



# **DAVID BRENTON'S TEAM**

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## **RE/MAX Select, REALTORS**

**48 N Emerson Ave Suite 600 Greenwood, IN 46143-8895**

**(317) 882-7210 Office • (317) 888-7201 Fax**

**[www.move2indy.com](http://www.move2indy.com)**

The covenants provided may or may not include any amendments made due to governing agencies (ie: national, state, city, local and neighborhood agencies). Please contact the Recorder's office for the county where the property is located to receive updated information.

**The information is deemed reliable, but not guaranteed.**

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RECEIVED  
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DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
FISHERS POINTE

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SHARON K. CHERRY  
RECORDER  
HAMILTON CO. IN

THIS DECLARATION made this 17TH day of December 1993, by Bay Communities Limited Partnership, an Indiana limited partnership (hereinafter referred to as "Developer"),

WITNESSETH:

WHEREAS, Developer is the owner of all of the lands contained in the area shown on Exhibit A, page 1, attached hereto and made a part hereof, which lands will be subdivided and known as "Fishers Pointe" (hereinafter referred to as the "Development"), and will be more particularly described in the plats thereof to be recorded in the office of the Recorder of Hamilton County, Indiana; and

WHEREAS, 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 covenants and restrictions and charges under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and future home owners thereof.

NOW, THEREFORE, 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 covenants and 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 covenants and restrictions shall run with the land and shall be binding upon Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Developer's successors in title to any real estate in the Development.

1. Drainage and Utility Easements. There are strips of ground as shown on the plat marked Drainage and/or Utility Esmt. ("DU&SE") which are hereby reserved for the use of public utilities, including cable TV companies and sanitary sewer, but not including transportation companies, for the installation and maintenance of poles, mains, ducts, drains, lines, cables and wires, subject at all times to the proper authorities and to the easements herein granted and reserved, and such other further

public service facilities as the undersigned owner of record may deem necessary along, through, in, over and under the strips of land shown on this plat.

2. Building and Grounds Maintenance. The owner or party in possession of each lot in the Development shall conform to the following standards:

- a) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- b) Remove all debris or rubbish;
- c) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development;
- d) Cut down and remove dead trees;
- e) Where applicable, prevent debris and foreign material from entering drainage areas;
- f) Keep the exterior of all improvements in such a state of repair and maintenance as to avoid their becoming unsightly or detracting from the value of the general neighborhood;
- g) Regularly treat or cause to be treated the lawn areas against weed and insect infestation;
- h) Not allow hazardous materials to enter storm sewer.

In the event that any owner of a lot shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the property owners' association, the Declarant or the owner or owners of any lot in the immediate neighborhood shall have the right, but not the obligation, by and through its agents and employees of 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 improvement situated thereon, if any, conform to the requirements of these Restrictions. The cost thereof shall be an expense of the lot owner, and such lot owner shall have a lien against said lot for the expense thereof, including court costs and reasonable attorney fees. Neither the Declarant, nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

3. Setback Lines. Building setback lines ("BL") shall be established on the plat excepting front building lines as established by any plat are to be modified pursuant to Variance 5-V-93 granted by the Town of Fishers Board of Zoning Appeals to

provide that not more than sixty-five percent (65%) of the dwellings shall have front building lines of twenty feet (20') to twenty-five feet (25') and the remainder shall have front building lines of twenty-five feet (25') or more. In the event a building is erected on more than one single lot, this restriction shall apply to the side lines of the extreme boundary of the multiple lots. In the event of a discrepancy between this Declaration and a recorded plat, this Declaration shall control.

4. Use Restrictions. All lots in this subdivision shall be known and designated as residential lots. No business buildings shall be erected on said lots and no business may be conducted on any part thereof. No structure shall be erected, altered, placed or permitted to remain on any residential lot herein, other than one detached single family dwelling, one story or multi-storied, not to exceed thirty-five feet (35') in height and permanently attached residential accessory buildings. Any attached or detached garage, tool shed, storage building or any other accessory building erected or used as an accessory to a residence shall be of a permanent type of construction and shall conform to the general architecture and appearance of such residence.

5. Lake, Landscaped and Retention Areas. There may be Blocks of land reciting the acreage therein and containing Common Areas, a lake, landscaped areas and islands in the plats, which Blocks shall be conveyed by the Developer to an association of property owners within the Development as hereinafter provided for. Such lake and drainage easements thereto shall become a part of the storm water drainage system of Fishers Pointe. No lot owner or other person, firm or corporation shall alter, impair or impede the drainage system and all lot owners shall be subject to regulation by the public authority having jurisdiction and the property owners association as hereinafter set forth.

The association of owners, as hereinafter described, shall own such Blocks designated lake and landscaped areas ("LA") and, through its bylaws and regulations, control the water quality and condition of such lake and the utilization of such lake for recreational purposes providing such utilization does not result in trespass on residential lots adjacent thereto or otherwise impair the privacy and enjoyment of homes and their residents adjacent to such areas. Landscaped areas ("LA") shall be regularly planted and maintained by the association for the beautification of Fishers Pointe.

The enjoyment of the lake located within the Development is limited to the lot owners to which such lake abuts. No wading, swimming, fishing, boating, rafting, floating or ice skating shall be permitted and no decks, docks or structures or equipment of any type, temporary or permanent, except fountains and related equipment may be permitted.

Common Areas for landscaping and recreation shall be owned, controlled and maintained in the same manner as the lake.

6. Property Owners Association. A property owners association is or shall be created named Fishers Pointe, Inc. (the "Association"), an Indiana not-for-profit corporation, prior to the sale of the first lot in a Fishers Pointe platted addition.

7. Power of Assessment and Collection. 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, including the power to levy a uniform annual assessment against the lots within the Development as set forth herein and in the bylaws of the association, attached hereto.

8. Membership and Voting Rights. Every owner of a lot shall be a member of the association. For purposes of determining classes of membership, a Class A member shall be the owner of any conveyed lot containing a home thereon, and a Class B member shall be the owner of any undeveloped platted lot, and each reference to a lot in this Declaration shall be deemed to be a conveyed lot, containing a home or an unconveyed, platted or unplatted, lot, respectively, as more particularly set forth as follows. The association shall have two (2) classes of membership:

8.1 Class A. Every person, group of persons or entity, other than the Developer, who is a record owner of a fee interest in any improved lot shall, by this Declaration, be subject to assessment by the association and shall be classified as a Class A member; provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a member. A Class A membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. Class A members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any lot, then the vote for the membership appurtenant to such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot. In the event agreement is not reached, the vote attributable to such lot shall not be cast.

8.2 Class B. The Class B members shall be the Developer and shall be entitled to three (3) votes for each platted Lot owned. For purposes of determining voting rights and duties, it shall be assumed there is a total of one hundred thirteen (113) platted and unplatted lots within the Development and Developer shall have the automatic right to plat and record,

not to contain in excess of one hundred thirteen (113) homes, without the consent or approval of the association or any other person, firm or corporation. The Class B membership shall cease and be converted to a Class A membership on the happening of either of the following events, whichever occurs earlier: whenever the total votes outstanding of Class A membership equals eighty-five (85) or seven (7) years from the date of recording the Final Plat of Fishers Pointe, in the event all the lots have not been conveyed to owners or the Class B memberships have not been surrendered by the then holders thereof for cancellation on the books of the association. Class B memberships existing, if any, at time of cancellation, shall automatically become Class A memberships excepting such Class A memberships shall not be subject to assessment or the lien of assessment until a home is constructed thereon.

9. Covenant Accepting Assessments. Each owner of any lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as provided in the bylaws of the association.

10. Commencement of Assessments. The annual assessments shall commence as to all lots with homes thereon on the first day of the month following the initial conveyance of a home on the lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year and thereafter until the board of directors fixes the permanent annual assessment date. The board of directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Annual assessments may be made payable at more frequent periods than one (1) year by resolution of the board of directors of the association.

11. Exception to Assessments. The Developer, as owner of platted or unplatted lots, shall be exempt from any and all assessments but Developer shall pay any deficits in usual or ordinary expense until such time as assessments upon lots with homes thereon is sufficient to meet such expense.

12. Uniform Rates. Both annual and special assessments shall be fixed at a uniform rate for all lots containing a home.

13. Right To Increase Annual Assessments. Because of uncertainties in usual and ordinary common property expenses due to the Indiana real property reassessment, costs of energy, insurance, maintenance and landscaping costs and other unforeseeable operating expenses, the board of directors of the association may increase the budgeted initial temporary assessment by a sum not to exceed ten percent (10%) per annum without vote of the membership. However, any such increases shall be documented by

normal accounting procedures and distributed to the membership to demonstrate that such increases are attributable to increases in operating expenses and no portion of such increase shall inure to the benefit of the Developer and the monies received shall be entirely expended on association expense.

The maximum annual assessment per lot may be increased above the maximum percentage set forth above only by a vote of two-thirds (2/3rds) of the Class A members who are voting in person or by proxy, at a meeting duly called for this purpose.

14. Liens, Charges and Subordination. Any charge levied or assessed against any lot, together with interest and other charges and costs hereinafter provided, shall become and remain a lien upon that lot until paid in full, subordinate only to the lien of a first mortgage, and shall also be a personal obligation of the owner or owners of the lot at the time the charge fell due. Such charge shall bear interest as a late charge at a rate of one and one-half per cent (1-1/2%) per month until paid in full. If, in the opinion of the board of directors of the association, such charge has remained due and payable for an unreasonably long period of time, the board may, on behalf of the association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction.

The owner of the lot or lots subject to the charge shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay the expense or costs, including reasonable attorney's fees, incurred by the association in collecting same. Every owner of lot in the subdivision and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the subdivision is hereby notified that by the act of acquiring such title, such person shall be conclusively held to have covenanted to pay the association all charges that the association shall make pursuant to these covenants and restrictions.

The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

The association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the association that the assessments on a specified lot have been paid or that

certain assessments against said lot remain unpaid, as the case may be. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. The charges or assessments levied by the association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the association, and for the improvement and maintenance of the properties owned or operated by the association.

15. Suspension of Privileges. Notwithstanding any other provision contained herein or in the bylaws, the board of directors of the association shall have the right to suspend the voting rights, if any, and the right to use the facilities of the Association of any member or associate member (i) for any period during which any of the association's charges owed by the member or associate member remains unpaid; (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the board of directors of the association; and (iii) during the period of any violation of the Articles of Incorporation, bylaws or regulations of the association.

16. Mortgagees Rights. Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned) or the Class A members have given their prior written approval, the Association shall not:

16.1 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Development, common property or improvements located thereon which are owned directly or indirectly by the association for the benefit of the lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Development by the association shall not be deemed a transfer within the meaning of this clause.

16.2 Change the method of determining the obligations, assessments, dues or other charges which may be levied against a homeowner.

16.3 By act or omission, change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior appearance of the homes on lots, the exterior maintenance of the dwellings on lots, the maintenance of common fences or common driveways or the upkeep of lawns and plantings in the Development.

16.4 Fail to maintain fire and extended coverage insurance on insurable common property on current replacement cost basis in an amount not less than one hundred percent of the insurance value (based on current replacement cost).

16.5 Use hazard insurance proceeds for losses to common property for other than the repair, replacement or reconstruction of such improvements.

16.6 Mortgagees, their successors or assigns, shall have the right to examine the books and records of the association.

16.7 First mortgagees of homes on lots may, jointly or singly, pay the taxes or other charges which are in default and which may or have become a charge against any common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such common property, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the association.

16.8 No provision of the constituent documents shall give an owner or any other party priority over any rights of first mortgagees of homes within the Development pursuant to their mortgages in the case of a distribution to homeowners of insurance proceeds or condemnation awards for losses to or a taking of common property.

17. Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence, except that used by developer or builder during construction on the property.

18. Nuisances. No farm animals, fowls or domestic animals maintained for food or for commercial purposes shall be kept or permitted on any lot or lots in the subdivision. No noxious, unlawful or otherwise 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.

19. Architectural Control. There shall be created an architectural control committee (the "Committee") initially composed of the Developer or its designees until ninety per cent (90%) of the total lots within Development are developed at which time the association, from among its members, shall appoint three (3) persons as the Committee. However, the Developer shall have sole right to approve plans for original construction on any lot and the Committee shall regulate reconstruction, remodeling, additions and other construction or alteration upon the lots.

The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the vegetation and topography.

19.1 Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the subdivision without the prior approval of the

Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner or builder for the owner of the lot requesting authorization by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn on a scale of 1/4" = 1" and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require.

19.2 Sight Visibility. Regardless of Committee approval, no fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines or, in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

19.3 Fences, Walls and Screening. It is the goal of the Committee to keep all fencing or screening as harmonious as possible with the architectural character of the Development. Undue obstruction of view of other amenities from adjoining properties will be taken into consideration by the Committee when reviewing fences for approval. Fences shall not be nearer to the front of a home than the rear foundation line of a home except decorative fences. With Committee approval, front fences may be placed parallel to the front foundation of a home only if they do not cause unreasonable visual barriers and they are of identical materials as the main structure.

The Committee will discourage fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other lot Owners. Approved fencing may be privately installed but must be constructed to professional levels of quality. Nonprofessionally installed

fences will be inspected by the Committee after completion in order to insure that the final product is of a professional quality and final approval of the fence shall be deemed withheld until successful completion of this final review. All fences or screens will be submitted to the Committee for approval.

19.4 Height Restriction. The Developer is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the Development is damaged by the proliferation of fences of excessive height.

The Committee, therefore, may approve rear perimeter fences up to four (4) feet in height which otherwise meet these guidelines. The Committee will give consideration to a deviation in their height limit where the rear line of the lot abuts a major arterial roadway or other clearly unique circumstance exists. The use of six (6) foot fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio area may be permitted. The guidelines for specific fence height restrictions are as follows:

a) Property fencing and walls above grade shall not exceed four (4) feet above grade unless otherwise approved by the Committee.

b) The Committee will not ordinarily approve a proposed fence which exceeds four (4) feet in height unless the rear line of that lot abuts a major arterial roadway or offers some other circumstances clearly unique to that lot.

c) Patio screens/privacy fences shall not exceed six (6) feet in height except for pools and other recreational fences as provided herein.

19.5 Power of Disapproval. The Committee may refuse to grant permission to construct, place or make any requested improvement when:

a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these restrictions.

b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures.

c) The proposed improvement or any part thereof would, in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of other owners.

19.6 Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of the submitted material shall be retained by the Committee, or copies thereof in a reduced form, for its permanent files and the second copy returned to applicant. All notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

19.7 Liability of Committee. Neither the Committee, any agent thereof nor the Developer shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make any representation or warranty as to suitability or advisability of design, engineering, method of construction or the materials to be used.

20. Size of Dwellings. Single family detached dwellings shall have the following minimum living area standards exclusive of garages, patios and open porches or breezeways:

- a) 1200 sq. ft. for one story dwellings; and
- b) 1600 sq. ft. for multi-storied dwellings.

21. Exterior Construction. Single family detached dwellings shall conform to the following restrictions:

a) The finished exterior of every building constructed or placed on any lot may be of aluminum siding, vinyl siding, rollbrock siding or any other similar artificial material. Provided, however, before application of material other than brick, stone or wood, all exterior and veneer plus roof materials will be submitted and approved.

b) No heat pumps, air conditioning units or gas meters will be installed in or on the front of a dwellings.

c) If storm doors or windows are installed, they must be painted. No unfinished aluminum windows or doors will be allowed.

d) All gutters and downspouts other than copper will be painted.

e) All roof and fireplace flashing other than copper will be painted.

f) All metal roof or range vents will be painted to blend with roof color. Every effort should be made to locate such vents to the rear of the dwelling.

g) All basement and crawl space sump pumps must discharge into retention ponds or six (6) inch surface drains must be provided at the rear of each lot or along the curb.

h) Every effort should be made to locate all plumbing vent stacks to rear of home.

22. Driveways and Sidewalks. All driveways shall be paved simultaneously with construction of the dwellings and the type of construction and materials must first be approved by the Committee. No carports shall be erected on any lot. Sidewalks and two foot (2') greenbelt between sidewalks and curbs shall be maintained by the association, but cleaning and snow removal shall be the obligation of the lot owners.

23. Mailboxes and Lights. All mailboxes shall be in accordance with the standards set forth by the Committee and shall be installed by the builder simultaneously with the construction of the dwelling. All homes shall have a garage light on the exterior of the home or lawn which will operate by photocell or similar device from dusk to dawn.

24. Signs. Except for marketing and permanent signs that the developer may place at the project entrance or entrances, no sign of any kind shall be displayed to the public view on any lot except that one sign of not more than 6 sq. ft. may be displayed at any time for the purpose of advertising the property for sale or rent, or may be displayed by a builder to advertise the property during construction and sale.

25. Garbage and Refuse Disposal. No lot shall be used or maintained as dumping ground for trash. Rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any lot in public view.

26. Storage Tanks. Any gas or oil storage tanks used in connection with a lot shall be either buried or located in a garage or house so that they are completely concealed from view.

27. Swimming Pools. Only permanent inground pools with professional construction will be permitted. All backyard pools should be oriented to minimize the potential effect on neighboring lots. All fencing shall conform to county or municipal regulations and shall be of harmonious design. The use of plantings/screenings in the vicinity of the pool will be required to soften the visual and sound effect on adjacent properties.

28. Enforcement of Restrictions. In the event there shall be any violation or attempted violation of any of these restrictions, it shall be lawful for the undersigned, the association, or for any person owning any real property in this subdivision, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such restrictions, and either to prevent him or them from doing so or to recover damages from such violation, but neither the Developer nor the association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these covenants and restrictions.

No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these covenants and restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these covenants and restrictions.

29. General Provisions. The foregoing restrictions may be amended at any time by the owners of at least two-thirds of the owners of lots subject to such restrictions. Provided, however, that until all of the lots are sold in this subdivision by the undersigned, any such amendment of these restrictions shall require prior written approval of the undersigned. Each such amendment must be evidenced by a written instrument, signed and acknowledged by the owner or owners concurring therein, setting forth facts sufficient to indicate compliance with this paragraph and recorded in the Hamilton County Recorder's Office.

30. Effect of Becoming an Owner. The owners of any lot subject to these covenants and restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every covenants, restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of Developer with respect to these covenants and restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with Developer and to and with the owners and subsequent owners of each of the lots affected by these covenants and restrictions to keep, observe, comply with and perform such covenants, restrictions and agreements.

31. Titles. The underlined titles preceding the various paragraphs and subparagraphs of the covenants and restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the

covenants and restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

32. Severability. Every one of the covenants and restrictions is hereby declared to be independent of, and severable from, the rest of the covenants and restrictions and of and from every other one of the covenants and restrictions, and of and from every combination of the covenants and restrictions.

Therefore, if any of the covenants or restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the covenants and restrictions.

IN TESTIMONY WHEREOF, witness the signature of Declarant this 17TH day of December, 1993.

Bay Communities Limited Partnership,  
an Indiana limited partnership

By Bay Communities, Inc., an  
Indiana corporation, its sole  
General Partner

By Miriam R. Sklare  
Miriam R. Sklare, Secretary

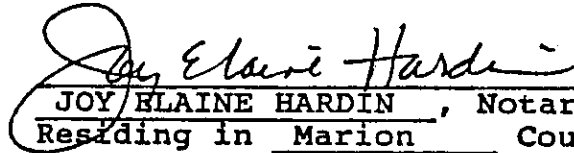
By Bruce T. Sklare  
Bruce T. Sklare, Vice President

STATE OF INDIANA )  
 )SS  
COUNTY OF MARION )

Before me, a Notary Public in and for County and State, personally appeared Bay Communities Limited Partnership, an Indiana limited partnership, by Bay Communities, Inc., an Indiana corporation, its sole General Partner, by Bruce T. Sklare and Miriam R. Sklare, known to me to be the President and Secretary of Bay Communities, Inc., who acknowledged execution of the foregoing Declaration of Covenants and Restrictions of Fishers Pointe for and on behalf of said Corporation, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and notarial seal this 17th day of December, 1993.

My commission expires:  
April 24, 1995

  
JOY ELAINE HARDIN, Notary Public  
Residing in Marion County, IN.

This instrument prepared by William F. LeMond, IN Attorney No. 8761-49, 801 Union Federal Building, Indianapolis, IN 46204-3180.

file 4197  
code FISH.1-8

EXHIBIT A

Part of the Northeast Quarter of Section 1, Township 17 North, Range 4 East, Hamilton County, Indiana, being described as follows:

Commencing at the brass plug with cut "x" at the northwest corner of said northeast quarter section; thence on an assumed bearing of South 89 degrees 59 minutes 19 seconds East along the north line of said northeast quarter section a distance of 1377.35 feet; thence South 00 degrees 00 minutes 41 West perpendicular to said north line a distance of 505.00 feet; thence South 89 degrees 59 minutes 19 seconds East parallel with said north line a distance of 257.57 feet to the westerly 40 feet right of way line of the Norfolk and Western Railroad; thence South 27 degrees 42 minutes 31 seconds West along said right of way line a distance of 1542.00 feet to a 5/8" rebar with cap marked "Schneider Eng Firm 0001" and the Beginning Point; thence continuing South 27 degrees 42 minutes 31 seconds West along said right of way line a distance of 1039.97 feet to a 5/8" rebar with cap marked "Schneider Eng Firm 0001" on the south line of said northeast quarter section, being also the north line of Berkley Grove Section 2, a subdivision in Hamilton County, Indiana, the plat of which is recorded as Instrument No. 8922400 in the Hamilton County Recorder Office; thence South 88 degrees 40 minutes 10 seconds West along said south section line and along said north line of Berkley Grove a distance of 454.71 feet to a 5/8" rebar with cap marked "Schneider Eng Firm 0001" at the southwest corner of said northeast quarter section, being also the southeast corner of Burberry Place Section 3, a subdivision in Hamilton County, Indiana (Instrument No. 9017035); thence North 00 degrees 24 minutes 56 seconds East along the west line of said northeast quarter section, along the east line of said Burberry Place Section 3 and along the east line of Charleston Crossing Section 4, a subdivision in Hamilton County, Indiana (Instrument No. 8912292) a distance of 1697.57 feet (1/2" rebar 0.1 feet north and 0.3 feet east of corner); thence North 86 degrees 30 minutes 38 seconds East a distance of 632.89 feet to the centerline of Fishers Pointe Boulevard right of way per Instrument No. 9134433 (the next three described courses along said centerline); thence South 04 degrees 21 minutes 51 seconds East a distance of 568.77 feet to a curve having a radius of 200.00 feet, the radius point of which bears North 85 degrees 37 minutes 25 seconds East; thence southeasterly along said curve an arc distance of 202.16 feet to a point which bears South 27 degrees 42 minutes 31 seconds West from said radius point; thence South 62 degrees 17 minutes 29 seconds East a distance of 163.12 feet to the Beginning Point. Containing 27.094 acres, more or less.