

**DECLARATION OF PROTECTIVE COVENANTS, EASEMENTS  
AND RESTRICTIONS AFFECTING IDLE CREEK GOLF COMMUNITY**

TO THE PUBLIC:

THIS DECLARATION OF RESTRICTIONS AND COVENANTS for Idle Creek Golf Community (the "Subdivision"), a subdivision in Vigo County, State of Indiana, as recorded in Plat Record 28, Page 84 of the records of the Vigo County Recorder's Office (the "Plat") hereby establishes the protective covenants, easements, reservations and restrictions affecting the Subdivision (same hereinafter collectively referred to as the "Covenants") as hereinafter set forth.

The Covenants are to run with all the land in the Subdivision--unless hereafter excepted from the terms hereof by recording with the Vigo County Recorder an indenture to that effect executed by the Committee (both terms hereinafter defined)--and shall be binding upon all persons owning lots in the Subdivision, or persons claiming under them, until January 1, 2005--or as thereafter extended by operation of the provisions of Section 28 hereof.

If the owner(s) of such lots, and/or any occupant(s), or the heirs, personal representatives, successors or assigns of such owner(s) and/or occupant(s), violate(s) any of the Covenants, it shall be lawful for any other person(s) owning real estate situated in the Subdivision to prosecute administrative proceedings and/or an action at law and/or in equity against the person or persons violating any of the Covenants, and either (a) prevent them from so doing, or (b) recover damages for such violation(s), or (c) both.

The invalidation or voidance of any of the Covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

1. For the purposes of further insuring that the land so platted is developed as an area of high standards, the **Committee** (as hereinafter described), **reserves the right** (i) to control the design and placement of buildings, structures and other improvements placed on each lot in the Subdivision, as well as (ii) **to make, from time to time, such written exceptions to one or more of these reservations and covenants as the Committee shall deem appropriate and proper.** However, any such exception or waiver shall not constitute an exception or waiver for any **other** lot, lots, parcel or parcels within the Subdivision.

Whether or not the provisions of the Covenants (or any of them) are specifically stated in any conveyance of a lot or lots (or part(s) thereof) made before now or hereafter made by the Developer or future owner(s) of any lot(s)--or part(s) thereof--in the Subdivision, the purchaser/owner and/or occupant of each and every lot and/or part(s)

thereof, by acceptance of a deed thereto, or by taking possession thereof, covenants and agrees that no building, wall, fence or other structure shall be erected or placed upon such lot and/or part(s) thereof unless and until the building plans, the specifications therefor, and plot plan have been approved in writing by the Committee. Each such building, wall, fence or structure shall be placed on said lot(s) only in accordance with the building plans, specifications and plot plans so approved. Refusal of approval of building plans, specifications or plot plans by the Committee may be based on any or no grounds, including purely aesthetic grounds, which, in the sole and uncontrolled discretion of the Committee shall be deemed sufficient. No alteration of the exterior appearance of the buildings, walls, fences or structures on any Subdivision lot(s) shall be made without like approval. If the Committee shall fail to approve or disapprove the plans, specifications and/or plot plans within thirty (30) days after written request therefor is delivered to the Committee, then such approval shall not be required, provided, however, that no building, wall, fence or other structure shall be erected on any Subdivision lot(s) which violates any provision of the Plat or any of the provisions herein.

2. Each lot of the Subdivision shall be used only for single-family residence purposes. There shall not exist on any of such lot at any time more than one such residence. No duplex, apartment building, or detached structure shall be permitted in the Subdivision. No trailer, tent, shack, barn, temporary building, outbuilding or guest house shall hereafter be constructed/erected on any of said lots in the Subdivision. No detached garage of any kind shall hereafter be constructed/erected on any Subdivision lot, and no undetached garage shall hereafter be constructed/erected except as an integral part of the residence it is intended to serve, and to house not less than two (2) motor vehicles.
3. No building, or any part thereof, including garages or porches, shall be erected so as to violate the setback lines shown on the Plat. Where one lot and a fraction of another lot are acquired for a single residence site, the side lot lines shall refer only to the lot lines bordering the adjoining property owners. Notwithstanding anything apparently to the contrary contained in this Declaration, the Committee shall have the right to permit (before construction commences) reasonable modifications of the setback requirements where, in its discretion, strict enforcement of setback provisions would work a hardship, provided, however, that no setback lines shall violate any current provision of the Vigo County Subdivision Control Ordinance.

Maintenance of the surface of any right-of-way for a street from the edge of its hard surface to the property line of a Subdivision lot shall be the responsibility of the owner(s) of the lot whose property line abuts said street right-of-way.

4. The Architectural Design Committee (referred throughout this document as the "Committee") shall be composed initially of a representative of Idle Creek Development, Inc., an Indiana corporation (the "Developer"), and after completion of the development (as signified by the Developer by a document stating such recorded in the Vigo County Recorder's Miscellaneous Record) the Committee shall consist of seven (7) homeowners in the Subdivision as initially designated by the Developer for a term of one (1) year, serving thereafter until their successors are elected by a majority vote of homeowners within the Subdivision if no homeowners association is hereafter formed, and acting on votes of a simple majority of a quorum (where four (4) members present in person or by proxy constitute a quorum). [However, if a not-for-profit corporation of homeowners within the Subdivision is formed by the Developer (the "Association"--but until formed, the term "Association" shall refer to the Developer), then the Committee shall consist of seven (7) members of the Association as elected for one year terms by the members of the Association.]

Prior to application for improvement/building permits from Vigo County, Indiana for the construction/alteration of a residential dwelling in the Subdivision, building plans, specifications, and name of builder, plot plan shall be submitted to the Committee for prior written approval. Such approval shall, during the development period as signified by the Developer, include building design, color and location, as well as plans for private drives, tree preservation methods and proposed landscaping. [Conformity and harmony of external design with existing structures in the Subdivision with respect to the topography and finished ground elevations, the destruction/preservation of trees and vegetation and any other matter as may effect the environment and ecology of the Subdivision, as well as the preservation of streets and the surface and subterranean draining systems within the Subdivision, shall all be proper areas of concern for the Committee.] All residences built in the Subdivision shall be built by custom builders (upon approval of the Committee), who have experience in custom construction in Vigo County, Indiana of housing comparable to the standards contemplated by these Covenants.

Before excavation commences for any house, the owner or the owner's contractor shall rough in the permanent driveway and white rock same. Thereafter, construction traffic for that house shall be limited to the white rocked area(s). The owner or the owner's contractor shall take all precautions to keep erosion of the lot at a minimum and, in any case, if dirt from the lot finds its way onto any street in the Subdivision, the Developer and/or the Association reserve the right to have that dirt cleaned up and removed at a cost, in each instance, of \$100.00 to the owner of the lot (and same shall constitute a lien the same as an assessment by the Association). This restriction is necessary to keep dirt, silt and soil out of the subterranean drainage system for the Subdivision. No unneeded dirt from excavation on any lot may be removed from the Subdivision without the prior consent of the Association.

**5. Additional Building Requirements.**

**A. LAKE LOTS: 10, 11, 16, 17, 18, 24 thru 27, 32, 33, 34, 38, 39, 40, 46, 47, 52 thru 61**

- a) Living area must be at least 2800 square feet for two story building, 2600 square feet for one story building.
- b) Each lot owner must install a sea wall at their expense made of prv or concrete.
- c) All property tax and costs associated with the lake will be the responsibility of the lake lot owners.

**B. LOTS: 62 thru 86, 107**

- a) Must have a living area of at least 2800 square feet for two story building, 2600 square feet for one story building.
- b) Exterior must be at least 80% brick or stone and balance may be cedar.
- c) Must have a 5 foot sidewalk along street before home is occupied.

**C. LOTS: 87 thru 106, 108 thru 125**

- a) Must have a living area of at least 1400 square feet.
- b) Exterior: Two story residence may be all vinyl siding.
- c) Must have a 5 foot sidewalk along street before home is occupied.

- D. LOTS: 1 thru 9, 12 thru 15, 19 thru 23, 28 thru 31, 35, 36, 37, 41 thru 48, 126 thru 144, 150 thru 154, 159 and 170
- a) Must have a living area of at least 2200 square feet.
  - b) Exterior must be brick, stone or cedar.
  - c) Must have a 5 foot sidewalk along street before home may be occupied.
- E. LOTS: 145, 146, 148, 149, 155, 156, 157, 158 are for Condominiums.
- F. LOT OWNERS who do not want to build at the time of purchasing a lot must seed the lot and install sidewalks within 90 days from the time the house on each side has been occupied. Owner may start construction within the 90 day period; therefore, normal seeding of yard sidewalk construction will be permitted.
- G. All houses must contain a lighted address in front when building is complete.
6. Unless parked in an enclosed garage, **no** truck(s), boat(s), motor home(s), mobile home(s), trailer(s), camper(s) or commercial-type vehicle(s) shall be stored or parked on either any Subdivision lot or parked on any street in the Subdivision except while engaged in transporting goods or services to and from a residence in the Subdivision. Also, no motor vehicle(s) may be parked overnight on any street in the Subdivision.
7. No horses, cattle, swine, goats, poultry or fowl or any other animals other than household pets shall be kept on any Subdivision lot. No detached outside animal or pet pen(s) or area(s) shall be permitted. No permanent clothesline or drying yard shall be permitted on any Subdivision lot unless concealed by hedges or lattice work or screening acceptable to the Committee. No garbage container(s), trash barrels, trash container(s) or ash pit(s) shall be permitted on any lot unless same is/are subterranean or enclosed in a fashion approved beforehand by the Committee. No breeding of animals for commercial purposes or as a hobby shall be allowed on/at any lot of the Subdivision.
8. All walls or fences to be hereafter erected must be approved by the Association, in writing, before construction, but in no event will chain-link fencing be allowed.

9. No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any part(s) of the Subdivision. Owners of Subdivision lots covenant to mow at a reasonable turf height and trim such portions of each lot which would be reasonably identified as the "yard" of said lot at least semi-monthly between April 1 and September 30 of each calendar year.
10. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain on any lot in the Subdivision. In the event any owner of any lot in the Subdivision shall fail or refuse, after the passage of ten (10) days following the sending (by certified mail, return receipt requested to the address given to the Association by the owner--or if none, then to the address to which the Vigo County Treasurer sends Indiana general real property tax bills for said lot) of written notice thereof, to keep such premises free from weeds, underbrush, refuse piles or unsightly growths or objects, then the Association may enter upon such lands and remove the same at the expense of the owner and such entry shall not be deemed trespass. In the event of such a removal, the owner of the lot in question now agrees that a lien will arise and be created in favor of the Association and against such lot for the full amount so chargeable to such lot for such removal and such amount shall be due and payable within thirty (30) days after the lot's owner is billed therefor.
11. No boundary wall or fence, except those now existing or to be built by the "Developer" and except security fences constructed by the Association) shall be constructed with a height of more than six (6) feet. No boundary line hedge or boundary shrubbery shall be permitted with a height of more than fifteen (15) feet. No wall of any height shall hereafter be constructed on any lot in the Subdivision until after the height, type, design and approximate location therefor shall have been approved in writing by the Committee. The heights or elevations of any walls shall be measured from the then existing elevations of the land at and along the applicable points or lines.
12. Any conveyance of property within the Subdivision shall be made subject to taxes, liens and other assessments, if any, levied or assessed--by against said property in or prior to the year in which same is conveyed, and shall be subject to all covenants, easements, reservations, restrictions and limitations imposed by governmental authority and/or hereunder.

13. After the date of this indenture, none of the lots in the Subdivision shall at any time be divided into as many as two building sites and no building site shall be less in area than the area of the smallest lot platted in the Subdivision. A single lot together with a contiguous portion or portions of one or more other lots in the Subdivision may be used for one building site, but no building or structure or any part thereof shall be erected or maintained nearer the side boundary lines of such integral unit than fifteen (15) feet.
14. All buildings must be connected to the sanitary sewer system in the Subdivision and use of any other sort of other sanitary disposal system shall be prohibited. No building shall have its gutters or downspouts connected to either the sanitary sewer or any foundation or perimeter drain inasmuch as all foundation or perimeter drains must be connected to the subterranean drainage system of the Subdivision (which does not need the leaves, roofing granules, etc. from gutters).

Inasmuch as the Developer contemplates petitioning the Vigo County Drainage Board to assume maintenance responsibilities for the Subdivision's subterranean drainage system, as well as all drainage swales, ditches and culverts which are a part of the Subdivision's overall drainage system, the following covenants shall apply to and run with all land within the Subdivision:

A. Drainage swales (ditches) along dedicated roadways and within the right-of-way, on or dedicated drainage easements, are not to be altered, dug out, filled in, tiled, or otherwise changed without the written permission of the Vigo County Drainage Board. Property owners (i.e. Subdivision lot owners) must maintain these swales as sodded grassways, or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts are installed.

B. Any property owner altering, change, or damaging these drainage swales or ditches will be held responsible for such action and will be given 10 days notice by registered mail to repair said damage, after which time, if no action is taken, the Vigo County Drainage Board will cause said repairs to be accomplished, and the bill for such repairs will be sent to the affected property owner for immediate payment.

15. All claims against the Developer and/or the Committee and/or the Association for damages, if any, arising out of the approval or non-approval of buildings/plans, construction, reconstruction, alteration, maintenance and repair of utilities, street and/or common area lighting system(s), or on account of or by acts of persons utilizing the golf course are hereby waived by each owner and/or occupant of property within the Subdivision.
16. No elevated tank(s) of any kind shall be erected, placed or permitted on any part of the Subdivision, provided, however, that nothing herein shall prevent the Association from erecting, placing, or permitting the placing of tanks or water system apparatus in/at designated parts of the Subdivision for the use of the water company serving the Subdivision. Any tanks or containers for use in connection with any residence constructed on any lot(s), including tanks for the storage of garbage, must be buried or walled sufficiently to conceal them from the view of neighboring lots. Plans for all enclosures of this nature must be approved in writing by the Committee prior to construction.
17. Electrical service lines, natural gas lines, and telephone lines shall be placed underground and no outside utility lines of any nature shall be placed overhead. No exposed or exterior radio or television transmission or receiving antennas or satellite dish shall be erected, placed or maintained on any part of any lot in the Subdivision larger than eighteen (18) inches in diameter and unless same is enclosed in a fashion approved in writing beforehand by the Committee.
18. No residence dwelling erected upon any lot shall be occupied in any manner while in the course of construction or at any time prior to its being fully completed, as herein required. Nor shall any residence, when completed, be in any manner occupied until made to comply with the approved plans, specifications and plot plan, and all other covenants, conditions, reservations and restrictions herein set forth or on the Plat. All construction shall be completed within nine (9) months from the start thereof, including exterior site work and planting and seeding of a lawn, provided, however, the Committee may (as previously set forth in Section 1 hereof) extend such time when, in its opinion, conditions warrant such extension. Unless the prior written consent of the Committee is given, rental of any guest house, hereafter constructed pursuant to special authorization of the Committee, is prohibited, the occupancy thereof being limited to either non-paying guests or servants. Regular, continuous occupancy of any residence in the Subdivision shall be limited to its owner and/or its owner's immediate family.



19. No lot owner may conduct a yard sale, garage sale, rummage sale or flea market sale on any lot unless approved in writing beforehand by the Association.
20. No obnoxious, offensive, deleterious or objectionable odors, sound, light or activity of any kind shall be permitted to exist which would be an annoyance or nuisance to the Subdivision.
21. Recreation structures, including but not limited to swing sets, playground equipment and basketball goals shall be constructed in a manner as to conformity and harmony of external design in keeping with the high standards of the Subdivision. Swimming pools must be enclosed by privacy fence, and any out buildings for said pool must match exterior of the house.
22. Lot owners contiguous to the lake may use the lake for recreational purposes. Other lot owners are restricted to fishing from the dam without access to the lake. All fishing is on a catch and release basis. Pleasure boats are restricted to no larger than a nine (9) horsepower motor. Fishing boats may use electric motors only.
23. No structures, fences or improvements shall be placed upon any easement areas within the boundaries of any building area of the Subdivision excepting shrubs and plants provided that said shrubs and plants do not hamper utility use and/or access.
24. Upon the sale or resale of any lot (except sales to a builder for speculation), the Purchaser shall, at the time of the closing of the sale of the lot, pay to the Association a fee for the cost of maintaining street lights and drainage ponds in the Subdivision as follows: Lots 1-105; 126-144; 150-154 and 159-170 One Thousand (\$1,000) Dollars, Lots 87-105 and 108-125 Seven Hundred Fifty (\$750) Dollars. Developer will maintain the street lights until fifty (50) lots are sold and pay fifty (50) percent of the cost of maintenance until one hundred (100) lots are sold.
25. The Association will maintain and operate the gate house in the Subdivision.
26. It is intended that all Subdivision streets, as shown on the Plat of the Subdivision, shall be accepted into the publicly-supported highway system as soon as the duly appointed Engineer of Vigo County, Indiana provides a signed statement that said streets comply with and meet the specifications for dedicated streets or roadways under the provisions of the Vigo County Subdivision Control Ordinance.

27. For the purpose of maintaining the Subdivision streets, traffic control, and any other general purpose within the Subdivision and all general planning of roadway areas and common community areas of every kind and nature required or desired within the Subdivision for the general use and benefit of all lot owners, each and every lot owner, by accepting a deed or contract for the acquisition of any lot in the Subdivision, agrees to join and shall (i) become a member of the Association when formed, and (ii) be subject to the duly enacted By-Laws of the Association when formed.
28. Each and every Subdivision lot's owner (meaning in the indenture, either single or joint ownership of a given Subdivision lot) may be assessed annually by the Association or its respective successor(s) and/or assign(s), for certain services provided to the Subdivision, including, but not necessarily limited to:
- (A) Maintenance of swales located on property owned and/or maintained by the Association otherwise not currently located on individually owned lots; and
  - (B) Mosquito control and/or snow removal--

in an amount equal to one one-hundred-seventieth (1/170th) of the cost thereof or charges therefor.

Assessments or charges set forth above, together with any and all other assessments authorized by the Association--including a reasonable charge for membership, postage and supplies--shall be made on March 1 of each calendar year and payment in full shall be made to the Association on or before May 10 of the same calendar year. In the event payment is not made, the Committee may file an affidavit entitled "Notice of Lien" with the Recorder of Vigo County setting forth the name and address of the owner, the legal description of the owner's real estate within the Subdivision, a description of the charges assessed and the amount of said charges, which lien shall run in the favor of the Association. In the event suit is required to obtain or enforce a lien under this indenture, then the Association shall be entitled to recover reasonable interest as then permitted by applicable statute (at the time of the filing of the lien) from and after May 10 of the year of said assessment, and reasonable attorney fees and legal costs associated therewith.

Any of the aforesaid charges and assessments, whether annual or special, shall run with the land and shall become liens on the lot or lots of the owner(s) at the time of attachment.

29. But for any exception hereafter made as hereinbefore provided, all of the foregoing covenants, conditions, reservations and restrictions shall continue and remain in full force and effect at all times as against the owner of any lot(s) in the Subdivision, regardless of how that owner/person acquired title until January 1, 2005, on which date these covenants, conditions, reservations and restrictions shall terminate and end, and thereafter be of no further legal or equitable effect on any property in the Subdivision or any owner thereof **provided, however,** these covenants, conditions, reservations and restrictions shall be automatically extended for a period of five (5) years and, thereafter, in successive five-year periods, unless on or before January 1, 2005 or the end of one of such extension periods, as the case may be the owners of a majority of the lots then platted in the Subdivision (through action by the Association, if then formed) shall by written instrument, duly recorded, declare a modification or termination of same. Although these covenants, conditions, reservations and restrictions may expire as herein provided, any and all then in-place remedies for breach of these covenants, conditions, reservations or restrictions committed or suffered prior to such expiration shall be absolute. Any lien(s) coming into existence before termination of the aforesaid covenants, conditions, reservations and restrictions shall survive such termination until released by the Association.
30. A breach by the owner of any Subdivision lot(s) of any of the covenants, conditions, reservations or restrictions established hereunder may be enjoined by appropriate proceedings by the Association or by the owner(s) of another lot or other lots in the Subdivision, as the case may be, but not by any other person or entity.

In the event that the Committee or the owner(s) of another lot or lots, as the case may be, is/are required to employ legal counsel to successfully enforce (via voluntary or involuntary (e.g. court-ordered) compliance) any of the foregoing covenants, conditions, reservations or restrictions, all costs incurred in such enforcement, including reasonable attorney fees and expenses, shall be paid by the owner(s) of the lot or lots violating said covenants, conditions, reservations or restrictions, together with court costs. The party so employing counsel to successfully enforce any of said covenants, conditions, reservations or restrictions shall have a lien upon any such Subdivision lot or lots subject to said proceedings in order to secure the payment of all such sums.

No delay or omission on the part of the Association or the owner(s) of one or more lots in the Subdivision to exercise any of the rights, powers or remedies provided for herein shall be construed as a waiver thereof or acquiescence to any particular breach. Except for certain statutory rights which may exist in favor of the Vigo County Area Plan Commission, no right of action shall accrue nor shall any actions be brought or maintained by anyone whatsoever against the Developer, the Committee, and/or the Association for or on account of its failure(s) to bring any action(s) for a breach of these covenants, conditions, reservations or restrictions or for imposing restrictions herein which may be unenforced by the Developer, the Committee and/or the Association.

31. In the event that any one or more of the foregoing covenants, conditions, reservations or restrictions (including any provision, word, sentence, paragraph or section) shall be declared, for any reason, null and void by a court of competent jurisdiction, such final judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of the other covenants, conditions, reservations and restrictions (including provisions, words, sentences, paragraphs and sections within the same section or covenant) unless the meaning of same is/are substantially changed by the voidance. All remaining covenants, conditions, reservations and restrictions (and provisions thereof) not so expressly held to be void shall continue unimpaired and in full force and effect. In the event any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then and in that event, such term(s) shall be reduced to a period of time which shall not violate the reason, rule or law supporting such declaration.

IN WITNESS WHEREOF, the Developer has executed this indenture as of the \_\_\_\_\_ day of \_\_\_\_\_, 1994 (said date to be the effective date hereof).

IDLE CREEK DEVELOPMENT, INC.

BY: \_\_\_\_\_  
Richard K. Jenkins, Its President

ATTEST:

BY: \_\_\_\_\_  
Stacy E. Jenkins, Its Secretary

IDLE CREEK DEVELOPMENT, INC.

BY: Richard K. Jenkins  
(Richard K. Jenkins, Its President)

ATTEST:

BY: Stacy E. Jenkins  
Stacy E. Jenkins, Its Secretary

RECEIVED FOR RECORD  
AT 10:15 O'CLOCK A.M.  
RECORD 205 PAGE 1262

OCT 21 1994

Nancy Barnhart  
RECORDER VIGO COUNTY

STATE OF INDIANA )  
                                  )SS:  
COUNTY OF VIGO )

Before me, a Notary Public in and for said State and County, personally appeared this 21 day of OCTOBER, 1994, the President and Secretary, respectively, of Idle Creek Development, Inc., who, having first been duly sworn, acknowledged execution of the above and foregoing indenture as the free and voluntary act of each as such officer after being authorized to do so by said corporation's Board of Directors, all for the purposes therein set forth, and who stated that the representations contained therein are true.

WITNESS my hand and notarial seal.



David A. Denham  
Notary Public

David A. Denham  
Printed Name

My Commission Expires:  
3-17-97

County of Residence:  
Vigo

This instrument prepared by David H. Goeller, Attorney at Law, 333 Ohio Street, Terre Haute, IN 47808