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Monroe County Recorder IN
Recorded as Presented

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF
BATCHELOR HEIGHTS SUBDIVISION**

THIS FIRST AMENDMENT TO THE DECLARATION, is made and executed on the date hereinafter set forth by the undersigned members, who constitute more than two-thirds of the owners of lots in Batchelor Heights Subdivision, all being members of BATCHELOR HEIGHTS HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as "Members", for themselves, their successors, grantors and assigns, pursuant to the provisions of and in accordance with the terms and provisions of Article IX, Section 3 of that certain Declaration of Covenants, Conditions, and Restrictions of Batchelor Heights Subdivision (hereinafter referred to as "Declaration"), filed for record on November 26, 1997, as Instrument No. 719969 in Miscellaneous Book 248 at pages 739 through 754 in the Office of the Recorder of Monroe County Indiana.

NOW THEREFORE, the Members, pursuant to Article IX, Section 3 of the Declaration, hereby amend and supplement the Declaration in the following respects:

1. Due to a scrivener's error, the first clause of the second paragraph of the legal description of Batchelor Heights Subdivision, Section One appearing in the first "Whereas" clause of the Declaration is amended to read as follows:

Beginning at the Southeast corner of said Quarter **Quarter** Section; thence North 88 degrees 02 minutes 36 seconds West along the South line of said Quarter **Quarter** Section 854.13 feet; thence North 00 degrees 40 minutes 53 seconds West 1111.94 feet to a point on a non-tangent curve concave Southwesterly with a radius of 230.00 feet and a chord bearing South 21 degrees 51 minutes 10 seconds East for a distance of **166.13** feet; . . . [changes from original in **boldface** type].

Said legal description remains unchanged in all other respects.

2. The following legal description for Batchelor Heights Subdivision, Section Two is inserted following the legal description for Section One:

A part of the Southeast quarter of the Southwest quarter of Section 17, Township 8 North, Range 1 West, Monroe County, Indiana, more specifically described as follows:

Commencing at the southeast corner of said Quarter Quarter Section; Thence on the east line of said Quarter Quarter Section North 00 degrees 42 minutes 13 seconds West 1183.19 feet to the true Point of Beginning;

Thence leaving said east line South 87 degrees 48 minutes 04 seconds West 110.52 feet; Thence North 16 degrees 15 minutes 56 seconds West 23.72 feet; Thence North 48 degrees 40 minutes 44 seconds West 78.84 feet; Thence South 33 degrees 15 minutes 37 seconds West 124.98 feet; Thence South 09 degrees 18 minutes 08 seconds East 153.27 feet; Thence South 55 degrees 21 minutes 12 seconds West 126.48 feet; Thence South 30 degrees 56 minutes 33 seconds West 86.73 feet; Thence South 53 degrees 43 minutes 23 seconds West 46.10 feet; Thence South 76 degrees 25 minutes 18 seconds West 37.0 feet; Thence South 69 degrees 25 minutes 41 seconds West 42.34 feet; Thence South 08 degrees 49 minutes 27 seconds East 308.86 feet; Thence South 81 degrees 45 minutes 19 seconds West 62.99 feet; Thence North 85 degrees 38 minutes 53 seconds West 61.55 feet; Thence South 77 degrees 18 minutes 35 seconds West 18.77 feet; Thence North 08 degrees 05 minutes 47 seconds West 220.85 feet; Thence North 78 degrees 53 minutes 53 seconds West 31.75 feet; Thence North 19 degrees 09 minutes 45 seconds West 81.39 feet; Thence North 32 degrees 19 minutes 54 seconds West 234.44 feet to the beginning of a non-tangent curve concave to the west and having a radius of 230.00 feet to which beginning a radial line bears North 89 degrees 19 minutes 07 seconds East; Thence on said curve Northerly and Northwesterly 118.81 feet through a central angle of 29 degrees 35 minutes 47 seconds; Thence on a non-tangent line North 00 degrees 42 minutes 13 seconds West 25.46 feet to Point A; Thence continuing North 00 degree 42 minutes 13 seconds West 122.65 feet to Point B; Thence continuing North 00 degrees 42 minutes 13 seconds West 104.12 feet; Thence South 87 degrees 56 minutes 27 seconds East 823.76 feet to the northeast corner of said Quarter Quarter Section; Thence on the east line of said Quarter Quarter Section South 00 degrees 42 minutes 13 seconds East 139.59 feet to the Point of Beginning containing within said bounds 8.17 ACRES be the same more or less but subject to all rights-of-way, easements, agreements, commitments, covenants, conditions, and restrictions of records.

TOGETHER with a 15 foot drainage easement being a part of Lot 2 Wickens Subdivision (Plat Cabinet C; Envelope 257, Office of the Recorder) the centerline of which begins at the hereinabove described Point A; Thence North 32 degrees 24 minutes 09 seconds West 92.48 feet to the east line of an existing drainage easement as shown on the plat of the Highland Subdivision Phase Three (Plat Cabinet C, Envelope 282, Office of the Recorder).

The side lines of said 15 foot easement to the extended or shortened to terminate at the east line of said Lot 2 and the east line of said existing drainage easement.

TOGETHER with a 15 foot drainage easement being a part of Lot 2 Wickens Subdivision (Plat Cabinet C, Envelope 257, Office of the Recorder) the centerline of which begins at the hereinabove described Point B; Thence North 89 degrees 37

minutes 33 seconds West 40.25 feet to the north line of an existing drainage easement as shown on the plat of the Highland Subdivision Phase Three (Plat Cabinet C, Envelope 282, Office of the Recorder).

The side lines of said 15 foot easement to be extended or shorted to terminate at the east line of said Lot 2 and the north line of said existing drainage easement.

Said property is platted as Batchelor Heights Subdivision Section 2 as shown in Plat Cabinet C Envelope 315, recorded August 27, 2002, instrument number 2002019513, and amended by Batchelor Heights Subdivision Section Two – Lots 114 through 117 and Lots 143 through 152 – Amendment One, as shown in Plat Cabinet D Envelope 58, recorded February 5, 2007, instrument number 2007002095 and Batchelor Heights Subdivision Section Two – Lots 127 through 131 – Amendment Two, as shown in Plat Cabinet D Envelope 78, recorded March 24, 2008, instrument number 2008004621, and all duly executed amendments thereto. Said property shall be subject to the Declaration of Covenants, Conditions and Restrictions of Batchelor Heights Subdivision and all duly executed amendments thereto.

3. Article I, Section 4 is deleted and replaced with the following:

Section 4. “Common Area” shall mean all real property and the improvements thereto, excepting therefrom the Lots and Garage Parcels and the improvements thereon, as shown on the Plat. All streets except Gordon Pike, and Wickens Street, shown on the Plat are part of the Common Area. Common Area includes, but is not limited to, those areas designated on the Plat as Common Area, Special Common Area, and Conservation Easement. All driveways, as described in Section 7 of this Article I, shall be limited common area and shall be constructed and maintained by the appurtenant Lot Owner.

4. Article I, Section 5 is deleted and replaced with the following:

Section 4. “Lot” shall mean and refer to any plot of land shown on the Plat with the exception of the Common Areas and the Garage Parcels and identified by number. Section One shall have One Hundred Three (103) Lots and Section Two shall have Eighty Two (82) Lots.

5. Article I, Section 8 is added as follows:

Section 8. “Garage Parcel” shall mean and refer to those plots of land shown on the Plat, with the exception of the Common Areas and identified and labeled A1, A2, A3, A4, B1, B2, B3, B4, C1, C2, C3, C4, D1, D2, D3, D4, E1, E2, E3, E4, E5, U, V, W, X, Y, and Z.

6. Article I, Section 9 is added as follows:

Section 9. “Plat” shall mean and refer to the Plats of the Properties known as Batchelor Heights Subdivision Section One, recorded in Plat Cabinet C Envelope 233, instrument

number 719968, and as amended by Batchelor Heights Subdivision, Section One, First Amendment, recorded in Plat Cabinet C Envelope 264; Batchelor Heights Subdivision Section Two recorded in Plat Cabinet C Envelope 315, instrument number 2002019513, and as amended by, Batchelor Heights Subdivision Section Two – Lots 114 through 117 and Lots 143 through 152 – Amendment One, recorded in Plat Cabinet D Envelope 58, instrument number 2007002095 and Batchelor Heights Subdivision Section Two – Lots 127 through 131 – Amendment Two recorded in Plat Cabinet D Envelope 78, instrument number 2008004621, and all subsequent amendments thereto, in the Office of the Recorder of Monroe County, Indiana.

7. Article III, Section 2 is deleted and replaced with the following:

Section 2. The Association shall have one class of voting membership. Members shall be all Owners, who shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. If more than one of the owners is present at a meeting of the Association, the vote allocated to the Lot may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the votes allocated to the Lot without protest being made promptly to the person presiding over the meeting by another owner of the Lot. In no event shall more than one vote be cast with respect to any Lot. The Members retain all votes until June 30, 2000, or when seventy-percent (75%) of all Lots are sold, whichever occurs first, and thereafter shall have one vote for each Lot owned by Members.

8. Article IV, Section 1 is deleted and replaced with the following:

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Members, for each Lot owned within the Properties, hereby covenant, and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) tax assessments, (3) insurance assessments, (4) special assessments for unforeseen emergencies, and (5) individual special assessments, such assessments to be established and collected as hereinafter provided. The annual tax, insurance, and special assessments, together with interest, costs, and reasonable attorneys fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each such assessment is made effective at the time each such assessment becomes due. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person who was the owner of such Lot at the time when the assessment fee became due.

Section 1.1 Annual Assessment. Until June 30, 2000, the annual assessments shall be determined as follows:

(a) From and after June 30, 2000, the annual assessment shall be set by the Association at any amount sufficient to pay the expenses, and shall be payable on a monthly basis.

(b) The Board of Directors of the Association shall fix all assessments from and after June 30, 2000.

Section 1.2 Working Capital Fund. The Association shall be obligated to establish a Working Capital Fund for the repair or replacement of improvements to the Common Areas and Limited Common Areas that it is obligated to maintain. To that end, the Board of Directors, as a part of the adoption of the regular budget pursuant to Section 1.1 above, shall include an amount which, in its reasonable business judgment, is sufficient to cover the costs of any necessary capital improvement project, based upon the project's age, remaining life, and the quantity and replacement costs of major common elements improvements. Any other extraordinary expenditures not originally included in the annual estimate that become necessary during the year shall also be charged first against the reserve fund so established before any Special Assessment is made or levied therefore.

Section 1.3 Special Assessments for Unforeseen Emergencies. In addition to the other assessments authorized above, the 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 costs of any unforeseen expense or emergency not contemplated by the Board in the annual budget, 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 1.4. Individual Special Assessments. Expenses attributable to fewer than all Lots, or attributable to an individual Lot or Lot Owner, may be assessed as an Individual Special Assessment against the individual Lot(s) under the following circumstances:

(a) Any expense associated with the repair, maintenance, cleaning or replacement of the Common Area, including any deductible charged by the insurer of the Association's blanket property damage or liability policy, that becomes necessary because of the negligence or neglect of any Lot Owner, or that arises from any maintenance required by Article VIII, Sections 15, 19, 21, 22 as amended herein, shall be separately assessed against the responsible Lot Owners' Lot. No such separate assessment shall be made without Notice and Hearing as provided in Section 7.

(b) Any expense that arises from any maintenance or repair required by Article VIII, Sections 15, 19, 21, 22 as amended herein, including any deductible charged by the insurer of the Association's blanket property damage or liability policy, shall be separately assessed against the affected or responsible Lot Owners' Lot. No such separate assessment shall be made without Notice and Hearing as provided in Section 7.

(c) Any expense associated with the proper maintenance or removal of any landscaping, vegetation or improvements shall be separately assessed against such Lot Owner's Lot.

(d) Any expense for services provided by the Association to an individual Lot at the request of the Lot Owner shall be assessed against the Lot which benefits from such service.

(e) Any insurance premium increase attributable to a particular Lot(s) by virtue of activities in or construction on the Lot(s) shall be assessed against that Lot(s).

(f) An assessment to pay a judgment against the Association may be made only against the Lots in the Community at the time the judgment was entered, in proportion to their Common Expense liabilities.

(g) If Common Expense is caused by the misconduct of a Lot Owner, the Association may assess that expense exclusively against that Lot Owner's Lot.

(h) Fees, charges, late charges, fines, collection costs, and interest charged against a Lot Owner pursuant to the Bylaws, Rules and Regulations, and other documents promulgated by the Board of Directors in exercise of its administrative duties of the Association are enforceable as Special Assessments.

9. Article IV, Sections 7 and 8 are deleted and replaced with the following:

Section 7. Date of Commencement of Assessments: Due Dates. The first assessment shall be adjusted pro rata according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the assessment against each Lot and provide written notice of the assessment to the Owners at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every Owner subject thereto. The due dates shall be as provided in Section 3 above unless otherwise established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. The Board of Directors shall have the authority to assess a late fee for the nonpayment of any assessment not paid within ten (10) days after the due date in an amount to be determined at the discretion of the Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the same and foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

10. Article VI, Section 1 is deleted and replaced with the following:

Section 1. Insurance.

1.1 Property Insurance. The Association shall purchase and maintain property damage insurance for 100% of the replacement costs of the following items:

- (a) Footings
- (b) Foundation
- (c) Framing outside wall
- (d) Exterior siding and guttering
- (e) Brick
- (f) Concrete floors and subflooring
- (g) Windows
- (h) Exterior doors
- (i) Garage doors
- (j) Roofs
- (k) Porches, decks, patio slabs and patios (screened and glassed areas included)
- (l) Chimney and fireplaces, with the exception of fireplace inserts
- (m) Electrical services to the meter
- (n) Plumbing to the inside of the exterior wall
- (o) Interior stud walls and framing
- (p) Interior perimeter support walls and beams
- (q) Earthquake coverage for all of the above

1.1.1 The Association shall not be responsible for and shall not purchase property damage insurance for damage to the following:

- (a) Plumbing from the inside of the exterior walls
- (b) Electrical services from the meter in
- (c) Duct work
- (d) Insulation
- (e) Drywall
- (f) Floor coverings
- (g) Light fixtures
- (h) Appliances
- (i) Interior doors and trim
- (j) Heating and cooling filtering units, cleaning and exhaust fans
- (k) Window treatments
- (l) Cabinets, included but not limited to, kitchen and bathroom cabinets, built-in bookcases or TV enclosures
- (m) Owner's furnishings and personal property
- (n) Earthquake coverage for the above

The Association shall not be responsible for obtaining or maintaining property and casualty insurance covering the personal property located on any Lot which property does not belong to the Association. The Lot Owner shall be responsible for the insurance against personal property losses at their own expense.

- 1.2. Liability Insurance. In addition, the Association shall purchase and maintain liability coverage in the amount of One Million Dollars (\$1,000,000.00), covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Areas, and the activities of the Association.
 - 1.3. Directors' and Officers' Liability Insurance. The Board may obtain and maintain directors' and officers' liability insurance covering all of the directors and officers of the Association in such limits as the Board in its sole discretion may, from time to time, determine.
 - 1.4. Other Insurance. The Association may carry other insurance which the Board considers appropriate to protect the Association or the Lot Owners.
 - 1.5. Premiums. The Association shall annually assess the owners for the premium of the coverage outlined in Sections 1.1 through 1.4 above in a proportion based on each Owner's percentage of square footage insured as it relates to the total square footage covered.
 - 1.6. Deductibles. Individual Lot Owners shall be responsible for paying the insurance deductible incurred as a result of damage to a Lot or the improvements thereon, regardless of whether the damage is of the type covered by the Association's blanket policy.
11. Article VIII, Section 15 is deleted and replaced with the following:

Section 15. Siding. Lot Owners shall use only Brown County stone, limestone, vinyl, or brick for the exterior siding of all structures. Front portions shall be 25% stone or brick. All vinyl shall be earth tones or white. All structures shall have a uniform appearance and architectural style. The rear elevations shall match the front elevation in window dressing and brick trim. The Association, through its Board of Directors, shall determine when maintenance of these items is necessary. Notwithstanding the foregoing, repair and replacement of garage siding, trim, fascia, eaves and gutters and the cost thereof shall be the responsibility of the individual Owner of such Garage Parcel, provided however, that if the Association determines that the siding, trim, fascia, eaves and gutters of any Garage Parcel is in need of maintenance, which maintenance is to be performed by the Owner, the Board shall notify the Owner who shall have thirty (30) days to complete the required maintenance. Prior to the commencement of the repair or maintenance, the Owner shall submit a written proposal describing the materials, specifications and contractor to be used for such repair, which shall be approved by the Board. If the maintenance is not completed within the time allotted, the Association may, but shall not be required to, cause the maintenance to be completed. If the Association completes the maintenance it shall make an individual special assessment against the Owner of the affected Garage Parcel for the cost of such maintenance along with a reasonable administration fee. The individual special assessment shall be imposed in accordance with Article IV.

12. Article VIII, Section 19 is deleted and replaced with the following:

Section 19. Sewer. All dwelling units constructed on the Lots shall be connected to the municipal sewer system. The Association shall be responsible for maintaining and repairing shared laterals (sewer lines used by more than one Lot that run between the buildings and the sewer main owned and maintained by the municipality). Each Owner shall be responsible for maintaining and repairing such Owner's individual lateral (defined as the sewer line not shared by more than one Lot running between the building on such lot and the sewer main owned and maintained by the municipality or at the point at which such line is joined to another lateral).

13. Article VIII, Section 21 is deleted and replaced with the following:

Section 21. Roofs. Roofs shall be shingled. All roof pitches shall be 6:12 as shown on Declarant's plans or 5:12 at the discretion of the Owner. No roof pitch shall be less than 5:12 or greater than 6:12. Roof colors of solid green, solid red and solid blue are prohibited. The Association, through its Board of Directors, shall determine when maintenance of these items is necessary. Notwithstanding the foregoing, repair and replacement of garage roofs and the cost thereof shall be the responsibility of the individual Owner of such Garage Parcel, provided however, that if the Association determines that the roof of any Garage Parcel is in need of maintenance, which maintenance is to be performed by the Owner, the Board shall notify the Owner who shall have thirty (30) days to complete the required maintenance. Prior to the commencement of the repair or maintenance, the Owner shall submit a written proposal describing the materials, specifications and contractor to be used for such repair, which shall be approved by the Board. If the maintenance is not completed within the time allotted, the Association may, but shall not be required to, cause the maintenance to be completed. If the Association completes the maintenance it shall make an individual special assessment against the Owner of the affected Garage Parcel for the cost of such maintenance along with a reasonable administration fee. The individual special assessment shall be imposed in accordance with Article IV.

14. Article VIII, Section 22 is deleted and replaced with the following:

Section 22. Windows and Doors and Decks. Each Owner shall be responsible for and shall bear the cost of the maintenance of the windows, decks and exterior doors and lighting fixtures on each Owner's Lot, including without limitation, painting, repairing and replacement, when needed. If the Association determines that any part of the exterior portion of a Lot is in need of maintenance, which maintenance is to be performed by the Owner, the Board shall notify the Owner who shall have thirty (30) days to complete the required maintenance. Such maintenance shall be performed in accordance with guidelines and using materials approved by the Association through its Board of Directors. Prior to the commencement of the repair or maintenance, the Owner shall submit a written proposal describing the materials, specifications and contractor to be used for such repair, which shall be approved by the Board. If the maintenance is not

completed within the time allotted, the Association may, but shall not be required to, cause the maintenance to be completed. If the Association completes the maintenance it shall make an individual special assessment against the Owner of the affected Lot for the cost of such maintenance along with a reasonable administration fee. The individual special assessment shall be imposed in accordance with Article IV.

15. Article VIII, Section 33 is added as follows:

Section 33. Streets and Sidewalks. In order to maintain and promote consistent and uniform maintenance and appearance within the Properties, the Association shall be responsible for and shall bear the cost, through its regular and/or special assessments, for the maintenance of the Streets and Sidewalks including, the repair and replacement, when needed. The Association, through its Board of Directors, shall determine when maintenance of these items is necessary.

16. Article IX, Section 3 is deleted and replaced with the following:

Section 3. General. The within covenants, limitations, and restriction are to run with the land and shall be binding on all parties and persons claiming under them. These restrictions may be amended by a written instrument executed by the Lot Owners representing 51% of the total number of existing Lots in the subdivision. No amendment to this Declaration shall be adopted which changes the vote of any owner with respect to any Lot without the approval of all Owners. No amendment to this Declaration shall be adopted which materially impairs the rights of any Mortgagee, or subordinates the lien of any Mortgagee to that of the Association.

17. Article IX, Section 6 is added as follows:

Section 6. Costs and Attorneys Fees. In a proceeding arising because of an alleged failure of an Owner to make any required payment or to comply with any provision of the Declaration, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the party initiating such proceeding shall be entitled to recover its reasonable attorney's fees incurred in connection with such proceeding, if it is found or agreed in such proceeding that a failure to make payment as required hereby or a violation of this Declaration, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, did occur.

EXCEPT AS SET FORTH AND EXPRESSLY AMENDED HEREIN, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Members have caused this First Amendment to the Declaration to be executed this 20 day of October, 2008:

Owner of Lots 16, 17, 29, 30, 63, 81, 82, 87, 89, 90, 95 and 96 in Batchelor Heights Subdivision Section One and Lots 104-106, 108, 111, 153-172, 175, 177-182, 184-186 in Batchelor Heights Section Two:

CPW Properties, LLC an Indiana Limited Liability Company

By: Cozeana Wickens
Cozeana Wickens, Member

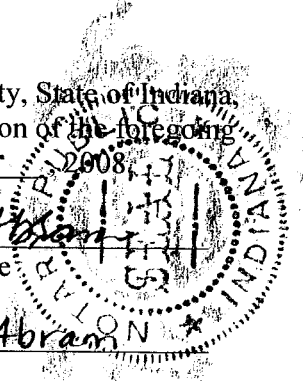
STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me the undersigned, a Notary Public for Monroe County, State of Indiana, personally appeared COZEANA WICKENS and acknowledged the execution of the foregoing document as her voluntary act and deed this 20th day of October 2008.

Commission Expires: 6-10-09

County of Residence: Monroe

Lori A. Abram
Notary Public Signature
Lori A. Abram
Name Printed



Owner of Lots 18-22, 23-26,31-34, 37-41, 44-49, 52, 53, 65-69, 72-75, 76-80, 91-94, 99-103 in Batchelor Heights Section One:

Batchelor Heights, LLC, an Indiana Limited Liability Company

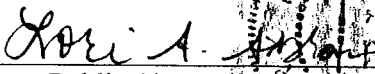
By: 
John W. Jacobs, Managing Member

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me the undersigned, a Notary Public for Monroe County, State of ~~Indiana~~ personally appeared JOHN W. JACOBS and acknowledged the execution of the foregoing document as his voluntary act and deed this 20th day of October, 2008.

Commission Expires: 6-10-09

County of Residence: Monroe


Notary Public Signature
Lori A. Abram
Name Printed

