

# COVENANTS AND RESTRICTIONS OF PORTAGE WOODS DEVELOPMENT

## Background

Portage Woods, LLC, an Indiana limited-liability company, and the other signatories of this document adopted these covenants and restrictions on May 5, 2010 for the Portage Woods Development.

These covenants and restrictions apply to Lots 42 through 83 (the “Lots”) as identified on the Portage Woods Development Final Plat and more particularly described on the attached Exhibit A. The signatories of this document may impose these restrictions on the Lots because they own them.

## Effectiveness and Scope

The Lots are subject to and impressed with the covenants, agreements, easements, restrictions, and charges (the “Covenants”) set forth in this document. Accordingly, the Covenants

- are effective against the Lots upon this document being recorded;
- are a part of the conveyance of any Lot even if they are not written in the conveyance;
- for the mutual benefit and protection of the owners, present or future, of the Lots;
- run with the land; and
- inure to the benefit of and are enforceable by an owner of any land or Lots in the Portage Woods Development Final Plat, and the owner’s legal representatives, heirs, successors, grantees, and assigns.

Any owner of any land or Lot in the Final Plat

- is entitled to injunctive relief against a violation or attempted violation of the Covenants;
- is entitled to damages for injuries resulting from a violation; and
- has no right of reversion or forfeiture of title resulting from a violation.

## The Covenants

1. **DEFINITIONS.** Unless the context clearly requires otherwise, the following terms, when used in this document, have the corresponding meanings:
  - 1.1 *Articles of Incorporation* — The Association’s Articles of Incorporation. The Articles of Incorporation are incorporated in this document by reference.
  - 1.2 *Association* — Portage Woods Homeowners’ Association, Inc. (a not-for-profit corporation whose Members own the Lots) and its successors and assigns.
  - 1.3 *Board of Directors* — The Association’s board of directors.
  - 1.4 *Bylaws* — The Association’s bylaws. The Bylaws are incorporated in this document by reference.
  - 1.5 *Committee* — The Portage Woods Architectural Control Committee.
  - 1.6 *Covenants* — The covenants, agreements, easements, restrictions, and charges set forth in this document.
  - 1.7 *Developer* — Portage Woods, LLC, an Indiana limited liability company, and its successors and assigns.
  - 1.8 *Lot* —
    - (A) Any of the plots of land identified as Lots 42 through 83 on the Plat and more particularly described on the attached Exhibit A; and
    - (B) any dwelling located on the plot.
  - 1.9 *Member* — A member of the Association.
  - 1.10 *Owner* — A person, corporation, partnership, association, trust, or other legal entity that holds (individually or with one or more other Owners) the fee simple title to a Lot.
  - 1.11 *Plat* — The recorded final plat of Portage Woods Development including any supplemental recorded plats covering the Property.
  - 1.12 *Portage Woods* — The name that the Property is known by.

- 1.13 *Property* — All of the Lots, including streets, easements, and common areas included on the Plat.
- 1.14 *Turnover Date* — The date that the Developer records the written turnover of Association control with the St. Joseph County, Indiana Recorder.
2. **DESCRIPTION OF THE PROPERTY.** The Property consists of the forty-two lots identified as lots numbered 42 through 83. The size of each Lot is designated on the Plat.
3. **ASSOCIATION.**
- 3.1 **Purpose.** The Association has been formed to manage and financially support all common areas, and for all other purposes deemed necessary.
- 3.2 **Membership.** The Association has one class of Members. Each Owner is a Member. Only persons or entities holding an interest in a Lot may be a Member.
- 3.3 **Voting Rights.** No Member other than the Developer has any right to vote on any matter until the Turnover Date. After the Turnover Date, each Lot will have only one vote. Any Member with an interest in a Lot may cast that Lot's vote. But if more than one Member attempts to cast the Lot's vote differently, the Lot's vote will not be counted.
- 3.4 **Transfer of Membership.** No membership certificate or similar document is necessary to transfer membership to or from an Owner. An Owner
- (A) becomes a Member when a deed giving the Owner an interest in a Lot is recorded with the St. Joseph County, Indiana Recorder; and
- (B) ceases to be a Member when a deed transferring the Owner's last interest in any Lot is recorded with the St. Joseph County, Indiana Recorder.
- 3.5 **Initial Board of Directors.** The initial Board of Directors is as designated in the Articles of Incorporation or as later appointed by Developer. A director on the initial Board of Directors (notwithstanding any provision in these Covenants, the Articles, or the Bylaws to the contrary) will remain a Director until
- (A) the Turnover Date,

(B) the Developer removes the director; or

(C) the director resigns from the board.

3.6 **Vacancy Before Turnover Date.** If there is a vacancy on the Board of Directors prior to the Turnover Date, only the Developer may fill the vacancy by appointing another person to fill the vacant seat.

3.7 **Board of Directors After Turnover Date.** Within 30 days after the Turnover Date, the Association must elect a Board of Directors and will continue to do so annually as the Bylaws provide. The Board of Directors

(A) governs the Association;

(B) represents all Members; and

(C) is responsible for the functions and duties of the Association, including but not limited to

(i) performing services detailed in these Covenants; and

(ii) paying the expenses related to those services.

3.8 **Adoption of Rules and Regulations.** The Board of Directors may adopt, amend, and supplement rules and regulations in addition to those set forth in this document regarding the operation of the Property. The Board of Directors must promptly deliver copies of any rules it adopts, amends, or supplements to all Owners.

#### 4. **ASSESSMENTS AND COLLECTION FEES.**

4.1 **Generally.** The Association may levy and collect dues and assessments, including annual assessments for the operation and maintenance of common areas. Assessments must be levied equally on each Lot. Failure to pay the annual dues or assessments is a violation of these Covenants.

4.2 **Billing and Payment.** Each January the Association will bill each Owner for assessments or annual dues. These are due and must be paid within 30 days.

4.3 **Unpaid Assessments.** Delinquent dues and assessments bear interest at 8% per year beginning 30 days after they become due. Until paid, dues and assessments are a lien in favor of the Association upon the Lot against which they are charged. The lien of the Association is

subordinate to any first mortgage lien. Any person buying or dealing with a Lot may rely upon a certificate signed by the President, Treasurer, or Secretary of the Association showing the amount of dues and assessments unpaid as of the date of the certificate. The Owner must also pay all costs of collection including attorney's fees.

5. **ARCHITECTURAL CONTROL.**

5.1 **Committee.** The Lots are subject to the authority of the Committee. The Committee consists of three persons appointed by the Developer (before the Turnover Date) or the Board of Directors (after the Turnover Date). Members of the Committee serve until they are removed or resign, unless the Developer or Board of Directors (as the case may be) sets terms for members of the Committee. The Committee may designate any one of its members to act on its behalf.

5.2 **Committee Approval of Construction.** No structure may be built or altered on any Lot, nor may the natural topography or drainage of any Lot be altered (through landscaping or otherwise), until the Committee approves in writing the construction plans for the structure or topographical alterations. The decision of the Committee is entirely within its discretion.

5.3 **Plans.** Before starting any construction or topographical alteration on a Lot, the Lot's Owner must submit one set of complete plans to the Committee. Construction plans submitted to the Committee must show

- (A) floor plan;
- (B) quality of construction;
- (C) materials;
- (D) outside colors to be used;
- (E) harmony of external design with existing structures;
- (F) location with respect to lot lines, topography, and finish grade elevations; and
- (G) all details regarding landscaping; and
- (H) all details regarding topographical alterations.

- 5.4 **Deviations from Plans.** No changes from approved plans may be made without the Committee's prior written consent.
- 5.5 **Limitation of Liability.** By submitting plans to the Committee, the party making the submission agrees not to bring any action or suit against the Developer, the Committee, or any of the Committees members with regard to the plans. The Developer, the Committee, members of the Committee, and their respective heirs, personal representatives, successors, or assigns, will not be liable to anyone for
- (A) any mistake in judgment, negligence, or non-feasance relating to the approval, disapproval, or failure to approve any plans submitted to the Committee;
  - (B) any structural defects in the plans or in any structure erected according to the plans or any drainage.
6. **COMPLETION DATE.** A structure must be completely constructed or completely removed within one year after construction starts. Unless otherwise approved in writing by the Committee, a Lot's side, front, and rear yards must be planted with grass seed or with sod, within 120 days after the structure is completed or the structure is occupied as a home (whichever is earlier).
7. **LOT DIVISION.** An Owner may not subdivide a Lot to build an additional dwelling.
8. **EASEMENTS.**
- 8.1 **Easement for Utilities.** An easement is granted to all public utilities and their agents for ingress, egress, installation, replacement, repairing, and maintaining utilities in the designated easement areas. But no one may install any utilities except as initially designed and approved by
- (A) the Developer (on any portion of the Property);
  - (B) the Association (after the Turnover Date); or
  - (C) a Lot's Owner (on any portion of the Lot and to the extent the Owner has the right to disapprove of the utilities being installed on the Lot).
- 8.2 **Easement to Association.** An easement is granted to the Association, its officers, agents, and employees, and to any management companies

selected by the Association to enter, cross over, and otherwise use any portion of a Lot to perform the Association's duties under these Covenants, the Bylaws, and the Articles of Incorporation.

- 8.3 **Lots Subject To Easements.** The Lots are subject to the rights of public utilities and to easements, which are marked as such on the Plat and are reserved for use as roads or for the installation of water and sewer mains, poles, ducts, lines and wires, overland drainage flows, and easements reserved in this document.
- 8.4 **No Permanent Structures on Easements.** No permanent structures may be erected or maintained upon the easements. No changes that would alter the flow of overland storm drainage runoff may be made in the grading of any areas used as drainage swales.
- 8.5 **Effect on Other Easements.** Easements granted in this document do not affect any other recorded easement on the Property.

9. **UTILITIES.**

- 9.1 **Service Lines.** All lines for telephone and all other public utility services, either in the streets or on Lots, must be located underground and must not be visible.
- 9.2 **Lighting.** All street or Lot lighting must be situated on posts with no lines visible.

10. **LAND USE AND RESTRICTIONS.**

- 10.1 **Generally.** No Lot may be used for any purpose other than as a single-family residence.
- 10.2 **Nuisances.** No one may on any Lot
- (A) carry on a noxious or offensive activity; or
  - (B) do anything that may become an annoyance or nuisance in the neighborhood.

- 10.3 **Home Business Allowed.** The Association may permit Owners to run a *home business* out of a residence on a Lot. A *home business* is an occupation or business that
- (A) involves only a member of the immediate family living in the dwelling;
  - (B) remains entirely within the dwelling;
  - (C) requires use of the dwelling that is clearly incidental and secondary to its use as a dwelling;
  - (D) does not change the dwelling's character;
  - (E) has no sign or display that indicates the building is being used for any purpose other than as a dwelling;
  - (F) does not involve a commodity being sold upon the premises;
  - (G) does not involve any person other than a member of the immediate family that lives on the premises being employed; and
  - (H) is not a barber shop, styling salon, beauty parlor, tea room, fortune-telling parlor, animal hospital, or any form of animal care or treatment such as dog trimming.
- 10.4 **Livestock and Poultry.** Ordinarily, no animals, livestock or poultry of any kind may be raised, bred, or kept on any Lot. But dogs, cats, or other household pets may be kept if they
- (A) are not kept, bred, or maintained for commercial purposes; and
  - (B) are not permitted to become a neighborhood nuisance or hazard.
- 10.5 **Garbage and Refuse Disposal.** No Lot may be used or maintained as a dumping ground for rubbish. Trash, garbage, weeds or other waste must be kept only in sanitary containers. All incinerators or other equipment for the storage or disposal of such material must be kept in a clean and sanitary condition.
- 10.6 **Recreational Vehicles and Commercial Vehicles.** No recreational or commercial vehicles (campers, trailers, trucks, or boats) may be kept in open areas, whether the open areas are on or off a Lot.

10.7 **Fires.** No fires may burn on any street or roadway on the Property.

11. **DWELLINGS.**

11.1 **Generally.** Each Lot may have only one dwelling on it. The dwelling must be a single-family dwelling and may not exceed two stories in height.

11.2 **Living Area Requirements.** Unless the Developer approves in writing, the living-floor area of the main structure (not including one-story open porches and garages) of a dwelling on the following Lots must meet or exceed the corresponding square footage:

Lots	Minimum Square Footage for Ranch-Style Dwelling	Minimum Square Footage for 2-Story Dwelling
45 through 51 79 through 83	2,600 square feet	2,800 square feet
42 through 44 52 through 55 69 through 79	2,200 square feet	2,500 square feet
64 through 68	2,000 square feet	2,400 square feet
56 through 63	1,800 square feet	2,300 square feet

11.3 **Garages.** All dwellings must have a full-size attached garage capable of storing at least two but not more than four automobiles. No unattached garages are permitted.

11.4 **Exterior Requirements.**

(A) All dwellings must have

- (i) a dusk-to-dawn light in front;
- (ii) a roof with an 8-in-12 pitch and dimensional shingles; and
- (iii) masonry chimneys.

- (B) Unless the Developer approves in writing
  - (i) a dwelling on Lots 45 through 51 or 79 through 82 must have a 100% brick or stone front; and
  - (ii) a dwelling on any other Lot must have a front made up of at least 50% brick or stone.

11.5 **Dwelling Location.** Not including eaves, steps and open porches, a dwelling may not

- (A) be nearer to the right-of-way line than the greater of
  - (i) 40 feet; and
  - (ii) the minimum building setback lines shown on the recorded plat;
- (B) be nearer than 10 feet to any side lot line; or
- (C) be nearer than 60 feet to any rear lot line.

## 12. OTHER LOT FEATURES.

12.1 **Temporary Structures.** No trailer, modular home, manufactured home, pre-built home, basement, tent, shack, garage, barn outbuilding, or any structure of a temporary character may be moved onto, assembled, or constructed on any Lot or used at any time as a residence, either temporarily or permanently.

12.2 **Above-Ground Pools.** No above-ground pools may be installed or maintained on any Lot.

12.3 **Tennis Courts.** Tennis courts may be installed on a Lot only with approval from the Committee.

12.4 **Detached Buildings.** Structures not attached to a dwelling on a Lot may not be built on any Lot.

12.5 **Driveways.** Driveways on Lots must be

- (A) at least 16 feet wide;
- (B) constructed of asphalt or concrete;

- (C) at least three inches thick, if constructed of asphalt;
  - (D) at least four inches thick, if constructed of concrete.
- 12.6 **Front and Side Yards.** A Lot's front and side yards must be landscaped. Any natural areas left in the front or side yards must be edged in and kept manicured.
- 12.7 **Rear Yards.** Ordinarily, rear yards may be left natural. But if a Lot is on a lake or pond, the rear yard must be landscaped and any natural areas must be edged in and kept manicured. In addition, the shore must have stone from the edge of the grass to the lake or pond.
- 12.8 **Sprinkler Systems.** Each Lot must have an underground sprinkler system that is able to adequately water all parts of the Lot's front and side yards and (if the Lot is on a lake or pond) the rear yard.
- 12.9 **Signs.** Except for political campaign signs, no sign of any kind may be displayed on any lot except one sign of not more than five square feet advertising the property for sale or rent. Political signs must be removed within 24 hours after the election that they pertain to.
- 12.10 **Mailboxes.** All mailboxes must be uniform and of a type and construction approved by the Developer (before the Turnover Date) or the Committee (after the Turnover Date).
- 12.11 **Sight Distance and Intersections.** No fence, wall, hedge or shrub planting that obstructs sight lines at elevations between two and six feet above the roadways may be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines; or, in the case of a rounded property corner, from intersection of the street property lines extended. The same sight-line limitations apply on any lot ten feet from the intersection of a street property line with the edge of a driveway. No tree may remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
- 12.12 **Perimeter Fencing.** Only perimeter fencing approved by the Developer or the Committee (as the case may be) may be erected or maintained on a Lot.

12.13 **Privacy Fence.**

- (A) *Around Patio.* A privacy fence not more than six feet high may be constructed around a patio adjacent to a dwelling. It must conform to present architectural standards as set by the style of home on that Lot and be approved in writing by the Committee before construction of the fence begins.
- (B) *Along Back Line of Certain Lots.* Lots that back onto Portage Road may have a privacy fence along the back property line if the fence
  - (i) is not more than six feet high;
  - (ii) has ¾-inch dog-ear ends;
  - (iii) is a color approved by Developer or the Committee; and
  - (iv) otherwise matches other privacy fences along Portage Road.

12.14 **Fuel Storage Tanks.** All oil or fuel storage tanks must be installed underground or concealed within the main structure of the dwelling, basement or attached garage.

12.15 **Lighting.** A dusk to dawn light (or gas light) of the type approved by the Developer or the Committee must be installed on each Lot in front of the front building setback line. If electric, post lights must be equipped with automatic operators (electric eyes) to provide light from sundown to dawn.

12.16 **Sewer-Septic Systems.** Until such time as a sanitary sewer system is constructed in the subdivision, or an individual sewage disposal system is approved by the Indiana Health Department, a sanitary septic tank must be installed for each dwelling erected in the subdivision. No other sanitary provision or device for sewage disposal may be installed or permitted to remain in this subdivision.

12.17 **Protective-Screening Areas.** The Plat may establish protective-screening areas, which may be noted as “non-access easements” or similarly identified as restricted. These areas are set aside to allow for the establishment of an effective screen for the protection of the residential area. No structure except a screen planting, fence, landscaping, wall, utilities, or drainage facilities may be placed or permitted to remain in screening areas. Any screen planting must be planted and maintained at

the owner's expense. No vehicular access over the area is permitted except to install and maintain screen planting, utilities, and drainage facilities. In addition, no screen planting over 36 inches high is permitted between the building setback line and front lot line.

**12.18 Antennas and Satellite Dishes.**

(A) *Generally Not Allowed.* Ordinarily, no outside above-ground television, A.M., F.M., or short wave radio antennas of any type, may be on any Lots or structures. But if the Committee approves, an Owner may erect

(i) a direct broadcast satellite (DBS) dish that is not more than one meter (39") in diameter; or

(ii) an antenna designed to receive either

(a) multichannel multipoint distribution service; or

(b) television broadcast service.

(B) *Requirements for Approved Antennas and Dishes.* Approved antennas or dishes and their support structure must

(i) meet all existing safety codes and laws governing historic preservation;

(ii) to the extent feasible be placed in locations that are not visible from the street or other common property; and

(iii) otherwise blend in with landscaping, including (if the Committee requires it) new shrubbery planted for the purpose of shielding the antenna or dish.

13. **DURATIONS OF COVENANTS.** The Covenants will remain in effect until revoked or amended.

14. **AMENDMENT AND WAIVER OF COVENANTS.**

14.1 **Amendment Before Turnover Date.** Before the Turnover Date, only the Developer (or its successors or assigns) may amend the Covenants. And amendment must be signed by the Developer and duly acknowledged before a Notary Public.

- 14.2 **Amendment After Turnover Date.** After the Turnover Date these Covenants may be amended only if the amendment is
- (A) in writing; and
  - (B) executed by the Owners of not less than sixty-seven percent of the Lots in the Property.
- 14.3 **When an Amendment Is Effective.** An amendment is effective when it is recorded with St. Joseph County, Indiana Recorder.
- 14.4 **Waiver of Covenants.** The right to amend these Covenants includes the right to waive any part of the Covenants as to any particular Lot.
15. **SEPARABILITY OF COVENANTS.** If a court invalidates one of the Covenants the other Covenants and all other provisions of these Covenants will remain in full force and effect.
16. **ENFORCEMENT OF COVENANT.**
- 16.1 **Who May Enforce.** Any Owner, the Developer (before the Turnover Date), or the Association may enforce these Covenants by a civil action for damages and by any other appropriate remedy at law or in equity.
- 16.2 **Remedies.** A person seeking to enforce these Covenants is entitled to
- (A) enjoin the person violating or attempting to violate the Covenants from doing so;
  - (B) have conditions that violate the Covenants altered or removed from a Lot (including removing any structure by due process of law);
  - (C) recover the person's actual and consequential damages caused by the violation;
  - (D) recover any expenses the person incurs for removing or altering conditions that violate the Covenants; and
  - (E) recover attorney's fees and costs the person incurs enforcing the Covenants.
- 16.3 **Expenses as Lien.** In addition to being recoverable in a lawsuit, expenses that the Developer or the Association incurs for in enforcing the Covenants will become a special assessment and lien against the

