

AUDITOR'S OFFICE
Duly entered for taxation. Subject
to final acceptance for transfer.

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|-------------|-----------|
| Doc. No. | 204091121 |
| Receipt No. | 41607 |
| DCFD | 3.00 |
| MISL | 136.00 |
| MISL | 1.00 |
| MISL | 2.00 |
| Total | 142.00 |

DEC 03 2004

**FIRST SUPPLEMENTAL DECLARATION OF
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS
OF HERON DEVELOPERS LLC**

Richard A. Glavin
AUDITOR OF ALLEN COUNTY

about

WHEREAS, Heron Developers LLC ("Declarant") executed and recorded that certain Declaration of Covenants, Conditions, Easements and Restrictions ("Declaration") for real estate in Allen County, which real estate is described on attached Exhibit "A", which is incorporated herein by reference ("Real Estate"), said Declaration being recorded on April 15, 2003, at Document Number 203037572 in the Office of the Recorder of Allen County, Indiana ("Declaration"); and

WHEREAS, Section 18.2 and 23.2 of the Declaration allows the Declarant to amend the Declaration for any reason and in its sole discretion; and

WHEREAS, Section 23.2 allows the Declarant to take such other action as Declarant may deem necessary and appropriate to develop Heron Preserve in accordance with the Development Plan; and

WHEREAS, Declarant deems it is necessary and appropriate to amend and modify Section 12.3 relating to Regular Assessments.

NOW, THEREFORE, pursuant to Section 18.2 and Section 23.2 of the Declaration, Declarant hereby amends the Declaration as follows:

- Section 12.3 is hereby deleted in its entirety and is modified, amended, replaced and restated so that it now reads in its entirety as set forth below:

Section 12.3 Regular Assessments. The annual budget, as adopted by the Owners, shall be based on the estimated cash expenses for the Common Expenses in the applicable fiscal year and the aggregate amount of Regular Assessment collectible against each Lot, as set forth herein. From January 1, 2004, to December 31, 2006, the maximum Regular Assessment shall be \$2,500 per Lot per year, regardless of the actual or estimated cash expenses for the Common Expenses in the applicable fiscal year. Beginning January 1, 2007, and each year thereafter, the maximum Regular Assessment may be increased not more than 7% per year, as calculated from the Regular Assessment in effect on January 1, 2006. Immediately following the adoption of the annual budget, each Owner shall be given written notice of the Regular Assessment against the Owner's respective Lot (herein called the "Regular Assessment"). As set forth in Section 12.6, prior to the Applicable Lot Date, no Regular Assessment shall be due from or owed on any Lot or other portion of Real Estate owned by Declarant.

RECORDED
12/22/2004 11:24:14
RECORDER
PATRICIA J. CRICK
ALLEN COUNTY, IN

For purposes of assessment, the Owner of two or more contiguous Lots which have been allowed to combine under Article X shall continue to be assessed separately and individually for each such Lot as if the combination has not occurred. In the event the Regular Assessment for a particular fiscal year is

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initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following the adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners; provided however that the Regular Assessment shall in no event exceed the maximum Regular Assessment set forth herein. The Regular Assessment against each Lot shall be paid in full in advance by a date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. However, at the option of the Board, the Regular Assessment against each Lot may be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the Regular Assessment, whether in one payment or in quarterly installments, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget,

- (a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether annual or quarterly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year; or
- (b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether annual or quarterly, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) or (b) shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners. The Regular Assessment for each fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall

Before me, the undersigned Notary Public in and for said County and State, personally appeared Heron Developers LLC, by Thomas W. Kelley, its sole member and acknowledged execution of the above and foregoing this 29 day of November, 2004.

My Commission Expires:

12-2007

Resident of:

Allen Co.

Billie Morris
Notary Public
BILLIE MORRIS

This instrument prepared by Vincent J. Heiny (7638-02), Haller & Colvin, P.C., 444 East Main Street, Fort Wayne, Indiana 46802, Telephone: (219) 426-0444; Fax (219) 422-0274.