

Requested By: 359098 10/08/2004

DECLARATION OF
COVENANTS AND RESTRICTIONS
OF
AUSTIN MEADOWS

THESE DECLARATION OF COVENANTS AND RESTRICTIONS made this 10th day of JUNE, 1995 by Pendleton Pike Associates, Inc., an Indiana Corporation (hereinafter referred to as "Developer"),

9500021375
Filed for Record in
HENDRICKS COUNTY IN
JOY BRADLEY
On 12-06-1995 At 09:44 am.
COV 38.00
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RECITALS

A. Developer is about to sell and convey the residential lots situated within the platted areas of the development located within the real estate more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Development") and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions, and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and the future owners thereof.

B. Such real estate and any additional real estate subjected to these Restrictions shall be known as Austin Meadows.

COVENANTS AND RESTRICTIONS

NOW, THEREFORE, Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of the lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to the Restrictions, and shall inure to the benefit of Developer and every one of Developer's successors in title to any real estate in the Development. Developer specifically reserves unto itself the right and privilege, prior to the recording of the plat by Developer of a particular lot or tract within the Development as shown on Exhibit B, to exclude any real estate so shown, from the Development, or to include additional real estate.

1. DEFINITIONS. The following are the definitions of the terms as they are used in these Covenants and Restrictions:

A. "Committee" shall mean the Austin Meadows Architectural Control Committee, composed of three members appointed by Developer who shall be subject to removal

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by Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the Developer. Developer may, at its sole option, at any time hereafter relinquish to Association the power to appoint and remove one or more members of Committee.

B. "Association" shall mean the Austin Meadows Homeowners Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in Paragraph 11 of these Covenants and Restrictions.

C. "Lot" shall mean any parcel of real estate excluding Common Areas, whether residential or otherwise, described by one of the plats of the Development which is recorded in the Office of the Recorder of Hendricks County, Indiana.

D. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to Developer or Association, by the President or a Vice President thereof, and with respect to Committee, by two members thereof.

E. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot including a builder, but excluding those persons having such interest merely as security for the performance of an obligation.

F. "Commons" and "Common Areas" shall mean those areas set aside for conveyance to Association, as shown on the plat(s).

G. "Plat" shall mean a subdivision plat of the Development or a part thereof which is recorded in the office of the Recorder of Hendricks County, Indiana, as the same may be hereafter supplemented by law or pursuant to this Declaration of Covenants and Restrictions.

H. "Expansion Real Estate" shall mean the real estate described on Exhibit C attached hereto and hereby incorporated herein by this reference.

2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every Lot in the Development, unless it is otherwise designated by Developer, is a residential lot and shall be used exclusively for single-family residential purposes. No structures shall be erected, placed or permitted to remain upon any of the Lots except a single-family dwelling house.

B. Residential Use of Accessory Outbuildings Prohibited. No accessory outbuildings shall be erected on any of the Lots prior to the erection thereon of a single-family dwelling house, and in no event shall any such accessory outbuilding which may be constructed upon a Lot under these Restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation.

C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the residences shall have been substantially completed shall be made by Committee and such decision shall be binding on all parties.

D. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the Development, and to recorded easements, rights-of-ways, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

A. Minimum Living Space Areas. The minimum square footage of living space of the residences constructed on various Lots in the Development, exclusive of porches, terraces, garages, carports, or accessory buildings shall be not less than twelve hundred (1200) square feet for one store residences, nor less than fourteen hundred (1400) square feet for two story residences. Basements shall not be included in the computation of the minimum living area except for that portion of a walkout basement which is to be finished as a living area.

B. Residential Set-Back Requirements.

(i) In General. Unless otherwise provided in these Restrictions or on the record plat, no residence or above-grade structure shall be constructed or placed on any Lot in the Development except as provided herein.

(ii) Definitions. "Side line" means a lot boundary line that extends from the road on which a Lot abuts to the rear line of the Lot. "Rear line" means the Lot boundary line that is farthest from, and substantially parallel to, the road on which the Lot abut, except that on corner Lots, it may be determined from either abutting road.

(iii) Front Yards. The front building set-back lines shall not be less than twenty five (25) feet nor less than the designated number of feet from the right-of-way of the road upon which the Lot abuts as set forth upon the plats of the Development.

(iv) Side Yards. The side yard set-back lines for Section 1 shall not be less than ten (10) feet from either side line of the Lot.

(v) Rear Yards. The rear yard set-back lines shall not be less than twenty (20) feet nor less than twenty percent (20%) of total lot depth.

C. Fences and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence must be approved by Committee as to size, location, height and composition before it may be erected. No fences or outbuildings of any kind shall be permitted on lake Lots. No chain linked fence shall be constructed on any Lot. A Lot must have at least two (2) trees with a minimum diameter of two and one half inch (2 1/2") and ten (10) shrubs growing upon it in the front yard by the time the residence is completed.

D. Exterior Construction. The finished exterior of every building constructed or placed on any Lot in the Development shall be of material other than tar paper, or rollbrick siding or any other similar material and for fifty percent (50%) of the homes in the Development shall contain at least 20% brick. All driveways must be paved with asphalt or concrete from their point of connection with the abutting street or road. Shingles shall be weatherwood shingles. Exterior colors shall be earhtone colors only. No yellow, blue or white. Colonial Style shall not be subject to the above 20% brick requirement of this paragraph.

E. Outbuilding. The approval of Committee must be obtained before any outbuilding is erected, placed, or altered on any Lot. No such outbuilding may be erected until residences are constructed on ninety percent (90%) of the Lots in that particular section. Such outbuildings shall be constructed of wood and shingles and shall be painted to match the primary residence. No outbuildings over one story shall be allowed.

F. Diligence in Construction. Every building whose construction or placement on any Lot in the Development is begun shall be completed with four (4) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

(i) Mow the Lot at such times as may be reasonably required in order to prevent unsightly growth of vegetation and noxious weeds.

(ii) Remove all debris or rubbish.

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.

(iv) Cut down and remove dead trees.

(v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

(vi) Within sixty (60) days following completion of a residence on a Lot, Owner shall landscape the Lot, weather permitting. For Lots on which the residence shall be substantially completed on or after November 15 and before April 15, landscape shall be

completed on or before the following June 1.

G. Association's Right to Perform Certain Maintenance. In the event that the Owner of any Lot in the Development shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon the Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make the Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to Association shall be added to and become a part of the annual charge to which Lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

A. Nuisance. No outside toilets shall be permitted on any Lot in the Development (except during a period of construction as required under subparagraph C below), and no sanitary waste or other wastes shall be permitted to enter any storm drain. By purchase of a Lot, each Owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by Developer or Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorney's fees, shall become a charge or lien upon the Lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt.

Neither Developer, nor Association, nor any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement of this paragraph.

B. Construction of Sewage Lines. All sanitary sewage lines on the Lots shall be designed and constructed in accordance with the provisions and requirements of the town of Brownsburg. No storm water (subsurface or surface) shall be discharged into sanitary sewers.

C. Dumpsters and Port-O-Lets. Builders shall be required to locate a dumpster and a port-o-let on the Lot during construction. Builder shall be permitted to use a dumpster or a port-o-let on another Lot if Builder is constructing on another Lot where such are located within three (3) Lots.

5. MAILBOXES.

Owners of a Lot in the Development shall install or cause to have installed a mailbox which shall be in accordance with the design, type and location of a mailbox approved by Developer which Developer may require for the purpose of uniformity and appearance.

6. GENERAL PROHIBITIONS.

A. Individual Yard Lights Required On Each Lot In The Development. At the time that an Owner of a Lot in the Development completes the construction of a residence on it's Lot, it shall install or cause to have installed a dusk to dawn coach light in the front yard of it's Lot. The design, type and location of the yard light shall be subject to the approval of Committee.

B. In General. No noxious or offensive activities shall be carried on any Lot in the Development, nor shall anything be done on any of the Lots that shall become or be unreasonable annoyance or nuisance to any Owner of another Lot in the Development.

C. Signs. No signs or advertisements shall be displayed or placed on any Lot or structures in the Development without the prior written approval of Committee except for real estate sales signs and signs used by a builder to advertise the Lot during the construction sale period.

D. Animals. No animals shall be kept or maintained on any Lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

E. Vehicle Parking. No commercial vehicles, campers, trailers, boats, or similar vehicles shall be parked on any street or Lot in the Development unless fully enclosed in a building or screens from view from the street.

F. Garbage and Other Refuse. No Owner of a Lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out of doors of such refuse on his Lot except as may be permitted in Subparagraph F Below.

G. Fuel Storage Tanks and Trash Receptacles. No bulk gasoline storage will be permitted in the Development, whether above or below ground. Any receptacle for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

H. Temporary Structures. No temporary structure of any kind, such as a house trailer, or other outbuilding shall be placed or erected on any Lot.

I. Ditches and Swales. It shall be the duty of the Owner on every Lot in the Development on which any part of any open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon the Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon the Lot as may be reasonably necessary to accomplish the purposes of this subsection. All Owners, if necessary, shall install dry culverts between the road rights-of-way and their Lots in conformity with specifications and

recommendations of Hendricks County, and of the appropriate zoning bodies.

J. Utility Services. No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring and shall require the approval of Hendricks County, where the streets are public and by the property Owners where there are private drives.

K. Wells and Septic Tanks. No water wells shall be drilled on any of the Lots nor shall any septic tanks be installed on any of the Lots in the Development, without the approval of Committee.

L. Prohibition of Antennas. No exposed radio, cable and television antennas and/or dishes, larger than 18 inch diameter, shall be permitted within the Development.

M. Pools. No swimming pool or associated structures shall be erected or placed on any Lot until the construction plans including a plot plan have been approved by Committee. There shall be no above ground pools.

N. Clotheslines. There shall be no outside clotheslines.

O. Playstructures. Playstructures shall be constructed of wood.

P. Basketball Goals. No basketball goals shall be attached to any residence. All basketball goals shall be of a non-attached nature and shall have a clear acrylic backboard.

7. AUSTIN MEADOWS ARCHITECTURAL CONTROL COMMITTEE.

A. Statement of Purposes and Powers. Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) Generally. No residence, building structure or improvement of any type or kind shall be constructed or placed on any Lot in the Development without the prior approval of Committee. Such approval shall be obtained only after written application has been made to Committee by the Owner of the Lot requesting authorization from Committee. Such written application shall be in the manner and form prescribed from time to time by Committee, and shall be accompanied by one (1) complete set of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which Committee may require. All building plans and drawings required to be submitted to Committee

shall be drawn to a scale of 1/4" =1' and all plot plans shall be drawn to a scale of 1" =30', or to such other scale as Committee shall require. There shall also be submitted, where applicable, the permits or reports required under Paragraph 3 of these Restrictions.

(ii) Power of Disapproval. Committee may refuse to grant permission to construct, place or make the requested improvement, when:

(a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;

(b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures;

(c) The proposed improvement, or any part thereof, would in the opinion of Committee be contrary to the interests, welfare or rights of all or any part of the Owners.

(iii) Power to Grant Variances. Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variances or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Development.

B. Duties of Committee. Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

C. Liability of Committee. Neither Committee nor any agent thereof, nor Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, Committee does not make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

D. Inspection. Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

E. Continuation of Committee. When Developer notifies Association of discontinuance of the Ashton Architectural Control Committee, then the Directors of Association, or their designees, shall continue the functions of Committee with like powers.

8. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS

HAVING ONE OWNER. Whenever two or more contiguous Lots in the Development shall be owned by the same person, and Owner shall desire to use two or more of Lots as a site for a single-dwelling house, Owner shall apply in writing to Committee for permission to so use the Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be treated as a single Lot for the purpose of applying these Restrictions to the Lots, so long as the Lots remain improved with one single-dwelling house. No double family houses shall be constructed in the Development.

9. **OWNERSHIP, USE AND ENJOYMENT OF COMMONS.** "Commons" and "Commons Area" shall mean those areas set aside for conveyance to Association, as shown on the plat. Any Commons depicted on the recorded plats of the Development shall remain private, and neither Developer's execution of recording of the plats nor the doing of any other act by Developer is, or is intended to be, or shall be construed as, a dedication to the public of the Commons.

A license upon such terms and conditions as Developer, and the successors, assigns or licensees of Developer, shall from time to time grant, for the use and enjoyment of the Commons, is granted to the persons who are from time to time members of Association. Ownership of any Commons shall be conveyed in fee simple title, free of financial encumbrances to Association upon their completion. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by Association and those persons who shall from time to time be members thereof upon the recording of a deed conveying the Commons to Association.

10. **AUSTIN MEADOWS HOMEBOWNERS ASSOCIATION, INC.**

A. **In General.**

(i) There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the Austin Meadows Homeowners Association, Inc.", which is referred to as the "Association". Every Owner of a Lot in the Development shall be a member of Association and shall be subject to all the requirements and limitations imposed in these Restrictions on other Owners of Lots within the Development and on members of Association, including those provisions with respect to the payment of an annual charge.

B. **Classes of Membership.** Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of Developer and 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. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast

with respect to any Lot.

Class B. The Class B member(s) shall be Developer, who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) On the date Developer sells the last Lot which Developer owns in the Development, and Developer no longer owns any Lots or land in the Development; or

(b) On January 1, 1999.

C. Board of Directors. The members shall elect a Board of Directors of Association as prescribed by Association's By-Laws. The Board of Directors shall manage the affairs of Association.

D. Professional Management. No contract or agreement for professional management of Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

E. Responsibilities of Association.

(i) Association shall maintain the landscape easements shown on the plat(s) and shall keep such areas in a neat, clean and presentable condition at all times.

(ii) Association shall maintain and repair the Common Areas shown on the plat(s) including improvements thereon.

(iii) Association shall procure and maintain casualty insurance for the Common Areas, liability insurance (including directors' and officers' insurance) and such other insurance as it deems necessary or advisable.

(iv) Association may contract for such service as management, snow removal, security control, trash removal, and such other services as Association deems necessary or advisable.

11. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Creation of the Lien and Personal Obligation of Assessments. Each Owner including builders of any Lot in the Development, except Developer, 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 Association: (1) annual assessments or charges; and (2) special assessments for capital

improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' 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 attorneys' fees, shall also be the personal obligation of the person who was Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by Association against Developer.

B. Purpose of Assessments. The assessments levied by Association shall be used exclusively to promote the health, safety and welfare of the residents in the Development and for the improvements and maintenance of the Common Area and improvements, operated or maintained by Association, and the landscape easements on the Development and other purposes as specifically provided herein.

C. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which Association is required to maintain in for operating deficits which Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

D. Notice and Quorum for Any Action Authorized Under Subparagraphs C and E. Written notice of any meeting called for the purpose of taking any action authorized under Subparagraphs C and E shall be sent to all members not less than ten (10) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the total votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

E. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence for each Lot on the date of conveyance to Owner by deed or on the date Owner signs a land contract to purchase a Lot. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from Association regarding the status of

assessments for any Lot shall be binding upon Association as of the date of its issuance.

F. Effect of Non-Payment of Assessments: Remedies of Association. Any charge levied or assessed against any Lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that Lot until paid in full and shall also be a personal obligation of Owner or Owners of that Lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum until paid in full. If, in the opinion of the Board of Directors of Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of Association, instituted such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. Owner of the Lot or Lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorneys' fees, incurred by Association in collecting the same. Every Owner of a Lot in the Development and any person who may acquire any interest in such Lot, whether as an Owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon the Lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an Owner of a Lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay Association all charges that Association shall make pursuant to this subparagraph of the Restrictions.

Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of Association that the assessments on a specified Lot have been paid or that certain assessments against the Lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

G. Subordination of the Lien to Mortgage. 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. No sale or transfer shall relieve the Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

H. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of Association shall have the right to suspend the voting rights, if any, and the services to be provided by Association together with the right to use the facilities of Association, of any member or associate member (i) for any period during which any of Association's charges or any fines assessed under these Restrictions owed by the member or associate member remains unpaid, (ii) during the period of any continuing violation

of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of Association.

12. REMEDIES.

A. In General. Association or any party to whose benefit these Restrictions inure, including Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither Developer nor Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, reoccurrence or continuation of such violation or violations of these Restrictions.

13. EFFECT OF BECOMING AN OWNER.

Owners of any Lot subject to these Restrictions by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, Owner acknowledges the rights and powers of Developer, Committee and of Association with respect to these Restrictions, and also, for themselves, their heirs, personal representative, successors and assigns, such owners covenant and agree and consent to and with Developer, Committee and Association and to and with Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

14. ADDITION TO REAL ESTATE.

Developer shall have the unilateral right, privilege, and option, from time to time, at any time until all of the Expansion Real Estate has been subjected to these Restrictions, to subject to the provisions of these Restrictions and the jurisdiction of Association all or any portion of the Expansion Real Estate. Such addition shall be accomplished by the filing in the Office of the Recorder of Hendricks County, Indiana a Supplemental Declaration subjecting such real estate to these Restrictions. Such Supplemental Declaration shall not require the consent of the Association or any Owner, but shall require the consent of the owner of such property, if other than Developer. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration, unless otherwise provided therein. This paragraph shall not be amended without the prior written consent of Developer, so long as Developer owns any of the Expansion Real Estate.

15. AMENDMENT.

During the first twenty (20) years following its recordation, these Restrictions may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Hendricks County, Indiana, approved and signed by at least ninety percent (90%) of the then Owners, and thereafter by an instrument signed by at least seventy-five percent (75%) of the then Owners; provided, however, that, notwithstanding anything contained herein to the contrary, any amendment to these Restrictions which would amend this paragraph or which would allow the assessing of a regular annual assessment or special assessment in excess of that assessed any other Lot shall require the approval of one hundred percent (100%) of the then Owners. None of the rights or duties of Developer reserved or set out hereunder may be amended or changed without Developer's prior written approval. These Restrictions may also be amended by Developer, if it then has any ownership interest in the Development, at any time within three (3) years after the recordation hereof. Any amendment must be recorded.

16. TITLES.

The titles preceding the various paragraphs and subparagraphs of these Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of these Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

17. DURATION.

The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2015, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the Owners of a majority of the Lots in the Development.

18. SEVERABILITY.

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions.

Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

IN TESTIMONY WHEREOF, witness the signature of the Declarant this 6th day of JUNE, 1995.

Requested By: 359098 10/08/2004

PENDLETON PIKE ASSOCIATES, INC.

By *Mark E. Sanders*
Mark E. Sanders
President

ATTEST:

Jane A. Hendrickson
Jane A. Hendrickson
Secretary

STATE OF INDIANA)
) SS:
COUNTY OF BOONE)

Before me, a Notary Public in and for said County and State, personally appeared Mark E. Sanders, the President, of Pendleton Pike Associates Inc., who acknowledged execution of the foregoing Declaration of Covenants and Restrictions for and on behalf of Sanders Development Group, Inc., and who, having been duly sworn, stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 16th day of JUNE, 1995.

Belinda J. Cripe
Notary Public

BELINDA J. CRIFE
Printed



My Commission Expires: 12/31/96
My County of Residence: CLINTON

This instrument was prepared by Jayne Ferguson Brackemyre, Attorney At Law, 6051 S. Indianapolis Road, Whitestown, IN 46075
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