

8801252

DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS

OF

CHERRY HILL FARMS

THIS DECLARATION is made this 14th day of December, 1987, by R. P. ENTERPRISES, INC., d/b/a R.P. MILHOUSE, a California corporation (hereinafter referred to as "Declarant" "Developer"), and

WITNESSES:

This Instrument Recorded YAN 21 1988
Sharon K Cherry Recorder Hamilton County IN.

WHEREAS, Developer is the owner of all of the lands contained in the area described in Exhibit A, attached hereto and made a part hereof, which lands will be subdivided and known as "Cherry Hill Farms" (hereinafter referred to as the "Real Estate" or the "Development"), and will be more particularly described on the plats of the various sections thereof recorded and to be recorded in the Office of the Recorder of Hamilton County, Indiana and which shall make reference hereto; and

WHEREAS, Developer intends to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject to 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 lots and lands in the Development and future homeowners thereof.

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 said 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 said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon 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 such Restrictions, and shall inure to the benefit 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 described in Exhibit A, to exclude any real estate as shown from the Development, or to include additional real estate.

1. DEFINITIONS.

A. The following are the definitions of the terms as they are used in this Declaration.

(i) "Association" shall mean the "Cherry Hill Farms Homeowners Association, Inc.", or an organization of similar name, its successors and assigns and shall be created as an Indiana not-for-profit corporation and its membership shall consist of lot owners who pay mandatory assessments for the expense of maintaining the landscaping, Common Area, and retention/detention pond Easement Areas as well as for various services which the Association may determine to provide for Owners from time to time.

(ii) "Builder" shall mean the person constructing the first residence on each Lot (which may be the Developer for one or more Lots).

(iii) "Committee" shall mean the Cherry Hill Farms Development Control Committee, composed of three (3) members appointed by Developer who shall be subject to removal by Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of Developer until such time as the subdivision is completely developed, at which time the Association shall appoint from its membership the Committee.

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21 day January 1988
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Hamilton County

INSTR. # 88 01252

(iv) "Common Area" shall mean those areas set aside for conveyance to the Association, as shown on the plats.

(v) "Common Property" means all real and personal property which is in the nature of common or public improvements or areas, in which is located in, upon, or under the Common Areas, easements, or streets within Cherry Hill Farms. Without limiting the generality thereof, Common Property shall include, to the extent not publicly dedicated, all streets, curves, water mains, fire hydrants, the drainage system, the sewage system, street lights and street signs, public sidewalks, lakes, retentions ponds, parks, and open spaces.

(vi) "Lot" shall mean any parcel of real estate, whether residential or otherwise, described by one of the plats of the Development which is recorded in the Office of the Recorder of Hamilton County, Indiana.

(vii) "Mortgagee" shall mean any holder, insurer or guarantor of any first mortgage on any Lot.

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

(ix) "Easement Area" shall mean those areas set aside for and included within the boundaries of one or more lots and designated as an easement on the plat of Cherry Hill Farms, which includes the landscaping areas, various easements for utilities, sewers, storm drainage, and retention/detention ponds.

B. Approvals, Etc. Approvals, determinations, permissions or consents required herein shall be deemed given if they are given in writing signed, with respect to Developer by an authorized officer or agent thereof, and with respect to the Committee by two members thereof.

2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every numbered 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 structure shall be erected, placed or permitted to remain upon any of said residential lots except a single family dwelling house. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded plat shall be Common Area and shall be used in a manner consistent with all applicable zoning requirements and the terms and provisions hereof.

B. Accessory Outbuildings Prohibited. No accessory outbuildings shall be erected on any of the residential lots without the advance written approval of the Committee. Any outbuilding approved by the Committee shall be constructed in a location such that it is substantially hidden from view from all streets in the Development.

C. Occupancy or Residential Use of Partially Completed Dwelling Houses Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the house shall have been substantially completed in accordance with the approved building plan shall be made by the 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, and to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference.

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21 day January 1988

Polly Pearce
Hamilton County

Parcel # _____

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

A. Minimum Living Space Areas. All dwellings will have at least two (2) bedrooms, a two-car attached garage and a minimum of One Thousand Two Hundred (1,200) square feet of living area for a single story structure, and 1,600 square feet of living area for a multi-level structure (in either case exclusive of basements, porches, garages, carports and accessory uses.

B. Residential Setback Requirements.

(i) In General. Unless otherwise provided herein or on the recorded plat, no dwelling or above-grade structure shall be constructed or placed on any residential 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 said Lot. "Rear line" means the Lot boundary line that is farthest from, and substantially parallel to, the road on which the Lot abuts, except that on corner Lots, it may be determined from either road.

(iii) Front Yards. The front building setback lines shall be all as set forth upon the plats of the Development, but the minimum front building setback distance from all right-of-way lines will be twenty-five (25) feet.

(iv) Cul-de-sacs. If the particular Lot abuts a cul-de-sac, the front building setback line shall be as shown on the plat of that Lot.

(v) Side Yards. The side yard setback lines shall maintain a minimum distance of ten (10) feet between side yard lot lines and buildings.

(vi) Rear Yards. The rear setback line shall be at least twenty-five (25) feet.

C. Fences, Light Fixtures, Etc., Mailboxes, Lawns and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence, exterior light fixture, basketball goal, hot tub or other exterior structure must be approved by the Committee as to size, location, height and composition before it may be installed. Any fencing in the Development will first be approved in advance by the Committee; no fence will be higher than six (6) feet; no fencing will extend forward of the furthest front corner of the home. Fencing style and color will be consistent with the Development as determined by the Committee. The Builder of any residence on a Lot shall finish grade and seed or sod the Lot.

D. Exterior Construction. The following requirements shall be applicable unless the Committee shall approve otherwise: (i) All utility facilities in the Development will be underground, except where required to be placed above-ground by the individual utility supplier; (ii) Each driveway in the Development will be of concrete or asphalt material; (iii) No additional parking will be permitted on a Lot other than in the existing driveway; (iv) Each dwelling will have a continuous concrete sidewalk from the driveway to the front porch; (v) All garage doors in the Development will be of a hard-board or wood material; (vi) Whenever possible, all utility meters and HVAC units in the Development will be located in places unseen or screened from the fronts of the dwellings; (vii) No outside fuel storage tanks will be permitted above ground and no gasoline storage will be permitted above or below ground in the Development; (viii) All windows in the Development will be factory or on the job painted, no raw aluminum windows will be permitted, and all windows will have an approved thermal break; (ix) All gutters and downspouts in the Development will be factory or on the job painted; (x) All roofing in the Development will be of a consistent color scheme and a shingle-type material with weight no less than two hundred thirty-five (235) pounds per square and rating of Class A; (xi) All roof pitches will be six to twelve (6:12) or greater; (xii) No metal, fiberglass or similar type material awnings or patio covers will be permitted in the Development; (xiii) No above-ground swimming pools will be permitted on any Lot in the Development; and (xiv) Modular-type construction is not permitted in the Development; however, pre-fabricated home components such as walls, roof trusses, etc. will not be considered modular-type construction. ENCL.

21 day July 11, 1988

Billy Pearce Agent
Hamilton Co.

E. Heating Plants. Every dwelling in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the dwelling. Heating plants shall have ductwork capable of handling central air conditioning.

F. Damaged Structures. 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.

G. Prohibition of Used Structures and Modular Homes. All structures constructed or placed on any numbered Lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot, nor shall modular constructed structures be placed on any Lot.

H. Maintenance of Lots and Improvements. The Owner of any Lot in the Development 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:

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

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

I. Lot Access. All Lots shall be accessed from the interior streets of the Development and no Lot shall be accessed directly from 116th Street.

J. Sight Obstructions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the adjoining street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street Lot lines and a line connecting points twenty-five (25) feet from the intersection of said street Lot lines (or in the case of a rounded property corner, from the intersection of the street Lot lines extended to form a corner). The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street Lot line with the edge of a driveway pavement or alley line. As to any trees or other plants located within said sight line areas, the Owner thereof shall maintain the foliage line of such trees or other plants at a sufficient height to prevent obstruction of such sight lines.

K. Remedies for Failure to Comply. In the event that any Owner fails to fully observe and perform the obligations set forth herein, and in the further event that such failure is not cured within thirty (30) days after written notice of the same is given by the Association, the Association and any Owner shall have the right to commence judicial proceedings to abate or enjoin such failure, and to take such further action as may be allowed at law or in equity to correct such failure after commencement of such proceedings. In the event that such failure causes or threatens to cause immediate and substantial harm to a property outside of such defaulting Owner's Lot or to any person, the Association shall have the right to enter upon such Lot for the purpose of correcting such failure and any harm or damage caused thereby, without any liability whatsoever on the part of the Association. All costs incurred by the Association in connection with any act or proceeding undertaken to abate, enjoin, or correct such failure, including attorneys' fees and court costs, shall be payable by the defaulting Owner upon demand by the Association, and shall immediately become a lien against his Lot, subject to payment and collection in the manner provided for collection of assessments by the Association. The rights in the Owners and the Association under this paragraph shall be in addition to all other enforcement rights hereunder or at law or in equity.

ENTERED
21 day January 1978
Polly Pearce Assoc.
Hamilton Co.

4. EASEMENTS AND PROPERTY RIGHTS.

A. Easements. There is hereby reserved for the purpose of installing and maintaining municipal and public utility facilities and for such other purposes incidental to the development of the property, to be perpetual hereof, from the date of this instrument by the Developer, its successors and assigns, full right and authority to lay, operate and maintain such drainage facilities, sanitary sewer and water lines, gas and electric lines, communication lines (which shall include cable television), signage, landscaping, earth berms, lakes, retention ponds and such other further public service or community oriented facilities as Developer may deem necessary in any Common Areas, Easement Areas, streets and rights-of-way as shown on the plat of the Development. Provided, however, the disturbed area shall be restored as nearly as is possible to the condition in which it was found. No permanent structures shall be constructed within any Easement Area, except such structures as may be required in connection with the purpose of any such easement. There is hereby specifically reserved by the Developer for the benefit of the Association a landscape easement in those areas designated as such on the plats of Cherry Hill Farms which the Association shall maintain in accordance with good husbandry practices. Additionally, the Developer hereby reserves an easement for the benefit of the Association and its agents, across any and all Lots for the limited purpose of providing access to Easement Areas to provide for the proper maintenance and repair of the landscaping, utilities and other facilities located therein; provided, however, that any persons entering upon a Lot under the rights granted hereunder shall be responsible for the repair of any damage resulting from the use of any area disturbed thereby.

B. Rights to Common Property. Title to all Common Property shall be held in the Association, and each Owner shall have, as a non-exclusive, reciprocal easement pertinent to his Lot, a right of access to his Lot over all streets and the right to the use of all Common Areas for their intended purposes; provided, however, that any Owner's (including such Owner's guests or invitees) use of any such Common Areas shall be at their sole risk; and provided, however, that no Owner's use of any Common Property shall materially interfere with any other Owner's use thereof.

C. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to charge reasonable admission and other fees, and to establish reasonable rules and regulations for the use of any such Common Area;

(ii) The right of the Association to suspend the voting rights and right to use of the Common Areas by any Owner for any period during which any assessment against such Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations; and

(iii) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be approved by the members at any annual or special meeting. No such dedication or transfer shall be effective unless an instrument signifying agreement to such dedication or transfer and signed by a majority of the Owners has been recorded.

D. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Areas of the Association to the members of his family, his tenants, or contract purchasers who reside on the property, and subject to the rules and regulations of the Association, to his guests and invitees.

5. MISCELLANEOUS PROVISIONS AND PROHIBITIONS.

A. Nuisances. No outside toilets shall be permitted on any Lot in the Development (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to enter the storm drainage system. No discharge from any floor drain shall be permitted to enter into the storm drainage system. By purchase of a Lot, each

21 day January 11, 88

Rolly Pearce Auditor
Hamilton Co.

Owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by Developer, Association, or any Owner in the Development in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' 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. No noxious or offensive activities shall be carried on on any Lot in the Development, 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 in the Development.

Neither Developer, any officer, agent, employee or contractor thereof, the Association, nor any Owner shall be liable for any damage which may result from enforcement of the provisions 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 Fishers. Copies of all permits, plans and designs relating to the construction of a sanitary sewer service shall be submitted in duplicate to the Committee at the time of the submission of all other plans or documents required for the obtaining from said Committee of permission to proceed.

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 the Committee, except such as may be installed by Developer in Easement Areas or in connection with sales of Lots.

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 quiet and contained, either on a leash or in a fenced area whenever outside, so as not to become a nuisance.

E. Vehicle Parking. All campers, trailers, recreational vehicles, boats, commercial vehicles or similar vehicles, other than ordinary family passenger vehicles (including vans), shall be parked in the garage with the garage door closed such that it is not visible to the occupants of other Lots in the Development or the users of any street in the Development; except for temporary periods not exceeding forty-eight (48) hours and except as the Committee may otherwise approve. All passenger vehicles shall be parked in the garage or on a driveway; except for vehicles of guests that may be parked on a street for a temporary period not exceeding six (6) hours.

F. Garbage, Trash and Other Refuse. No Owner of a Lot in the Development shall burn or permit the burying 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 G below. All dwellings built in the Development shall be equipped with a garbage disposal unit.

G. Trash Receptacles. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or 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. Model Homes. No Owner of any Lot in the Development other than a Builder shall build, or permit the building upon said Lot of, any dwelling that is to be used as a model home or exhibit house.

I. Temporary Structure. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any Lot except for such temporary structures as the Developer may approve for construction, sales or related purposes, nor shall any overnight camping be permitted on any Lot.

J. Ditches and Swales. It shall be the duty of every Owner of every Lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this subsection. There is hereby reserved an easement to be perpetual from the date

21 day January 1988
Polly Pearce Auditor,
Hamilton Co.

hereof for all such drainage facilities as the same may now exist or may hereafter exist from time to time over all Lots on the Real Estate. All Owners, if necessary, shall install d.y culverts between the road rights-of-way and their Lots in conformity with specifications and recommendations of the Committee.

K. Utility Services. No utility services shall be installed under finished streets except by jacking, drilling or boring unless specifically approved by Developer. All utility facilities in the Development will be underground, except where required to be placed above ground by the individual utility supplier.

L. Wells and Septic Tanks. No water wells shall be drilled on any of the Lots in the Development without the approval of the Committee. No septic tanks shall be installed on any of the Lots.

M. Antennas. Exposed antennas and satellite dishes shall not be permitted in the Development.

N. Solar Heat Panels. Unless otherwise approved by the Committee no solar heat panels shall be allowed in the Development.

6. DEVELOPMENT CONTROL COMMITTEE.

A. Powers of Committee.

(i) In General. No dwelling, building structure or improvement of any type or kind shall be repainted, constructed or placed on any Lot in the Development, and no existing trees shall be removed, without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets 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 material or information which the Committee may require. All plans and drawings required to be submitted to the Committee shall be drawn to such scale as the Committee may require. There shall also be submitted, where applicable, the permits or plat plans which shall be prepared by either a registered land surveyor, engineer or architect. Plat plans submitted for Improvement Location Permit shall bear the stamp or signature of the Committee acknowledging the approval thereof.

(ii) Power of Disapproval. The Committee may refuse to grant permission to remove trees, repaint, 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 repainting or improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or

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

(iii) Developer Improvements. The Committee shall have no powers with respect to any improvements or structures erected or constructed by the Developer (or any Builder if Developer has approved the plans therefor).

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within fifteen (15) days after all required information shall have been submitted to it. One (1) copy of submitted material shall be retained by

21 day January 1988

Polly Pearce Audit
Hamilton Co.

the 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 for such disapproval.

C. Liability of Committee. Neither the 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.

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

E. Remedies for Failure to Obtain Approval. In the event any changes or improvements are made to any structures on any Lot without first obtaining the approval of the Committee as required herein, the Association and the Committee shall have the enforcement rights set forth in Section 3(L) hereof and may require any changes or improvements undertaken or installed without the approval of the Committee to be removed or renovated by whatever means the Association and/or Committee deem appropriate, with the costs thereof, including reasonable attorneys fees, to become a lien against the defaulting Owner's Lot as more specifically described in Section 3(L) hereof.

7. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER.

Whenever two (2) or more contiguous Lots in the Development shall be owned by the same person, and such Owner shall desire to use two (2) or more of said Lots as a site for a single dwelling, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single dwelling shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as the Lots remain improved with one (1) single dwelling. No double family houses shall be constructed in the Development.

8. REMEDIES.

A. In General. Any party to whose benefit these Restrictions inure, including Developer, Association and any homeowner within Cherry Hill Farms, may proceed at law or in equity to prevent the occurrence of 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 to abide by, enforce or carry out any of these Restrictions.

B. Government Enforcement. The Plan Commission of the Town of Fishers, Indiana, its successors and assigns, shall have no right, power, or authority, to enforce any covenants, commitments, restrictions, or other limitations contained herein other than those covenants, commitments, restrictions, or limitations that expressly run in favor of the Plan Commission; provided further, that nothing herein shall be construed to prevent the Plan Commission from enforcing any provisions of the Subdivision Control Ordinance, as amended, or any conditions attached to approval of the plat of the various sections of the Cherry Hill Farms subdivision by the Plan Commission.

C. 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, recurrence or continuation of such violation or violations of these Restrictions.

9. EFFECT OF BECOMING AN OWNER.

The 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 the such contract, the Owner acknowledges the rights and powers of Developer with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners, covenant and agree and consent to and with Developer and to and with the Owners and

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21 day January 1958

Billy Pearce Auditor
Hamilton County

subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

10. TITLES.

The underlined titles preceding the various paragraphs and subparagraphs of the Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the 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 the neuter.

11. DURATION AND AMENDMENT.

A. This Declaration shall be effective for an initial term of twenty (20) years and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless as of the end of any term both the Owners of ninety percent (90%) of the Lots and the Mortgagees of at least ninety percent (90%) of the Lots vote to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken.

Notwithstanding the preceding sentence, all easements created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein.

B. Developer hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Developer without the approval of any other person or entity, in order to bring this Declaration into compliance with the requirements of any public agency having jurisdiction thereof or of any agency guaranteeing, insuring, or approving mortgages, so long as Developer owns any Lots within the Development; provided that Developer shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of these Restrictions to any Owner or substantially increases the obligations imposed by these Restrictions on any Owner.

C. For any one or more of the following purposes, and at any time or from time to time, the Developer may make such amendments to this Declaration as may be deemed necessary or appropriate by the Developer without the approval of any other person or entity, which amendment shall be fully effective in accordance with its terms:

(i) To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Declaration; or

(ii) To insert such provision clarifying matters or questions arising under this Declaration as are necessary or desirable and are not contrary to or inconsistent with this Declaration as theretofore in effect; or

(iii) To amend or modify this Declaration in any manner which in the reasonable opinion of the Developer does not adversely affect in any material respect the rights of any Mortgagee or Owner, nor which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

12. RIGHTS OF MORTGAGEES.

Except to the extent otherwise provided herein, no breach of these Restrictions shall defeat or render invalid the lien of any mortgage now existing or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to these Restrictions. Notwithstanding any other provision of these Restrictions, neither the Owners nor the Association shall have any right to make any amendment to these Restrictions which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

DULY ENTERED
21 day January 1988
Betsy Pearson Auditor
Hamilton Co.

Parcel # _____

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13. 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.

14. HOMEOWNERS ASSOCIATION.

The Association will be created as a not-for-profit corporation under the laws of the State of Indiana. A Supplemental Declaration of Covenants and Restrictions pertaining to the Association has been or will be recorded in the office of the Recorder of Hamilton County, Indiana, and shall be binding with respect to all land contained within the Development. The Association will be responsible for controlling all maintenance of Common Areas, Common Property, the retention/detention ponds and landscaping located in the Easement Area as well as for providing various services to the Owners in accordance with such Supplemental Declaration.

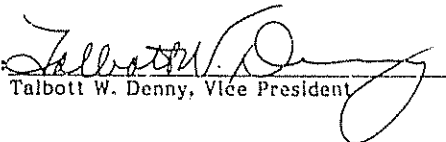
15. DEDICATED STREETS AND SANITARY SEWERS.

The streets and sanitary sewers in the Development are hereby dedicated to the public.

IN WITNESS WHEREOF, witness the signature on behalf of the Developer this 14th day of December, 1987.

R & P ENTERPRISES, INC.,
d/b/a R.P. MILHOUSE

By:



Talbott W. Denny, Vice President

DULY ENTERED FOR
21 day January 1988
Polly Pearce Auditor
Hamilton Co.

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me; a Notary Public in and for said County and State, personally appeared Talbott W. Denny, the Vice President of R & P ENTERPRISES, INC., d/b/a R.P. MILHOUSE, a California corporation, who acknowledged execution of the foregoing Declaration of Covenants, Easements and Restrictions as such officer acting for and on behalf of Grantor, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 14 day of December, 1987.

Signature Kathy L. Henderson
Printed KATHY L. HENDERSON
NOTARY PUBLIC


My Commission Expires:

10-3-88

County of Residence:

HAMILTON

This instrument was prepared by Phillip J. Stoffregen, ICE MILLER DONADIO & RYAN, One American Square, Box 82001, Indianapolis, Indiana 46282; Telephone: (317) 336-2100.

DULY EXECUTED
21 day January, 1988
Betsy Pearson
Hamilton County
Parcel # _____

EXHIBIT A

Beginning at a stone found at the Northwest corner of said Northwest Quarter Section which said corner bears North 89 degrees 39 minutes 22 seconds East (assumed bearing) 211.30 feet [(3.28 chains) 216.48 feet by Government survey] from a stone found at the Southwest corner of the Southwest Quarter of Section 35, Township 18 North, Range 4 East; thence along the North line thereof North 89 degrees 39 minutes 22 seconds East 1162.00 feet; thence parallel with the West line of the Northwest Quarter said Northwest Quarter Section South 00 degrees 03 minutes 44 seconds West 1535.87 feet to a point on the South line of said Quarter Quarter Section; thence along the South line of said Quarter Quarter Section South 89 degrees 38 minutes 22 seconds West 1162.00 to a stone found at the Southwest corner of said Quarter Quarter Section; thence along the West line of said Quarter Quarter Section North 00 degrees 03 minutes 44 seconds East 1536.21 feet to the Point of Beginning, containing 40.976 acres, more or less.

This Instrument Recorded 4021 1988
Sharon K. Cherry Recorder Hamilton County IN

Done at
21 day January 1988
Betsy P. ... Auditor
Hamilton County

Parcel # _____

88 01252

8801253

SUPPLEMENTAL DECLARATION OF COVENANTS
AND RESTRICTIONS OF CHERRY HILL FARMS

RECEIVED
FOR RECORD
JAN 21 10 57 AM '88
SHARON K. CHERRY
RECORDER
HAMILTON CO. IN

THIS SUPPLEMENTAL DECLARATION (the "Supplemental Declaration") made this 21 day of December, 1987, by R & P ENTERPRISES, INC., d/b/a R. P. MILHOUSE, a California corporation (hereinafter referred to as "Declarant" or "Developer"), and

WITNESSES:

WHEREAS, Developer is the sole owner in fee simple of all of the lands contained in the area described in Exhibit A (description of Section I only), attached hereto and made a part hereof, (the "Real Estate"); and

WHEREAS, Developer is developing the Real Estate and certain surrounding lands within the tract described in the attached Exhibit B (overall description), upon which Developer or its assigns may, but is not obligated to, construct residential facilities which shall be known as the "Cherry Hill Farms Subdivision" ("Cherry Hill Farms" or the "Development") and which shall be platted by Developer in sections from time to time; and

WHEREAS, the Real Estate has been platted by Developer as Section I of the Cherry Hill Farms Subdivision, recorded on January 21, 1988 as Instrument No. 8801253 in the Office of the Recorder of Hamilton County, Indiana along with the Declaration of Covenants, Easements and Restrictions which run with the land comprising Cherry Hill Farms which was recorded on January 21, 1988 as Instrument No. 8801253 in the Office of the Recorder of Hamilton County, Indiana (both of which, by this reference, are incorporated herein and, together with the plats of the future sections of the Cherry Hill Farms Subdivision to be recorded from time to time, are collectively referred to as the "Plat Declaration"); and

WHEREAS, Developer desires to subject the Development to certain covenants and restrictions (the "Restrictions") in addition to those set forth in the Plat Declaration in order to further insure that the development and use of the various lots in Cherry Hill Farms are harmonious and do not adversely affect the value of surrounding Lots on the Development; and

WHEREAS, Developer desires to provide for maintenance of the Easement Areas, which includes any retention/detention ponds, and improvements located or to be located in Cherry Hill Farms, which are of common benefit to the Owners of the various Lots within said subdivision, and to that end desires to establish certain obligations on said Owners and a system of assessments and charges upon said Owners for certain maintenance and other costs in connection with the operation of Cherry Hill Farms.

NOW, THEREFORE, Developer hereby declares that all of the platted lots and lands located within the Development 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 said 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 said lots situated therein. All of the restrictions shall run with the land and shall be binding upon 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 of parts thereof subject to such Restrictions, and shall inure to the benefit of Developer's successors in title to the Development, or any part thereof. 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 described in Exhibit B, to exclude any real estate as shown from the Development, or to include additional real estate.

1. DEFINITIONS.

Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned thereto in the Plat Declaration. In addition, the following are definitions of terms as they are used in this Declaration (which, for purposes hereof shall supercede any different definition of such term in the Plat Declaration).

This Instrument Recorded Jan 21 1988
Sharon K. Cherry, Recorder Hamilton County IN

21 day January 1988
Billy Pearce Auditor
Hamilton County

Parcel # _____

INSTR. # 88 01253

(i) "Assessment" means the share of the Common Expenses imposed upon each Lot, as determined and levied pursuant to the provisions of paragraph 7 herein.

(ii) "Association" shall mean the "Cherry Hill Farms Homeowners Association, Inc.", or an organization of similar name, its successors and assigns which has been or shall be created as an Indiana not-for-profit corporation and its membership shall consist of lot owners who pay mandatory assessments for Common Expenses and the cost of such other services as may be desired for the common benefit of all Owners.

(iii) "Common Expense" means the actual and estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Area, Common Property, or Easement Area, snow removal and trash removal (to the extent, if any, provided by the Association), taxes assessed against any Common Area, Common Property, or Easement Area, and any other cost or expense incurred by the Association for the benefit of the Common Area, Common Property, or Easement Area, and shall also include the costs of insurance as required herein. Common Expenses shall not include any costs or expenses incurred in connection with the initial installation or completion of the streets, utility lines and mains, drainage system, street lights, or other improvements constructed by Developer.

(iv) "Declarations" means this Supplemental Declaration and the Plat Declaration, collectively.

(v) "Developer" or "Declarant" means R & P Enterprises, Inc., d/b/a R. P. Milhouse, a California corporation or any other person, firm, corporation or partnership which succeeds to the interest of R & P Enterprises, Inc., d/b/a/ R. P. Milhouse as developer of Cherry Hill Farms.

(vi) "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation; provided, however, that the Declarant shall be deemed for all purposes hereof relating to payment of Assessments not to be an Owner with respect to any Lot during the period of initial construction of a residence thereon, the period prior to the initial sale thereof during which the residence is not being used for residential purposes and during which such residence is being used for model/sales purposes.

2. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

A. Membership. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Additionally, the Association, and/or members therein, may be members in any one or more umbrella or joint homeowner's associations, if any, composed of associations and/or members from surrounding areas.

B. Classes of Membership. The Association shall have one class of voting membership which shall be comprised of 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. The vote for such Lot shall be exercised as they among themselves determine, but in no such event shall more than one vote be cast with respect to any Lot.

C. Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association. The initial Board of Directors shall be appointed by Developer and shall manage the affairs of the Association until Developer transfers control of the Association to the Owners as required herein.

D. Professional Management. No contract or agreement of the Association for professional management of the Association nor any contract of the Association with Developer 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.

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January 1988

Patricia Auditor
Hamilton County

E. Responsibilities of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement of the Common Area, Common Property and Easement Areas, the determination of Common Expenses, the collection of assessments and special Assessments, and the granting of any approvals whenever and to the extent called for by the Declarations for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Declarations. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of the Declarations or for any failure to take any action called for by the Declarations, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Association shall, to the extent deemed necessary by the Board of Directors, procure and maintain casualty insurance for the Easement Areas, liability insurance (including directors' and officers' insurance) and such other insurance as it deems necessary or advisable. The Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable. In the event the Association enters into any contracts while Declarant controls the Association or prior to the sale by Declarant of the last Lot it owns in the Development, the Association shall indemnify and hold Declarant harmless from all liability and obligations with respect thereto.

F. Transfer of Control of Association. Developer must transfer control of the Association to the Owners no later than the earlier of (a) four (4) months after three-fourths (3/4) of the Lots in Cherry Hill Farms have been conveyed to Owners or (b) five (5) years after the first Lot is conveyed to an Owner in the Development.

G. Mortgagees' Rights. The Mortgagees have the right, but not the obligation, to pay any overdue premiums on hazard insurance policies required to be maintained by the Association, or to secure new hazard insurance coverage in the event of a lapse of any such policies. Any Mortgagee or Mortgagees making any payment pursuant to this paragraph shall be entitled to reimbursement from the Association promptly upon written demand therefor to the Association.

H. Snow Removal. The Association shall not be required to provide snow removal services prior to the date Declarant turns over control of the Association to the Owners in accordance herewith. The Developer anticipates that this service for the Development will be provided by the Town of Fishers and this permissive right of the Association to contract for the private provision of such services may only be exercised in the event a majority of Owners have approved the same. The cost of snow removal in excess of amounts budgeted therefor shall be paid by the Owners on a pro-rata share basis by a Special Assessment. In the event the Association enters into contracts for snow removal while Declarant controls the Association or prior to the sale by Declarant of the last Lot it owns in the Development, the Association shall indemnify and hold Declarant harmless from all liability and obligations with respect thereto.

I. Trash Removal. In order to preserve the value of Lots in the Development and to promote the health and safety of the Owners, the Association may designate a trash collection day and/or designate a trash collection service to be used by the Owners at any time after Declarant turns over control of the Association in accordance herewith. Unless Declarant elects otherwise, the cost of such trash collection service shall be borne by the individual Owners in the Development, but in any event after Declarant turns over control of the Association the Owners may agree to a master contract for such service by the Association with the cost thereof to be paid for through regular assessments.

J. The Association shall be primarily responsible for the maintenance of the Common Area, Common Property, the Landscaping Easement Areas, retention/detention pond or lake Easement Areas in a clean, orderly and well groomed condition and the Association and its agents shall have the right to enter upon the Common Area, Common Property, and the Easement Areas at all reasonable times in order to fulfill this primary responsibility.

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21 day January 1935

Billy Pearce Auditor
Hamilton County

3. INSURANCE.

A. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury occurring on or in connection with any and all of the Easement Area, the Common Area and the Common Property as the Board of Directors deem appropriate.

B. The Association also shall obtain comprehensive public liability insurance together with Workmen's Compensation Insurance, employers liability insurance, and such other liability insurance, with such coverages and limits, as the Board of Directors deems appropriate. All such policies of insurance, if any, shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, the Board of Directors, the Developer, any Managing Agent, their respective employees and agents, or the Owners, and shall further contain a clause whereby the insurer waives any defenses based on acts of individual Owners whose interests are insured thereunder, and shall cover claims of one or more insured parties against other insured parties. All such policies, if any, shall name the Association, for the use and benefit of the Owners, as the insured; shall provide that the coverage thereunder is primary even if an Owner has other insurance covering the same loss; shall show the Association or insurance trustee, in trust for each Owner and Mortgagee, as the party to which proceeds shall be payable; shall contain a standard mortgage clause and name FHLMC and all Mortgagees as mortgagee; and shall prohibit any cancellation or substantial modification to coverage without at least ten (10) days' prior written notice to the Association and to the Mortgagees. Such insurance shall inure to the benefit of each of each individual Owner, the Association, the Board of Directors, and any managing agent or company acting on behalf of the Association. The individual Owners, as well as any lessees of any Owners, shall have the right to recover losses insured for their benefit.

C. A professional management firm must provide insurance to the same extent as the Association would be required to provide if it were managing its own operation and must submit evidence of such coverage to the Association.

D. Each Owner shall be solely responsible for loss of or damage to the improvements and his personal property located on his Lot, however caused. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

E. Neither the Developer, Declarant, the Association, the Board of Directors nor any officer, shareholder, employee or agent of any of the foregoing shall be held liable or otherwise subject to any claims for damages in the event the discretion to obtain insurance permitted by the Declarations is exercised or not exercised.

4. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within Cherry Hill Farms, as the same may be platted from time to time, and promoting the health, safety, and welfare of the Owners, users, and occupants of the same and, in particular, for the improvement, repairing, operating, and maintenance of the Easement Area, the Common Area and the Common Property the Common Area and the Common Property required to be maintained by the Association, including, but not limited to, the payment of taxes and insurance thereon, if any, for the cost of labor, equipment, material, and management furnished with respect to the Easement Area, the Common Area and the Common Property and any and all other Common Expenses. Each Owner hereby covenants and agrees to pay to the Association:

(i) A Pro-rata Share (as hereinafter defined) of the annual Assessments fixed, established, and determined from time to time as hereinafter provided.

(ii) A Pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

FILED FOR RECORDED

21 day January 19 1985

Billy Pearce Auditor
Hamilton County

Parcel # _____

88 01253

B. Pro-rata Share. The pro-rata share of each Owner for purposes of this paragraph shall be the percentage obtained by dividing one by the total number of Lots shown on the plat or plats of Cherry Hill Farms, as the same may be recorded from time to time.

C. Liability for Assessments. Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien upon each Lot from and after the due date thereof in favor of the Association. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. The lien for any Assessment shall for all purposes be subordinate to the lien of any Mortgagee whose mortgage was recorded prior to the date such Assessment first became due and payable. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

D. Basis of Annual Assessments. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all anticipated Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves as the Board of Directors deems appropriate for periodic repair and replacement of the Easement Area, Common Property and Common Area. A copy of this budget shall be delivered to each Owner within thirty (30) days prior to the beginning of each fiscal year of the Association. Notwithstanding anything contained in the Declarations to the contrary, during the period that the Developer is in control of the Association, no allowance for contingencies or reserves are required to be assessed, levied, collected or held by the Association.

E. Basis of Special Assessments. Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied for such year may be insufficient to pay the Common Expenses for such year, the Board of Directors shall call a special meeting of the Association to consider imposing such special Assessments as may be necessary for meeting the Common Expenses for such year. A special Assessment shall be imposed only with the approval of two-thirds (2/3) of the Owners, and shall be due and payable on the date(s) determined by such Owners, or if not so determined, then as may be determined by the Board of Directors.

F. Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be the calendar year and may be changed from time to time by action of the Association. The annual Assessments on each Lot in Cherry Hill Farms shall commence on the first day of the first month following the month in which Declarant first conveys ownership of any Lot to an Owner; provided, that if any Lot is first occupied for residential purposes prior to being conveyed by Declarant, full Assessments shall be payable with respect to such Lot commencing on the first day of the first month following the date of such occupancy. The Declarant shall have the right, but not the obligation, to make up any deficit in the budget for the Common Expenses for any year in which Declarant controls the Association, subject to its right to be reimbursed therefor as provided herein. The first annual Assessment shall be made for the balance of the fiscal year of the Association in which such Assessment is made and with respect to particular Lots shall become due and payable on the date of initial transfer of title to a Lot to the Owner thereof. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Board of Directors may from time to time by resolution authorize the payment of such Assessments in monthly, quarterly, or semi-annual installments.

ONLY ENTERED FOR RECORD
21 day January 1988
Bobby Pearce Auditor
Hamilton Co

G. Duties of the Association.

(i) The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. Except as may be otherwise provided in the Association's By-Laws, the Association shall cause financial statements to be prepared at least annually for each fiscal year of the Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives. Notices of the amounts of the annual Assessments and the amounts of the installments thereof shall be sent annually within thirty (30) days following the determination thereof. Notices of the amounts of special Assessments shall be sent as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

(ii) The Association shall promptly furnish upon request to any Owner, prospective purchaser, title insurance company, or Mortgagee a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to any Lot in which the requesting party has a legitimate interest. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

(iii) The Association shall notify any Mortgagee from which it has received a request for notice: (a) of any default in the performance of any obligation under this Declaration by any Owner which is not cured within sixty (60) days; (b) of any condemnation or casualty loss that affects either a material portion of Cherry Hill Farms or the Lot securing its mortgage; (c) of any lapse, cancellation, or material modification of any insurance policy or fidelity bond required to be maintained by the Association; and (d) and proposed action which requires the consent of the Mortgagees or a specified percentage thereof, as set forth in the Declarations.

H Non-payment of Assessments; Remedies of Association.

(i) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(ii) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at a rate of eighteen percent (18%) per annum and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys' fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

FILED FOR REVISION
21 day 15 MAY 1988

Polly Pearce Auditor
Hamilton County

I. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year, except that so long as the Declarant controls the Association, Declarant may, in its sole discretion, make up such deficit; provided, however that Declarant shall be reimbursed by the Association for such funded deficits, together with interest at 10% per annum until so reimbursed, from available surpluses in later years or through a special assessment at the time of transfer of control of the Association to Owners. Thereafter, such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special assessments for such purpose, at the option of the Association. After Declarant turns over control of the Association as required herein, in the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s); provided, that Declarant shall first be reimbursed for deficits previously paid as required above before such excess shall be so credited to Owners.

J. Initial Assessments. During the first year following the date of recordation of the Declaration for Section I of Cherry Hill Farms, the total Assessments per Lot per year shall not exceed One Hundred Eighty Dollars (\$180.00). In each year thereafter, the total Assessments per Lot per year shall not be increased by more than the twelve percent (12%) over the prior year, until such time as the Declarant relinquishes control of the Association. In no event shall the annual Assessments exceed Two Hundred and Fifty Dollars (\$250.00) per year per Lot without the approval of a majority of the Owners; provided, however, that said maximum amount may be increased by no more than five percent (5%) per year by the Board of Directors without such consent.

K. Notice and Quorum for Any Action to Increase Assessments. Written notice of any meeting called for the purpose of increasing the regular or special Assessments of the Association shall be sent to all Owners 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 Owners or of proxies entitled to cast sixty percent (60%) of all the votes 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. Nothing contained in this paragraph shall be construed to limit the ability of the Developer or the Board of Directors to increase Assessments up to the amounts permitted by paragraph 4(J) hereof.

L. Subordination of the Lien to Mortgages. 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 such 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 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.

5. REMEDIES.

A. In General. Any party to whose benefit these Restrictions inure, including Developer, Association and any Owner within Cherry Hill Farms, may proceed at law or in equity to prevent the occurrence of 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. Government Enforcement. The Plan Commission of the Town of Fishers, its successors and assigns, shall have no right, power, or authority, to enforce any covenants, commitments, restrictions, or other limitations contained herein other than those covenants, commitments, restrictions, or limitations that expressly run in favor of the Plan Commission; provided further, that nothing herein shall be construed to

4 day January 1988
Betsy Pearce Auditor
Hamilton County

construed to prevent the Plan Commission from enforcing any provisions of the Subdivision Control Ordinance, as amended, or any conditions attached to approval of the plats of Cherry Hill Farms by the Plan Commission.

C. 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, recurrence or continuation of such violation or violations of these Restrictions.

6. EFFECT OF BECOMING AN OWNER. The 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 the such contract, the Owner acknowledges the rights and powers of Developer with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners covenant and agree and consent to and with Developer and to and with the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

7. TITLES. The underlined titles preceding the various paragraphs and subparagraphs of the Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the 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.

8. DURATION AND AMENDMENT. This Supplemental Declaration shall be effective for an initial term of twenty (20) years and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless as of the end of any term both the Owners of ninety percent (90%) of the Lots and the Mortgagees of at least ninety percent (90%) of the Lots vote to terminate this Supplemental Declaration, in which case this Supplemental Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all easements created or reserved by this Supplemental Declaration shall be perpetual unless otherwise expressly indicated herein.

A. The Association shall have the right to amend this Supplemental Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors, and the subsequent approval of such amendment by both the Owners of at least seventy-five percent (75%) of the Lots and ninety percent (90%) of the Mortgagees; provided, however, that any such amendment of this Declaration shall require prior written approval of the Developer so long as Developer owns any Lots within Cherry Hill Farms. Each such amendment must be evidenced by a written instrument, signed and acknowledged by duly authorized officers of the Association, and by Developer when their approval is required, setting forth facts sufficient to indicate compliance with this paragraph, including as an exhibit or addendum thereto a certified copy of the minutes of the Association meeting at which the necessary actions were taken, and such amendment shall not be effective until recorded in the office of the Recorder of Marion County.

B. Developer hereby reserves the right to make such amendments to this Supplemental Declaration as may be deemed necessary or appropriate by Developer without the approval of any other person or entity, in order to bring this Supplemental Declaration of Cherry Hill Farms into compliance with the requirements of any public agency having jurisdiction thereof or of any agency guaranteeing, insuring, or approving mortgages, so long as Developer owns any Lots within Cherry Hill Farms; provided that Developer shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Supplemental Declaration to any Owner or substantially increases the obligations imposed by this Supplemental Declaration on any Owner. Declarant further reserves the right to make such amendments to this Supplemental Declaration as may be deemed necessary or appropriate by Developer to the same extent as the Developer may make amendments to the Plat Declarations pursuant to Section 11(C) of the Plat Declaration.

21 day January 1988

Polly Pearson Auditor
Hamilton Co.

C. Subject to the other requirements of this paragraph 16, unless at least two-thirds (2/3) of the Mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Developer) of the Lots have given their prior written approval, the Association shall not be entitled to:

(i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Easement Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area, Common Property Easement Area by the Association shall not be deemed a transfer within the meaning of this clause);

(ii) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(iii) by act or omission change, waiver or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the residences, the exterior maintenance of the residences, the maintenance of the Easement Area, or the upkeep of lawns and plantings in the Development;

(iv) use hazard insurance proceeds for losses to any of the Common Area, Common Property or Easement Area other than for the repair, replacement or reconstruction of the Common Area, Common Property or Easement Area.

9. RIGHTS OF MORTGAGEES. Except to the extent otherwise provided in paragraph 3(L), no breach of this Supplemental Declaration shall defeat or render invalid the lien of any mortgage now existing or hereafter executed upon any portion of the Development; provided, however, that if all or any portion of said Development is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Supplemental Declaration. Notwithstanding any other provision of this Supplemental Declaration, neither the Owners nor the Association shall have any right to make any amendment to the Declarations or Articles and By-Laws of the Association which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Development at the time of such amendment.

10. EXPANSION OF SUBDIVISION.

A. Method and Scope of Expansion. Developer, at its option, and from time to time, may expand Cherry Hill Farms to include all or any parts of the tract described in the attached Exhibit B, by the addition of further sections consisting of one (1) or more Lots and any Common Property, Common Area and/or Easement Area which in the discretion of Developer is appropriate for addition with such sections. Such further sections, if added, shall be added by the recordation of a plat of such section, consistent in detail and layout with the plats of sections previously recorded, which plat shall specifically reference this Supplemental Declaration and the Plat Declarations, and by such reference, such plat shall be subject to the terms and provisions hereof and of the Plat Declarations to the same extent as if the same were originally subject hereto as a part of the property described in Exhibit A hereto and in the Plat Declarations.

B. Future Improvements. The streets, sewage system, drainage system, and utility lines and mains within each section, to the extent not publicly dedicated, shall be substantially constructed or installed prior to recordation of the plat for such section. All buildings, streets, and other improvements in all additional sections shall be consistent in quality of construction with the Section(s) already in Cherry Hill Farms as of the date of this Supplemental Declaration.

11. SEVERABILITY. Every provision of this Supplemental Declaration is hereby declared to be independent of, and severable from, the other provisions hereof and of and from every combination of the provisions hereof. Therefore, if any of the provisions hereof 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 provisions hereof.

DULY ENTERED FOR TAXATION

21 day JANUARY 1988

Bally Pearce Auditor
Hamilton County

IN WITNESS WHEREOF, witness the signature of Developer this 14th day of December, 1987.


R & P ENTERPRISES, INC.,
d/b/a R. F. Milhouse

By: Talbot W. Denny
Talbot W. Denny, Vice President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Talbot W. Denny, the Vice President of R & P Enterprises, Inc., d/b/a R. P. Milhouse, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions as such officer acting for and on behalf of said corporation, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 14 day of December, 1987.

Kathy L. Henderson
Signature
KATHY L. HENDERSON
Printed Name NOTARY PUBLIC


My Commission Expires:
10-3-88

My County of Residence:
HAMILTON

This instrument was prepared by Phillip J. Stoffregen, ICE MILLER DONADIO & RYAN, One American Square, Box 82001, Indianapolis, Indiana 46282.

DOLY ENTERED FOR REGISTRATION
21 day January, 1988
Billy Pearce Auditor
Hamilton County

Parcel # _____

EXHIBIT A

Beginning at a stone found at the northwest corner of said Northwest Quarter, said point being North 89°39'22" East (assumed bearing) 211.30 feet (3.28 chains (216.48 feet) by Government survey) from a stone found at the southwest corner of the Southwest Quarter of Section 35, Township 18 North, Range 4 East; thence North 89°39'22" East along the north line of said Northwest Quarter 1162.00 feet; thence South 00°03'44" West parallel with the west line of said Northwest Quarter 693.15 feet; thence South 89°56'16" West 174.99 feet; thence South 00°03'44" West 60.17 feet to the point of curvature of a curve concave Easterly having a central angle of 04°54'04" and a radius of 175.00 feet; thence Southerly along said curve an arc distance of 14.97 feet (said arc being subtended by a chord having a bearing of South 02°23'18" East and a length of 14.96 feet) to the point of tangency of said curve; thence South 04°50'20" East 15.10 feet; thence South 89°38'22" West 173.10 feet; thence South 69°29'18" West 217.40 feet; thence North 20°30'42" West 125.00 feet; thence South 69°29'18" West 30.27 feet; thence North 20°30'42" West 50.00 feet to a point on a curve concave Northwesterly having a central angle of 90°00'00" and a radius of 25.00 feet; thence Easterly, Northeasterly, and Northerly along said curve an arc distance of 39.27 feet (said arc being subtended by a chord having a bearing of North 24°29'18" East and a length of 35.36 feet) to the point of tangency of said curve; thence North 20°30'42" West 156.33 feet; thence North 23°22'27" West 19.73 feet to the point of curvature of a curve concave Easterly having a central angle of 20°10'04" and a radius of 430.00 feet; thence Northerly along said curve an arc distance of 151.36 feet (said arc being subtended by a chord having a bearing of North 13°17'25" West and a length of 150.58 feet) to the point of tangency of said curve; thence North 03°12'22" West 14.53 feet; thence South 89°39'22" West 275.69 feet; thence South 00°03'44" West 114.16 feet; thence North 89°56'16" West 50.09 feet; thence North 00°03'44" East 115.05 feet to the point of curvature of a curve concave Easterly having a central angle of 23°29'51" and a radius of 175.00 feet; thence Northerly along said curve an arc distance of 71.77 feet (said arc being subtended by a chord having a bearing of North 11°48'39" East and a length of 71.27 feet) to the point of reverse curvature of a curve concave Westerly having a central angle of 54°18'53" and a radius of 25.00 feet; thence Northerly along said curve an arc distance of 23.70 feet (said arc being subtended by a chord having a bearing of North 03°35'51" West and a length of 22.82 feet) to the point of reverse curvature of a curve concave Southeasterly having a central angle of 151°13'41" and a radius of 50.00 feet; thence Northerly, Northeasterly, and Easterly along said curve an arc distance of 131.97 feet (said arc being subtended by a chord having a bearing of North 44°51'33" East and a length of 96.86 feet) to the point of reverse curvature of a curve concave Northerly having a central angle of 54°18'53" and a radius of 25.00 feet; thence Easterly along said curve an arc distance of 23.70 feet (said arc being subtended by a chord having a bearing of South 86°41'03" East and a length of 22.82 feet) to the point of reverse curvature of a curve concave Southerly having a central angle of 23°29'51" and a radius of 175.00 feet; thence Easterly along said curve an arc distance of 71.77 feet (said arc being subtended by a chord having a bearing of North 77°54'26" East and a length of 71.27 feet) to the point of tangency of said curve; thence North 89°39'22" East 119.44 feet to the point of curvature of a curve concave Northwesterly having a central angle of 90°00'00" and a radius of 25.00 feet; thence Easterly, Northeasterly, and Northerly along said curve an arc distance of 39.27 feet (said arc being subtended by a chord having a bearing of North 44°39'22" East and a length of 35.36 feet) to the point of tangency of said curve; thence North 00°20'38" West 75.00 feet to the point of curvature of a curve concave Southwesterly having a central angle of 90°00'00" and a radius of 25.00 feet; thence Northerly, Northwesterly, and Westerly along said curve an arc distance of 39.27 feet (said arc being subtended by a chord having a bearing of North 45°20'38" West and a length of 35.36 feet) to the point of tangency of said curve; thence South 89°39'22" West parallel with the north line of said Northwest Quarter 405.32 feet to the west line of said Northwest Quarter; thence North 00°03'44" East along said west line 45.00 feet to the point of beginning, containing 14.10 acres, more or less; subject to highways, rights-of-way, and easements.

DULY ENTERED FOR RECORDATION

21 day January 1981

Billy Pearce Auditor
Hamilton County

Parcel #

88 01253

EXHIBIT B

Beginning at a stone found at the Northwest corner of said Northwest Quarter Section which said corner bears North 09 degrees 39 minutes 22 seconds East (assumed bearing) 211.30 feet [(3.28 chains) 216.40 feet by Government survey] from a stone found at the Southwest corner of the Southwest Quarter of Section 35, Township 18 North, Range 4 East, thence along the North line thereof North 89 degrees 39 minutes 22 seconds East 1162.00 feet; thence parallel with the West line of the Northwest Quarter said Northwest Quarter Section South 00 degrees 03 minutes 44 seconds West 1535.07 feet to a point on the South line of said Quarter Quarter Section; thence along the South line of said Quarter Quarter Section South 89 degrees 38 minutes 22 seconds West 1162.00 to a stone found at the Southwest corner of said Quarter Quarter Section; thence along the West line of said Quarter Quarter Section North 00 degrees 03 minutes 44 seconds East 1536.21 feet to the Point of Beginning, containing 40.976 acres, more or less.

This Instrument Recorded Jan 21 1988
Sharon K. Cherry, Recorder Hamilton County, IN

DULY ENTERED FOR TAXATION
21 day January 1988
Polly Pearce Auditor
Hamilton County

Parcel # _____

88 01253