

DECLARATION OF COVENANTS AND RESTRICTIONS  
OF THE FIRST SUBDIVISION  
OF CHRISTMAS LAKE VILLAGE

MARCH 15, 2001

W/2007 AMENDMENT

AMENDMENT RECORDED 12/10/07  
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OFFICE OF THE RECORDER OF SPENCER COUNTY

MODIFICATION OF COVENANTS AND RESTRICTIONS FOR  
FIRST (1st) SUBDIVISION OF CHRISTMAS LAKE VILLAGE

THIS AGREEMENT entered into as of the 15TH day of MARCH, 2001, by and among the undersigned lot owners of the First (1st) Subdivision of Christmas Lake Village (hereinafter "Subdivision"), and which lot owners are hereinafter referred to as "Lot Owners", WITNESSETH THAT:

WHEREAS, the subdivision has been heretofore platted and subdivided into lots and which plat (hereinafter "Plat") is recorded in Town Plat Book 1, page 79, in the office of the Recorder of Spencer County, Indiana; and

WHEREAS, the undersigned lot owner(s) are owners of Lot(s) No. 7, 11, 13, 15, 16, 17, 20, 22, 23, 25, 26, 27, 28, 29, 31, 35, 36, 37, 38A, 41, 42, 43, 44, 45, 46, 49, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 71, 72, 73, 74, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 99, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 113, 114, 119, 120, 121, 122, 126, 127, 128, 134, 137, 138, 139, 141, 142, 143, 144, 145, 146, 147, 151, 153, 154, 155, 156, 157, 158A, 163, 164, 166, 167, 168, 169, 170, 171, 172, 174, 175, 177, 181, 182, 183, 184, 185, 186, 187, 188 in the First Subdivision of Christmas Lake Village.

WHEREAS, the undersigned Lot Owners desire to amend the covenants and restrictions for the Subdivision which have been heretofore recorded on the 1st day of August, 1966, in the office of the Recorder of Spencer County, Indiana, and impose certain other restrictions and covenants upon the respective lots and lands, all as more particularly hereinafter described.

WHEREAS, the undersigned lot owner(s), by their execution of this instrument, wish to evidence their intent to be bound by the restrictions and covenants more particularly described herein.

WHEREAS, the lot owners requested the Christmas Lake Properties Association, Inc. ("Association"), which owns certain properties in the subdivision, to accept these covenants, and the Association refused to accept these covenants by action of the Board of Directors of the Association on May 10, 2001.

NOW, THEREFORE, the undersigned Lot Owners, for and in consideration of the mutual promises made by the parties in this instrument and for other good and valuable consideration, the receipt and sufficiency of which is

acknowledged, do hereby amend the restrictions and covenants and impose the following restrictions and covenants upon their respective lots and lands, which restrictions and covenants shall be covenants running with the title to the respective lots and lands, as follows:

1. LAND USE. All lots shall be used for residential purposes unless designated for other use on said plat. No residential lot shall have more than one (1) single-family residence erected thereon. No temporary or mobileliving facility shall be used on any residential lot at any time. No lot owner shall erect a residence or any other building for the purpose of realizing rental income therefrom. The first structure to be erected or assembled on any residential lot shall be a residence.

2. SUBDIVIDING LOTS. No residential lot or lots shall be re-subdivided by the owner or owners thereof for the purpose of creating two (2) or more residential lots.

3. WATER COURSES. No natural water or drainage course shall be altered without the prior approval of the Association.

4. STREETS AND EASEMENTS. All streets shown on the plat shall remain the property of the Association; and the use thereof is hereby reserved for the owners of said lots as private ways for the exclusive use, benefit and convenience of the owners, their successors and assigns. It is not intended to make the streets public thoroughfares, but to retain exclusive use thereof for the benefit of the owners of the lots and their invitees as herein provided. However, the Association shall have the right to grant any of its interest in and to any or all streets, easements, parks and lakes to the Town of Santa Claus, Indiana, (hereinafter "Town") or to Spencer County, Indiana (hereinafter "County"). Which said grant shall be made subject to the covenants and restrictions of this subdivision. Easements and rights of way are hereby expressly reserved by the Association for the construction and maintenance of sewers, drains, pipelines for supplying gas, water and heat and the erection, construction and maintenance of TV cable, telephone and electrical lines, poles, wires, conduits and necessary attachments, and for other services and quasi-public purposes in, on, along, over, through, across or under all parks, parkways, roads, streets and between the building setback line and the property lines along the front, side and rear lot lines. The right is reserved to suspend or maintain, at a reasonable height over any lot, along lot lines or over any park or streets, wires from telephone or electrical power line poles and to trim or cut trees as necessary. The right is reserved to enter upon said easements or rights-of-way for any purpose for which said easements or rights-of-ways are created or reserved; provided however, that the premises shall be left in the same general condition as when entered upon.

Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot, and all improvements in it, shall be

maintained continuously by the owner of the lot except for those improvements for which a public authority or utility company is responsible.

5. ARCHITECTURAL CONTROL. No building, fence, wall or other structure shall be erected, placed or altered on any lot until the construction plans and specifications, and a plan showing the location of the same, have been approved by the Board of Directors of the Association, or its designee, ("Board"). In the event said Association, or its designated representatives, fail to approve or disapprove such designs and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The plans and specifications submitted to the Board must include: (a) the nature, kind, shape and size of the structure; (b) the materials to be used and the exact location and placement of the structure; (c) renderings of the front, rear and side elevations of the structure; (d) proposed grading, landscaping and fencing, if any; (e) the approximate cost of the improvements; (f) commencement and completion dates; and (g) such other information as shall be reasonably requested by the Board.

The Board may approve or disapprove a plan based solely on the subjective aesthetic considerations and the harmony of external design of the proposed structure and other planned improvements in the subdivision are the sole and absolute discretion of the Board and under no circumstances will the Board or any of its members be responsible to the Lot Owner submitting the plans or to any other lot owner for any direct, indirect or consequential damages that any such lot owner may allege may have been caused in whole or in part by a decision of the Board. All Lot Owners acknowledge that the decisions of the Board will be based upon subjective standards of appearance and aesthetics and that the opinions of the members of the Board must of necessity be subjective. All Lot Owners release the Association and the Board from any claim or liability based upon decisions made by the Board in enforcing or failing to enforce the provisions of these restrictions.

All federal, state and local permits must be obtained prior to construction.

The Association, or its designee, reserves the right to make on-site inspection of any or all structures during the construction period. If the construction standards as to size and material are at variance with the approved plans and specifications in any respect, the Association may, at its option, halt construction of the structure until the same meets the approved plans and specifications.

Notwithstanding the foregoing powers of the Board, any decision of the Board based upon the Board and its members' "subjective aesthetic considerations" and not a violation of any other covenant of this Subdivision, may be overturned and plans may be approved by the Lot Owners' obtaining written approval of such plans and aesthetics by the owners of all lots contiguous with the Lot Owners' property on which the plan is to be implemented and completed.

6. BUILDING LOCATION. No dwelling or accessory building shall be located on any lot nearer to the lot line than the minimum, building setback line shown on the recorded plat, or nearer than ten (10) feet to the interior lot line, except that attached garages, carports or open porches may extend within five (5) feet of the interior lot line.

7. VIEW OBSTRUCTION. No structure, fence, wall, hedge, tree, shrub or other planting which creates a safety hazard by obstructing the view of traffic or detracts from the overall appearance of the subdivision shall be permitted between the building setback lines and street property lines.

8. DWELLING SIZES. No dwelling shall be permitted with a living area of less than the square footage as set out below in any zone designated on any recorded plat of the subdivision. The square footage set out below shall be exclusive of open porches, patios, balconies, carports, garages and basements; and a dwelling with any entire side of the lower level exposed and completely finished for living area, shall be deemed to be a two story dwelling.

one-story dwelling 1,200 square feet

two-story dwelling 1,800 square feet

Notwithstanding the foregoing, any dwelling unit which has already been constructed, but which does not comply with these requirements, shall be exempted from the square footage requirements of this paragraph.

9. CONSTRUCTION. Within five (5) months from the commencement of construction of an approved residence, the residence must be completed and the exterior finished. Within nine (9) months from the commencement of construction, said residence must be completed and the site finish graded and reasonably landscaped. Each owner shall require his builder or contractor to confine all building materials, equipment and excavated soil within the boundaries of the owner's lot and to exercise good erosion control practices. All streets shall be kept free of transported soil. The job site and street in front of the lot shall be kept clean, undamaged and free of debris at all times.

Within a reasonable time after the completion of construction, the lot shall be graded, seeded and mulched and a good turf shall be established and thereafter maintained.

10. HEATING AND COOKING SYSTEM. Heating systems shall be limited to the use of electricity or gas, with the exception of fireplace fuel which may be gas, electricity or non-impregnated wood. Cooking appliances and water heaters installed within the residential structure shall use gas or electricity.

11. WATER AND SEWAGE SYSTEM. No individual water supply system or sewage system shall be permitted on any lot, and piping water from the lakes to the residential lots is prohibited. The water and sewage disposal systems constructed by Santa Claus Land, Inc., and /or the Town, shall be the only means of water supply and sewage disposal. A water tap in fee and sewage fee may be assessed by and payable to the Town. It will be

effective the date these modifications of covenants and restrictions shall become effective. In no case will these fees be retroactive.

12. GARBAGE AND REFUSE DISPOSAL. All homes shall be equipped with electric food waste disposals. No lot shall be used or maintained as a dumping ground for rubbish, nor may garbage or rubbish be buried on such lots. Rubbish, garbage and other waste shall be kept in sanitary containers concealed from the streets, parks and fairways and in such manner as to avoid an unsightly appearance until removed from the premises by an authorized garbage and rubbish removal service or the lot owner. All equipment for the storage or disposal of garbage and rubbish shall be kept in a clean and sanitary condition at all times. Burning of trash, leaves or other refuse is prohibited.

13. AIR-CONDITIONING UNITS. No air-conditioning unit, or part thereof, shall be mounted or installed on the street side, lake side, fairway or park side of a dwelling, unless prior approval of the Association has been obtained.

**“14. MAINTENANCE AND SERVICE ASSESSMENT.** The Association may assess and collect fees and assessments for maintenance of the facilities and provisions of services within the confines of Christmas Lake Village residential area, including, without limitation, dams, roads, streets, boat docks, parks, security guards and other equipment and services maintained for the health, welfare and enjoyment of the property owners and their guests, as follows:

a) For each lot in the Subdivision still owned by the original lot owner(s), an amount not to exceed \$126.00 for the year 2008 assessment (which shall be due and payable on January 1, 2008). “Original lot owners” are defined as those persons that purchased a lot or lots in the Subdivision directly from Santa Claus Land Properties and still own such lot or lots. The affected lots and original lot owners are as follows:

Lot #	Names (Title Holders)
01-002	William H. and H. Kaye Villenes
01-011	Leonard & Diane Turner
01-054	Ulis Jones
01-083-1	William & Mae Risley and Grace Hedinger
01-098	John B. & Sarah F. Butts
01-099	Robert E. & Mary S. Lorimer
01-125	Matthew & Sherry Beebe
01-130	Vernon T. & Sue Eileen Jacques
01-137	Dale W. & Margaret C. Drake
01-147	Boyd & Dorothy K. Kline
01-168	Charles W. & Bette C. Rice

01-170	John C. & Sharon E. Behrman
01-171-1	N. Kent & Stanley W. Robinson
01-173	Allen W. & Natalie H. Grubb
01-174	Hugo Jr. & Patty Steinkamp
01-175	David G. & Jane A. Gerkin
01-177	Robert Junk
01-180	Jack R. & Imogene Burlison

Lots in the preceding list that change ownership and/or for which title is transferred (excluding only a transfer to a spouse) at any time hereafter, shall no longer be subject to the provisions applicable to original lot owners and will instead be subject to the provisions of subsection (b) below, effective at the time of the ownership change and/or title transfer and at all times thereafter.

These provisions for original lot owners shall be continuous in perpetuity and shall be included in any future Covenants and Restrictions governing Subdivision lot owners.

(b) For each lot in the Subdivision not owned by an original lot owner, an amount equal to \$250 for the year 2008 assessment (which shall be due and payable on January 1, 2008), and an amount equal to the amount assessed each lot in subdivisions 2 thru 12 for each year thereafter.

The maximum amount of annual assessment for all Subdivision lots shall be subject to review and change by the Board of Directors of the Association beginning January 1, 2009, and each year thereafter, provided, at no time shall the maintenance and service assessment be increased more than Five percent (5%) above the last-established applicable annual assessment, unless a greater increase is approved by a majority of the Christmas Lake Village lot owners. Such assessments shall be made upon lot owners of record on January 1 of each year, and shall be a lien on the lot until fully paid. In the event a lot owner fails to pay any assessment by April 1 of the year in which it is assessed, the Association may enforce the lien by foreclosure pursuant to this instrument, the By-Laws of the Association, and/or applicable law and may deny the lot owner and occupants of said lot the right and privilege to use the facilities and services for which the assessment is made. The lien of any assessment shall be subordinate to the lien of any first mortgage previously placed upon such lot. Any contributions in excess of the yearly assessment amount shall be applied to the Christmas Lake Village general budget.

Timely payment of the assessment provided for herein by the lot owner shall entitle the lot owner to any and all rights of membership in the Association, including, without limitation, the right to use the dams, roads, streets, boat docks, parks, security guards and other equipment and services maintained for the health,

**welfare and enjoyment of the property owners and their guests under the same conditions and fees as that of lot owners in subdivisions 2-12.**

15. EROSION OF LOTS. In the event a lot owner shall fail to take steps to prevent erosion of the soil of his lot or lots, the Association shall have the right to take appropriate measures to prevent such erosion and collect the costs thereof from the owner. All swales for surface-water drainage located along the side and rear lot lines shall be preserved and not obstructed.

16. VACANT LOTS. Owners of vacant lots shall be required to maintain, at their own expense, their lots in a clean, neat, sanitary, attractive and uncluttered manner. Weeds shall be cut as necessary to preserve a clean appearance. When the owner falls or refuses to maintain said lot, the Association shall have the right to enter upon such lot and perform such work as necessary, charging the lot owner any cost of such maintenance.

17. WATERFRONT LOTS. Each lot owner adjoining the water front shall have the exclusive right to use and enjoy the land lying between his lot line and the lake shore line. The owner of each water front residential lot shall be required to maintain, at his own expense, a clean and uncluttered water front and shore line. In providing such maintenance, the original shore line shall not be changed. No lot owner or his guest shall commit any act which shall in any manner pollute or tend to pollute the lakes located within the bounds of Christmas Lake Village.

18. RECREATIONAL FACILITIES. Lot owners shall be permitted to use the recreational facilities of Christmas Lake Village, including the park areas, lakes and all common and community property subject to such limitations and regulations as may be established from time to time by the Association. No houseboat or other watercraft shall be used for sleeping or living quarters.

19. PARKING. No vehicles shall be parked regularly or habitually on any street in this subdivision, and the owner of each lot shall provide adequate off-street parking facilities for the vehicles of all occupants of each residence. Camping trailers, campers and boats mounted on boat trailers may be parked in an owners drive between April 1, and October 31, each year; and at all other times, they must be parked in a garage, carport or at a location other than in this subdivision, provided, however, that at no time shall a trailer, camper, boat or boat trailer be parked at any lot on which a residence has not been erected. Vehicles exceeding 3/4 ton rating, classed as commercial, such as trucks and vans, may not be parked on any lot unless the owner shields same from the street.

20. NUISANCES. No noxious or offensive trade or activity shall be conducted upon any lot, nor shall anything be done thereon which may be or become a nuisance or annoyance to the neighborhood or the owners of the lots. No commercial business, trade or activity of any commercial nature shall be carried on upon any residential lot in this subdivision. No junk or disabled motor vehicles, whether licensed or unlicensed, shall be kept upon any lot in the subdivision for a period exceeding fifteen (15) days. The keeping of poultry, cows, hogs, goats, horses or livestock of any nature is strictly prohibited. No more than two (2)

dogs and / or two (2) cats shall be permitted at each residence. Dogs shall be kept under the control of owners, at all times, by leash, pens or other means and shall not be permitted to wander through this or any other subdivision. No lot shall be used for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, thing or material be kept upon any lot that will emit fire or obnoxious odors or that will cause any noise which might disturb the peace, quiet, comfort or serenity of the owners of the lots. There shall be no discharge of any firearms and there shall be no hunting with firearms or bows and arrows or otherwise upon any part of the subdivision.

21. SIGNS. Each lot owner may display a marker containing only his residence name, his name and address. No sign or signs advertising products, services, professions, facilities or real estate shall be displayed on any lot at any time. No sign shall exceed five (5) Square feet.

22. OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. Nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

23. ADDITIONAL COVENANTS AND RESTRICTIONS. No property owner may impose any additional covenants and restrictions on any part of the land shown in this subdivision and any such attempted imposition of restrictions shall be null and void.

**“24. BINDING EFFECT; TERM. Each and all of the Covenants and Restrictions contained herein shall be binding and effective upon the lots and respective lot owners in the Subdivision upon the execution of this Amendment by the owners of a majority of the lots in the Subdivision, at which time each and all of the Covenants and Restrictions herein contained shall be deemed covenants running with the title to the land and shall be binding upon all parties and all persons claiming under them until January 1, 2012, after which time said covenants and restrictions shall be automatically extended for successive periods of five (5) years. Notwithstanding the foregoing, however, these Covenants and Restrictions may be modified, changed or eliminated at any time by the due recording of an instrument executed by the owners of a majority of the lots in the Subdivision, which instrument changes, modifies or eliminates these covenants and restrictions.”**

25. ENFORCEMENT AND LIABILITY OF ASSOCIATION. These restrictions shall be enforceable by actions at law for damages or in equity for injunctions to restrain any violations or require compliance or by any combination thereof. Proceedings to enforce these restrictions may be instituted by the Association or any lot owner. In the event any plaintiff is successful in the enforcement of these covenants and restrictions, the plaintiff shall also be entitled to an award of reasonable attorney fees and expenses. Those

entitled to enforce these covenants and restrictions shall have the right to enforce them without proof of monetary damage.

26. SEVERABILITY. Invalidation of any of the covenants by judgment or court order, or otherwise, shall in no manner affect any of the other provisions which shall remain in full force and effect.

27. AUTHORITY. The person or persons executing this instrument for and on behalf of the undersigned lot owners each represent and certify that they are one of the lot owners, or a duly empowered legal representative, officer, director, agent, partner or other representative of the undersigned lot owner and have full power and authority to execute this instrument for and on behalf of the undersigned lot owner and have the legal authority to bind said lot owner to the restrictions and covenants contained herein.

28. COUNTERPARTS. This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement, binding on the parties hereto, notwithstanding that not all parties are signatory to the same counterpart.

