


2013000727 DECL \$41.00
01/04/2013 08:44:03A 13 PGS
Mary L. Clark
HAMILTON County Recorder IN
Recorded as Presented


**Cross Reference Instrument Numbers: 900000809, 900000810,
900000811, 910049301, 910049302, and 910051655**

WOODGATE HOMEOWNERS ASSOCIATION OF CARMEL, INC.

**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS OF WOODGATE HOMEOWNERS
ASSOCIATION OF CARMEL, INC.**

**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS. CONDITIONS,
EASEMENTS AND RESTRICTIONS OF WOODGATE HOMEOWNERS
ASSOCIATION OF CARMEL, INC.**

THIS SECOND AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS OF WOODGATE
HOMEOWNERS ASSOCIATION OF CARMEL, INC. (the "Declaration"), is made this _____
day of _____, 2012, by the Woodgate Homeowners Association of Carmel, Inc., an
Indiana corporation ("Association").

WITNESSES:

WHEREAS, LANGSTON DEVELOPMENT COMPANY, INC.. (as defined herein) was
the developer of the Development (as defined herein); and

WHEREAS, LANGSTON DEVELOPMENT COMPANY, INC. has previously executed
that certain Declaration of Covenants and Restrictions of Woodgate Homeowners Association
and recorded such instrument on September 11, 1990 as Instrument No. 9022513 in the Office of
the Recorder of Hamilton County, Indiana; and

WHEREAS, LANGSTON DEVELOPMENT COMPANY, INC. previously executed
that certain Amended Declaration of Covenants and Restrictions of Woodgate Homeowners
Association recorded January 28, 1998 in the Office of the Recorder of Hamilton County,
Indiana, as instrument number 9909804137, as the ("Amended Covenants"); and

WHEREAS, the Amended Declaration may be amended pursuant to various provisions
therein set forth; and

WHEREAS, Association, for and on behalf of the Development and the Owners, wishes
to amend the Prior Declaration; and

WHEREAS, notwithstanding its ability to otherwise amend the Prior Declaration,
Association has obtained the consent of the Majority of the Owners of Lots within the

Development to the Declaration as evidenced by a summary of the consents attached hereto as **Exhibit "A"** and incorporated herein by reference; and

WHEREAS, this Declaration amends and restates the Prior Declaration and is in all respects in substitution thereof; and

WHEREAS, this does not amend or alter the plats of the subdivision referenced herein except as the original Covenants that may be contained thereon are in conflict with these Amended Covenants.

WHEREAS, Association by this Declaration (as defined herein) imposes upon the Development mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Development by the recording of this Declaration; and

WHEREAS, Association desires to provide a flexible and reasonable procedure for the overall development of the Development and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such properties as are now or may hereafter be subject to this Declaration; and

WHEREAS, the Association shall carry out the powers and duties aforesaid.

NOW, THEREFORE, Association hereby declares that all of the real estate described in the previously recorded Plats referenced herein, shall be held, sold and conveyed subject to the following covenants, conditions, easements and restrictions which shall "run with the land" and are for the purpose of protecting the value and desirability of and which shall run with, the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Development or any part thereof, their heirs, successors, successors-in-title, and assigns and shall inure to the benefit of each owner thereof.

DEFINITIONS

The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

Applicable Dates -July 12, 1995, the date of incorporation of Woodgate Homeowners Association, Inc.; and October 3, 2012 the date the name was amended to Woodgate Homeowners Association of Carmel, Inc., hereinafter "WHOAC".

Architectural Approval Committee -the entity established by the Declarant, to include

representatives of WHOAC, to review all Lot development Plans for all future construction proposed to be built in the Tract.

Articles -The Articles of Incorporation of the Woodgate Homeowners' Association, Inc., (now known as the Woodgate Homeowners Association of Carmel, Inc.)

Assessments and Dues -all sums lawfully assessed against Members of the Corporation or as declared by this Declaration, the Articles or the Bylaws.

Bylaws-The Code of Bylaws of the Woodgate Homeowners' Association of Carmel, Inc.

Board of Directors-the governing body of the Corporation elected by the Members in accordance with the Bylaws.

Common Areas-areas and easements defined as part of the Tract but not otherwise deeded to an owner.

Corporation -Woodgate Homeowners' Association, Inc. (now known as the Woodgate Homeowners Association of Carmel, Inc.), an Indiana Corporation, its successors and assigns.

Declarant -Langston Construction Company, Inc., (the Developer), its successors and assigns to its interest in the Tract other than Owners purchasing lots or residences by deed from the Declarant (unless the conveyance indicated an intent that grantee assume the rights and obligations of Declarant).

Drainage System -the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention equipment and facilities located in the Tract and designed for the purposes of controlling, retaining or expediting the drainage of surface and sub-surface waters from, over and across the Tract as shown on the Plat.

Entry Ways -the structures constructed as an entrance to Woodgate (exclusive of the street pavement, curbs and drainage structures and tiles), and the Landscape Easement surrounding such structures, whether located within or without of the Tract.

Initial Capital Assessment-the initial assessment for the Reserve for Replacements Fund.

Landscape Easement-area on the Plat to be landscaped and maintained by the Corporation.

Barrier or Fence Easement – area on the Plat situated along 146th Street that contains a boundary barrier or fence which is an area and structure to be maintained by the Corporation.

Lot-platted lot as shown on the Plat.

Lot Development Plan - (I) a site plan prepared by a licensed engineer or architect, (II) foundation plan and proposed finished floor elevation, (III) building plans, including elevation and floor plans, (IV) material plans and specifications, (V) landscaping plans, and

(VI) all other data or information that the Corporation may request pertaining to the improvement or alteration of a Lot or the construction or alteration of an existing residence or other structure or within the Tract.

Member -a Class A or Class B member of the Corporation as defined in the Articles and Bylaws.

Name – originally named Woodgate Homeowners Association, Inc. at the time of creation, the city name, “Carmel”, has been added by the Indiana Secretary of State to eliminate confusion with other subdivisions. The legal name is “Woodgate Homeowners Association of Carmel, Inc.”

Owner - a Person, including Declarant, who at the time has or is acquiring any interest in a Lot, except a person who has or is acquiring such interest merely as security for the performance of an obligation.

Person-an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Plat-the final plat of the Tract recorded in the Office of the Recorder of Hamilton County, Indiana, which is referred to herein as if attached to and made a part thereof.

Reserve for Replacements-a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Areas, at such time as Woodgate Homeowners' Association, Inc., assumes responsibility for said areas.

Residence -any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and out buildings and recreational usual and incidental to the use of single family residential lot as governed by the Amended Woodgate Covenants and Restrictions.

Tract -the land described in Exhibit A and commonly known as Woodgate Subdivision.

A. CONSTRUCTION AND DESIGN

- I. No building shall be erected, placed or altered on any building plot in this subdivision until the building plans, specifications, and plot plan showing the location or such building have been approved as to the conformity and harmony of external design with existing structures herein and as to the building with respect to topography and finished ground elevation, by the developer, owner of the herein described real estate, or by their duly authorized representatives.
- II. If the Developer fails to act upon any plans submitted to it for its approval within a period of fifteen (15) days from the submission date of the same, the owner may proceed

then with the building according to the plans as approved. Neither Developer nor the designated representatives shall be entitled to any compensation for services performed pursuant to this covenant.

- III. All lots in this subdivision are reserved for residential use, and no building other than a one-family residence or structure or facility accessory in the use thereto shall be erected thereon.
- IV. Not more than one building shall be erected or used for residential purposes on any lot in this subdivision.
- V. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall not be less than Twenty-two hundred (2200) square feet in the case of a one story structure, nor less than Fourteen hundred (1400) square feet in the case of a multiple story structure, provided no structure of more than one story shall have less than an aggregate of Twenty-four hundred (2400) square feet of finished and livable floor area. All garages shall be attached to the residence dwelling and be a minimum of two car size.
- VI. No trailer, tent, shack, attached shed, basement, garage, barn, or other out-building or temporary structure shall be used for temporary or permanent residence on any lot in this subdivision. An attached garage, tool shed or detached storage building erected or used as an accessory to an residence in this subdivision shall be of permanent type of construction and conform to the general architecture and appearance of such residence. No swimming pools shall be constructed in areas reserved as easements.
- VII. Front and side yard building setback lines are hereby established as shown on this plat, between which lines and the property lines of the street, there shall be erected or maintained no building or structure.
- VIII. No building structure or accessory building shall be erected closer to the side of any lot than ten (10) feet. Where buildings are erected on more than one single lot this restriction shall apply to the side lines of the extreme boundaries of the multiple lots.
- IX. No structure in this subdivision, without special approval from the Developer shall exceed two and one half (2 1/2) stories or Twenty-five (25) feet in height measured from finished grade to the underside of the eve line, and no structure other than an open porch shall be erected between the building line as designated on the plat and property line of the street.

B. EASEMENTS AND DRAINAGE

- I. There are strips of ground as shown on this plat and marked Drainage and Utility Easement, reserved for the use of public utilities for the installation of water and sewer

mains, poles, ducts, lines and wires, subject at all times to the proper authorities and to the easement herein reserved. No permanent or other structures are to be erected or maintained upon said strips of land, with the exception of the fence or barrier situated within portions of the easement situated along 146th Street, but owners of lots in this subdivision shall take their titles subject to the rights of public utilities and said fence or barrier easement.

- II. Areas shown on this plat and marked as Detention/Retention shall be recorded as drainage easements, reserved for the installation and maintenance of storm sewers structures and subject at all times to proper City and/or County authorities and the easement herein reserved. The areas shall be maintained free of weeds, trash or other obstruction by the homeowner or Homeowner's Association.
- III. In the event storm drainage from any lot flows across another lot, provision shall be made to permit such drainage to continue, without restriction or reduction, across the downstream lot and into the natural drainage channel or course, even though no specific drainage easement for such flow of water is provided.
- IV. Outlets for sump pump water will be provided for each lot in this subdivision by the Developer or home builder at the time of lot development. If during excavation of the foundation for crawl space or basement, ground water is encountered, or if the house location is in an area of high water table (as per Hamilton County Surveyor or City of Carmel), an outlet will be provided directly to a storm sewer or approved open ditch with plastic pipe. The route of outlet will be via platted easements and approved by proper agencies. Where a storm sewer exists on or directly adjacent to a subject lot, all sump pumps shall tie directly to storm sewer via underground pipe. Lots not located in an area of high water table may outlet sump water in the rear yard, no closer than twenty five (25) feet from established lot lines or platted easements.
- V. Construction of any sump pump outlet will commence only when appropriate construction plans have been submitted and approved by the proper agencies and applicable permits issued from the local building authority. Where construction will be in established drainage and/or utility easements, approval must be obtained from City of Carmel or Hamilton County Surveyor. The maintenance of drainage pipes and facilities for discharging sump pumps shall be the responsibility of the individual homeowner and/or a Homeowners' Association.
- VI. Geo-thermal heat pumps shall be of the closed loop type only.

C. PROPERTY AND USAGE RESTRICTIONS

- I. No fence shall be erected in his subdivision between the building lines and the property line of the streets as shown on the within plat, except with the approval of the Developer, or architectural review committee, which fences shall not exceed seventy two 72 inches in height and shall be of a decorative nature. Chain link fences are not permitted. No fences shall be constructed in areas designated for Detention/Retention.
- II. No boat, trailer, or camper of any kind (including but not in limitation thereof, house trailers, camping trailers or boat trailers), or any disabled vehicle shall be kept or parked on any lot except within a garage or other approved structure.
- III. No noxious, unlawful or other offensive activity shall be carried out on any lot in this subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood
- IV. No animals, livestock, or poultry of any description shall be raised, bred or kept on any lot, except dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes.
- V. All lot owners will be required to install, or to have installed, at least one gas or electric "dusk to dawn" yard light in the front yard. All garages opening to the street shall have automatic door controls.
- VI. No lot in this subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, and shall not be kept, except in sanitary containers. Trash shall not be burned, except in suitable incinerators.
- VII. It shall be the duty of the owner of each lot in the subdivision to keep the grass on the lot properly cut and to keep the lot free from weeds and trash and otherwise neat and attractive in appearance. Should any owner fail to do so then the Developer may take such action as it deems appropriate in order to make the lot neat and attractive and the owner shall upon demand reimburse Developer for the expense incurred in so doing

D. ENFORCEMENT AND RIGHTS

- I. Lot owners, upon taking title, agree to waive all rights to oppose future zoning changes and special permits necessary to complete the Master Plan of WOODGATE.
- II. The foregoing covenants (or restrictions) are to run with the land and shall be binding on all parties and persons claiming under them for a period of Twenty-five (25) years from the date of this plat, at which time said covenants, (or restrictions), shall be automatically extended for successive periods of Ten (10) years unless changed by vote of majority of the then owners of the buildings covered by these covenants, or restrictions, in whole or part.

- III. Invalidation of any one of the foregoing covenants or restrictions, by judgment or court order shall in no way affect any of the other covenants or restrictions, which shall remain in full force and effect.
- IV. The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law, of any structure or part thereof erected, or maintained in violation hereof, is hereby dedicated to the public, and reserved to the several owners of the several lots in this subdivision and/or their heirs and assigns.
- V. No owner of any lot shown herein shall have the right to remonstrate against annexation of that lot to the City of Carmel.

AMENDMENTS DUE TO CONSENT DECREE

The Amendments are to be considered additions to the above existing Covenants and Restrictions.

- I. Construction and Design. The Langstons (Declarant/Developer) shall take all necessary steps to cause the Woodgate Lots to be developed as described and depicted in the WOODGATE PLATS, in conformance with the Amended Woodgate Covenants and Restrictions and in such a manner as to maintain conformity and harmony with existing structures, by requiring at a minimum the following:
 - a. All future houses in Woodgate shall be custom houses and not be built by any commercial builders or tract home builders (e.g. including but not limited to the following: Trinity Homes, C.P. Morgan, M/I Homes, Deluxe Homes, Hansen & Horn, etc.).
 - b. All future houses in Woodgate shall have at least three (3) sides of brick wrap on the first floor and all exterior fireplaces must be full brick. The use of gas fireplace inserts that are vented similar to water heaters through the side of a house will not be considered a chimney and thus will be exempt from the brick requirement. Builders may use Drivet or comparable plaster type of product in lieu of brick exterior.
 - c. All future houses in Woodgate shall have a partial basement unless they are built on the following power line lots: 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 90, 91, 104, 108, 110 and 194 (per Plat). All lots built on the aforementioned power line lots shall be built upon crawl spaces or basements, if so desired. No slabs shall be allowed for any houses in the Woodgate subdivision, even on the power line lots described above.
 - d. No houses in Woodgate shall be allowed to use vinyl siding in their construction or future remodeling, but vinyl clad windows shall be allowed so long as said windows match the color of the house and are approved by the architectural control committee.

II. Ownership and Maintenance of Entry Ways, Barrier or Fence and Landscaping Easements.

The entry ways and the fence or barrier situated along 146th Street shall be Common Property as defined herein and shall not be the property of any individual property owner.

The Langstons (Declarant/Developer) shall maintain the Entry Ways and the Landscaping Easements and all improvements and planting thereon, and the Maintenance Costs thereof, until the time the subdivision is complete. After such time the Corporation shall maintain the Entry Ways, the barrier or fence situated along 146th Street and the Landscaping Easements and all improvements and plantings thereon, and the Maintenance Costs thereof. Grass, trees, shrubs and other plantings located on an Entry Way or a Landscaping Easement shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Woodgate or part thereof. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential subdivision.

III. Homeowners Association. The homeowners in Woodgate shall, with the assistance of the Langstons (Declarant/Developer), form a mandatory Homeowner's Association for all current homeowners who agree to be so enjoined and for all future lot/homeowners (including lot/homeowners of lots 141 and 169 of the new subdivision to be constructed by Developer directly west of Woodgate).

IV. Architectural Approval Committee. The Langstons (Developer) shall cause to be created an Architectural Approval Committee. Such Committee shall be entirely controlled by the Langstons (Declarant/Developer) until such time as all of the lots in Woodgate have been sold (at which time the Homeowner's Association shall control the Architectural Approval Committee). Such Architectural Approval Committee shall exercise the right to regulate the external design, appearance, use, location and maintenance of development on the Woodgate lots. Although the Architectural Approval Committee shall, in exercising such right, utilize the criteria set forth herein as minimum requirements for approval, the Committee may where necessary require that such minimum requirements be exceeded in order to maintain conformity and harmony with existing structures of Woodgate.

V. Enforcement and Rights. The Langstons (Declarant/Developer) shall provide within two (2) business days of receipt, to the President of the Homeowner's Association or to his/her designee, a copy of all "Lot Development Plans" for all homes proposed to be built in Woodgate (including lots 141 and 169 of the new subdivision). The Association shall have five (5) business days from actual receipt of such plans to report any objections or comments that the Association may have to the Langstons (Declarant/Developer). If the Association does not provide such objections to Langston (Declarant/Developer), it is to be assumed that the Association has no objection to the proposed plans. The Association shall have no vote on approval of the architectural plans until all lots are sold; however, the association shall be entitled to enforce their rights under the Amended Covenants and restrictions, any recorded covenants *and the Consent Decree entered into as a resolution to the Lis Pendense filed in*

ADDITIONAL AMENDMENTS

These Amendments are to be considered additions to the above Existing Covenants and Restrictions as well as the Amendments Due to Consent Decree.

I. Initial Assessment. The Initial assessment for Operations shall be set at twenty dollars (\$20.00). Such assessment is a one-time initial assessment to defray the cost of organizing and forming the Corporation and to establish the "Reserve for Replacement" fund. This assessment is due from existing homeowners and payable to the Woodgate Homeowners' Association of Carmel, Inc. immediately upon incorporation of the Corporation. The assessment is due from all future homeowners at the time of occupancy.

II. Dues. The annual dues shall initially be set at twenty dollars (\$20.00) per member. All future dues shall be set by resolution of the Board of Directors.

III. Ponds. The Woodgate Homeowners' Association of Carmel, Inc. agrees to subordinate its control over the drainage ponds to the actual property owners (per Woodgate Plat) of the drainage pond real estate and/or their specified Pond Homeowners' Association. The Woodgate Homeowners' Association of Carmel, Inc. realizes that such property is "Private Property" to be maintained, controlled and utilized solely by those property owners of the ponds (as shown in the Woodgate Plat) within the guidelines of the above Woodgate covenants including but not limited to the *EASEMENTS AND DRAINAGE RESTRICTIONS and PROPERTY AND USAGE RESTRICTIONS*. The pond property homeowners shall be solely responsible for any and all liability regarding such property as well as all costs for special maintenance of such property. The Woodgate Homeowners' Association does reserve all rights granted it by the Articles of Incorporation, Bylaws and above Covenants in regards to such property.

IV. 146th Street Fence or Barrier. The entry ways and the fence or barrier situated along 146th Street shall be Common Property as defined herein and shall not be the property of any individual property owner. The maintenance of these structures shall be the responsibility of the Woodgate Homeowners Association of Carmel, Inc. and not any individual property owner.

THIS SPACE INTENTIONALLY BLANK

IN WITNESS WHEREOF, the undersigned Declarant and the Association have executed this Declaration as of the date first above-written.

WOODGATE HOMEOWNERS ASSOCIATION OF CARMEL, INC.

By: _____

L. Craig Stiff, President

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for the State of Indiana, personally appeared L. Craig Stiff who is the President of the Board of Woodgate Homeowners Association of Carmel, Inc. who acknowledged the execution of the foregoing instrument to be a voluntary act and deed within the scope of his/her authority.

Witness my hand and Notarial Seal this 3rd day of January, 2013.
~~2012~~

I am a resident of Marian County
County, Indiana, and my
Commission expires:

July 5, 2020

Signed: _____

Printed: _____

(Notary Public)

Social Security Number Certification (Required by IC 36-2-11-15)

I affirm, under the penalties for perjury, that I have taken reasonable care to reflect each Social Security number in this document, unless required by law.

Peter S. Beering

This instrument was prepared by:
Peter S. Beering, Attorney at Law
P.O. Box 68465, Indianapolis, Indiana 46268
(317)513-4341 Fax (317)569-7670
pbeering@iquest.net

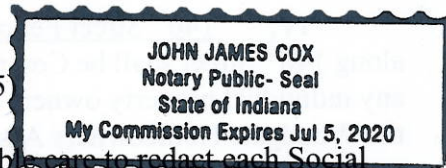


EXHIBIT A

The Annual Meeting was held of the Owners of lots which comprise the Association December 16, 2012. Notice of the meeting was mailed by United States Mail and was transmitted by electronic mail to all owners of record December 5, 2012.

116 of the 143 owners of record appeared in person or by proxy submitted to the Treasurer prior to the meeting. After it was determined that a quorum was present, voting was held on the matter of amending these Covenants pursuant to the provisions contained herein. 91 residents voted in favor of the amending these Covenants, 21 voted against, and 4 abstained. This constitutes a majority as defined herein.

James Laverdiere
James Laverdiere, Secretary WHOAC

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for the State of Indiana, personally appeared James Laverdiere who is the Secretary of the Board of Woodgate Homeowners Association of Carmel, Inc. who acknowledged the execution of the foregoing instrument to be a voluntary act and deed within the scope of his/her authority.

Witness my hand and Notarial Seal this 3rd day of January, 2013.
~~2012.~~

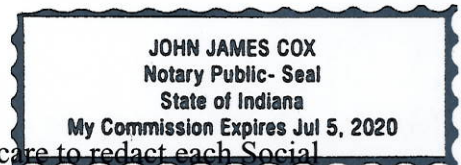
I am a resident of Marian County
County, Indiana, and my
Commission expires:

July 5, 2020

Signed: John James Cox
Printed: John James Cox
(Notary Public)

Social Security Number Certification (Required by IC 36-2-11-15)

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.



Peter S. Beering

The Agent of the State of Indiana, who is authorized to receive and disburse the same, is hereby notified that the same have been deposited in the Treasury of the State of Indiana, and are to be paid to the person or persons entitled to the same, as directed by the Treasurer of the State of Indiana.

I do hereby certify that the same have been deposited in the Treasury of the State of Indiana, and are to be paid to the person or persons entitled to the same, as directed by the Treasurer of the State of Indiana.

John James Cox
Notary Public, State of Indiana

STATE OF INDIANA

1892

COUNTY OF []

I hereby certify that the same have been deposited in the Treasury of the State of Indiana, and are to be paid to the person or persons entitled to the same, as directed by the Treasurer of the State of Indiana.

John James Cox
Notary Public, State of Indiana

John James Cox
Notary Public, State of Indiana

