

Both 1 & 2

Annual assessments & special assessments.  
Said assessment is junior and subordinate to the lien of the first mortgage

8711703

The Instrument Rec'd 5/19 1987  
Sandra K. Cherry Hamilton County, Ind.

**DECLARATION OF COVENANTS AND RESTRICTIONS**

**HICKORY WOODS DEVELOPMENT**

THIS DECLARATION, made this 19th day of May, 1987, by M-W Enterprises, an Indiana partnership, (hereinafter referred to as the "Developer"). WITNESSETH:

WHEREAS, the Developer is the owner of all of the lands contained in the legal description (Exhibit "A") attached hereto and made a part hereof, which lands will be subdivided and known as the Hickory Woods Development (hereinafter referred to as the "Development"), and subdivided portions of the Development will be more particularly described on the plats of the various sections thereof which will be recorded in the office of the Recorder of Hamilton County, Indiana; and

WHEREAS, the Developer is about to sell and convey the lots and parcels situated within the platted areas of the Development, and before doing so, desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions, and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit of the subdivided lots and lands in the Development and the future owners thereof.

NOW, THEREFORE, the 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.

**INSTR. #87 11703**

subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of the platted lands and sale of said lots in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of the lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Developer and everyone of the Developer's successors in title to any real estate in the Development. The Developer specifically reserves unto itself the right and privilege, prior to the recording of the Declaration by the Developer of a particular lot or tract within the Development as shown on Exhibit "A", to exclude any real estate from the Development, or to include additional real estate.

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

A. "Committee" shall mean the Hickory Woods Control Committee, composed of three (3) members appointed by the Developer who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the Developer. The Developer may, at its sole option, at any time hereafter, relinquish to the Association the power to appoint and remove or more members of the Committee.

B. "Association" shall mean the Hickory Woods Home Owners Association. In addition, a not-for-profit corporation membership and powers of which are more fully defined in paragraph 9 of this Declaration.

C. "Lot" shall mean any numbered parcel of residential real estate described by one of the plats of the Development, which is recorded in the office of the Recorder of Hamilton County, Indiana.

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

3. "Owner" shall mean a person, partnership, trust or corporation 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.

## 2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every lot in the Development, unless it is otherwise designated by the Developer in the plat, is a residential lot and shall be used exclusively for single-family residential purposes; provided, however, that the Developer may retain a sales office in each section of the Development until the Developer has sold all lots in such section. No streets or alleys shall be erected, placed or permitted to remain upon any of the lots, except a single-family dwelling house and such outbuilding or structure usually accessory to 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 plats shall be used in a manner consistent with the zoning and use designated in the plan filed by the Developer. However, the Developer reserves unto itself the right to change the character of such designated use at any time in the future, applying to the Fishers, Indiana, Plan Commission and its successors for modifications of the plan, and, where necessary, to apply for any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Developer's planned use.

B. Residential Use of Accessory Outbuilding Prohibited. Accessory outbuildings shall be erected on any of the lots, except to the erection thereof of a single-family dwelling house. In no event shall any such accessory outbuilding or structure or structure which may be constructed upon a lot, or any portion thereof, ever be used as a residence or dwelling, or for any other human occupancy.

C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house consisting of less than a full lot shall be occupied or used for residential purposes.

habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties.

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

**A. Minimum Living Space Area.**

- (1) **BINGLE STORY HOUSE:** The minimum square footage area of living space for a single story house shall be eighteen hundred (1800) feet. A two car attached garage or larger shall be required. The garage area shall not be included in the living area total square footage.
- (2) **MULTI-LEVEL HOUSE:** The minimum square footage area for a multi-level type house shall be twenty-two hundred (2200) feet. A two car attached garage or larger shall be required. The garage or porch area shall not be included in the living area total square footage.

**B. Residential Set-Back Requirement.**

- (1) **GENERAL:** Unless otherwise provided in these Restrictions or on the recorded plat, no dwelling house or above grade structure shall be constructed or placed on any lot in the Development except as provided herein.
- (2) **FRONT SET-BACKS:** Unless otherwise provided in these Restrictions or on the recorded plat, all dwelling houses or above grade structures shall be constructed or placed on lots in the Development so as to comply with the set-back lines, as established in plats of the various sections of the Development.
- (3) **SIDE YARDS:** The side yard set-back line shall be at least ten (10) feet from either side line on a lot.
- (4) **REAR YARDS:** The rear yard set-back line shall be at least thirty (30) feet from the rear lot line. If the lot abuts on the drainage detention area (as designated on the recorded plat of the various sections of the Development), the Committee may determine that the location of the rear set-back line adjacent to the drainage detention area or easement shall be as determined by the Committee.

**C. Fences and Mailboxes.**

No fence shall be constructed on any lot in the Development closer to the front lot line than the front set-back line. No fence shall be constructed on any lot in the Development closer to the side lot line than the side set-back line. No fence shall be constructed on any lot in the Development closer to the rear lot line than the rear set-back line.

more than four (4) feet in height if the fence is within twenty (20) feet of any side or rear lot line. No fence, wall, hedge, tree or shrub planting which obstructs sight lines and elevations between three (3) and twelve (12) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting points forty (40) feet from the intersection of said street lines or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended. The same sight line limitations shall apply to any lot within ten (10) feet of the intersection of a street right-of-way line with the edge of the driveway pavement or alley line. No driveway shall be located within seventy-five (75) feet of the intersection of two street lines. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any mailbox must be approved by the Committee as to size, location, height and composition before it may be installed.

D. Use of Land. The use of all lots shall be in accordance with the Town of Fishers, Indiana, Zoning Ordinance, February 28, 1972, and any amendments thereto.

E. Exterior Construction. All dwelling houses shall have brick to grade. The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding, or any other similar material. No dwelling house shall have prefabricated flues that extend above the highest roof line and chimney chases shall be of masonry construction. All dwelling houses shall have a driveway and the same shall be paved with asphalt or concrete. Except to Lots 1 and 17 in Section I, a sidewalk no less than four (4) feet in width shall be required across that portion of a lot which is considered the frontage. Installation of sidewalk shall be the responsibility of the Developer.

F. Heating Plants. Every house in the Development shall contain a heating plant installed in accordance with applicable codes and capable of providing adequate heat for year-round habitation of the house.

G. Diligence in Construction. Every building under construction or placement on any lot in the Development shall be completed within six (6) months after the date of such construction or placement. No improvement shall be partially or totally destroyed by fire or other cause. If such destruction occurs, the owner shall be responsible for such destruction and shall be required to reconstruct the building within the same time period.

H. Prohibition of Used Structures

I. 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 lots or improvements from becoming unsightly; and, specifically, such Owner shall:

- (1) Mow the lot at such time as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.
- (2) Remove all debris or rubbish.
- (3) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (4) Cut down and remove dead trees.
- (5) Keep the exterior of all improvements in such state of repair or maintenance as to avoid their becoming unsightly.

J. Association's Right to Perform Certain Maintenance.

In the event that the Owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, by and through its agents or 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 improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual charge to which said lot is subject, and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

K. Yard Lights. Each Owner of a lot in the Development, other than the Developer, shall install a yard light at the time a house is constructed upon the lot. The type of light and the location of the light on the lot must be approved by the Committee. Each light must be controlled by an electric eye so that it will be lighted from dusk to dawn.

#### 4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

A. 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 Hamilton County Board of Health. No storm water (subsurface or surface) shall be discharged into sanitary sewers. Copies of all permits, plans, and designs relating to the construction of a sanitary sewer service line shall be submitted in duplicate to the Committee at the time of the submission of all other plans or documents required for the construction of the same. A permit to build on

5. GENERAL PROHIBITIONS.

A. In General. No noxious or offensive activities shall be permitted 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.

B. Signs. No signs or advertisements except professional or "For Sale" signs shall be displayed or placed on any lot or structures in the Development without the prior written approval of the Committee.

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

D. Vehicle Parking. No trucks, campers, trailers, or other or similar vehicles shall be parked on any street in the Development. No such vehicle shall be parked on a lot in view from any street in the Development for more than a 48-hour period.

E. Garbage and Other Refuse. No Owner of a lot shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in subparagraph F below. All houses built in the Development shall be equipped with a garbage disposal unit.

F. 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 time when refuse collections are being made.

G. Model Homes. No Owner of any lot shall build or permit the building upon a lot of any dwelling house that is to be used as a model home or exhibit house without permission from the Developer.

H. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot.

I. Ditches and Swales. Drainage swales or ditches shall be installed and maintained in accordance with the right-of-way map and specifications attached hereto and approved by the Committee in writing.

Town Engineer of Fishers, Indiana. Property owners must maintain these swales as sodded grassways, or other non-eroding surfaces. Water from roofs of parking areas may be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the Town Engineer of Fishers, Indiana.

Culverts must be protected especially at the ends by head walls or metal end sections, and, if damaged enough to retard the water flow, must be replaced.

Any property owner altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice by registered mail to repair said damage, after which time, if no action is taken, the Town will cause said repairs to be accomplished, and the bill for such repairs will be sent to the affected property owners for immediate payment.

J. Utility Services. Easement for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat or plats. No utility services shall be installed under finished streets except by jacking, drilling or boring.

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

L. Subdivision of Individual Lots. No lot shall be subdivided into parcels for additional residential purposes.

M. Ingress and Egress onto Hague Road. No ingress or egress (pedestrian or vehicular) shall be permitted onto Hague Road from lots 18, 23, 33, 34, 35, 36, 66, 67, and 85 as described on the recorded plat or plats.

6. HICKORY WOODS CONTROL COMMITTEE.

A. Power of Committee.

No dwelling, building structure or other type or kind shall be constructed or placed in the Development without the prior approval of the Committee. Such approval shall be obtained 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. In addition, such plans and specifications shall show elevation of the proposed improvements as related to the existing street elevation. 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 a scale of 1/4" = 1', or to such other scale as the Committee may require. There shall also be submitted, where applicable, any permits or reports required under these Restrictions.

(2) **POWER OF DISAPPROVAL.** The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

- (a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these restrictions;
- (b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures;
- (c) The proposed improvement, or any part thereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of other Owners of lots.

(3) **POWER TO GRANT VARIANCES.** The Committee may grant reasonable variances or adjustments of the Restrictions where literal application would cause unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions. No variance or adjustment shall be granted which is materially detrimental or injurious to other lot Development.

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of all submitted material shall be retained by 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.

C. Liability of Committee. Neither the Committee nor any agent thereof, nor the Developer, nor the Association, 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.

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

Whenever two or more contiguous lots in the Development shall be owned by the same person, and such Owner shall desire to use two or more of said lots as a site for a single dwelling house, he shall apply in writing to the Committee for permission so to use the lots. If permission for such a use shall be granted, the lots constituting the site for a single dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to the lots, so long as the lots remain improved with one single dwelling house.

8. HICKORY WOODS PROPERTY OWNERS' ASSOCIATION INC.

A. In General.

- (1) There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the Hickory Woods Property Owners' Association Inc., which is referred to as the "Association."
- (2) Owners of lots who are engaged in the business of constructing houses may apply to the Committee for determination that they own a lot or lots not for their own use but for resale. If the Committee determines that such is the purpose for which the lot or lots are held, the Association shall be deemed to be the Association for the lot or lots, and the Association shall be responsible for the charges. The Committee shall be authorized to...

(b) sale of the lot, or (c) occupancy of a residence upon the lot.

**B. Purpose of the Association.**

- (1) The general purpose of the Association is to care for, maintain, and provide necessary liability insurance protection of the drainage detention and easement area located on portions of Lots 15, 16, 17, 19, 20, and 21 of Hickory Woods Section I and such other easement areas that the corporation may become responsible for.
- (2) Additional purposes of the Association are to provide a means for the promulgation and enforcement of regulations necessary to govern the use of such parcels as may be the responsibility of the Association as well as the responsibility for enforcement of powers delegated to the Association herein or in the Articles of Incorporation.

**C. Purpose of the Assessments.** The charges or assessments levied by the Association shall be used for the purpose of promoting the health, safety and welfare of the members of the Association, and, in particular, for the care and maintenance and the provision for necessary insurance protection of the drainage detention and easement areas located on parts of Lots 15, 16, 17, 19, 20, and 21 of Hickory Woods Section I and such other easement areas that the corporation may become responsible for, as well as the enforcement of the powers and responsibilities delegated to the Association herein or in the Articles of Incorporation.

**D. Membership.** Every Owner of a lot subject to assessment except as herein provided to the contrary, shall be entitled to be a member of the Association. If a lot is owned and held by more than one person, each of such persons shall be a member. An Owner of more than one lot shall be entitled to, and there shall be required, one membership for each such lot. Each such membership shall be appurtenant to the lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that lot. Except as herein otherwise expressly provided, no person or entity other than an Owner or Developer may be a member of the Association, and a person who is not an Owner or Developer shall not be eligible to be a member of the Association. The Association may not be a member of any other corporation, partnership, or other entity.

**E. Transfer.** The membership in the Association shall be transferred to the person or entity to whom the lot is transferred by deed, and shall be subject to the provisions of this Article. The Association may not be a member of any other corporation, partnership, or other entity.

process. It shall be the responsibility of each Owner, upon becoming entitled to membership, to so notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a member, in its sole discretion. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the transferee of title of such lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

**F. Voting.** The Association shall have two (2) classes of voting membership, as follows:

1. **Class A:** Class A members shall be all Owners of lots, with the exception of the Developer prior to termination of Class B membership, and shall be entitled to one (1) vote for each lot owned with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one person holds title to any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-Owner or other persons have filed a general voting authority with the Secretary applicable to all votes until rescinded.
2. **Class B:** Class B members shall be the Developer and all successors and assigns of Developer designated by Developer as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled, on all matters requiring a vote of the membership of the Association, to five (5) votes for each lot owned by it and identified as a lot on any recorded plat of the subdivision described in Exhibit "A" which has not been conveyed by Developer to another person. The Class B membership shall cease and terminate upon the first conveyance of the date upon which the written notice is received by the Association. The Class B membership shall terminate on the date upon which the written notice is received by the Association. (5) one hundred twenty (120)



paysable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the office of the Recorder of Hamilton County, Indiana.

9. ASSESSMENTS.

A. Purpose of Assessments. The assessments levied by the Association shall be used to care for and maintain, and provide liability insurance for, those drainage and detention easement areas and for payment of any other costs and expenses incurred by the Association in connection with the performance of its duties, obligations, and responsibilities hereunder. An adequate reserve fund shall be maintained for working capital and for periodic maintenance.

B. Annual Assessments. Except as set forth herein, until June 1, 1988, the maximum annual assessment shall be Fifteen and no/100----- Dollars (\$ 15.00 ) per lot for each lot upon which a living unit has been constructed. Payment of annual assessments shall be in advance upon conveyance of a lot to an Owner.

1. From and after June 1, 1988, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessments permitted for the previous year, on a cumulative basis, without a vote of the membership.
2. From and after June 1, 1988, the maximum annual assessment may be increased more than ten percent (10%) above the maximum assessments permitted for the previous year by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting called for this purpose.
3. The Board of Directors may fix the annual assessments at any amount not in excess of the maximum permitted hereby.

C. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, (1) the cost of construction, reconstruction, repair or replacement of a detention area or easement, provided that any such assessment shall be assent of not less than two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting called for this purpose.

D. Notice and Quorum. Written notice of any meeting of Members called for the purpose of taking any action authorized under Sections B.2. and C hereof, shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Members entitled to cast sixty percent (60%) of the total votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

E. Commencement of Initial Annual Assessment. The annual assessment provided for herein shall commence as to all lots subject to this Declaration on the first day of the month following the month of recording of the instrument by which such lots became a part of the Development. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year for which such assessment is imposed.

F. Commencement of Annual Assessment. By March 1 of each year the Board shall fix the amount of annual assessment against each lot for the following calendar year and shall send written notice thereof to each Owner. The due date for payment of the annual assessment shall be June 1. At the time the Board fixes the amount of the annual assessment it shall adopt a budget for the following calendar year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

G. Proof of Payment. Upon written request by any mortgagee, at any time and for a reasonable charge, the Association shall furnish a written certificate signed by an officer of the Association setting forth whether there are then unpaid annual or special assessments levied against such Owner's or mortgagee's lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

H. Nonpayment of Assessments. Any assessment not paid when due shall be deemed delinquent. If an assessment is not paid within thirty (30) days after the delinquent date, the Association shall bear the cost of the delinquent assessment. The Association shall have a lien in favor of the Association on the lot of an Owner who fails to pay assessments when due on the Association's behalf. The Association may enforce its lien by foreclosure in equity against the property of the Owner or mortgagee, including the proceeds of any sale of the property for any such lien.

such assessment and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit.

I. Recording and Enforcement of Liens. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the lot, the name of the person personally obligated to pay the same and a description of the lot. Such a notice shall be signed by an officer of the Association and it or a notice of lien or adverse claim thereof may be recorded in the office of the Recorder of Hamilton County, Indiana. No notice of lien shall be recorded until there is a delinquency in payment of the assessment for thirty (30) days. Upon such a delinquency for thirty (30) days, the Association shall proceed promptly to enforce the lien or, in its discretion, to sue the person personally liable to pay the lien for the delinquency. Such lien shall be enforced by action in the same manner in which mortgages on real property may be foreclosed in Indiana. In any such foreclosure, the person personally obligated to pay the lien shall be required to pay all costs of foreclosure including reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The person personally obligated to pay the lien shall also be required to pay to the Association any and all taxes on the lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the foreclosed interest in the lot as the Owner thereof.

The Association shall, upon written request, report to any mortgagee of a lot any assessments remaining unpaid for more than thirty (30) days after the same shall have become due. It is provided, however, that such mortgagee first shall have furnished to the Association and written notice of the mortgagee's name, address, claims and its notice address.

J. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of a First Mortgage ("First Mortgage") and to tax liens and liens for assessments in favor of any taxing and governmental authority. Sale or transfer of any lot shall not constitute an assessment lien. However, the sale or transfer of a lot pursuant to mortgage foreclosure or redemption of a mortgage, or any proceeding in lien thereof, shall not constitute a lien of such assessments as to charges which shall be due on such sale or transfer. No such sale or transfer shall release a lot from liability for any assessments thereon or from the lien thereof or shall constitute a discharge of the



obligated to pay the same from personal liability for assessments payable prior to such sale or transfer or acquisition. Any delinquent assessments the lien for which is extinguished by reason of this provision may be reallocated and assessed to all lots as a common expense.

**K. Limitations on Assessments Owed by Developer.** Notwithstanding anything to the contrary contained herein, Developer shall be obligated to pay, as to any and all lots owned by it from time to time, only ten percent (10%) of the assessments (whether regular annual assessments or special assessments) payable hereunder by Owners (other than Developer) of lots, and all such lots owned by Developer shall be subject to a lien hereunder only for amounts determined under this Section K.

**L. Initial Working Capital and Start-up Fund.** At the closing of the initial sale of each lot by Developer to an Owner other than Developer (or an Owner set forth under 8.A(2)), whether or not the lot is then improved with a living unit, the purchaser of such lot shall pay to the Association an amount equal to the annual assessment applicable to the lot purchased, which amount shall be held and used by the Association as a working capital fund and start-up fund for the initial year of operation of the Association, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Developer shall pay to the Association the required contribution to the Association's working capital fund and start-up fund for all of such lot then owned by it which remain unsold, which amount Developer shall then be entitled to recover directly from the subsequent purchaser of such unsold lots, who shall pay the same to Developer for Developer's own account in lieu of making payment thereof to the Association.

#### 10. REMEDIES.

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

**B. Delay or Failure to Enforce.** No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the provisions herein shall constitute a waiver of that party's right to enforce the same, and the amount of any such remedy shall be available to him up to the time of the violation.

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

**11. 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 the Developer or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges that rights and powers of the Developer and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representative, successors and assigns, such Owners covenant and agree and consent to and with the Developer, the Association 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.

**12. TITLES.**

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

**13. DURATION.**

The foregoing covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2016, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the Owners of sixty-six percent (66%) of the lots.

**14. 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 from every combination of the Restrictions. If any one of the Restrictions shall be held to be invalid, void, unenforceable or to lack the quality of running with the land, such holding shall be without effect upon the validity, enforceability or running with the land of any other Restriction.

IN TESTIMONY WHEREOF, witness the signature of the Declarant  
this 19th day of May, 1987.

M-N ENTERPRISES, an Indiana  
Partnership

By Keith F. Macy  
Keith F. Macy, partner

STATE OF INDIANA     )  
                          ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State,  
personally appeared Keith F. Macy, partner of M-N Enterprises, an  
Indiana Partnership, who acknowledged the execution of the  
foregoing Declaration of Restrictions for and on behalf of the  
partnership.

Witness my hand and seal this 19th day of May, 1987.

John M. Kyle  
John M. Kyle  
Notary Public  
Resident of Hamilton County

INDIAN  
NOTARY  
PUBLIC  
My commission expires:  
February 15th, 1989

This instrument was prepared by John M. Kyle, Attorney at Law,  
198 South 9th Street, Post Office Box E, Noblesville, IN 46060

EXHIBIT "A"

Part of the East Half of Section 2, Township 17 North, Range 4  
East of the Second Principal Meridian in Hamilton County, Indiana,  
being described as follows:

Commencing at the Northeast corner of the Northeast Quarter of  
said Section 2, thence South 00 degrees 13 minutes 31 seconds West  
(assumed bearing) along the East line thereof a distance of  
1365.00 feet to the Northeast corner of the tract of land  
described in a deed to Trustees of the Seminary of the Kingdom of  
God (as recorded in Deed Record 317, page 608 in the Office of the  
Recorder of Hamilton County, Indiana), said corner being the point  
of beginning; thence continuing South 00 degrees 13 minutes 31  
seconds West along said East line of the Northeast Quarter a  
distance of 123.73 feet to the Northeast corner of a tract of land  
described in a deed to John E., Sr. and Mary E. Sapp (Deed Record  
321, page 320); thence North 89 degrees 46 minutes 29 seconds West  
along the North line of said Sapp tract a distance of 221.49 feet  
to the Northwest corner thereof; thence South 00 degrees 13  
minutes 31 seconds West parallel with the East line of said  
Northeast Quarter and along the West line of said Sapp tract a  
distance of 236.00 feet to the Southwest corner thereof; thence  
South 89 degrees 46 minutes 29 seconds East along the South line  
of said Sapp tract a distance of 221.49 feet to the Southeast  
corner of said Sapp tract, said corner being on the East line of  
said Northeast Quarter; thence South 00 degrees 13 minutes 31  
seconds West along said East line a distance of 1127.30 feet to  
the Southeast corner of said Northeast Quarter; thence South 00  
degrees 06 minutes 49 seconds West along the East line of the  
Southeast Quarter of said Section 2, a distance of 596.66 feet to  
the intersection with the Easterly extension of the North line of the  
Real Estate described in Deed Record 325, page 650 in the Office  
of the Recorder of Hamilton County, Indiana; thence South 89  
degrees 54 minutes 31 seconds West on said extension and the North  
line of said Real Estate 334.86 feet to the Northwest corner of  
said Real Estate; thence South 00 degrees 06 minutes 49 seconds  
West on the West line of said Real Estate 210.00 feet to the North  
line of a 29.5 acre tract of land described in a deed to Maude  
Gruber (Deed Record 175, page 74); thence South 89 degrees 54  
minutes 31 seconds West along the North line of said Gruber tract  
being parallel with the South line of the Northeast Quarter of the  
Southeast Quarter of said Section 2, a distance of 471.00 feet to  
the West line of the aforesaid Trustees tract; thence North 00  
degrees 06 minutes 49 seconds East along said West line and  
parallel with the East line of said Southeast Quarter a distance  
of 805.04 feet to the North line of said Southeast Quarter; thence  
North 00 degrees 13 minutes 31 seconds East along the West line of  
said Trustees tract and parallel with the East line of the  
Northeast Quarter of said Section 2, a distance of 1489.36 feet to  
the Northwest corner of said Trustees tract; thence North 89  
degrees 57 minutes 32 seconds East along the North line of said  
Trustees tract, being parallel with the North line of the  
Northeast Quarter of said Section 2, a distance of 885.00 feet  
to the point of beginning.