



FILED

COPY

DECLARATION OF RESTRICTIONS

97-06075

John R. [signature]

THIS DECLARATION made this 30th day of June, 1997 by Persimmon Development, L.L.C. (hereinafter referred to as the "Developer" as the term applies solely to the subdivision to be known as Persimmon Creek and Persimmon Ridge).

WITNESSETH:

WHEREAS, The Persimmon Development, L.L.C. is the owner of the lands contained in the area shown on Exhibit "A". Said Exhibit "A" attached hereto and made a part hereof, which lands will be subdivided and known collectively as Persimmon Creek and Persimmon Ridge (hereinafter referred to as the "Development"), and will be more particularly described on the plats of the various sections referred to recorded and to be recorded in the office of the Recorder of Marion County, Indiana and

WHEREAS, the Developer is about to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions, and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and the future owners thereof;

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held, and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property of any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the Development. The Developer specifically reserves unto itself the right and privilege, prior to the recording of the plat by the Developer of a particular lot or tract within the plat Development as shown on Exhibit "A", to exclude any real estate so shown from the Development, or to include additional real estate.

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1. Definitions. The following are definitions of the terms as they are used in this Declaration:

A. "Committee" shall mean the Persimmon Development Control Committee composed of three members appointed by the Developer who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the Developer. The Developer may, at its sole option, at any time hereafter relinquish to the Association the power to appoint and remove one or more members of the committee.

B. "Association" shall mean the Persimmon Property Owners Association, Inc. a not-for-profit corporation, the membership and powers of which are more fully described in Paragraph 11 of this Declaration.

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C. "Lot" shall mean any parcel of real estate excluding "Blocks", whether residential or otherwise, described by one of the plats of the Development which is recorded in the Office of the Recorder of Marion County, Indiana.

D. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Developer or the Association, by the President or a Vice President thereof, and with respect to the Committee, by two members thereof.

E. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a lot, but excluding those persons having such interest merely as security for the performance of an obligation.

* 2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every lot in the Development, unless it is otherwise designated by the Developer, is a residential lot and shall be used exclusively for single-family residential purposes. No structures shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house and such outbuildings as are usually accessory to dwelling houses.

* B. Residential Use of Accessory Outbuildings Prohibited. No accessory outbuildings shall be erected on any of the residential lots prior to the erection thereon of a single-family dwelling house, and in no event shall any such accessory outbuilding which may be constructed upon a residential lot under these Restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation. Accessory outbuildings must be constructed on a permanent foundation and limited to 120 square feet.

C. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-ways, and also to all governmental zoning authority and regulation affecting the Development.

* 3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of porches, terraces, garages, or accessory buildings shall be as specified in the recorded plats of the various sections of the Development. Basements shall not be included in the computation of the minimum living area.

B. Residential Set-Back Requirements.
(i) In General. Unless otherwise provided in these Restrictions or on the record plat, no dwelling house or above-grade structure shall be constructed or placed on any residential lot in the Development except as provided herein.

(ii) Definitions. "Side line" means a lot boundary line that extends from the road on which a lot abuts to the rear line of said lot. "Rear line" means the lot boundary line that is farthest from, and substantially parallel to, the road on which the lot abuts, except that on corner lots, it may be determined from either abutting road.

* (iii) Front Yards. The front building set-back lines shall be the designated number of feet from the right-of-way of the road upon which the lot abuts as set forth upon the plats of the Development.

* C. Fences and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence must be approved by the Committee as to size, location, height and composition before it may be installed. A lot must have at least two (2) trees of a species acceptable to the Committee growing upon it in the front yard by the time the house is completed.

* D. Driveway. All driveways must be paved with the asphalt or concrete from their point of connection with the abutting street or road.

* E. Heating Plants and Garages. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. Geo-Thermal heat pumps shall be a closed loop system. Every house in the Development must have a two car attached garage.

* F. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within (9) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

* G. Street Numbers. Street numbers shall be uniformly displayed on all homes.

* H. Maintenance of Lots and Improvements. The owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly; and, specifically, such owner shall:

(i) Mow the lot at such times as may be reasonably required in order to prevent unsightly growth of vegetation and noxious weeds.

(ii) Remove all debris or rubbish.

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.

(vi) Cut down and remove dead trees.

(v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

(vi) Within sixty (60) days following completion of a house on a lot, the owner shall landscape the lot, weather permitting.

(vii) Owners of lots which abut or adjoin any detention pond shall be responsible for maintaining any area which is between the lot and the waters edge.

* I. Association's Right to Perform Certain Maintenance. In the event that the owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements

situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual charge to which said lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

* 4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

A. Nuisance. No outside toilets shall be permitted on any lot in the Development (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to enter any storm drain. By purchase of a lot, each owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by the Developer or the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorney's fees, shall become a charge or lien upon the lot, and may be collected in any manner provided bylaw or in equity for collection of a liquidated debt.

Neither the Developer, nor the Association, nor any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement of this paragraph.

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the Marion County Board of Health. No storm water (subsurface or surface) shall be discharged into sanitary sewers.

* 5. INDIVIDUAL YARD LIGHTS REQUIRED ON EACH LOT IN THE DEVELOPMENT.

At the time that the owner of the lot in the Development completes the construction of a home on his lot, he shall install or cause to have installed a dusk to dawn yard light in the front yard of his lot. The design, type and location of the yard light shall be subject to the approval of the Committee which may require, for the purpose of uniformity and appearance, that said yard light be purchased from the Developer or its designee.

* 6. MAILBOXES.

Owners of a lot in the Development shall install or cause to have installed a mailbox which shall be in accordance with the design, type and location of a mailbox approved by the Committee. The Committee may require, for the purpose of uniformity and appearance, that the mailbox be purchased from the Developer or its designee.

* 7. GENERAL PROHIBITIONS.

A. In General. No noxious or offensive activities shall be carried on on any lot in the Development, nor shall anything be done on any said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Development.

*
B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development without the prior written approval of the Committee except for real estate sales signs.

*
C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

*
D. Vehicle Parking. No campers, trailers, boats, or similar vehicles shall be parked on any street or lot in the Development. No boat or truck, one (1) ton or larger in size, shall be parked for overnight or longer storage in any lot in the Development, unless the same shall be parked in such a manner that it is not visible to the occupants of other lots in the Development, or the users of any street in the Development.

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E. Garbage and Other Refuse. No owner of a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in Subparagraph F below. All houses built in the Development shall be equipped with a garbage disposal unit.

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F. Trash Receptacles. Any receptacle for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

*
G. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.

*
H. Temporary Structures. No temporary structure of any kind, such as a house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot without permission to do so from the Developer.

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I. Ditches and Swales. It shall be the duty of the owner on every lot in the Development on which any part of such open storm drainage ditch or swale is situated to keep continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection. All owners shall be responsible to maintain the grading of their respective lots as defined by the Persimmon construction plans as prepared by the Persimmon Engineering and approved by the City of Lawrence. Any accumulation of silt or change in grading caused by sump-pump discharge, downspout run-off, general drainage or the dispersal of excavation spoilage which creates standing water or an improper drainage condition shall be the responsibility of the property owner to remove and correct.

J. Utility Services. No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring and shall require the approval of the City of Lawrence.

K. Wells and Septic Tanks. No water wells shall be drilled on any of the lots nor shall any septic tanks be installed on any of the lots in the Development, without the approval of the Committee.