

201500009283  
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BARTHOLOMEW COUNTY, IN  
ANITA L MOLE, COUNTY RECORDER  
09-15-2015 At 02:47 PM.  
DECLARATION 35.00

SUPPLEMENTARY DECLARATION XXXIX  
TO THE  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
TIPTON LAKES COMMUNITY ASSOCIATION, INC.  
(Cluster #39, Commonly Known as Westcreek Woods)

THIS DECLARATION made this 15<sup>th</sup> day of September, 2015, by Tipton Lakes Company, Inc., an Indiana Corporation (hereinafter referred to as the "Developer").

Preamble

WITNESSETH:

WHEREAS, Developer is the owner of Lot 4 in the Tipton Lakes - Westside Administrative Subdivision, as recorded in Plat Book R, Page 150C of the Bartholomew County Recorder's Office which may in whole or in part be subjected to the provisions of the Declaration of Covenants, Conditions, and Restrictions of Tipton Lakes Community Bartholomew County, Indiana in Record 59, Page 992;

NOW THEREFORE, the Developer hereby declares that Lot 4 in the Tipton Lakes - Westside Administrative Subdivision (commonly known as Westcreek Woods) and any areas serving as Common Areas or Cluster Common Areas in Westcreek Woods and any additions thereto as may be made pursuant to Article III hereof, shall be annexed to Tipton Lakes Community Association, Inc. and shall be held transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens of the Declaration and of this Supplementary Declaration each of which is for the benefit of said Property and each Owner thereof.

Article I

Definitions

The definitions as set forth in the Declaration and Bylaws of Tipton Lakes Community Association, Inc. are hereby incorporated in full by reference.

Article II

Cluster and Neighborhood Designation

Section 1. Cluster Designation. The aforementioned land in Westcreek Woods is hereby designated as a Cluster of the Tipton Lakes Community Association, Inc. and is identified as Cluster #39.

Section 2. Neighborhood Service District Designation. The aforesaid Cluster or any portion thereof may be incorporated into a Neighborhood Service District in accordance with the Declaration, at which time the Neighborhood Service District shall be established and designated by Supplementary Declaration.

### Article III

#### Property Subject to this Supplementary Declaration

Section 1. Existing Property. The aforementioned Lot and Common Areas are hereby subjected to the Declaration and this Supplementary Declaration.

Section 2. Common Areas. The Common Areas hereby subjected to the Declaration by this supplementary Declaration shall include the area around the signage for the Cluster. Other common areas may exist in this Cluster as defined and provided for in the governing Documents. The foregoing listing of common areas within this Cluster may be changed from time to time in accordance with the Governing Documents.

Section 3. Subdivision of the Existing Lot. Lot 4 in the Tipton Lakes - Westside Administrative Subdivision consists of a land area totaling 3.92 acres. Developer acknowledges the right of any future owner of Lot 4 to subdivide Lot 4 into a maximum of two lots, with no lot being smaller than 1 acre. If this occurs, this Supplemental Declaration will not need to be amended and will automatically recognize the two new lots which will total 3.92 acres in place of Lot 4 which is a single lot at the time of this recording. Although it is contemplated that Lot 4 may be subdivided into a maximum of two lots, any subdivision process will have to be approved by the City of Columbus and properly documented and recorded.

### Article IV

#### Cluster Assessments

Section 1. Purpose of Assessments. The Board of Directors may establish an Annual Cluster Assessment as provided for in the Declaration and impose such upon the Lots and Living Units subjected to this Supplementary Declaration which may be used to defray the costs of construction, maintenance, repair or replacement of Cluster Common Areas and facilities and to provide for differentials in services and benefits unique to this Cluster which may include but shall not be limited to the following, and which may be changed from time to time in accordance with the Governing Documents:

- A. Special Cluster signage, mailbox cluster structures and entryway landscaping serving this Cluster, and not otherwise the responsibility of the Association generally, any specific Owner, or any other entity.
- B. Others as provided for in the Governing Documents.

Section 2. Method of Assessment. The method of assessment shall be in accordance with that established in Section 5.01(d) of the Declaration.

**Section 3. Maximum Cluster Assessment.** The initial maximum allowable Annual Cluster Assessment is hereby established in the amount of \$500.00 per assessment year per Lot or Living Unit situated within this Cluster, which shall be effective until the first day of the fiscal year following the establishment of this Cluster.

**Section 4. Change in Maximum.** Changes in the maximum allowable Annual Cluster Assessment for this Cluster shall be effected in accordance with Section 5.04(iv) of the Declaration.

## **Article V**

### **Protective Covenants**

**Section 1. Land Use and Building Type.** No Lot shall be used except for residential purposes. No structure shall be erected, altered, placed, or permitted to remain on any Lot other than one detached Single Family dwelling not to exceed three stories in height above basement level, a private garage, and other outbuildings incidental to residential use of the premises. Duplexes, apartment buildings, and similar construction are expressly prohibited.

### **Section 2. Design.**

- A. **Design.** House and landscaping plans must be approved by the Design Review Committee. The Design Review approval includes driveways, patios, and other concrete areas, decks, and finish floor elevations.
- B. **Materials.** For each home no more than three basic materials, in addition to glass, will be used on exterior walls unless this is specifically waived by the Design Review Committee. All material shall be subject to Design Review Committee review and approval. No window glazing of any kind is allowed in overhead garage doors. Storage buildings may be made of prefinished metal panels and are restricted to the taupe/grey/brown color range so they will blend in with the wooded setting.
- C. **Color.** External color schemes are subject to review and Approval by the Design Review Committee. Secondary colors for doors, windows, window shutters, architectural trim, or other details are also subject to Approval.
- D. **Buildable Area.** Houses shall be sited to enhance the overall Cluster design and maximize natural views.
- E. **Driveways.** Special attention will be given to driveway materials and design related to overall Cluster consistency. All driveways must be paved with asphalt, concrete or brick and approved by the Design Review Committee.
- F. **Fences.** The only fencing that will be permitted is black wrought iron style (aluminum). Fences may only be of materials and design approved by the Design Review Committee. Chain link and similar fences are not acceptable. No fences shall be placed between the principal residence and the local street right-of-way, without the Approval of the Design Review Committee.

- G. Out Buildings. It is contemplated that storage buildings will be built in Westcreek Woods. Storage buildings or structures, such as gazebos, greenhouses, kennels, swimming pools and their accompanying facilities must be of a design and location approved by the Design Review Committee. No aboveground pools will be allowed.
- H. Dwelling Size. No Lot shall contain a primary residential building having a total finished area exclusive of open porches, breezeway or garage of less than 1,200 square feet.
- I. Building Coverage. Building coverage shall not exceed 25% of the Lot's acreage. Driveways and parking areas are not included in this ratio. All buildings, garages, storage buildings and similar facilities are included.
- J. Signs. No sign of any kind shall be displayed to the public view on any Lot or the Common Areas, except ordinary 2'x 2' "For Sale" signs, without the prior Approval of the Design Review Committee.
- K. Exterior Lighting. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents of adjacent property. Exterior lighting must be approved by the Design Review Committee.
- L. Mechanical and Electrical Equipment. Objects, such as air conditioning compressors, gas meters, electric meters, and vents shall be architecturally compatible with the buildings or screened from public view, and approved by the Design Review Committee.
- M. Building Placement. Building placement should take into consideration existing site conditions. Features such as changes in terrain elevation and interesting views should be exploited where they occur, and every effort should be made to preserve existing plant materials. Building placement should show consideration for neighbors.
- N. Building Location. Building setback lines are hereby established as shown on the plat and by City code and building setback will be approved by the Design Review Committee.
- O. Performance Deposit. Upon the submission of a design review application for the initial construction of a home in Westcreek Woods, each lot owner shall be required to submit a one thousand dollars (\$1,000.00) performance deposit to the Tipton Lakes Community Association. This deposit will be held by the Tipton Lakes Community Association, and no interest shall be paid on this deposit. The purpose of this performance deposit is to ensure that the lot owner complies with all rules, regulations, and covenants as set forth in Tipton Lakes Community Association documents and to ensure that the home, landscaping, and all other improvements are completed as submitted in the Design Review Application. Upon 100% completion of all improvements as submitted for approval to the Design Review Committee, the lot owner may request the release of the performance deposit. The Design Review

Committee will inspect the improvements and decide, in their sole opinion, if the improvements were completed as approved and the improvements were executed in full compliance with all rules, regulations, and covenants. In the event that the Design Review Committee concludes that the improvements were not completed as submitted, and/or rules, regulations, or covenants were violated during the construction process, the performance deposit will be forfeited to the Tipton Lakes Community Association. Forfeiture of the performance deposit shall not diminish the obligation of the lot owner to comply with all rules, regulations and covenants, and to complete all improvements as submitted in a timely way. Tipton Lakes Community Association reserves the right to pursue all remedies available to them with respect to lot owners who do not comply with the Association's rules, regulations, and covenants.

Section 3. Construction Regulations. Trailers, field offices, etc. shall be parked in approved locations and removed upon completion of construction. Contractors are permitted to store construction materials on their site, but all materials shall be neatly stacked and any such storing shall be at the contractor's risk.

No tracked vehicle shall be permitted on any paved road. Contractors shall clean up all debris on their construction sites on a regular basis. Loose paper, cardboard, etc. shall be covered or weighted down to prevent its blowing across the site. No trash shall be dumped, burned, or buried. All dirt, mud, or debris shall be promptly removed from public and private streets. Upon completion the contractor shall remove any unused materials, equipment, and debris and shall clean all streets and repair all property damaged by him including, but not limited to, restoration of grades, grass, trees, repair to all streets, pathways, curbs, drains, signs, lighting and fencing.

Topsoil shall be separated from subsoil and be stockpiled in a mound and will be replaced where needed after construction is complete. Temporary berms shall be constructed around the topsoil to prevent erosion. The contractor shall establish erosion control measures which will prevent sedimentation of materials off site. A minimal amount of existing vegetation shall be disturbed during excavation and grade. Dikes, benches, berms, checkdams, level spreaders, straw bale barriers or other common erosion control measures shall be used where necessary and appropriate.

All homes and original landscaping and other structures shall be completed within 12 months of the beginning of such construction on the Lot, unless otherwise approved by the Design Review Committee.

Section 4. Trees. The landscape plan shall include at least 2 deciduous trees of 2½-inch caliper in the front yard or front right of way at the direction of the Design Review Committee. Generally, no living trees more than 3 inches in caliper and beyond 20 feet of any planned physical improvement shall be removed without the express written Approval of the Design Review Committee. The Design Review Committee may require that these clearing limits be staked with continuous tape and that significant trees be protected by snow fence barriers. The Design Review Committee may require replacement of any excessive loss of trees due to carelessness or accident by an equal number of 3-1/2 to 4 inch trees. These must be of a species recommended by the Design Review Committee.

**Section 5. Parking.** The parking of junk or disabled vehicles or vehicles which are not properly registered or licensed on the Lots or Common Areas is expressly prohibited unless such vehicles are stored inside a structure away from public view. The Board may issue additional regulations pertaining to parking.

**Section 6. Damage or Destruction of Living Unit.** In the event of damage to or destruction of a Living Unit or other improvements situated in a Lot by fire or other means, any repair or replacement of such Living Unit or improvement shall be done in accordance with the original approved plans and specifications therefor unless otherwise approved by the Design Review Committee.

**Section 7. Temporary Structures.** No house trailer or mobile home, either with or without wheels, shall be permitted to remain on any Lot other than for, and during such reasonable period of, construction of the Living Units or for bona fide visits by guests of the Occupants of the main house and then only one such vehicle at a time.

After the construction period, such vehicles may not be present on any Lot for more than such reasonable period of time as the Board by resolution may establish. Any use of house trailers and mobile homes must be in accordance with local zoning ordinances. No trailer, tent, shack, garage, barn, or other outbuilding shall at any time be used for human habitation temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. Recreational vehicles, motor boats, house boats and similar water borne vehicles may be maintained, stored, or kept on any Lot only if housed completely within a permanent structure. No Lot shall at any time be used for the parking of semi-trailer trucks.

**Section 8. Garbage and Refuse Disposal.** Trash, garbage or other waste shall be kept in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition and shall be located in areas concealed from view from outside the Lot. All rubbish, trash, or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All Living Units must be equipped with garbage disposals. Trash, leaves and other similar material shall not be burned without the written Approval of the Association, and any such burning shall be in accordance with all local, state or federal laws. The Board may promulgate additional regulations for waste disposal procedures.

**Section 9. Maintenance by Owner.**

- A. **Lot Maintenance.** As further provided herein, every Owner shall promptly perform all maintenance and repair within his own Lot, which, if neglected, would affect the value of the Property, or any Lot or Living Unit thereon, and which is the responsibility of the Owner to perform personally. Each Lot shall be maintained neat and clean and free of paper, trash, uncut weeds or unsightly growth or other debris. No Owner or Occupant shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of any building, and no sign, awning, canopy, shutter or other attachment or thing shall be affixed to or placed upon the exterior walls or roof or any other parts of any building without the prior Approval of the Design Review Committee. No permanent clotheslines, equipment, service yards, or

storage piles visible from outside the Lot shall be permitted upon any Lot, Living Unit or Common Area. Owners of Lots abutting Tipton Lakes Boulevard and the respective rights-of-way and vegetation easements, if any, are responsible for maintaining, but may not alter, the trees and landscaping in place there up to the nearest hard surface, be it road surface or pedestrian walkway. Tipton Lakes Community Association maintains the landscaping between any pedestrian asphalt walkway and the road surface out of the General Assessment.

- B. Maintenance of Common Areas and Other Areas. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the Common Areas. The Tipton Lakes Community Association and the Owners and Occupants shall endeavor to keep the Common Areas free and clear of rubbish, debris, and other unsightly materials. The Owner of each Lot shall be responsible for the maintenance of the unpaved right-of-way adjacent to his Lot.

Section 10. Utilities. All utilities along the internal roads and serving individual Lots shall be placed underground.

Section 11. Sewage Disposal. No Living Unit shall be erected unless it contains inside flush toilets connected with sewage disposal services provided by the City of Columbus, or other systems approved by the City of Columbus and by the Design Review Committee.

Section 12. Water Supply. No individual primary water supply system shall be permitted on any Lot. Primary water shall be obtained from the City of Columbus. Water may not be removed from the lakes without written permission from the Board.

Section 13. Oil and Mining Operations. No gas, oil, mineral, quarry, or gravel operations shall be engaged in on any Lot except as provided in the Declaration.

Section 14. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or in the Common Areas, except that dogs, cats, or customary household pets may be kept on a Lot, provided that such pets are not kept, bred or maintained for any commercial purpose, and do not create a nuisance. An Owner shall be fully liable for any damage to the Common Areas caused by his pet. The Board may adopt such other rules and regulations regarding pets as it deems necessary from time to time. Any pet which, in the judgment of the Board based on a decision of the Covenants Committee following procedures ensuring due process, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property upon three (3) day's written notice from the Board to the respective Owner.

Section 15. Satellite Dishes and Antennas. Satellite dishes must be approved by the Design Review Committee. Such approvals will be limited to satellite dishes a meter or less in diameter. In addition, placement and screening may be considered by the Design Review Committee. Exterior antennas are discouraged, particularly in areas served by Cable TV. All such antennas must be specifically approved by the Design Review Committee.

**Section 16. Nuisances.** No noxious or offensive activity shall be carried on or permitted upon any Lot, nor shall anything be done therein which may be or may become an annoyance or nuisance to the neighborhood.

**Section 17. Applicable Laws.** All applicable Federal, state and Local codes, regulations, ordinances, and laws shall be complied with.

**Section 18. Hazardous Use.** Nothing shall be done or kept on or in any Lot or in the Common Areas which will create a hazard, threat thereof, or actual damage to other Lots, Living Units or the Common Areas.

**Section 19. Structural Soundness.** Nothing shall be done or permitted on any Lot or in any Living Unit which will impair the structural integrity of any building, structurally change any building or impair any easement or hereditament, except as otherwise provided in the Declaration, the Bylaws, or this Supplementary Declaration.

**Section 20. Garage Doors.** For security, energy efficiency, and the appearance of the neighborhood, garage doors shall be maintained closed to the extent it is reasonably convenient in the actual use of the garage.

**Section 21. Mailboxes and Newspaper Tubes.** Mail delivery shall be to the designated mailboxes in the mailbox clusters. The mailbox cluster housings are maintained by the Cluster; however, the operational aspects of the individual mailboxes are the individual's responsibility. The Association does not keep extra mailbox keys and is not responsible for locksmith functions. Newspaper tubes are not permitted unless specifically approved by the Design Review Committee.

**Section 22. Lake Use - Regulations and User Fees.** The Association may assign any or all of the rights it may have in the use of the Lakes and Lake Property to the Members of the Association, their families and guests. Such use of the Lake and Lake Property may be subject to rules and regulations promulgated by the Board and to user fees for such activities as constructing boat docks along the lakes, placing boats upon the lakes, and fishing upon the lakes, among others. Such rules and regulations may include limitations on the types and sizes of boats permitted on the lakes and specifications for the type, size and location of boat docks, if permitted, as further provided herein.

**Section 23. Lake Pollution Control.** The Board may adopt regulations prohibiting or restricting activities in Clusters in reasonably close proximity to the lake system which may, in the Board's judgment, pose a threat of pollution to the lake system. Among other activities, the Board may so regulate landscape fertilization, bug spraying, and other activities which may result in the contamination of the lake system and activities which may result in the flow of sediments into the lake system.

**Section 24. Use of Lake Water Prohibited.** Lake or pond water is not to be used for pet consumption, landscape irrigation, water supply for open loop geothermal systems, or other household uses.



Section 25. Damage to Common Areas by Owner. In the event that the need for maintenance or repair of Common Areas is caused through the willful or negligent act of the Owner, Occupant, his family or guests, or invitees, as determined by the Board or Covenants Committee, and not covered or paid for by insurance on such Common Areas, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which the applicable Lot or Living Unit is subject.

Section 26. Exceptions. The Board of Directors may issue temporary permits to except any prohibitions expressed or implied by this Supplementary Declaration, provided the Board can show good cause and acts in accordance with adopted guidelines and procedures.

So long as the Developer is engaged in developing or improving any portion of the Properties, it shall be exempted from the provisions of this Supplementary Declaration affecting movement and storage of building materials and equipment, erection and maintenance of directional and promotional signs and conduct of sales activities, including maintenance of model Living Units. Such exemption shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness and the general appearance of the Properties.

## Article VI

### Easements

Section 1. General. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat or plats. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of natural drainage channels in the easements. The easement areas of each Lot and all improvements within it shall be maintained continuously and kept free of debris by the Owner of the Lot, except for those improvements for which a public authority or utility company or the Association is responsible.

Section 2. Pedestrian Easements. There are hereby created easements for pedestrian rights-of-way, if any, over and across Lots as shown on the plat.

Section 3. Vegetation. Vegetation easements, if any, are shown on the aforementioned plat or plats. The Association may enter said areas to maintain, alter or replace vegetation within the easement. No Lot Owner may alter, remove or replace any shrub or tree within the easement without the express written Approval of the Design Review Committee.

Section 4. Encroachment Easements. Each Lot shall be subject to an easement for encroachments created by construction, settling and overhangs for all fences built on or near the side yard property lines, if any. A valid easement for said encroachments and for the maintenance for same, so long as such encroachments stand, shall and does exist. In the event such a fence is partially or totally destroyed and then rebuilt, the Owners so affected agree that minor encroachments due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

## Article VII

### General Provisions

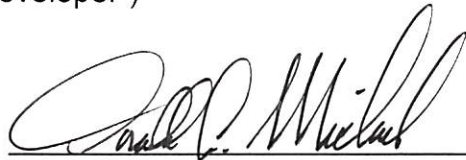
**Section 1. Duration.** The foregoing Supplementary Declaration is to run with the land and shall be binding on all parties and all persons claiming under it until January 1, 2030, at which time said Declaration shall be automatically extended for successive periods of ten years unless changed in whole or in part by an instrument signed by at least two-thirds of the Owners in this Cluster, approved by the City of Columbus and recorded.

**Section 2. Amendment.** This Supplementary Declaration may be amended by an instrument signed by the Developer so long as the Developer continues to hold Developer's rights as provided in the Declaration and not less than two-thirds of the remaining Owners of Lots or Living Units in this Cluster. Any amendment must be recorded in the Office of the Recorder of Bartholomew County, Indiana. No such Agreement shall be effective unless written Notice of the proposed agreement is sent to every Owner of a Lot or Living Unit in the Cluster at least thirty (30) days in advance of any action taken and no such agreement shall be effective with respect to any permanent easement or other permanent rights or interests relating to the Common Area, Cluster Common Area, Limited Common Area, or Lake Property created in the Declaration or this Supplementary Declaration. However, because development and recordation of this Supplementary Declaration preceded final results of marketing and budget analysis and final Approval of Federal Mortgage Agencies, for a period of two years from the date of recordation of this Supplementary Declaration the Developer reserves the right to amend the provisions of this Supplementary Declaration including but not limited to modifying the stated maximum Annual Cluster Assessments or other changes in response to changes in requirements of government agencies and financial institutions. Such amendments shall be effected by: (1) giving Notice to the Association and Cluster Owners other than Developer of proposed changes; (2) securing the Approval of appropriate local governmental bodies; and (3) securing Approval of the Federal Mortgage Agencies.

**Section 3. Severability.** Invalidation of any one of the provisions of this Supplementary Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

IN WITNESS WHEREOF, witness the signature of the Developer this 15<sup>th</sup> day of September, 2015.

Tipton Lakes Company, Inc.  
("Developer")


By   
Donald L. Michael  
President

STATE OF INDIANA                    )  
  ) §:  
COUNTY OF BARTHOLOMEW        )

Before me, a Notary Public in and for said County and State, personally appeared Donald L. Michael, who, for and on behalf of the Developer, acknowledged the execution of the foregoing Supplementary Declaration XXXIX to the Declaration of Covenants, Conditions, and Restrictions of Tipton Lakes Community Association, Inc.

Subscribed and sworn to before me this 15<sup>th</sup> day of September, 2015.



  
Notary Public  
Shannon G. Hampton  
Printed

County of Residence: Bartholomew

My Commission Expires: June 17, 2016

This instrument was prepared by W. D. Chambers, Attorney at Law, #3179-03, P.O. Box 808, Columbus, Indiana 47202-0808.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

W. D. Chambers, Attorney at Law