

RECORDER
VANDERBURGH COUNTY
BETTY KNIGHT SMITH

2005R00003281

02/01/2005 03:38PM

RECORDING FEE: \$40.00
PAGES: 16

PROTECTIVE COVENANTS

OF

STONECREEK PUD SECTION 1, PHASE 2

The undersigned, Jagoe Land Corporation (the "Developer") of 3624 Wathens Crossing, Owensboro, Kentucky, is the owner of Lots 224-258 (collectively, the "Lots") of a Planned Unit Development in Vanderburgh County, Indiana known as Stonecreek, Section 1, Phase 2, as shown on Plat of record in Plat Book R, Page 143, in the Office of the Recorder of Vanderburgh County, Indiana (the "PUD").

For the purpose of promoting the development of the PUD, the undersigned does hereby dedicate for public use the streets and easements shown upon the recorded plat of the PUD (the "Plat").

The PUD will be part of a development to be known as Stonecreek Subdivision (the "Subdivision").

In addition to the restrictions imposed under and by all existing zoning ordinances of the City of Vanderburgh County, Indiana, the undersigned does hereby establish and place upon the Lots in the PUD the following restrictions:

ARTICLE I

General Restrictions Applicable To All Lots

1.1. EXTERIOR MATERIALS. In order to further enhance the future property values of the PUD Lots, the Developer has color coordinated certain exterior materials on the new homes and accessory buildings built or to be built thereon. As these products need replacing, repairing or repainting, the original colors and type materials must be used or colors and materials as near the original as possible may be substituted providing the original is not readily available. Exterior trim shall be antique white or as originally installed. Siding and roofing colors and design shall remain as similar as possible to the original. Fences in front of the homes and painted fences connecting the homes shall remain of the same type and color as the original.

1.2. BUILDING LOCATION. All buildings erected in the PUD shall conform to the building set back lines for front, rear and side yards and the public utility easements where established on the Plat . (See Section 1.11).

1.3. BUILDING COMPLIANCE. All buildings erected on the Lots shall conform to the rules and regulations as established by the applicable zoning ordinances.

1.4. DWELLING QUALITY AND SIZE- ACCESSORY BUILDING. The ground floor area for a one or one and one-half story residence shall be 500 square feet or more. For a two-story residence the ground floor area shall be 400 square feet or more. Such minimums shall be exclusive of open porches, breezeways and attached garages. No building shall be constructed to more than two stories in height. Accessory buildings must be in conformity with applicable zoning regulations and cannot exceed (a) one hundred (100) square feet in floor area; or (b) eight (8) feet in height.

1.5. FENCES AND WALLS. Fences or walls erected at the rear yards shall not be higher than eight (8) feet. No fences or walls shall be permitted in the front yards except such fences or walls used for decorating or ornamental purposes installed by the Developer. Any fences connecting homes which were originally erected by the Developer for side yards privacy from the street shall not be removed, destroyed or materially altered and shall be maintained in good condition and repair by the owner of the Lot upon which the fence sits. Fences must be constructed to permit reasonable access to utilities, or they must have gates to allow access. Fencing added after initial construction of a home must conform to the same style as that of the connecting fences at the time of construction or shall be a six-foot high fence as originally installed. Fences along side streets must remain at the distance from the street originally built.

1.6. DRIVEWAYS. All driveways shall have a permanent constructed surface of concrete or bituminous asphalt.

1.7. TRELLISES. Sideyard trellises or arbors shall not have solid roofs over them unless permitted by the applicable zoning ordinances.

1.8. PRIVACY WALL. In the event a home is destroyed, moved or for any other reason does not provide a privacy wall along its "zero lot line" (as hereinafter defined) , the owner of that Lot shall, within seven (7) days of the removal of or destruction of such privacy wall, construct a six (6) foot high solid fence of the same style as the side fence connecting the homes along the zero lot line where the house wall was formerly located.

1.9. DRAINAGE FLOW AND CARE OF PROPERTY. Fencing, structures erected, and/or grading by owners of Lots must allow the original direction or flow of the community drainage. Each Lot owner shall be responsible to see that their respective builder or contractor exercises good erosion control practices during construction of any improvements and that such builder or contractor and/or the owner of a Lot shall finish, grade, seed and straw the Lot as soon as possible. Straw bale dams for run-off control during construction shall be used if necessary.

Thereafter, a good turf shall be established and maintained and each Lot owner shall be responsible for maintenance and the grade elevation of the drainage swales along and within their respective Lot lines. The Developer has established certain grades for the PUD as required by the Evansville-Vanderburgh County Area Plan Commission (the "Plan Commission"). Accordingly, it shall be the sole responsibility of each Lot owner to maintain their drainage easements providing proper surface water drainage for the community.

1.10. DRAINAGE AND EASEMENTS. All areas upon the recorded plat of the Subdivision which are designated as easements thereon are hereby reserved for the use of any and all public utilities and for the installation of water, sewer and gas mains, for drainage above or underground, electric facilities and surface water drainage, subject at all times to the proper authorities. No structures or other improvements, planting or other materials shall be erected or permitted to remain within said easements which may damage or interfere with the installation and maintenance of the utilities and drainage. The easement area of each Lot shall be maintained continuously by the owner of said Lot so as not change the intended direction of flow of surface water within said easement as said direction of flow is set forth on the Plat. Any existing creeks, spillways or other drainage way within the PUD shall be maintained by each Lot owner affected thereby in its present condition so as to maintain thorough and clear surface water drainage along said waterway at all times, such Lot owner being responsible to maintain that portion of said waterway which is located upon said owner's respective Lot. Water from downspouts or other surface water drainage systems shall not be drained into or connected with the sanitary sewer system serving the Lots in this PUD.

1.11. UTILITY ACCESS. Any public utility which has an easement over any Lot shall, in addition to the easement shown on the Plat, have the right to enter the Lot at any necessary location for the purpose of repairing, maintaining or moving utility wires, pipelines or any other equipment. If, at any time, access to an easement by any utility or agency of the City of Evansville is necessary, the Lot owner shall be responsible for removal of any obstruction at the Lot owner's expense.

1.12. APPEARANCE OF LOTS. The front yard areas shall be kept neat and clean. All trash containers, junk, immobilized autos, bicycles, and any other items when not in use must be stored in the side or back yard and out of view from the street. No permanent or temporary basketball goals or other permanent sporting equipment structures shall be constructed in the front yard.

1.13. PARKING OF VEHICLES. The owners of Lots will not park or permit others to park large vehicles or vehicles and trailers which total over eight (8) feet in height or twenty (20) feet in length on a permanent or regularly reoccurring basis in the drives, front yards, the streets or any alley in the PUD. The vehicles referred to in this section include but are not limited to semi trucks, large vacation vehicles, two-ton or larger trucks, boats, trailers and so forth.

1.14. RESIDENTIAL PURPOSES. Except for model homes, sales or construction buildings and trailers of the Developer or its designated builders, no Lot shall be used except for

residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling and accessory buildings.

1.15. TEMPORARY STRUCTURE. No trailer, garage, carport, apartment, barn, tent, shack or other buildings in the PUD shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence. This restriction shall not be construed to prohibit the building of a detached garage or carport to be used as a garage or carport when allowed by governing ordinances or these Protective Covenants.

1.16. TRADE OR ACTIVITY. No noxious or offensive trade or activity shall be carried on upon any Lots nor shall anything be done thereon which may be, or become an annoyance or nuisance to the neighborhood. Without limiting the generality of the foregoing, no animals, birds or fowl shall be allowed or permitted to be kept or raised on any Lots in the PUD, except dogs, cats and pet birds, which may be kept thereon in reasonable numbers as pets for the pleasure and use of the occupants but not for any commercial or agricultural use or purpose. Birds shall be confined in cages.

1.17. RESIDENTIAL LOCATION AND SIDEYARD EASEMENTS. The home on each Lot may be built by the Developer on or at any distance from the side boundary lines, which boundary line shall be known as the "zero setback line". A Sideyard Easement shall serve each home. The Sideyard Easement shall be on the adjoining lot immediately adjoining the lot along the zero setback line. The Sideyard Easement shall be five (5) feet wide and shall begin at the front street and extend to the rear line. Further, there will be a minimum of ten (10) feet separation between residence buildings.

The five (5) foot Sideyard Easements serving a home shall be known as the Dominant Estate. The lot across which the five (5) foot Sideyard Easement lies shall be known as the Servient Estate.

The Sideyard Easement shall be used for maintenance and repair purposes by the owner of the Dominant Estate, and neither the whole or any part thereof nor any right to use and enjoy the whole or any part thereof shall be sold, mortgaged, leased, rented or otherwise granted and conveyed separate and apart from the Dominant Estate.

The owner of the Dominant Estate shall not:

- (a) permit eaves, gutters or overhangs of the house to extend more than twelve inches into the Sideyard Easement;
- (b) suffer or permit any waste upon the Sideyard Easement;
- (c) undertake any use of or affix any object to any wall, fence or other structure on the Servient Estate which abuts, adjoins or crosses the Sideyard Easement;

(d) undertake any grading that would tend to prevent proper drainage of the Sideyard Easement, or to promote soil erosion or to undermine support for the foundation of any wall, fence or other structure on the Servient Easement which abuts or adjoins the Sideyard Easement;

(e) place or permit the accumulation of any soil or fill material against any wall, fence or other structure on the Servient Easement which abuts, adjoins or crosses the Sideyard Easement to a height which exceeds original grade;

(f) cause, suffer or permit any damage to any utility lines located within the Sideyard Easement or interrupt or interfere with the maintenance and repair thereof;

(g) construct, erect or install any structure upon, across, over, under or within the Sideyard Easement or undertake any grading or fill or any other activity upon the Sideyard Easement which is in violation or which would result in a violation of any applicable governmental statute, ordinance, rule or regulation.

There shall be reserved to the owner of the Dominant Estate with the respect to the Sideyard Easement the right to:

(a) cause or permit the foundations of the dwelling constructed upon the Dominant Estate to extend under the Sideyard Easement (below finish grade) and to cause or permit the eaves and gutters, if any, of the dwelling constructed on the Dominant Estate to extend over the Sideyard Easement at heights no less than such eaves and gutters are originally constructed; and extensions no greater than 12"; provided that no such gutters shall be permitted which cause or lead to excess water run-off and drainage upon the Sideyard Easement that results in erosion of the surface thereof;

(b) enter upon the Sideyard Easement at reasonable times and under reasonable circumstances for the purpose of constructing, reconstructing, maintaining and repairing any connecting fence, wall or other structure on the Dominant Estate which abuts, adjoins, lies near, or crosses the Sideyard Easement;

(c) permit reasonable drainage of water from the Dominant Estate over, upon and across the Sideyard Easement;

(d) in exercising the right of entry upon the Sideyard Easement as provided for above, the owner of the Dominant Estate agrees to utilize reasonable care not to damage any landscaping or other items existing in the Sideyard Easement area; provided, however, the owner of the Dominant Estate shall not be responsible for damage to such landscaping or other items to the extent such damage could not be reasonably avoided in connection with such entry upon the Sideyard Easement area for authorized purposes and shall not be liable for damage to structures if they are built upon the Sideyard Easement so as to unreasonably interfere with repairs.

maintenance or reconstruction of the wall, fence or the home on the Lot having the Dominant Estate.

The owner of the Servient Estate may use the Sideyard Easement for the purposes of planting, landscaping, installation and use of general landscape type structures, including such structures as benches, ponds, walks, patios, decks, fences or trellises, general recreation, access, drainage and other visual, aesthetic and recreational purposes and it shall be maintained by the owner of the Servient Estate. The owner of the Servient Estate further shall maintain the landscaping on any land lying between the Dominant Estate's building foundation and their mutual property line.

The owner of the Servient Estate shall not:

(a) place any structures on the Sideyard Easement in such a manner or such a location that the structure would unreasonably interfere with repair, maintenance or reconstruction of any wall, fence or the house on the Lot having the Dominant Estate. If the structure does interfere, the owner of the Dominant Estate will not be liable for any damage to a structure which is done in the course of repair, maintenance or reconstruction work done by the Dominant Estate.

(b) permit trees, shrubbery or other vegetation to grow on the Sideyard Easement which would cause damage to or interfere with the maintenance and repair or any wall, fence or the house on the Dominant Estate;

(c) cause or permit any offensive contact (including without limitation thereto, any pounding or bouncing of objects) with any wall of the residence on the Dominant Estate which abuts, adjoins or crosses the Sideyard Easement);

(d) suffer or permit upon the Sideyard Easement any activity by household pets or other animals which would tend to cause damage to or undermine support for any wall, fence or other structure on the Dominant Estate which abuts, adjoins or crosses the Sideyard Easement;

(e) cause or permit to exist any open, uncontained fire on the Sideyard Easement;

(f) construct, erect or install any structure upon, across, over, under or within the Sideyard Easement or undertake any grading or fill or any other activity upon the Sideyard Easement which is in violation or which would result in a violation of any applicable governmental statute, ordinance, rule or regulation.

The owner of the Dominant Estate shall not construct, install or otherwise cause to be made any door, window, duct, vent or aperture of any kind in the residence on the Dominant Estate which abuts or adjoins the Sideyard Easement.

In the event of any dispute arising concerning the right and obligation created by this Section, the owner of the Servient Estate and the owner of the /Dominant Estate shall each choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision of a majority of all the arbitrators shall be binding upon such owners.

1.18. OUTDOOR LIGHTING. Each Lot in the PUD may be provided with an outdoor light post. Each light post will be provided with a photocell, for dusk to dawn operation. Lot owners shall maintain these lights in an operable manner always using 100 watt bulbs unless public street lighting is installed and maintained by a public entity.

1.19. SIGNS. The PUD entrance signs will remain until the Developer or its successor removes them. The area upon which such entrance sign identifying the PUD (the 'Signs') are located shall be deemed to be and located within an easement in favor of the Developer or its successors or assigns (the "Sign Easements."). The Sign Easements are for the benefit of the Developer and its assignees. No structure, improvement, driveway or pathway, except for Signs and related structures shall be located in or on the Sign Easements without the written consent of the Developer or its assignees. The Signs and landscaping located within the Sign Easements shall not be changed or altered without the express written consent of the Developer or its assignee. The obligation to maintain the Sign Easements including removing debris and cutting the grass shall be the obligation of the owner of the Lot upon which any Sign Easement is located. The Signs which are located in the Sign Easement shall be maintained by the Developer or its assignee. At any time, the Developer may assign to the Association (as hereinafter defined) all of its rights and obligations with respect to the Signs and Sign Easements and the Association shall accept any such assignment.

1.20. HOMEOWNERS ASSOCIATION. All record owners of Lots in this PUD and all other record owners of any lot in the Subdivision shall automatically be members of and subject to the obligations, rules, regulations, assessments and by-laws of Stonecreek Homeowners Association (the "Association"). This Association shall be responsible for repair, maintenance, and improvement of all Signs and special landscaping around them (excluding any trees which shall be the obligation of the owner of the Lot upon which the Sign Easement is located). In addition, the Association shall be responsible for the upkeep and maintenance for the areas designated as "Open Space" on the plat and any other recorded plat creating lots within the Subdivision. The Open Space area will include lakes and other easements and drainage facilities. The Association shall be the owner of the Open Space shown on the plat. The general scope of the area making up the Open Space is shown on the primary plat of the Subdivision, approved by the Plan Commission on November 3, 1999, under Docket No. 24-S-99. For ease of reference, the "Open Space" area proposed by the Developer for the entire Subdivision is attached hereto as Exhibit "A". The Developer reserves the right to modify the "Open Space" area at any time prior to recording of any plat for any section or phase of the Subdivision.

Each Lot Owner in the Subdivision shall have one vote in the Association. The Association may be incorporated or an unincorporated association. If a Lot is sold on installment

contract the owner, for purposes hereof, shall be the purchaser under the installment contract rather than the record title owner. The Association may meet once a year and may elect such officers as it sees fit at said meeting.

The Association may make assessments against the Lots, with each Lot to bear its proportion of the total assessment as one Lot bears to the total number of Lots responsible for maintenance of Association property.

All assessments shall be subordinate to any mortgage lien on any Lot.

Assessments shall be established by the Association by December 1 of each year for the next year provided that any such assessment shall have the consent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for that purpose. Notices of the annual assessment established by the Association shall be mailed to all owners of the Lots by December 10 of each year for the next year. Owners of Lots will pay an assessment charge for each separate Lot they own. After the assessment notice has been mailed or hand delivered to each Owner, such assessment shall become a lien on each Lot until paid in full. If not paid within sixty (60) days, the assessment will bear interest at the rate of twelve percent (12%) per annum until paid in full and to which shall be added reasonable attorney fees in the event the services of an attorney are utilized to collect the assessment. All such assessments shall be subordinated to any purchase money mortgage on the Lot.

1.21. INJUNCTIVE RELIEF. Each and all of the covenants, restrictions and conditions contained herein shall inure to the benefit of all owners of Lots in this PUD, jointly and severally, and may be enforced by them or by any of them, in any court of competent jurisdiction by injunction or other appropriate legal remedy. The party adjudged to have violated any of said restrictions shall be liable to the aggrieved party for reasonable attorneys fees and court costs, which shall be fixed by the court hearing said matter. The owner of any Lot in this PUD shall have the right to enforce said covenants, conditions and restrictions without proof of pecuniary damage to their own property in the Subdivision or otherwise.

1.22. BINDING EFFECT. The restrictions contained in Articles I and II hereof shall run with the land and shall be binding upon all persons claiming interest therein.

1.23. INVALIDATION OF RESTRICTIONS. In the event any one of the restrictions set forth in Articles I and II hereof shall be declared void by the judgment of a court of competent jurisdiction, such judgment shall in no wise affect any other restriction herein contained.

1.24. REMONSTRATE OR PETITION. By acceptance of title to any Lot in this PUD, the Lot owner agrees that he, she or it shall not object, remonstrate or petition against the Developer in any undertaking which the Developer deems beneficial to the PUD.

1.25. AMENDMENT BY DEVELOPER. The Developer may amend these Protective Covenants so long as the Developer or its subsidiaries or affiliates owns any lot in the

Subdivision. The consent of any other lot owners shall not be required for the Developer to amend the Protective Covenants as provided in this Section.

1.26. SUBDIVISION OF LOTS. No Lot or Lots shall be re-subdivided except as may become necessary in order to correct minor changes resulting from errors of survey in the platting of the PUD. The Developer also reserves the right to divide or subdivide any Lots to provide additional streets for ingress or egress to and from the PUD.

1.27. CHANGING OF LOT DIMENSIONS. It is expressly understood and agreed that the Developer shall have the right to change, alter, adjust or readjust the dimensions of any Lot owned by the Developer situated in the Subdivision.

1.28. TERMINATION OF RESTRICTIONS. The covenants and restrictions set forth in Article I and Article II hereof shall continue in full force and effect for a period of thirty (30) years from the date these protective covenants are recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Except as otherwise set forth herein, the restrictions, conditions, covenants and agreements contained in Article I and Article II hereof may only be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot owners. Any such amendment must be in writing and recorded in the Office of the Recorder of Vanderburgh County, Indiana.

ARTICLE II

ADDITIONAL RESTRICTIONS, CONDITIONS AND COVENANTS APPLICABLE TO LOTS 253 THROUGH 255 IN THE PUD ONLY

Section. 2.0. Definitions. The following words shall have the following meanings in this Article II:

2.1.1. "Stonecreek Lake "C" Maintenance Association" shall mean and refer to Stonecreek Lake "C" Maintenance Homeowners Association, its successors and assigns. The Stonecreek Lake "C" Maintenance Association may be incorporated or an unincorporated association.

2.1.2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the PUD, but excluding those having such interest merely as security for the performance of an obligation. If any Owner sells a Lot on an installment contract and the buyer becomes a resident of the Lot, the buyer shall be substituted for the Owner as a member of the Association.

2.1.3. "Property" or "Properties" shall mean and refer individually or collectively to Lots 253 through 255, inclusive, in the PUD, and any other residential lots developed by Developer which Developer determines shall be subject to Stonecreek Lake "C" Maintenance Association

membership, and which, by recorded covenants the Developer makes subject to Stonecreek Lake "C" Maintenance Association membership. Such lots may be in any unit of any subdivision, all or part of which Developer determines should be subject to membership in the Stonecreek Lake Maintenance Association for the purposes of sharing the obligations as hereinafter set out.

2.1.4. "Common Area" means the surface of a lake (including Lake "C" as shown on the plat) and any drainage structures in a lake except for boat docks and decks extending from the Properties. The lake shown on the Stonecreek PUD and identified as Lake "C", lies on land owned by Owners of the Properties. However, all of the Owners of lots lying beneath a lake shall have the right to use the surface of that entire lake. "Common Area" shall also include any drainage and lake maintenance sites as shown on the plat.

2.1.5. "Lot" for purposes of this Article II shall mean and refer to any plot of land shown upon the plat with the exception of the Common Area.

2.1.6. "Developer" shall mean and refer to Jagoe Land Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 2.2. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Properties.

Section 2.3. Membership in Stonecreek Lake "C" Maintenance Association. All Owners of Properties and any other Owners with lake frontage on Lake "C" shall be members of the Stonecreek Lake "C" Maintenance Association, currently an unincorporated association, and shall be governed by any properly passed rules and regulations of the Stonecreek Lake "C" Maintenance Association.

Each Lot comprising the Properties shall be considered to have one Owner and shall have one vote in the Stonecreek Lake "C" Maintenance Association.

If any Owner sells a Lot on an installment contract and the buyer becomes a resident of the Lot, the buyer shall be substituted for the Owner as a member of the Stonecreek Lake "C" Maintenance Association.

The Developer shall be deemed the Owner and a member as to each Lot owned within the Properties to which it retains title.

Section 2.4. Creation of Lien and Personal Obligation of Assessments. The Developer, for each Lot owned within the Properties, hereby covenants, and each Owner of any such Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Stonecreek Lake "C" Maintenance Association; (a) annual assessments or charges, and (b) special assessments for capital improvements or repairs or

unbudgeted items, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person or persons who was or were the Owner(s) of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

Section 2.5. Purpose of Assessments. The assessments levied by the Stonecreek Lake "C" Maintenance Association shall be used exclusively to maintain, improve, and repair the Common Areas. The Stonecreek Lake "C" Maintenance Association may, if it sees fit, elect to insure the Common Areas instead of such insurance being carried by the individual Owners on their individual lots.

Section 2.6. Establishing Assessments. Assessments established by the Stonecreek Lake "C" Maintenance Association shall be set by December 1 of each year for the next year; provided that any such assessment shall have the consent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for that purpose. Notices shall be mailed to all Owners of the Properties and such assessments shall be due on January 1 of each year. Owners of the Properties will pay an assessment charge for each separate Property they own. After the assessment notice has been mailed or hand delivered to each Owner of the Properties, such assessment shall become a lien on each of the Lots until paid in full by the Owner of such Property. If not paid within sixty (60) days, the assessment shall bear interest at the rate of 12% per annum until paid in full and to which shall be added reasonable attorney fees in the event the services of an attorney are utilized to collect the assessment. All assessments shall be subordinate to the lien of any first mortgage on the Property.

The Association shall have the right to promulgate and publish rules and regulations which each Owner shall strictly comply with.

Section 2.7. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Stonecreek Lake "C" Maintenance Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, or other unexpected expense, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 2.8. Effect on Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Stonecreek Lake "C" Maintenance Association may bring an action at law or in equity against the Owner personally obligated to pay the same, or foreclose the lien against the property which is subject to the lien. No Owner may

waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of a Lot.

Section 2.9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due 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.

Section 2.10. Additional Restrictive Covenants Applicable to the Properties.

- 2.10.1 Fences. Backyard fences must be decorative, not over six (6) feet high and they cannot be chain link, woven wire, or other similar material. Fences must be approved by Developer until Developer has sold all properties abutting Lake "C", and thereafter must be approved by the Stonecreek Lake "C" Maintenance Association.
- 2.10.2 Decks and Docks. Decks and docks permitted to be constructed on the easement and/or over the water may not extend beyond eight (8) feet from the water's edge at normal pool stage. Normal pool stage is considered equal to the overflow structure elevation. Decorative safety railings may be constructed on decks or docks.
- 2.10.3 Lakefront Maintenance. Lakefront properties and lake banks shall be maintained in a neat manner. Washouts shall be filled, grass shall be mowed, and backyards shall be clear of debris. There shall not be obtrusive automobiles, outbuildings, and scrap or messy conditions as determined by the Stonecreek Lake "C" Maintenance Association.
- 2.10.4 Boats. There will be no gas powered or other noisy motors on boats in the lake. Boats may be manually powered or powered with quiet electric motors or motors with no greater level of noise.
- 2.10.5 Aquatic Life. No aquatic life shall be placed in the lake without receiving approval from the Stonecreek Lake "C" Maintenance Association.
- 2.10.6 Swimming. Swimming in the lake is prohibited.
- 2.10.7 Drainage Structures. Owners of Lots 253 through 255, inclusive, in the PUD, shall be responsible for drainage structures on their respective Lots and shall be responsible for debris removal from structure openings on their respective Lots.

2.10.8 Television Satellite Dishes. Television satellite dishes shall not be permitted within twenty-five (25) feet of the normal pool stage of the lake as determined by the elevation of the overflow pipe.

2.10.9 Trade or Activity. Except as set forth herein, no noxious or offense trade or activity shall be carried upon any Lot nor shall anything be done thereon, which may be, or become an annoyance or nuisance to the neighborhood. Without limiting the generality of the foregoing, no animals, birds or fowl shall be allowed or permitted to be kept or raised on the Lots in the PUD except dogs, cats, pet birds and water fowl which may kept thereon in reasonable numbers as pets for the pleasure and use of the occupants but not for any commercial or agricultural use or purpose.


Section 2.11. Invalidation of Restriction. In the event that any one of these restrictions shall be declared void by the judgment of a court of competent jurisdiction, such judgment shall in no wise affect any of the other restrictions herein contained.

Section 2.12. Injunctive Relief. Each and all of the covenants, restrictions and conditions contained in this Article II shall inure to the benefit of all Owners of Properties, jointly and severally, and may only be enforced by them or by any of them in any court of competent jurisdiction by injunction or other appropriate legal remedy. The party adjudged to have violated any of said covenants, conditions or restrictions shall be liable to the aggrieved party for reasonable attorney fees and court costs, which shall be fixed by the court hearing said matter. The Owner of any of the Properties shall have the right to enforce said covenants, conditions and restrictions, without proof of pecuniary damage to their own property. The covenants, restrictions and conditions contained in this Article II shall not be enforceable by any other person or entity other than the Owners and the Stonecreek Lake "C" Maintenance Association.

Section 2.13. Article I Restrictions Applicable. All owners of the Properties shall be bound by the restrictions, conditions, covenants and agreements set forth in Article I, as well as the covenants, restrictions, and conditions set forth in this Article II. All Owners of the Properties are also members of Stonecreek Homeowners Association as described in Article I, Section 1.20 hereof, which entity is separate and distinct from the Stonecreek Lake Maintenance Association.

IN WITNESS WHEREOF, said Jagoe Land Corporation has caused these presents to be duly executed by its authorized officer, duly attested, this 19th day of January, 2005.

JAGOE LAND CORPORATION

By: 
J. Scott Jagoe, President

STATE OF KENTUCKY)
) SS:
COUNTY OF DAVIESS)

The foregoing instrument was acknowledged before me this 19 day of January, 2005, by J. Scott Jagoe, President of JAGOE LAND CORPORATION, a Kentucky corporation.

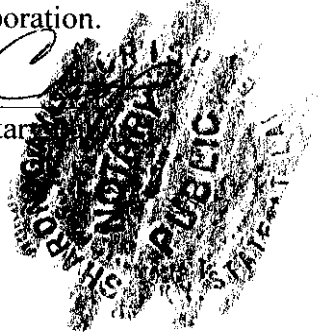
Sharon Gayle C
(Ky State at Large) Notary

County of Residence:

Daviess

My Commission Expires:

4-2-2005



THIS INSTRUMENT PREPARED BY: MARCO L. DELUCIO OF THE LAW FIRM OF ZIEMER, STAYMAN, WEITZEL & SHOULDERS, LLP, 20 N.W. FIRST STREET, P. O. BOX 916, EVANSVILLE, INDIANA 47706. TELEPHONE: (812) 424-7575.

EXHIBIT "A"
OPEN SPACE EXHIBIT

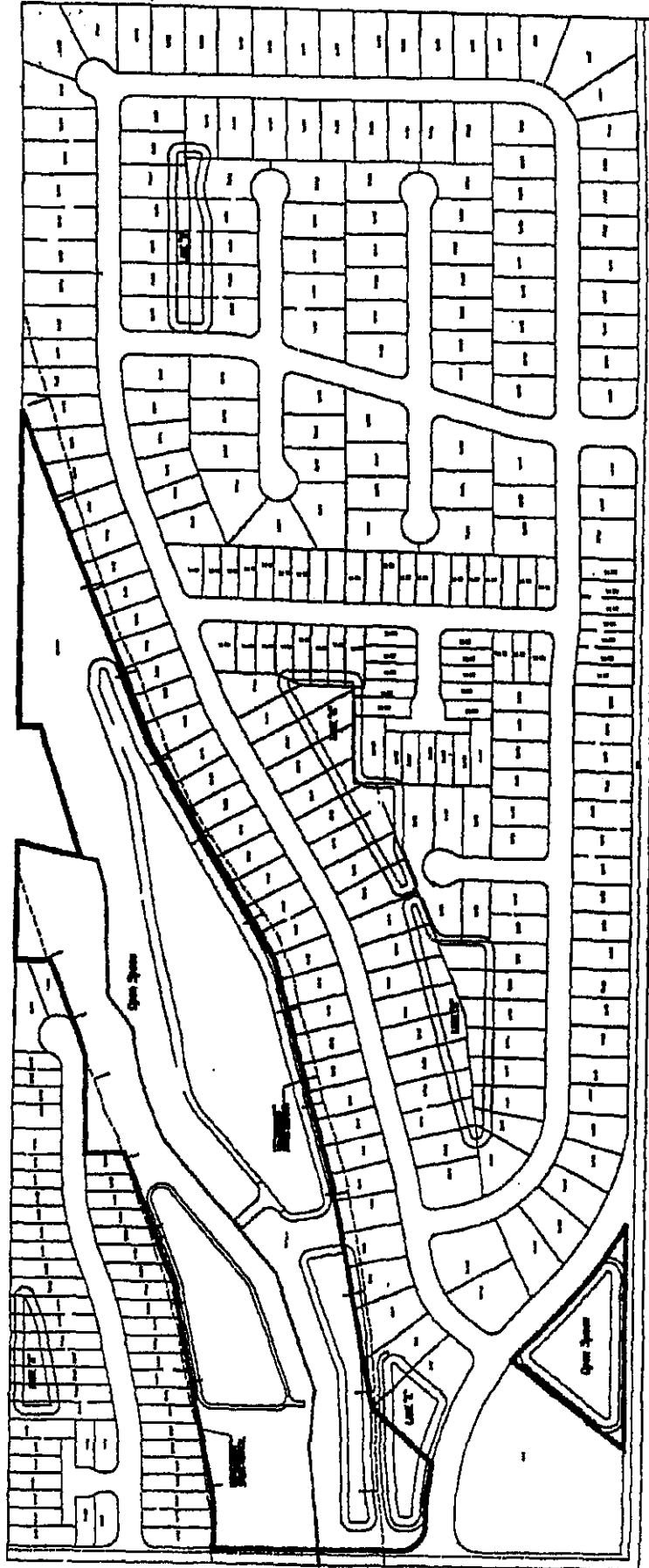


EXHIBIT A

EXHIBIT A
Open Space Exhibit