

**DECLARATION OF COVENANTS AND RESTRICTIONS**  
**OF CHRISTMAS LAKE VILLAGE**

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**AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS**  
**OF CHRISTMAS LAKE VILLAGE**

This Amended Declaration (“Declaration”) is made as of the 10th day of May, 2005, by CHRISTMAS LAKE PROPERTIES ASSOCIATION, INC. (“Association”), an Indiana non-profit corporation.

WITNESSETH:

WHEREAS, Santa Claus Land, Inc. (“Developer”) was the owner of the real estate located in Spencer County, Indiana, described in Exhibit A and depicted in Exhibit B, upon which the Developer developed and built-out a residential community known as Christmas Lake Village (“Development”); and

WHEREAS, the Developer constructed certain improvements and amenities, including, without limitation, roads, boat docks, playground facilities and general infrastructure, in the Development which constitute and are a part of the Common Areas, as that term is defined in Section 1(h); and

WHEREAS, the Developer has conveyed to the Association all of its rights pertaining to the governance and ownership of any part of the Development; and

WHEREAS, the Association and Owners of Lots in Christmas Lake Village desire to implement reasonable restrictions on the Development for the benefit of all Lots and Owners and grant to the Association enforcement powers over these Restrictions; and

WHEREAS, the Association desires to provide for the preservation and enhancement of the property values, amenities and opportunities in the Development and for the maintenance of the Common Areas, and to this end Developer originally established the Association and delegated and assigned the powers of owning, maintaining and administering the Common Areas, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter described, and promoting the recreation, health, safety and welfare of the Owners of Lots in the Development.

NOW, THEREFORE, the Association and the undersigned Owners, constituting more than a majority of all the Owners in Christmas Lake Village, do hereby declare that all of the Lots and Common Areas, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement of Lots 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 the Residences, Lots and lands situated therein. These Restrictions shall run with the land and shall be binding upon the Association, its successors and assigns, and upon the parties having or

acquiring any interest in the Development or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Association and its successors in title to the Development or any part or parts thereof.

Section 1. Definitions. The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

(a) “Architectural Review Board” means that entity established pursuant to Section 10 of this Declaration for the purposes therein stated.

(b) “Articles” means the Articles of Incorporation of the Association, as amended from time to time.

(c) “Assessments” means all sums lawfully assessed against the Members of the Association or as declared by this Declaration, any Supplemental or Amended Declaration, the Articles or the By-Laws.

(d) “Board of Directors” or “Board” means the governing body of the Association elected by the Members in accordance with the By-Laws.

(e) “Boat Docks” means any boat docks (as indicated on the initial Plat) extending into a Lake as a means of access to the Lakes and which are intended for use by the Owners.

(f) “By-Laws” means the Code of By-Laws of the Association, as amended from time to time.

(g) “Christmas Lake Village” means all of the developments comprising the community or subdivisions of Christmas Lake Village.

(h) “Common Areas” means all real and personal property, including, without limitation, easements, which the Association owns, leases or otherwise holds possessory or use rights in and for the common use and enjoyment of the Owners. The term shall include (i) the Boat Docks, (ii) the Lakes, (iii) the Drainage System, (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through the Development, and (v) any areas of land (1) shown on any Plat, (2) described in any recorded instrument prepared by the Developer, Association or their agents, or (3) conveyed to or acquired by the Association, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of any Lot Owners.

(i) “Drainage System” means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention

ponds, and the other structures, fixtures, properties, equipment and facilities (excluding the Lakes) located in the Development and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Development, including, without limitation, those shown or referred to on the Plat.

(j) “Facilities” shall mean any and all improvements to the Development maintained by the Association for the recreation, health, safety and welfare of the Owners of Lots.

(k) “General Assessment” shall have the meaning as set forth in Section 9(b) hereof.

(l) “Landscape Easement” means a portion of a Lot denoted on a Plat, or as declared by the Declaration, any Supplemental or Amended Declaration, the Articles or the By-Laws, as an area to be landscaped and maintained by the Association.

(m) “Lake” means any lake located in the Development and “Lakes” means all of such Lakes.

(n) “Lot” means a platted lot as shown on the Plat.

(o) “Lot Development Plan” means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans and all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including, without limitation, the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

(p) “Maintenance Costs” means all of the costs necessary to keep the Facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such Facility, payment of all insurance with respect thereto, all taxes imposed on the Facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the Facility.

(q) “Member” means a member of the Association and “Members” means all members of the Association.

(r) “Mortgagee” means the holder of a first mortgage on a Residence or a Lot.

(s) “Owner” means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Development, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(t) “Person” means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(u) “Plat” or “Plats” mean the plats of the Development recorded in the Office of the Recorder of Spencer County, Indiana, for each of the subdivisions of Christmas Lake Village.

(v) “Reserve for Replacements” means a fund established and maintained by the Association to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Areas.

(w) “Residence” means a structure intended exclusively for occupancy by a single family, together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

(x) “Restrictions” means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental or Amended Declarations and the Register of Regulations, as the same may from time to time be amended.

(y) “Register of Regulations” or “Regulations” means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended. [\(top↑\)](#)

Section 2. Declaration. The Association hereby expressly declares that the Development shall be held, transferred, and occupied subject to the Restrictions. The Owner of a Lot subject to these Restrictions (i) by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Association or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of the Association with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with the Association, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements. [\(top↑\)](#)

Section 3. Property Rights in the Common Areas. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Areas, subject to:

(a) This Declaration and any other applicable covenants, as they may be amended from time to time, and subject to any restrictions or limitations contained in any deed conveying such property to the Association;

(b) The right of the Board of Directors to adopt rules regulating the use and enjoyment of the Common Areas and Lots, including rules limiting the number of guests who may use the Common Areas;

(c) The right of the Board of Directors to suspend the right of an Owner to vote or to use recreational facilities within the Common Areas (i) for any period during which any Assessments or other charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation of these Restrictions after notice and a hearing pursuant to the By-laws;

(d) The right of the Board of Directors to dedicate or transfer all or any part of the Common Areas, subject to such approval requirements as may be set forth in this Declaration;

(e) The right of the Board of Directors to impose reasonable membership requirements and charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Areas;

Any Owner may extend his right of use and enjoyment to the members of his family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board of Directors and in accordance with procedures it may adopt. [\(top↑\)](#)

Section 4. The Lakes.

(a) Maintenance. The Association shall be responsible for maintaining the Lakes. The Maintenance Costs of the Lakes shall be assessed as a General Assessment against all Lots subject to assessment in the Development.

(b) Waterfront Lots. Each Lot Owner adjoining the water front shall have the exclusive right to use and enjoy the land lying between the Lot line and the Lake shore line; provided, however, that the rights hereby granted to the Lot Owner to said water front and Lake shore area, shall not conflict with and shall be subordinate to the rights of the Association to do all things necessary, or desirable, to protect, preserve and maintain the Lake and said water front and Lake shore area.

The Owner of each water front 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. Neither a Lot Owner nor the Lot Owner's lessees, guests or invitees shall commit any act which shall in any manner pollute or tend to pollute the Lakes located within the bounds of the Development.

(c) Use. No boats shall be permitted upon any part of a Lake except if authorized by the Board of Directors and then subject to such rules and regulations as may be adopted by the Board of Directors. No swimming will be permitted in any Lake except to the extent authorized by the Board of Directors. Each Owner of a Lot abutting a Lake shall indemnify and hold harmless the Association and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a Lake by any Person who gains access thereto from, over or across such Owner's Lot. The Association shall have no liability to any Person with respect to a Lake, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Lake or the proximity of a Lot thereto, including loss or damage from erosion. [\(top↑\)](#)

Section 5. The Common Areas. The Association shall be responsible for maintaining the Common Areas and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Except for underground utility facilities, no permanent improvements shall be made to or installed on the Common Areas other than lighting, seating, walkways, planting structures and fountains or other non-recreational water features unless such commons is designated as a Boat Dock area or recreational facility, in which event such Common Areas may be improved as the Board of Directors deems appropriate for its use as a Boat Dock area or recreational facility. The use of the Common Areas shall be subject to rules and regulations adopted by the Board of Directors which are not inconsistent with the provisions of this Declaration. [\(top↑\)](#)

Section 6. Boat Docks.

(a) Designation of Boat Docks. The Association may, but is not obligated to, designate certain of the Common Areas adjacent to Lakes as Boat Dock areas if the Board of Directors determines to permit boating on a particular Lake.

(b) Regulation. The Board of Directors may adopt reasonable rules with respect to the use of Boat Docks by Owners, but no such rules shall impair the reasonable use thereof or impose any cost or expense on such Owner other than Maintenance Costs reasonably allocable to such owners. [\(top↑\)](#)

Section 7. Maintenance of Entry Ways and Landscape Easements. The Association shall maintain the Landscape Easements and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an entry way or a Landscape Easement shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an



attractive entrance to the Development or a part thereof or a planting area within the Development. Any and all entrance signs shall be maintained at all times in good and sightly condition appropriate to the character of a residential community. ([top↑](#))

Section 8. Christmas Lake Properties Association, Inc.

(a) Membership. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person or Mortgagee would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

(b) Powers. The Association shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law.

(c) Classes of Members. At all times, the Association shall have a single class of Members.

(d) Voting and Other Rights of Members. The voting and other rights of Members shall be-as specified in the Articles and By-Laws.

(e) Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repair, renewal and replacement of the Common Areas, including, without limitation, any and all Maintenance Costs. In determining the amount, the Board shall take into consideration the expected useful life of the Common Areas, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of such consultants as the Board may employ.

(f) Mergers. Upon a merger or consolidation of another corporation with the Association, its properties, rights and obligations may, as provided in its Articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration except as hereinafter provided. ([top↑](#))

Section 9. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. The Association hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the Land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance, repair, replacement and operation of the Common Areas, including, without limitation, any and all Maintenance Costs.

(ii) Basis for Assessment.

(1) Lots Generally. Each Lot owned by a Person other than the Association shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(2) Lots owned by the Association. No Lot owned by the Association shall be assessed by the Association except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.

(3) Change in Basis. The basis for assessment may be changed upon recommendation of the Board of Directors if such change is approved by two-thirds (2/3) of the Lot Owners of Christmas Lake Village, including the Association, who are voting in person or by proxy at a meeting of such Lot Owners duly called for this purpose.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(iv) Maximum Assessment. The maximum amount of the General Assessment shall be subject to review and change by the Board of Directors beginning each year, provided that at no time shall the General Assessment be increased more than five percent (5%) above the last established General Assessment, unless a greater increase is approved by a majority of the Lot Owners in the Christmas Lake Village.

(c) Special Assessment. The Association may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Common Areas, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of a majority of the votes of the Members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such Members duly called for this purpose.

(d) Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Association shall be entitled to institute in any court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Association in collecting such Assessment. If the Association has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Association may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

(e) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to Mortgagee's lien covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months 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.

(f) Certificates. The Association shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Association that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(g) Annual Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget of the Association for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration will be met. ([top↑](#))

Section 10. Architectural Control. An Architectural Review Board consisting of not less than seven (7) or more Persons shall be appointed by the Board of Directors.

(a) Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Development and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(b) Conditions. 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 Architectural Review Board. In the event the Architectural Review Board fails to approve or disapprove such designs and location within thirty (30) days after said plans and specifications have been submitted by the Owner, approval will not be required and this Section will be deemed to have been fully complied with.

The plans and specifications submitted to the Architectural Review Board must include: (i) the nature, kind, shape and size of the structure; (ii) the materials to be used and the exact location and placement of the structure; (iii) renderings of the front, rear and side elevations of the structure; (iv) proposed grading, landscaping and fencing, if any; (v) the approximate cost of the improvements; (vi) commencement and completion dates; and (vii) such other information as shall be reasonably requested by the Architectural Review Board.

The Architectural Review 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 Development in the sole and absolute discretion of the Architectural Review Board and under no circumstances will the Architectural Review Board or any of its members be responsible to the Owner submitting the plans or to any other Owner of a Lot for any direct, indirect or consequential damages that any such Owner may allege may have been caused in whole or in part by a decision of the Architectural Review Board. All Owners of Lots acknowledge that the decisions of the Architectural Review Board will be based upon subjective standards of appearance and aesthetics and that the opinions of the members of the Architectural Review Board must of necessity be subjective. All Owners of Lots release the Association and the Architectural Review Board from any claim or liability based upon decisions made by the Architectural Review Board in enforcing or failing to enforce the provisions of these restrictions.

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

(c) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within thirty (30) days after notice of such plan has been duly filed with the Architectural Review Board in accordance with procedures established by the Association or the Board of Directors, approval shall be granted. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.

(d) Guidelines and Standards. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. Any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

(e) Exercise of Discretion. The Association intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of this Declaration, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as a defense, abuse of discretion may be established only if a reasonable Person, weighing the evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion.

(f) Liability of Board. Neither the Architectural Review Board, nor any member thereof, nor any agent thereof, nor the Association 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 Board does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

(g) Inspection. Members of the Architectural Review Board may inspect work being performed to assure compliance with these Restrictions and applicable regulations. ([top↑](#))

Section 11. Specific Restrictions. The following are specific restrictions that are binding upon the Architectural Review Board, run with the land to the Development, and may not be amended except by appropriate amendment of these Restrictions. It is the intent of these Restrictions to specifically restrict the Development as follows:

(a) Land Use. All Lots shall be used for residential purposes unless designated for other use on the Plat. No residential Lot shall have more than one (1) single-family residence erected thereon. No temporary or mobile-living facility shall be used on any 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.

(b) Subdividing Lots. No Lot or Lots shall be re-subdivided by the Owner or Owners thereof for the purpose of creating two (2) or more Lots.

(c) 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 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. No accessory buildings shall be located on any Lot nearer than ten (10) feet to the rear Lot line.

(d) View Obstructions. 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 Development shall be permitted between the building setback lines and the street property lines.

(e) Dwelling Sizes. No Residence shall be permitted with a living area of less than the square footage as set forth below. The square footage set forth below shall be exclusive of open porches, patios, balconies, carports, garages and basements unless completely finished for living area.

One Story Dwelling: 1200 Square Feet

Multi-Story Dwelling: 1800 Square Feet

Notwithstanding the foregoing, any dwelling unit or Residence which has already been constructed, but which does not comply with these requirements, shall be exempted from the square footage requirements of this Section 11(e).

(f) Construction. Within five (5) months from the day a building permit is issued for an approved Residence, the Residence must be completed and the exterior

finished. Within nine (9) months from the day a building permit is issued, the Residence must be completed and the site finish graded, seeded and mulched. 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 appropriate 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.

(g) 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, electric or non-impregnated wood. Cooking appliances and water heaters installed within a Residence shall use gas or electricity.

(h) Water and Sewage System. No individual water supply system or sewage system shall be permitted on any Lot. Piping water from the Lakes to any residential Lot is strictly prohibited. The water and sewage disposal systems constructed by the Developer, the Association or the Town of Santa Claus, Indiana shall be the only means of water supply and sewage disposal.

(i) Parking. No vehicles shall be parked regularly or habitually on any Street in the 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 Owner's 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 the Subdivision; provided, however, that at no time shall a trailer, camper, boat or boat trailer be parked on any Lot on which a Residence has not been erected. Vehicles exceeding  $\frac{3}{4}$  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. [\(top↑\)](#)

## Section 12. Common Areas.

(a) Ownership. The Common Areas shall remain private, and neither the Association's execution or recording of an instrument showing the Common Areas, nor the doing of any other act by Association, is, or is intended to be, or shall be construed as, a dedication to the public of such Common Areas. The Association may, however, dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for utility purposes.

(b) Streets. All streets shown on the Plat shall remain the property of the Association and the use thereof is hereby reserved for the Owners of the Lots as private ways for the exclusive use, benefit and convenience of the Owners, their successors and assigns. It is not intended that the streets will become public thoroughfares but to retain non-exclusive use thereof for the benefit of the Owners of the Lots and their invitees as

herein provided. However, the Association may grant any of its interest to a public, agency, authority or utility as provided in Section 12(a).

(c) Easements. Easements and rights-of-way are hereby expressly reserved by the Association for the construction and maintenance of a Drainage System, 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-ways for any purpose for which said easement or right-of-way are created or reserved; provided, however, that the Lot shall be left in the same general conditions 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, of which may change the direction of flow of the Drainage Systems 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 except for those improvements for which a public authority or utility company is responsible. Neither the Association nor the Developer shall be liable to the Owners, their successors and assigns, their families, friends, guests or invitees for injury or damage occurring because of the condition of any street, easement, park or right-of-way.

(d) Density of Use. The Association expressly disclaims any warranties or representations regarding the density of use of the Common Areas or any facilities located thereon.

(e) Obligations of the Association. The Association, subject to the rights of the Association and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto), and, except as otherwise provided herein, shall keep the Common Areas in good, clean, attractive and sanitary condition, order and repair.

(f) Damage or Destruction by Owner. In the event the Common Areas are damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Association to repair said damaged area; the Association shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area



may have been modified or altered subsequently by the Association in the discretion of the Association. An amount equal to the costs incurred to effect such repairs shall be assessed against such owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner. ([top↑](#))

Section 13. Use of Development Property.

(a) Protective Covenants.

(i) Nuisances. No noxious or offensive trade or activity shall be conducted upon any Lot nor shall anything be done thereon which may become a nuisance or annoyance to the neighborhood or the Owner of a Lot. No commercial business, trade or activity of any commercial nature shall be carried on upon a residential Lot in the Development. No junk or disabled motor vehicles, whether licensed or unlicensed, shall be kept upon any Lot in the Development 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 the Development. No Lot shall be used for the storage of any property or thing that will cause such Lot to appear unclean or untidy 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. 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 Development.

(ii) Garbage and Refuse Disposal. All Residences shall be equipped with electric food waste disposers. 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 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.

(iii) 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 Residence, unless prior approval of the Architectural Review Board has been obtained.

(iv) Erosion of Lots. In the event a Lot Owner shall fail to take steps to prevent erosion of the soil of the Owner's 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 the Drainage System located along the side and rear Lot lines shall be preserved and not obstructed.

(v) Vacant Lots. Owners of vacant Lots shall be required to maintain, at the Owner's expense, their Lots in a clean, neat, sanitary, attractive and uncluttered manner. Weeds shall be cut as necessary to preserve a clean appearance. If the Owner fails 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.

(vi) Signs. Each Lot may display a marker containing only the resident's name and the Owner's name and address. No 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 unless approved by the Board.

(vii) 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.

(viii) Other Restrictions. In addition to the provisions of this Section 13, the Board of Directors may adopt general rules and regulations to implement the purposes set forth in this Declaration, including but not limited to, rules to regulate animals, antennas, signs, fences, walls and screens, mailboxes, storage tanks, awnings, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash containers, and planting, maintenance and removal of vegetation in the Development. The Board of Directors may adopt general rules and regulations appropriate to each Lot, which rules and regulations may vary among Lots. Such general rules may be amended by a two-thirds (2/3) vote of the Board of Directors.

(ix) Exceptions. The Board of Directors may authorize exceptions to or variances from the general rules and regulations adopted pursuant to subsection (viii) if the Board of Directors can show good cause and acts in accordance with adopted guidelines and procedures.

(b) Maintenance of Lot. Each Owner shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair and free of debris including, without limitation, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is

consistent with good property management as determined by the Architectural Review Board or Board of Directors. In the event an Owner of any Lot in the Development shall fail to maintain the premises and the improvements situated on a Lot, as provided herein, the Association, after notice to the Owner as provided by the By-Laws and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a Special Assessment upon such Lot. ([top↑](#))

Section 14. Easements. All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on the Drainage System or any sewer or utility easement, if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Spencer County, Indiana. ([top↑](#))

Section 15. Enforcement. The Association, or any Owner, shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, but neither Developer nor the Association shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. In addition, the Board of Directors shall have the discretion to establish and amend fines for infractions of the requirements set forth in this Declaration. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action. ([top↑](#))

Section 16. Amendments.

(a) Generally. This Declaration may be amended at any time by an instrument signed by the appropriate officers of the Association acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Owners of Christmas Lake Village cast at a meeting duly called for the purpose of amending this Declaration.

(b) Effective Date. Any amendment shall become effective upon its recordation in the Office of the Recorder of Spencer County, Indiana. ([top↑](#))

Section 17. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall

be used as an aid to the construction of any provision of this Declaration. 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. [\(top↑\)](#)

Section 18. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners and the Association, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2012, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by majority vote of those Persons who are then the Owners of Lots in Christmas Lake Village. [\(top↑\)](#)

Section 19. Severability. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the 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 Restrictions. [\(top↑\)](#)

[REMAINDER OF PAGE INTENTIONALLY OMITTED]

IN WITNESS WHEREOF, the Association has caused the due execution hereof by their duly authorized officers and the Lot Owners have executed or caused the execution hereof all as of the day and date hereinabove set forth.

CHRISTMAS LAKE PROPERTIES  
ASSOCIATION, INC.

By: *Kenneth Van Winkle*  
Printed: *Kenneth Van Winkle*  
Title: *President, Christmas  
Lake Village Property Association*

ATTEST:

*Ronald A. [Signature]*

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF SPENCER    )

Before me, a Notary Public in and for said County and State, personally appeared, Kenneth Van Winkle, the President of Christmas Lake Properties Association, Inc., who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions of Christmas Lake Village on behalf of Christmas Lake Properties Association.

Witness my hand and Notarial Seal this 10<sup>th</sup> day of May, 2005.

My Commission Expires:

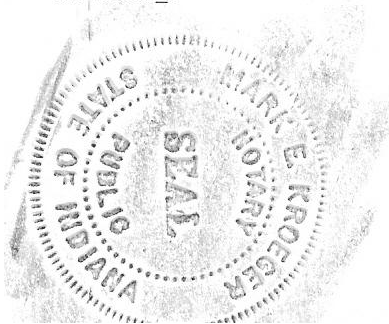
11/12/2008

Mark E. Kroeger  
Notary Public

Residing in Spencer County

Mark E. Kroeger  
Printed Name

IM-496905\_1



STATE OF INDIANA        )  
  ) SS:  
COUNTY OF SPENCER    )

[\(top↑\)](#)