

DECLARATION OF COVENANTS AND RESTRICTIONS

OF

Bradford Place

BOOK 185 PAGE 270

Raymond B. Roehling ("Developer"), has executed this Declaration of Covenants and Restrictions ("Declaration"), this 21<sup>st</sup> day of October, 1985, for the purpose of (i) establishing minimum standards pertaining to the development, use, and maintenance of certain real estate in Hamilton County, Indiana, described in Exhibit A attached hereto, incorporated herein and referred to herein as "Bradford Place" and (ii) insuring the stability of land and improvement values in Bradford Place; and by such execution, Developer as the owner of Bradford Place declares that the standards, covenants and restrictions contained in this Declaration shall be imposed on, apply to and run with the real estate described in Exhibit A and shall inure to the benefit of and be a charge upon the owners and occupants of such real estate.

A plat of the real estate described in Exhibit A has been recorded in Plat Book 12, Page 79 in the Office of the Recorder of Hamilton County, Indiana, and all references herein to the "Plat" are to such recorded plat.

The following standards, covenants and restrictions are established for Bradford Place:

1. Land Use. Lots may be used only for residential purposes and only one (1) single family dwelling, a private garage and other such outbuildings usual and incidental to the use of a residential lot may be constructed thereon. No portion of any lot may be sold or subdivided such that there will be thereby a greater number of houses in Bradford Place than the number of original lots shown on the Plat.
2. Building Control. Prior to construction of any structure upon a lot, the building plans therefor, including plot plans, site storm drainage and grading plan, specifications, plan for landscaping, and any other data or information which may be requested, must be submitted to the Developer for his approval, said approval to be evidenced by a written instrument executed by the Developer and delivered to the person or persons requesting such approval.

The Developer is authorized to determine whether the proposed structures, plans and specifications show conformity and harmony of external design with existing structures, whether the building and property set-back lines are in conformity with applicable plat requirements, and whether the proposed site storm drainage plan conforms to the overall project and lot drainage plan as specified in the approved final construction plans for Bradford Place. No charge will be made to any purchaser of a lot for examination of plans or for giving approval for construction thereon. In the event the Developer does not indicate in writing its approval or disapproval of plans submitted for its review within a period of fifteen (15) days after submission, the Developer is deemed to have approved such plans.

3. Building Location and Grade Line Elevation. No building may be erected between the building line shown on the Plat and the front lot line; and no structure or part hereof may be built or erected nearer than 10 feet to any side yard line or nearer than 20 feet to any rear lot line. A minimum grade line elevation, shown on the Plat, is hereby established for each lot and no grade line can be constructed lower than said minimum without the written consent of the Developer and the Building Commissioner of the City of Carmel. Demonstration of adequate storm water drainage with both on lot and overall project drainage plans shall be a prime requisite of alterations to the

This Instrument Recorded 11-12- 1985  
Mary L. Clark, Recorder, Hamilton County, Ind.

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HAMILTON COUNTY, IND.

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270

line elevations. Before building commences, said grade line shall be physically checked on the lot and certified by a licensed professional engineer or a licensed land surveyor on lots eight (8), nine (9) and ten (10).

**4. Easements for Drainage, Sewage, Utilities and Access.**

Lots are subject to drainage easements, sewer easements and utility easements, either separately or in combination of the three (3) as shown on the Plat, which are reserved for the use of lot owners, public utility companies and governmental agencies as follows: (a) Drainage easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the subdivision and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each land owner to maintain the drainage across his own lot. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvement, and shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by Developer. Said easements are for the actual use and benefit of the owners of all lots in Bradford Place. (b) Sewer easements (SE) are created for the use of the local governmental agency having jurisdiction over the storm and sanitary waste disposal system designed to serve Bradford Place and adjacent areas for the purpose of installation and maintenance of sewers that are a part of said system. (c) Utility easements (UE) are created for the use of all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements. All such easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer, or utility easement.

**5. Maintenance of Lots and Improvements.** The Owner of any Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall:

- (A) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- (B) Remove all debris or rubbish;
- (C) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;
- (D) Cut down and remove dead trees;
- (E) Where applicable, prevent debris and foreign material from entering drainage areas;
- (F) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly; and
- (G) Regularly treat or cause to be treated, the lawn area against weed and insect infestation.

**6. Maintenance of Pond Located on Lots 8, 9 and 10; and Easement.** The owners of Lots 8, 9 and 10 shall share equally the cost of repairing and maintaining the pond located on said Lots, including but not limited to maintaining the pond in a clean, clear and sanitary condition and performing or causing to be performed the repairs necessary to maintain in a good and operable condition the spillways and circulating systems.

There is hereby reserved for the owner of Lot 9 an easement for access over and on the variable drainage easement as described on the Plat for the sole purpose of access.

MISC.

103

271

7. Developer's Right to Perform Certain Maintenance. In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, Developer shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvement situated thereon, if any, conform to the requirements of these Restrictions. The cost thereof shall be an expense of the lot owner, and such land owner shall have a lien against said real estate for the expense thereof. Neither the Declarant, nor any of its agents, employees, or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder.

ARCHITECTURAL GUIDELINES

As noted previously, any new building or improvement or any addition to an existing building or an exterior alteration or change to an existing building must have the prior written approval of the developer before any work is undertaken. The Developer has established the following guidelines for specific types of construction and improvements. Any addition, exterior alteration or change to an existing building shall be compatible with the design character of the original building. Any new detached structures shall be compatible with the existing structure.

1. FENCES, WALLS AND SCREENING. It is the goal of the Developer to keep all fencing or screening as harmonious as possible with the architectural character of the community. No fence or screen will be approved if its installation will obstruct necessary sight lines for vehicular traffic. Undue obstruction of view or other amenities from adjoining properties will be taken into consideration by the Developer when reviewing fences for approval. Fences shall not be nearer to the front of a home than the rear foundation line of a home except decorative fences. Front fences may be placed parallel to the front foundation of a home only if they do not cause unreasonable visual barriers and they are of identical materials as the main structure.

The Developer discourages fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other property owners. Fences may be privately installed but must be constructed to professional levels of quality. Non-professionally installed fences will be inspected by the Developer after completion in order to insure that the final product is of a professional quality and final approval of the fence shall be deemed withheld until successful completion of this final review.

a. Height restriction. The Developer is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the community is damaged by a proliferation of fences of excessive height. The Developer, therefore, will approve rear perimeter fences up to 4 feet in height which otherwise meet these guidelines. The Developer will give consideration, however, to a variance in this height limit where the rear line of a lot abuts a major arterial roadway or other clearly unique circumstances exist. The use of 6 foot fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio area will be permitted. The specific fence height restrictions are as follows:

- (1) Property fencing and walls above grade shall not exceed 4 feet above grade unless otherwise approved by the Developer.
- (2) The Developer will not ordinarily approve any proposed fence which exceeds 4 feet in height .

MISC. 185

272

unless the rear line of that lot abutts a major arterial roadway or offers some other circumstances clearly unique to that lot.

- (3) Patio screens/privacy fences shall not exceed 6 feet in height, except for pools and recreational fences as provided herein.

b. Materials and Finish.

- (1) Wood fencing or screening will be allowed if the design is in conformity with the architectural design of the community.
- (2) The installation of a chain link or other galvanized metal fencing will not be permitted unless it is vinyl coated or covered with similar coated material.
- (3) All fencing or screening should preferably have finished material on both sides. If only one (1) side has finished materials, that side must face the public side or adjoining property.
- (4) Walls above grade should be constructed of natural stone masonry or attractive timber.

2. Size of Dwelling: The ground floor area of the main structure, shall be not less than 2600 square feet in the case of a one story structure, nor less than 1500 square feet in the case of a multiple story structure, provided no structure of more than one story shall have less than an aggregate of 2600 square feet of finished and liveable floor area. The square footage of a residence as referred to on such plat shall not include porches, terraces, garages, carports, accessory buildings, or basements. No two (2) houses in the development can be noticeably duplicated so that you can tell from the street. No plan will be approved that does not have a minimum retail value of \$250,000.00 including lot. Any question of value will be determined by actual contract price and/or an average of two (2) SRA approvals, one (1) selected by the builder/owner and one (1) selected by the Developer.

3. Garages and Driveways. Every house in the Real Estate must have at least a two (2) car garage, attached or detached, and of the same architectural design and materials as the house. All driveways must be paved from their point of connection with the abutting street or road to a point of connection with the garage apron.

4. Exterior Construction.

- (A) The finished exterior of every building constructed or placed on any Lot shall be of material other than aluminum siding, rollbrick siding or any other similar artificial material. Vinyl siding may be allowed as an exception to arrive at a particular design home, but must have special approval. Colors of homes and improvements are, generally, to be subdued, earthen tones or white and compatible with other structures in the immediate area. Before application of material, all exterior colors, veneer and roof material will be submitted and approved.
- (B) All chimneys and flues must be of masonry construction.
- (C) All roofing of structures on the property shall be shake shingle, tile or a minimum of 300#/square asphalt shingle.

5. Roof Pitch. No main roof pitch will be allowed less than 6/12 on a two (2) story and 7/12 on a ranch or story and one-half.

6. Garage Doors. Every effort possible will be made to put on rear of end, or in case of all plan the inside will be acceptable. Any ell or front facing doors will have to have door design approved. A redwood door or similar quality will be required.

MISC. 185

273

7. No heat pumps, air conditioning units, or gas meters will be installed on front of house.
8. If storm doors or windows are installed they must be painted. No unfinished aluminum storm windows or doors will be allowed.
9. All gutters and downspouts other than copper, will be painted.
10. All roof and fireplace flashing other than copper will be painted to blend with roof color.
11. All metal roof or range vents will be painted to blend with roof color. Every effort should be made to locate such vents to rear of the house.
12. Plumbing. All plumbing vent stacks to be on rear of house. Sump pump lines shall be connected to underground laterals or storm sewers as provided in the plat.
13. Street Cleaning. Builder or Buyer to finish cleaning in front of his house upon completion and rough clean the street periodically during construction.
14. Yard Lights. All lot owners will be required to furnish and install dusk to dawn light fixtures at all driveway entrances to their lots, the style and type of which will be selected by the Developer and shall be the standard for the entire subdivision. Builders shall install said lights on behalf of the owner prior to closing.
15. Sidewalks. To be installed by the Builder according to the recorded plat. In general a 4 foot wide sidewalk shall be installed in front of each home. If the home is completed in the winter then the sidewalk shall be installed not later than the May 30th of the following spring.
16. Mailboxes. All mailboxes installed at the street to service lots in Bradford Place shall be uniform and shall be of a type, color and manufacture approved by the Developer. Such mailboxes shall be installed by the Builder upon posts approved as to type, size and location by the Developer.
17. Landscaping. To be furnished with house and completed before closing. Builder shall sod the front yard and at least 50% of the side yard. The balance of the yard may be seeded. Each home shall include a minimum of \$1,000.00 worth of plantings and landscape. This allowance includes labor and inclusive of sod. All work on the minimum landscape requirement above shall be completed prior to the closing or as soon as weather conditions permit, but no later than May 30th of the following spring.
- Pines and hardwood trees of landscape value shall not be destroyed but shall be moved to other areas of the Lot, unless they exceed 10" in diameter and cannot be moved. Trees, hedges, and shrubs which restrict visual lines for vehicular traffic shall be cut back or removed. Special landscaping beyond that normally associated with a single family residence must be approved by the Developer prior to installation.
18. Swimming Pools. Only permanent in ground pools with professional construction will be permitted. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design. The use of plantings/screenings in the vicinity of the pool will be required to soften the visual and sound effect on adjacent properties.
19. Tennis Courts, Racquetball Courts, Paddle Ball Courts, etc. Tennis courts, racquetball courts, paddle ball courts, squash courts, and other recreational facilities or sporting facilities will be permitted, provided that all fencing shall be vinyl coated variety and that all views of adjacent properties, in Bradford Place be screened by pines of at least 6' in height. All lighting must be of a baffled variety so as to minimize the effect on other properties in Bradford Place.

MISC. 185

274

20. Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth less than 24 inches, swing and slide sets, playhouses and tents shall not require approval by the Developer provided such equipment is not more than six (6) feet high, maintained by the lot owner in good repair (including painting) and every reasonable effort has been made by the lot owner to screen or shield such equipment from view. Equipment higher than six (6) feet shall require approval of the design, location, color, material and use by the Developer.

21. Solar Heating Systems. The Developer acknowledges the increased use of residential solar heating systems which utilize solar heating panels and related equipment. The Developer will carefully review solar heating plans to insure that their use and location have a minimum detrimental effect on adjoining properties. Geothermal heat systems are acceptable however, the closed loop variety should be used unless there is a direct discharge available into a stream or other location acceptable to the Developer.

22. Miscellaneous. All exterior lighting shall be directed in such a manner so as not to create annoyance to adjacent properties. Lot owners shall keep garage doors closed at all times except during the times of actual use of the garage facility. Collapsible and removable clothes lines will be permitted, but permanent clothes lines are not acceptable.

23. Liability of Developer. Neither the Developer, nor any agent thereof, 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, the Developer does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, 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.

24. Inspection. The Developer may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

#### GENERAL PROHIBITIONS

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

2. Vehicle Parking. No trucks, campers, trailers, recreational vehicles, boats, boat trailers or similar vehicles shall be parked on any street or Lot, unless the same shall be stored in an enclosed garage.

3. Exterior Antennae. Unless specifically authorized by the Developer, no television, radio or other antennas may be erected by any lot owner on the exterior of a house or on a lot. Satellite dishes will not be permitted.

4. Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view except at the times when refuse collections are being made. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

5. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective lots so such that they will not be a nuisance.

6. Storage Tanks. Any gas, propane, or oil storage tanks used in connection with a lot shall be either buried or located in a garage or house such that they are completely concealed from public view. The storage of any caustic chemicals is prohibited.

7. Temporary Structures and Out Buildings. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence.

MISC. 185

275

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 house shall have been substantially completed shall be made by the Developer and such decision shall be binding on all parties. No metal outbuildings shall be permitted on any Lot. All outbuildings must be of same design and materials as the primary structure.

8. Signs. No sign of any kind shall be displayed to the public view of any lot except that one sign per builder and one per realtor of not more than six (6) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent.

9. Prohibition of Used Structures. All structures constructed or placed on any Lot shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any such Lot.

10. Building Completion. Unless a delay is caused by strikes, war, court injunction, or acts of God, the exterior of any dwelling or structure built upon any lot shall be completed within one (1) year after the date of commencement of the building process. 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. If said structure is not completed or repaired within such time, then the Developer may re-enter, take possession of said lot, without notice, and sell the same together with improvements, and after payment of liens and expenses, pay the balance of the sale proceeds to the owner of said lot at the time of sale.

11. Assessments. The Developer may make assessments to cover any costs incurred in enforcing these covenants or in undertaking any maintenance or other activity which is the responsibility of a lot owner hereunder but which such lot owner has not undertaken as required hereunder. Any such assessment shall be assessed only against those lot owners whose failure to comply with the requirements of these covenants necessitated the action to enforce these covenants or the undertaking of the maintenance or other activity.

12. Lien for Assessments. Each owner of a lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay assessments as the same become due in the manner herein provided. All such assessments, together with interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made until paid in full. Such assessments shall also be the personal obligation of the owner of the lot at the time when the assessment became due and payable. Any assessment not paid within thirty (30) days after the date the same became due and payable shall bear interest from the due date at a percentage rate not greater than eighteen per cent (18%) per annum to be established by the Developer. The Developer or any member thereof shall be entitled to institute in any court of competent jurisdiction such procedures, at law or in equity, by foreclosure or otherwise, to collect the delinquent assessment plus any expenses or costs, including attorney's fees, incurred by the Developer or such member in collecting the same. If the Developer has provided for collection of any assessment in installments, upon default in the payment of any one or more installments, the Developer may accelerate payment and declare the entire balance of said assessment due and payable in full. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot or otherwise.

MISC. 185

276

The lien of the assessments provided for herein shall be subordinate to the lien of any recorded first mortgage covering such lot and to any valid tax or special assessment lien on such lot in favor of any governmental taxing or assessing authority. Sale or transfer of any lot shall not affect the assessment lien. The sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments which thereafter become due or from the lien thereof.

The Developer shall, upon demand at any time, furnish a certificate in writing that the assessments on a lot have been paid or that certain assessments remain unpaid, as the case may be. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Any easement granted herein or any property shown on the Plat as dedicated and intended for acceptance by the local public authority and devoted for public use shall be exempt from the assessments, charge and lien created herein.

13. Enforcement. The right to enforce each of the foregoing restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to the Developer, the owners of the lots in Bradford Place, their heirs and assigns, and to the Carmel Clay Plan Commission, their successors or assigns, who are entitled to such relief without being required to show any damage of any kind to the Developer, any owner or owners or such Commission by or through any such violation or attempted violation. There shall be no rights of reversion or forfeiture of title resulting from any violations.

14. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

15. Non-Liability of Developer. Developer shall not have any liability to a lot owner or to any other person or entity with respect to drainage on, over or under a lot. Such drainage shall be the responsibility of the owner of the lot upon which a residence is constructed and of the builder of such residence; and an owner, by an acceptance of a deed to a lot, shall be deemed to agree to indemnify and hold Developer free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the lot described in such deed.

16. General Provisions. This Declaration may be amended at any time by the owners of at least two thirds of the Lots in Bradford Place. Each such amendment must be evidenced by a written instrument signed and acknowledged by the owner or owners concurring therein, setting forth facts sufficient to indicate compliance with this paragraph, and recorded in the Hamilton County Recorder's Office.

As used herein, the term "lot" means a lot depicted on the Plat.

17. Deed of Dedication - Bradford Place.

A deed of dedication, in substantially the following form, shall appear on every final plat for a subdivision.

I, the undersigned, Raymond E. Roehling, owner of the real estate shown and described herein, do hereby certify that I have laid off, platted and subdivided and do hereby lay off, plat and subdivide, said real estate in accordance with this plat.

The subdivision shall be known and designated as Bradford Place an addition to the City of Carmel, Hamilton County, Indiana. All streets and alleys shown and not heretofore dedicated, are hereby dedicated to the public.

MISC. 185

277



Front and side yard building setback lines are hereby established as shown on this plat, between these lines and the property lines of the street, there shall be erected or maintained no building or structure.

There are strips of ground 5 feet to 20 feet in width as shown on this plat and marked "Easement" reserved for the use of public utilities for the installation of water and sewer mains, poles, ducts, lines, and wires, subject at all times to the proper authorities and to the easement herein reserved. No permanent or other structures are to be erected or maintained upon said strips of land, but owners of lots in this subdivision shall take their titles subject to the rights of the public utilities.

The foregoing covenants or restrictions, are to run with the land and shall be binding on all parties and all persons claiming under them until December 31, 2010, at which time said covenants, or restrictions, shall be automatically extended for a successive period of 10 years unless changed by vote of a majority of the then owners of the buildings covered by these covenants or restrictions, in whole or in part.

18. Common Areas.

a. The two (2) parcels of land designated on the Plat as area 1 and area 2 and the improvements construed thereon are common area (hereinafter Common Area) and shall be owned by Bradford Homeowner's Association, Inc., an Indiana Not for Profit Corporation (hereinafter Association). Every lot owner shall have a non-exclusive right and easements of enjoyment in common with all lot owners, in and to the Common Area, which shall be appurtenant to and shall pass with title to every lot in the form of a right to and obligation of membership in the association subject to the following provisions:

- (1) the right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area;
  - (2) the rights of Developer as provided in this Declaration;
  - (3) all other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented;
  - (4) the right of the Association to mortgage any and all of the Common Area, upon the approval of two thirds (2/3rds) of the membership of each class of members of the Association;
  - (5) the easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area for the benefit of its members; and
  - (6) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon the approval of two thirds (2/3rds) of the membership of each class of members of the Association.
- b. Delegation of Use. Any owner may delegate, in accordance with the By-Laws and any reasonable and non-discriminatory rules and regulations promulgated from time to time by the Association and subject to the .

MISC. 185

278

rights of others as set forth in this Declaration, his or her right of enjoyment of the Common Area to family members, to a lessee, or contract purchaser of his Lot or to guests.

c. Certain Obligations and Access Rights to the Common Area.

- (1) The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area, and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.
- (2) The Association shall have and is hereby granted an easement and right of access to all of the Common Area for the purpose of maintaining or repairing or causing the same to be maintained or repaired as is its obligation and duty under this Declaration. In addition, certain utility lines, sewer and other facilities and other improvements located within a Lot or a Common Area may serve other adjacent or non-adjacent Lots. The Association and any member thereof whose enjoyment of the use and occupancy of his Lot is affected thereby, their respective officers, agents, employees and contractors, shall have an easement thereto and shall have the right, at reasonable times and at any time in case of emergency, to go upon any Lot or Common Area for the purpose of maintaining or causing to be maintained or repaired any Building, party wall, utility line, sewer or other facilities located thereon that serve another Lot. The Association shall also have and is hereby granted a general right of access to all of the Common Area and Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Developer so long as Developer owns more than one (1) Lot.

d. Drainage, Utility, Sewer and Other Development Easements.

Developer reserves unto himself during the Development Period, and thereafter unto the Association, an undefined easement for drainage, utility and sewer purposes in and on and over all of the Common Area, so as to permit Declarant to properly install and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services, antennae and other equipment and facilities to serve the Lot and the single family residential dwelling to be constructed on each Lot.

- e. Membership. Initially, to satisfy the requirements of the Indiana Not-for-Profit Corporation Act, the three (3) persons who serve as incorporators of the Association shall be the members (the "initial Members"). The Initial Members shall remain members of the Association until three (3) persons have become Class A or Class B members, at which time the Initial Members shall cease to be members unless they also qualify as Class A or Class B members. Every Owner of a Lot shall be a member of the Association. Apart from

MISC.

185

279

the Initial Members, membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

- f. Classes of Membership and Voting Rights. The Association shall have two (2) classes of voting membership: Class A; Class A members shall be all Owners with the exception of the Developer. Class A member shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members; the vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. Class B; The Class B member shall be the Developer. The Developer 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) when the total number of votes outstanding in the Class A membership is equal to the total number of votes outstanding in the Class B membership; or
  - (b) on January 1, 1990.
- g. Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association.
- h. Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Developer and the 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.
19. Covenant for Maintenance Assessments.
- a. Creation of the Lien and Personal Obligation of Assessments. Developer, for each Lot now or hereafter owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) Regular Assessments (for maintenance, repairs, and ordinary operating expenses); (2) Special Assessments for (a) capital improvements and operating deficits and (b) for special maintenance or repairs as provided and (3) any Insurance. Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such 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 Owner. Past due assessments shall run with the land and pass with title.

- b. Purpose of Regular Annual Assessments. The Regular Annual Assessment levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the property, for the improvement, maintenance, and repair of the Common Area, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. A portion of the Regular Annual Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area and other capital improvements which the Association is required to maintain.
- c. Maximum Regular Annual Assessments.
- (1) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Annual Assessment on any Lot conveyed by Declarant shall be \$100.00 per Lot.
  - (2) From and after January 1 of such year, the maximum Regular Annual Assessment may be increased each calendar year not more than 10% above the maximum Regular Monthly Assessment for the previous year without a vote of the membership.
  - (3) From and after January 1 of such year, the maximum Regular Annual Assessment may be increased each calendar year by more than 10% above the maximum Regular Annual Assessment for the previous year, with the approval of two thirds (2/3rds) of those members of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose.
  - (4) The Board of Directors from time to time may fix the Regular Annual Assessment, without any vote of the membership, at any amount not in excess of the maximum.
- d. Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Annual Assessments authorized above, the 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 the Association is required to maintain, or to recover any operating deficits which the association may from time to time incur, provided that any such assessment shall have the assent of two thirds (2/3rds) of those members of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose.
- e. Notice and Quorum for Any Action Authorized Under Section 5.3 and 5.4. Written notice of any meeting for the purpose of taking any action authorizing a special assessment shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the 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 more than sixty (60) days following the preceding meeting.

f. Uniform Rate Assessment. Regular Annual Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots.

g. Date of Commencement of Assessments; Due Dates. The Regular Assessment provided for herein shall commence as to each Lot on the date of conveyance of such Lot by Developer.

The Board of Directors shall fix an increase in the amount of such assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Assessment, and written notice of any Special Assessment 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, and the assessment and collection period for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

b. Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees shall become delinquent and shall constitute a continuing lien on the Lot to which such assessments relate, binding upon the then Owner, his or her heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen per cent (18%) per annum the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property or both. In such event there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the Court. 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.

i. Subordination of the Lien to Mortgage; Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of

MISC. 185

202

joining the 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. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

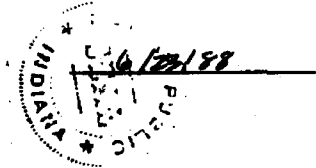
DEVELOPER

Raymond H. Roehling  
Raymond H. Roehling

SUBSCRIBED AND SWORN to before me, a Notary Public, this 15<sup>th</sup> day of October, 1985.

Larry L. Beckler  
Larry L. Beckler, Notary Public  
County of Residence: Marion

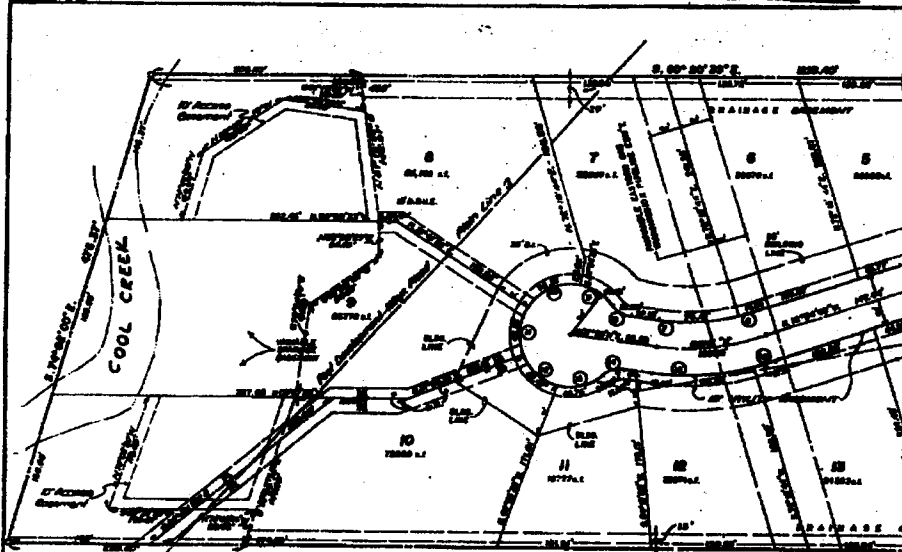
My Commission Expires:



THIS INSTRUMENT WAS PREPARED BY:

James J. Nelson  
NELSON & FRANKENBERGER, P.C.  
3021 E. 98th Street, Suite 220  
Indianapolis, IN 46280  
(317) 844-8106

This Instrument Recorded 11-12- 1985  
Mary L. Clark, Recorder, Hamilton County, Ind.



RECEIVED FOR RECORD  
 AT 1 O'CLOCK P.M.

NOV 8 1885

BOOK 12 PAGE 79  
*Mary F. Clark*  
 RECORDS HAMILTON COUNTY, TENNESSEE

657157

*[Faded text, likely the beginning of a deed or legal instrument]*

*[Faded text, likely the middle of a deed or legal instrument]*

*[Faded text, likely the end of a deed or legal instrument]*



This instrument recorded 11-12-1885  
 Mary L. Clark, Recorder, Hamilton County, Tenn.