

644326

DECLARATION OF RESTRICTIONS
FOREST BAY ESTATES

5558

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THIS DECLARATION, made this 6th day of December, 1976, by The Shorewood Corporation, an Indiana corporation, (the "Developer"),

WITNESSETH THAT:

WHEREAS, the following facts are true:

1. Developer is the owner of all of the lands described in Exhibit "A" attached hereto and made a part hereof, which lands will be subdivided and known as Forest Bay Estates (hereinafter referred to as the "Development") and will be more particularly described on the plat of Forest Bay Estates to be recorded in the Office of the Recorder of Hamilton County, Indiana; and
2. Developer is about to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges (the "Restrictions") under a general plan of improvement for the benefit of the lots and lands in the Development and the future owners thereof.

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the Development are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of the Development as a whole; and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof, subject to such Restrictions, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the Development.

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

A. "Lot" shall mean any parcel of real estate described on the plat of the Development (except for the common areas designated on such plat as common areas A and B), which plat is recorded in the Office of the Recorder of Hamilton County, Indiana.

B. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing signed, with respect to the Developer, or the Indianapolis Water Company, by an officer or duly authorized agent thereof.

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

This Instrument Recorded Dec 6 1976
JUNE M. HEDGES, RECORDER, HAMILTON COUNTY, IND.

2. CHARACTER OF THE DEVELOPMENT.

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A. In General. Every numbered lot in the Development is a residential lot and shall be used exclusively for single-family residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots unless approved by the Developer, its successors or assigns. Unless otherwise provided in these Restrictions or on the recorded plat, no dwelling house shall be constructed or placed on any residential lot in the Development except as provided herein. The first floor living area of any single-family dwelling located on any lot in the Development shall not be constructed lower than an elevation of 817 feet above mean sea level.

B. Residential Use of Accessory Outbuildings Prohibited. No accessory outbuilding or temporary structure which may be constructed upon a residential lot under these Restrictions shall be used as a residence or dwelling house or place for human occupancy or habitation.

C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Developer.

D. Common Areas. There are two parcels designated on the recorded plat as common areas A and B. Upon the completion of the sale of Lots 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 in the Development, which lots are designated on the record plat as having an interest in common area A, the Developer shall convey an undivided 1/12th interest in common area A to the owners of such lots. Upon the completion of the sale of Lots 22 and 23 in the Development, which lots are designated on the record plat as having an interest in common area B, the Developer shall convey an undivided 1/5th interest in common area B to the owners of such lots. The Developer intends to develop and plat additional lots to the south of the Development and upon platting such additional lots will convey an undivided 1/5th interest to the purchasers of no more than three of said lots upon the completion of the sale of same. Accordingly, the owners of Lots 22 and 23 in the Development and the purchasers of no more than three lots which shall be part of an additional platted area south of the Development will each own up to an undivided 1/5th interest in common area B. Common areas A and B shall be used solely as green areas for recreational purposes by the owners thereof and the maintenance of these common areas shall be the responsibility of the respective owners thereof.

E. Subdivision of Lots Prohibited. No lot in the Development shall be divided or subdivided in order to provide for an additional lot or lots.

F. Other Restrictions. All lots in the Development shall be subject to the easements, restrictions and limitations of record between the Indianapolis Water Company and the Developer, as set forth in a Release and Modification Agreement, recorded in Book 121, Instrument No. 4862, in the Office of the Recorder of Hamilton County, Indiana, as modified by a Consent Agreement from the Indianapolis Water Company, recorded in Book 150, Instrument No. 5554, in the Office of the Recorder of Hamilton County, Indiana. In addition, all lots in the Development shall be subject to the easement, restrictions and limitations of record between the Indianapolis Water Company and the Developer as set forth in a License Agreement recorded in Book 121, Instrument No. 4863, in the Office of the Recorder of Hamilton County, Indiana.

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

A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development shall be one thousand five hundred (1,500) square feet exclusive of porches, terraces, garages, carports, accessory buildings or basements.

B. Fences. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence must be approved by the Developer as to size, location, height, and composition before it may be installed.

C. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding or any other similar material.

D. Heating Plants. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house.

E. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed one (1) year after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

F. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

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

(i) Mow such portion of the lot upon which grass has been planted at such times as may be reasonably required.

(ii) Remove all debris or rubbish.

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

(iv) Cut down and remove dead trees.

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

H. Developer's Right to Perform Certain Maintenance. In the event that the Owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Developer shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Developer shall be collected in any reasonable manner from the Owner. Neither the Developer nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

I. Prohibition on Removal of Trees. No tree of a diameter in excess of four inches shall be removed by any owner of any lot in the Development without the prior consent of the Developer. At the time of the submission by each owner of the plans of the proposed residential structure to the Developer in accordance with the provisions of paragraph 6 of these Restrictions, each such owner shall indicate upon the plot plan to be submitted at such time the location and size of all trees proposed to be removed as a result of such construction. The removal of such trees must be approved by the Developer.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

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

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

B. Wastewater Treatment Systems. Each lot owner shall be required to install a wastewater treatment system similar to a Cromoglass aerobic wastewater treatment system, as approved by the Developer. This system together with a finger system, and peripheral subsurface drain tile, shall be installed in strict compliance with the following procedure.

(i) The lot owner shall submit to the Developer detailed plans and specifications to include the following items. These plans and specifications shall be submitted at the same time that house plans are submitted pursuant to paragraph 6 of these Restrictions.

(aa) Location of wastewater treatment system.

(bb) Location of the finger system (the finger system is to be located in the immediate area of a certified percolation test, but no part of the finger system can be located within one hundred fifty (150) feet of the edge of Morse Reservoir).

(cc) Location of water well.

(dd) Location of peripheral subsurface drain tile (the peripheral subsurface drain tile shall encircle the house and finger system).

(ee) Direction of surface water flowage on the lot.

(ff) Details of construction.

(ii) The lot owner will specify the contractor who is to install the sewage system, finger system and peripheral subsurface drain tile. The contractor is to be bonded, experienced and competent in these types of installations.

(iii) The wastewater treatment system, finger system and peripheral subsurface drain tile are to be installed in accordance with approved plans and specifications as provided herein and these installations shall be left uncovered for inspection by a registered engineer or person otherwise qualified to make such an inspection as approved by the Developer. Certification is to be made by the engineer or other qualified and approved person as to compliance with plans and specifications.

(iv) A copy of the engineer's or other qualified and approved person's certification will be retained by the Developer for its records.

5. GENERAL PROHIBITIONS.

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

B. Signs. No signs or advertisements shall be displayed or placed on any lot or structure in the Development without the prior written approval of the Developer.

C. Animals. Any animals kept or maintained on any lot in the Development must be kept reasonably confined so as not to become a nuisance.

D. Garbage, Trash and Other Refuse. No Owner of a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out of doors of such refuse on his lot.

E. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground or adequately screened so that it is not visible from any street in the Development. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

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

G. Temporary Structures. No temporary house, or garage shall be placed or erected on any lot in the Development.

H. No Mobile Homes. No mobile home shall be placed or erected on any lot in the Development.

I. Ditches and Swales. It shall be the duty of every Owner of every lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection.

J. Docks and Piers. No dock, pier, or other structure may be constructed into Morse Reservoir that does not conform to specifications established by the Developer.

K. Beaches. No beach may be constructed on Morse Reservoir unless the plans and specifications for the beach are submitted to and approved by the Developer. Beaches shall be constructed of sand only, and shall not extend farther than twenty-five (25) feet from the shoreline into Morse Reservoir. No spoil materials shall be placed or allowed to collect in Morse Reservoir which result from beach construction.

L. Piers, Boat Docks and Boathouses. When the Developer shall permit the construction or placing of a structure wholly or partly within Morse Reservoir, such permits shall constitute a license, and only a license, from the Indianapolis Water Company and the Developer or its successors in title to Morse Reservoir, and said structures must have the prior written approval of the Developer.

6. APPROVAL OF PLANS BY DEVELOPER.

(i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Development without the prior approval of the Developer. Such approval shall be obtained only after written application has been made to the Developer by the Owner of the lot requesting authorization from the Developer. Such written application shall be in the manner and form prescribed from time to time by the Developer, 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 location of all improvements existing upon 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 Developer may require. There shall also be submitted, where applicable, the permits or reports required under Paragraph 4B of these Restrictions. All such plot plans shall be prepared by either a registered land surveyor, engineer or architect.

(ii) Power of Disapproval. The Developer may refuse to grant permission to construct, place or make the requested improvement, when:

(aa) 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;

(bb) 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;

(cc) The proposed improvement, or any part thereof, would in the opinion of the Developer be contrary to the interests, welfare or rights of all or any part of other Owners.

(iii) Power to Grant Variances. The Developer may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Development.

B. Duties of Developer. The Developer shall approve or disapprove proposed improvements within 30 days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Developer for its permanent files. 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.

C. Liability of Developer. The Developer or any agent thereof, shall not 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.

D. Inspection. The Developer may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

8. REMEDIES.

A. In General. Any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but the Developer shall not be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

B. Delay or Failure to Enforce. 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 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 Restrictions.

9. EFFECT OF BECOMING AN OWNER.

The Owners of any lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Developer with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners covenant and agree and consent to and with the Developer and to and with 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.

10. USE OF THE RESERVOIR.

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All operation of boats upon Morse Reservoir is pursuant to a license that shall be exercised in accordance with the limitations made by a joint committee of the Developer and the Indianapolis Water Company according to the procedures set out in the License Agreement recorded in Book 121, Instrument No. 4863, in the Office of the Recorder of Hamilton County, Indiana. That committee shall have the power to assess fines for the violation of any limitations on boat traffic on Morse Reservoir in accordance with the schedule of fines promulgated by it. Every such fine shall be paid promptly upon its being assessed.

11. TITLES.

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

12. DURATION.

The foregoing covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until the year 2,001, 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 vote of those persons who are then the Owners of a majority of the numbered lots in the Development.

13. 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.

IN WITNESS WHEREOF, the Developer has caused this Declaration of Restrictions to be executed as of the day and year first above written.

THE SHOREWOOD CORPORATION

By Stanley E. Hunt
Stanley E. Hunt, Executive Vice President



Hayes T. O'Brien
Hayes T. O'Brien, Secretary

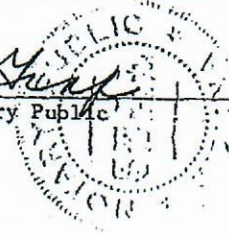
STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

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Before me, a Notary Public in and for said County and State, personally appeared Stanley E. Hunt and Hayes T. O'Brien, the Executive Vice President and Secretary, respectively of The Shorewood Corporation, and who acknowledged the execution of the foregoing Declaration of Restrictions for and on behalf of The Shorewood Corporation.

WITNESS my hand and Notarial Seal this 6th day of December, 1976.

Cheri L. Graf
Cheri L. Graf, Notary Public



My Commission Expires May 30, 1980

This instrument was prepared by Hayes T. O'Brien, attorney at law.