my hand and notarial seal this 27<sup>th</sup> day of October, 2004.

My Commission Expires: 3-5-2009

My County of Residence: LAKE

This instrument prepared by: J.W. Hawk

