

This declaration made this 7th day of March, 1994 by Stephen V. Miller, Architect.

## TURNING TREE - DECLARATION OF COVENANTS

LOCATION: SEC 12, TN9, R2E BROWN COUNTY, INDIANA

This development was designed for a community of ecologically minded residents wishing to preserve, enhance and enjoy the natural surroundings where they live. As such, the subdivision will include hiking trails, wildlife enhancements, lakes, underground utilities, wildflower plantings, and other amenities to enhance the lives of both humans and wildlife. Homes are expected to be designed in concert with the terrain and constructed with an absolute minimum of disruption of the forest. Since they are presumed to reflect the ecological orientation of the residents, the covenants should not be perceived as unduly restrictive. All are consistent with environmentally sound living and are designed to ensure that residents will be similarly vested in preserving an atmosphere in which to enjoy nature.

## ARCHITECTURAL/ECOLOGICAL REVIEW BOARD

An Architectural/Ecological Review Board (ARB) will exist prior to any residential construction and will continue permanently to assure that all improvements, construction, additions and changes will remain consistent with these Covenants. The ARB will consist of the Architect/Developer, Stephen Miller and Prof. John Miller ( or their designees ) until at least nine of the lots are sold and developed. After nine of the lots are sold, the ARB will transfer some of the responsibility for maintaining the architectural and ecological integrity of the development to the Homeowners Association. The Homeowners Association will appoint one member to serve with the initial ARB. When all lots are sold, the Homeowners Association will appoint three members who will assume all responsibilities of the ARB for all future additions and changes.

The ARB will make all initial decisions to preserve the natural quality and aesthetic appearance of the existing geographic area and to ensure that all initial buildings, improvements and activities will be consistent with the intended nature of the community. To these ends, the ARB acts in the interests of all residents to approve or disapprove all plans, specifications, details, color schemes for buildings and improvements to property. The ARB also has the responsibility to oversee that the activities of individual property owners are consistent with sound ecological practices.

Approval for construction or improvement shall be obtained only after written application has been made to the ARB by the owner of the lot requesting authorization from the ARB. Such written application shall be accompanied by two complete sets of plans and specifications (including a detailed site plan) for any such proposed construction or improvement. The ARB shall approve or disapprove proposed improvements within fifteen (15) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the ARB for its permanent files. All notifications to applicants shall be in writing. The ARB may inspect work being performed to assure compliance with this Declaration and applicable regulations.



## HOMEOWNERS ASSOCIATION

The Homeowners Association (a not-for-profit group) shall be formed when nine of the lots are sold and shall provide for the maintenance, replacement, administration and operation of all roads, lakes, dams and spillways, trails, signs, landscaping, etc. within the Common Areas and hiking easements as shown on the development plans. The Homeowners Association will also establish guidelines for the use of the Wildlife Area (Lot 18) and will perform such other functions as may be designated to it. The Homeowners Association will be responsible for maintaining adequate property damage and personal liability insurance for Common Areas, hiking easements and Wildlife Area. Each Owner of a residence or lot shall automatically be a member of the Homeowners Association, but membership shall terminate when such person ceases to own a residence, and will be transferred to the new Owner.

Each Owner of a lot (excluding the developer) will pay the regular assessments and any agreed upon special assessments levied by the Homeowners Association when due. No Owner is exempted from liability by waiving the right to use the Common Areas or by refusing to participate in the meetings of the Homeowners Association (see Covenants and Restrictions - Specific Lots for exceptions).

## COVENANTS AND RESTRICTIONS - GENERAL

Perpetual and non-exclusive Easements are shown on the development plans for the purpose of the installation, maintenance, repair and replacement of all sewer, water, storm sewer, power and telephone lines, pipes, mains, conduits, transformers, cable television and other facilities. Within these easements, no structure or parking area will be allowed by a Lot Owner unless approved by the ARB. All vegetation within the easements and common areas will be maintained by the Homeowners Association unless agreed with an individual Owner. A small residential identification sign and any other structures approved by the ARB within the Common Area at the residence driveway must be well maintained by the Lot Owner.

All public roads as shown on the Plat within the boundaries of the development are hereby dedicated to the public. However, these roads will primarily be restricted for the use of residents and guests and will be maintained by the Homeowners Association with funds used from the annual assessments.

All utilities, including but not limited to water, electric, telephone and cable television shall be installed underground.

There shall be no subdivision of any lot nor any sale thereof in parcels except that a portion of a lot may be sold to an adjoining lot owner if no new lot is created and if the transferor obtains the prior written approval of the ARB and the Area Plan Commission.

Residences are to be constructed in accordance with Brown County R-1 zoning ordinance. No commercial buildings or uses are allowed. Home occupation is allowed as long as there are no employees, commercial vehicles or signs, non-residential noise or lighting, etc. Renting a residence for periods of one month or longer is not considered commercial.



Residences will not be less than 2000 square feet of living space, excluding open porches and decks, garages and basements. Two story residences and one and one-half story residences shall have a finished ground floor of not less than 1400 square feet above finished grade and a total finished area of not less than 2000 square feet above finished grade. For the purposes of this section, ground floor area shall be determined from the area of the residence measured from the outside of the building foundation, exclusive of porches, garages, carports, chimney and eaves. The sq. ft. requirements may be modified only if the ARB approves the overall plan as being designed to fulfill the intent of the minimum size requirement.

All structures must have roof pitches of 8/12 or greater (unless approved by the ARB) with overhanging eaves, the amount of which is consistent with the architectural design.

Exterior wall surfaces may be stone, brick, natural wood siding or logs. Other materials may only be used if approved by ARB. No used structures may be placed on any lot.

All future additions or color changes must be approved in writing by the ARB. This includes storage sheds, fences, house additions, signs and any other structures. Proposed structures or changes within a common area will be given special attention by the ARB to maintain the character of the development.

The minimum building setback requirements for all structures, will be no closer than 75 feet from the road right of way, 50 feet from sides of a lot and 75 feet from the rear of lot (except lake front lots, which will be 75 feet from the high water mark) unless indicated otherwise on the Development Plan or indicated in the Specific Lot restrictions.

No satellite dishes, television antennas, fuel tanks, above-ground swimming pools, outside clothes lines or other exposed structures will be installed unless specifically approved by the ARB. A fence enclosing a small part of a lot to serve a specific purpose may be approved by the ARB, however, a fence enclosing a substantial portion of a lot will not be permitted.

Construction, once commenced, shall be completed within nine (9) months, unless an extension is granted by the ARB. Improvements not completed as above shall be deemed nuisances and be removed at the cost of the owner.

Only one residence shall be constructed on any Lot. There shall be no duplexes.

For every residence located on any Lot within the community, there will be constructed an enclosed garage for the off-street parking of at least two (2) vehicles. No commercial vehicles, RV's, campers, boats, trailers, etc. may be parked outside for more than one day (except during construction or moving) unless approved in advance. Every residence shall have a driveway with a minimum width of ten (10) feet.

No manufactured device which is designed or used for collection of solar energy or other similar purposes shall be allowed except for solar systems that were incorporated into the original design approved by the ARB. This Section shall not prohibit the use of "passive solar" or "geothermal" energy.



Removal of trees for construction site preparation shall be limited to those within 20 feet of the boundary of the building foundation and deck area, unless approved by ARB or required by the Health Dept. for a septic area. The ARB may approve small additional clearings for purposes of gardens, patios, yards, etc. Placement of houses, walks, driveways and parking areas shall be designed to minimize tree removal.

The complete removal, or a substantial portion, of any live tree over 6" in-diameter and more than 20 feet from a building shall require approval from the ARB. Removal of other trees shall be limited to dead, damaged or diseased trees, trees in danger of falling and creating hazardous conditions, and trees in close proximity to more desirable trees, where the removal will improve growth of remaining trees. See "Specific Lots - 19 & 20" for tree removal.

No person shall erect or maintain any permanent sign or advertisement, other than a residential identification sign at the driveway entrance without the permission of the ARB. Residential signs should be subdued in color, size and appearance. Exception: A FOR SALE sign may be erected by the owner or real estate company.

No owner may burn trash, garbage, brush or other household refuse. Outdoor grills may be used, provided that they are specifically designed for that purpose and approved by the ARB.

No owner is permitted to accumulate any inoperative or unlicensed vehicles.

No outdoor lights greater than 150 watts shall be installed on any lot, and no outdoor lights of any type shall be installed above eaves level. All outdoor lighting is to be directed downward.

No off-road vehicles, snowmobiles, motorcycles, dirt bikes, all-terrain vehicles, or other devices which produce excessive noise ( other than normal construction and maintenance ) will be operated on the property unless approved.

No animals other than a reasonable number of household pets may be kept at any residence. No pets shall be kept, bred or maintained for any commercial purpose. Household pets shall be kept under control by their owner whenever they are outside the residence.

No hunting (or gunfire), trapping, or killing animals or birds of any kind is allowed on any part of the development property or on adjoining properties. If a nuisance develops, the Homeowners Association will decide a joint policy for the situation.

Refuse containers shall be kept shielded, except when placed outside for pickup. All Homeowners are expected to participate in community-wide trash pickup and recycling.

There will be no underground fuel tanks or any large containers of fuels or chemicals installed or stored on any lot unless specifically approved by the ARB.

There will be no underground fill areas containing trash or debris of any kind ( this includes construction materials or debris in case of fire or other damage ) on any lot without the specific approval from the ARB.



## COVENANTS AND RESTRICTIONS - COMMON AREAS

Common Areas and hiking trails are permanent easements through part of individual lots maintained by the Homeowners Association for the enjoyment of residents and guests. As such, the Homeowners Association assumes liability for use of those areas. The Homeowner of a lot on which a Common Area exists is responsible for property taxes for their entire lot. The use of the lakes will be established by the ARB for Owners and accompanied guests only. Any restrictions concerning boats, fishing, nesting areas, live bait use, swimming, picnic areas, etc. will be set forth in a written document for the Homeowners Association.

## COVENANTS AND RESTRICTIONS - WILDLIFE AREA

The Wildlife Area (Lot 18) will be owned by the Developer initially. Prior to all lots being sold, the Developer will deed Lot 18 at no cost to the Homeowners Association. The Wildlife Area will be available for hiking by lot owners and their accompanied guests. The Wildlife Area will be managed by the Homeowners Association, which assumes responsibility for maintenance, liability and taxes of those areas. Such costs are to be recovered through routine Homeowners Association assessments.

## COVENANTS AND RESTRICTIONS - SPECIFIC LOTS

LOT 1: Lot 1 has an existing cabin and shares a pond with Lot 2. The Developer will reserve the right to restore and add to this cabin as he feels necessary and will not be subject to the same building and setback restrictions of other lots. Setbacks for this lot are shown on the Development Plan. The Developer may retain the right to use this as a caretaker's cabin. The normal yearly assessments may be adjusted as needed for the owners of Lot 1.

LOTS 19 & 20 : Lots 19 & 20 are accessible off State Road 135, as drawn on the development plan and will not be subject to the same building and setback restrictions as other lots. Setbacks for these lots are shown on the Development Plan. The owners of these two lots have the option to participate in the Homeowners Association on a limited basis and annual assessment fees will be adjusted accordingly which would allow them to have access to the Common Areas but not pay full road maintenance fees. Owners of these lots will maintain their driveways at their own expense. The Developer will create views for these two lots by cutting the necessary trees (on these two lots only) before the lots are sold. These views may be maintained by cutting limbs and a few trees by future owners but not substantially increased by cutting additional trees unless approved in advance by the ARB. The septic system for Lot 20 may be located on Lot 18, as approved by the Health Department and the Developer. The septic approval for Lot 20 will be obtained by the Developer prior to that lot being sold or any building permit issued. Easements as shown on the Development Plan will allow for the installation and maintenance of the trenches and septic system across Lot 18.

LOT 18 : The Wildlife Area will be available to the residents of the development and accompanied guests for hiking. Adequate Liability insurance will be maintained by the Homeowners Association for the use of the Wildlife Area. This lot will not have a residence or other structures and will remain available as a wildlife area . The septic system for the adjoining Lot 20 may be located on Lot 18 as indicated above.



## MAINTENANCE, TAX AND OTHER ASSESSMENTS

Annual Assessments: The annual assessments levied by the Homeowners Association will be used for insurance, taxes, maintenance of roads, trails, Common Areas and Wildlife Areas. The annual assessment will be \$250 per lot owner, initially set by the Developer. This amount may be adjusted to reflect actual annual costs by a 2/3 majority of the Homeowners Assoc.

Special Assessments: After 2/3 of the lots are sold, Special Assessments by the Homeowners Association for Capital Improvements may be levied in any year in addition to the Annual Assessment. The purpose of such assessments is to pay costs of any construction, repair or replacement of a capital improvement upon the Common Areas, hiking trails, Wildlife Areas or roads. Such special assessments require a 2/3 majority vote of the Owners.

Construction Assessments: Any damage done to roads or Common Areas by construction vehicles or workmen during construction of a residence will be repaired at the expense of the responsible Homeowner. If such damages are not repaired within 30 days to the satisfaction of the ARB or Homeowners Association, an assessment will be charged to the responsible Homeowner for the required cost of repair.

Creation of Lien and Personal Obligation for Assessments: Lot owners shall be deemed to covenant and agree, by acceptance of a deed for a Lot, whether or not it be expressed in any such deed or other conveyance, to pay to the ARB or Homeowners Association assessments or charges, together with such interest and costs of collection and attorney fees, if necessary. Said amounts shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment or charge is made.

## DURATION AND ENFORCEMENT OF COVENANTS

Duration of Covenants: These Covenants shall run with the real estate and shall be binding on the Grantees of the Owner and all Heirs, Successors and Assigns of the Grantees. The Developer reserves the right to make minor revisions to these Covenants until nine of the lots have been sold. The Homeowners Association may make future minor revisions by a 2/3 majority vote and approval by the Plan Commission and Developer (until all lots are sold). Any such amendments shall be added to these Covenants and recorded in the office of the Recorder of Brown County and Area Plan Commission.

Enforcement of Covenants: In the event that any Lot Owner fails to fully observe and perform the obligations set forth in this Declaration of Covenants, and in the event that any such failure is not cured within 30 days after written notice of same is given by the ARB or Homeowners Association, any Lot Owner shall have the right to commence judicial proceedings to abate or enjoin such failure, and to take such further action as may be allowed by law to correct such failure. The failure or forbearance by the Homeowners Association to enforce any covenant or restriction shall in no case be deemed a waiver of right to do so later. All costs incurred by the Homeowners Association or Developer in connection with any act or proceedings undertaken to abate, enjoin or correct such failure, including attorney's fees, shall be payable by the defaulting Lot Owner to the Homeowners Association, and shall immediately become a lien against his lot.



OWNER'S CERTIFICATE

STATE OF INDIANA )  
COUNTY OF BROWN ) SS:

I, the undersigned Stephen V. Miller owner of the real estate shown and described herein, do hereby certify that I have laid off, platted and subdivided, and do hereby lay off, plat and subdivide, said real estate in accordance with the within plat.

This subdivision shall be known and designated as Turning Tree.

Front and side yard building setback lines are hereby established as shown on this plat, between which lines and the property lines of the street, there shall be erected or maintained no building or structure.

Stephen V. Miller  
Signature

\_\_\_\_\_  
Signature

STATE OF INDIANA )  
COUNTY OF BROWN ) SS:

I, Ellen F. Williamson, a Notary Public in and for said County and State, do hereby certify that Stephen V. Miller, personally known to me to be the same person whose name is subscribed to the above certificate, appeared before me this day in person and acknowledged that he signed the above certificate as his own free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1<sup>st</sup> day of June, A.D., 1994.

MY COMMISSION EXPIRES:

03/19/98

Ellen F. Williamson  
Notary Public

Resident of County of Bartholomew



"EXHIBIT C"

COMMISSION CERTIFICATE

UNDER AUTHORITY PROVIDED BY CHAPTER 174 - ACTS OF 1947, ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF INDIANA, AND ALL ACTS AMENDATORY THERETO, AND AN ORDINANCE ADOPTED BY THE BOARD OF COUNTY COMMISSIONS OF THE COUNTY OF BROWN, INDIANA, THIS PLAT WAS GIVEN APPROVAL BY THE COUNTY OF BROWN AS FOLLOWS:

Approved by the Brown County Area Plan Commission at a meeting held  
February 22, 1994.

BROWN COUNTY AREA PLAN COMMISSION

**DULY ENTERED  
FOR TAXATION**

JUN 1, 1994

*Robert F. Melton*  
AUDITOR OF BROWN COUNTY KS

*Larry Hawkins*  
Larry Hawkins  
President

*Leslie Kelp*  
Leslie Kelp  
Secretary

"EXHIBIT D"

COUNTY COMMISSIONERS CERTIFICATE

UNDER AUTHORITY PROVIDED BY CHAPTER 47, ACTS OF 1951, OF THE GENERAL ASSEMBLY, STATE OF INDIANA, THIS PLAT WAS ACCEPTED BY THE BOARD OF COUNTY COMMISSIONS OF BROWN COUNTY, INDIANA AT A MEETING HELD ON THE 7 DAY OF MARCH, 1994.

BOARD OF COMMISSIONS

*Jerry Floyd*  
Jerry Floyd

*Robert D. Woods*  
Robert Woods

*James Owens*  
James Owens

ATTEST:

*Robert F. Melton*  
Robert F. Melton  
Auditor