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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF OLDFIELDS COUNTRY HOMES

(75)

MAY 13 1983

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Henry G. Fisher
MARION COUNTY AUDITOR

CROSS REFERENCE

CROSS REFERENCE

This Declaration made this 21st day of April 1983, by D. E. Murphy, Inc., d/b/a Oldfields Country Homes of Indianapolis, Indiana (herein-after referred to as "Declarant",)

WITNESSETH:

83-32248

WHEREAS, Declarant is the owner of certain real estate in Marion County, State of Indiana, more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof ("Real Estate").

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community with streets, walls, fences and other common facilities and amenities for the benefit of such residential community, to be known as Oldfields Country Homes; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common facilities therein contained, and, to this end, Declarant desires to subject the Real Estate (being a portion of such community) to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each owner of all or part thereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering any common facilities

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located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the owners of the Real Estate, and all parts thereof; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name of Oldfields Country Homes Owners Association, Inc., or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Lots situated therein.

ARTICLE I

Declaration; Common Properties and Rights Therein; Easements

Section 1. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, transferred, and occupied subject to the Restrictions. Subsequent owners or contract purchasers of any Lot (i) by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed or

execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner or contract purchaser acknowledges the rights and power of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owner of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

Section 2. Definition of "Common Properties." When used herein, "Common Properties" shall refer to: streets, sewers, street lights, property lights, drains and drainage easements, and all other amenities, structures and easements which serve the common needs and provide a common benefit to the subdivision and its occupants and owners.

Section 3. Easement to Owner. Declarant hereby grants a non-exclusive easement in favor of the Declarant and of each Owner for the use, enjoyment and benefit of the streets and Common Properties, subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot and the Real Estate.

Section 4. Easement to Corporation. Declarant hereby grants a non-exclusive easement in favor of the Corporation for the maintenance of the Common Properties. Such easement shall permit the Corporation or its agents to enter onto any Lot to make emergency repairs or to do other work reasonably necessary for the proper maintenance or operation of the subdivision and to enter onto any Lot for the purpose of reconstruction and restoration in the event of casualty. Maintenance shall include but not be limited to

maintenance of easements and utilities which serve more than one Dwelling Unit.

Section 5. Easement for Utilities. Declarant reserves onto itself, its successors, assigns, agents and public utilities an easement in, and upon, through and over the Real Estate for the purpose of installation, repair, and replacement of all sewer water, power and telephone pipes, lines, mains, conduits, waters, poles, transformers, and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility systems serving the Real Estate. Further, the public utility companies serving the Real Estate shall have a perpetual utility easement consisting of five (5) feet either side of any and all such lines, pipes and equipment as placed on the Real Estate.

Section 6. Municipal Services. Declarant for itself, its successors and assigns hereby declares that the City of Indianapolis, County of Marion and Washington Township (but not the public in general), shall have a perpetual non-exclusive easement to enter upon all streets, sidewalks, parking areas and walkways for the purpose of maintaining the safety, health, welfare, police and fire protection of the citizens of such City, County and Township, including the residents, guests, invitees and owners of the Real Estate.

ARTICLE II
Obligations of Declarant
as to Common Properties

Declarant has constructed or provided for, or will construct or provide for, Common Properties consisting of the following items:

- (a) installation of utility equipment, facilities and

- systems to serve the Real Estate,
- (b) intersection street lighting facilities,
 - (c) Real Estate lighting,
 - (d) private streets and sewers,
 - (e) drainage system,

Upon final construction or provision of the Common Properties described in this Article II, and prior to the closing of the first sale of a Lot subject to this Declaration, Declarant covenants to convey all of its right, title and interest in and to such Common Properties to the Corporation, and all such right, title and interest in and to such items (whether owned in fee, by leasehold, or otherwise) shall then be the property of the Corporation.

As to the Common Properties located entirely or partially on any one or more of the Lots, the Owners of such Lots shall have only non-exclusive easement rights therein, as described in Article I, Section 2 of this Declaration.

ARTICLE III

Corporation; Membership; Voting; Functions

Section 1. Membership in Corporation. Declarant and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a member of the Corporation and shall remain a member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as

security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and member of the Corporation.

Section 2. Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:

- (a) Class A. Class A members shall be all Owners except Class B members. Each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner 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 (1) Person constitutes the Owner of a particular Lot, all such Persons shall be members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.
- (b) Class B. Class B members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B member shall be entitled to three (3) votes for each Lot of which it is the Owner on all matters requiring a vote of the members of the Corporation. The Class B membership shall cease and terminate upon the first to occur of (i) the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership or (ii) December 31, 1985 ("Applicable Date").

Section 3. Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, replacement, administration and operation of the Common Properties, to pay any other necessary expenses and costs in connection with the Common Properties, and to perform such other functions as may be designated for it to perform under this Declaration.

ARTICLE IV
Board of Directors

Section 1. Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with the Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 2 of this Article IV.

Section 2. Initial Board of Directors. The initial Board of Directors shall be composed of the persons designated in the Articles, ("Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or applicable Indiana law (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Corporation and an Owner solely for the purpose of qualifying to act as member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a member of the Corporation).

Section 3. Additional Qualifications. Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be

eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

Section 4. Term of Office. Subject to Section 2 of this Article IV, one-third (1/3) of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, one-third (1/3) of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one-third (1/3) of the Board of Directors shall be elected for a three (3) year term, one-third (1/3) for a two (2) year term, and one-third (1/3) for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified.

Section 5. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual

meeting of the Owners and until his successor is duly elected and qualified.

Section 6. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Properties (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. The Board's duties shall include, but are not limited to:

- (a) maintenance, repair, replacement and upkeep of the Common Properties (or items deemed Common Properties for purposes of maintenance).
- (b) protection, surveillance and replacement of the Common Properties, unless the same are otherwise the responsibility or duty of Owners of Lots or Dwelling Units; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same may, but need not be furnished;
- (c) removal of trash and waste from the Real Estate on a basis of not less than weekly, provided further that only the Board or any Managing Agent shall contract for such service and no Owner shall contract for such service;
- (d) snow removal from the Common Properties and from streets;
- (e) assessment and collection from the Owners of the Owner's

respective share of the Common Expenses;

- (f) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time the notice of annual meeting is mailed or delivered;
- (g) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year.

Section 7. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) to employ a Managing Agent to assist the Board in performing its duties; provided that no employment agreement with the Declarant (or any entity affiliated with the Declarant) as Managing Agent or for any other service shall be for more than three (3) years after the Applicable Date and further provided that after the Applicable Date any such agreement shall be subject to termination by either party without cause and without payment of termination fee upon ninety (90) days written notice to the other party;
- (b) to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors for the maintenance, upkeep, repair and replacement of the Common Properties;
- (c) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (d) to open and maintain a bank account or accounts in the name of the Corporation;
- (e) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Properties (in addition to

those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners.

Section 8. Limitation on Board Action. The Board's powers are subject to the following limitations. (a) After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary.

(i) contracts for replacing or restoring portions of the Common Properties damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

(iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

(a) The Board shall not, without the prior written approval of at least sixty-seven percent (67%) of the Owners (other than Declarant) and Mortgagees (whose mortgage interests have been made known to the Board of Directors) holding mortgages on Dwelling Units which have at least sixty-seven percent (67%) of the votes of Dwelling Units subject to mortgages:

(i) by act or omission abandon, partition, subdivide, encumber, sell or transfer the Common Properties owned by the Corporation (provided, the granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this

clause);

(ii) by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of Dwellings, the exterior maintenance of Dwellings, the maintenance of side walls in the Common Properties or common fences, or the upkeep of lawns in the Subdivision;

(iii) fail to maintain fire and extended coverage insurance on Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement costs; and

(iv) use hazard insurance proceeds for losses to any of the Common Properties for other than the repair, replacement or construction of Common properties.

Section 9. Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners.

Section 10. Non-Liability of Directors. The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. Directors shall not have personal liability with respect to any contract made by them on behalf of the Corporation.

Section 11. Bond. The Board of Directors shall provide surety bonds and shall require the Managing Agent (if any), the

treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protections for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense. The amount of the bonds shall be based upon the judgment of the Board of Directors and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Corporation or its Management Agent at any given time during the term of the bond. In no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all units plus reserve funds.

ARTICLE V

Real Estate Taxes; Utilities

Section 1. Real Estate Taxes. Real estate taxes on each Lot and Dwelling Unit are to be separately assessed and taxed to each such Lot or Dwelling Unit and shall be paid by the Owner thereof.

Section 2. Utilities. Each Owner shall pay for his own utilities which shall be separately metered to each Lot and Dwelling Unit.

ARTICLE VI

Maintenance, Repairs and Replacements

Section 1. By Owners. Except as provided in Section 2 of this Article, each Owner shall, at his expense, be responsible for, and shall promptly perform as the need therefor arises, all maintenance, repairs, decoration and replacement of the interior of his own Dwelling Unit. Each Owner shall promptly perform all

maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Properties. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot. Further, owners shall be responsible for maintenance and repair to the exterior of their Dwelling Units where damage exists or repair is dictated by circumstances not constituting normal wear and tear.

Section 2. By Corporation. The Corporation shall be responsible for all mowing, trimming, upkeep and maintenance of the lawns and landscaping on the Lots as well as any common areas. However, where landscaping has been performed by the Owner on his lot, in addition to that placed by the developer or Declarant, the Corporation may, at its sole discretion, refuse to maintain such additional landscaping and such maintenance shall be the responsibility of the Owner.

ARTICLE VII
Party Walls

Section 1. General Rules of Law to Apply. Any wall which is built as a part of the original construction of any Dwelling Unit upon the Real Estate and which connects two Dwelling Units shall

constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.

Section 3. Destruction by Fire or Other Casualty. If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions; without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be

exposed to the elements shall bear the whole cost of the furnishing the necessary protection against those elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator from among disinterested Owners, and such arbitrators shall choose an additional arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request thereof from another party, the Board of Directors of the Corporation shall select an arbitrator for the refusing party.)

ARTICLE VIII

Assessments

Section 1. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to

each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceeding fiscal year.

Section 2. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget and the Regular Assessments shall be drawn to include the establishment and maintenance of two replacement reserve funds for capital expenditures and replacement and repair of the Common Properties (one replacement reserve fund shall be for capital expenditures and replacement and repair of Common Properties owned by the Corporation and not deemed Common Properties for purposes of maintenance only and the other replacement reserve fund shall be for capital expenditures and replacement and repair of those items deemed Common Properties for purposes of maintenance only as defined herein), which replacement reserve funds shall be used for those purposes and not for usual

and ordinary repair expenses of the Common Properties. Such replacement reserve funds for capital expenditures and replacement and repair of the Common Properties shall be maintained by the Corporation in separate interest-bearing accounts with one or more banks, savings and loan associations, or other financial institution or brokerage house authorized to conduct business in Marion County, Indiana, as may be selected from time to time by the Board. The proposed Budget shall be presented at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (herein defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided that any increase of more than ten percent (10%) must be approved by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy; provided further, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended.

Section 3. Regular Assessments. Immediately following the adoption of the annual budget, each Owner shall be given written notice of the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the

Owners, to reflect the assessment against each Lot based upon the annual budget finally adopted. The Regular Assessment against each Lot shall be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the Regular Assessment shall be made to the Board of Directors; provided, however, Owners may elect to pay their assessments semi-annually or annually, in advance.

Section 4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time, unless otherwise provided in this Declaration, the Articles, the By-Laws or applicable Indiana Law, the Board of Directors shall have the full right, power and authority to make special assessments.

Section 5. Failure of Owner to Pay Assessment. No Owner may exempt himself from paying Regular Assessments or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Properties for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Properties or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular Assessments and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any

payment of any Regular or Special Assessments when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessments or Special Assessments, when due, the Board may in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments were due, until paid, at a rate equal to the "prime interest rate" then being charged by Indiana National Bank to its largest and best corporate customers (or, if such Bank is no longer in existence, then such rate charged by another national bank in Marion County, Indiana selected by the Board).

Section 6. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, or otherwise, until the Applicable Date the annual budget

and all Regular and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 2 of Article IV hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date.

ARTICLE IX

Mortgages

Section 1. Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise, shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to which such Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or effectively given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed

to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to which such Mortgagee may otherwise be entitled shall be required.

Section 2. Notice of Certain Actions or Conditions. The Corporation shall, upon request of a Mortgagee (or insurer or guarantor) who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee (or insurer or guarantor) with written notice of:

- (i) any condemnation loss or any casualty loss which affects a material portion of the subdivision or any Dwelling Unit on which there is a first mortgage;
- (ii) any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days; and
- (iii) any proposed action which would require the consent or approval of Mortgagees.

Section 3. Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special

Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such Statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article VIII hereof.

Section 4. Unpaid Taxes and Insurance. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which have or may become a lien against any Common Properties (excluding items deemed Common Properties for maintenance) and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for any Common Properties (excluding items deemed Common Properties for maintenance), and the Mortgagees making such payments shall be owed immediate reimbursement therefor by the Corporation.

ARTICLE X

Insurance

Section 1. Casualty Insurance. (a) The Corporation shall choose a company issuing casualty insurance with an "agreed amount and inflation guard endorsement" and a "blanket building endorsement" affording fire and extended coverage insurance insuring each Dwelling Unit in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the Dwelling Units. Each Owner shall purchase insurance from such Company insuring his Lot and Dwelling Unit. Each policy shall indicate that the Corporation is an Additional Insured and each Owner shall utilize a minimum standard form #3 policy affording property and liability coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and for determining that each Owner has the required insurance in full force and effect. If an Owner permits his insurance to lapse, the Board may pay the premium then due on account of such Owner's policy and may assess such amount against such Owner.

(b) The Corporation shall purchase a casualty insurance policy with an "agreed amount and inflation guard endorsement" affording fire and extended coverage insurance insuring all Common Properties owned by the Corporation including, but not limited to utilities and recreational equipment, if any, in an amount

consonant with the full replacement value of the improvements. If the Board of Directors can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage for such improvements. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense of all Owners. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each Owner.

(c) All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as herein set forth shall be paid to it or to the Board of Directors. In the event that members of the Board of Directors have not posted surety bonds for the faithful performance of their duties or if such bonds do not equal or exceed the funds which will come into their hands, and there is damage to a part or all of the Common Properties resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners of the Corporation. The proceeds shall be used or disbursed by the

Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such casualty insurance policies, and "all risk" coverages if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

Section 2. Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time; provided, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners

of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

Section 3. Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workman's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

Section 4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagees whose interest may

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be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the Mortgagee of each Lot.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy or the Board has notice of a Mortgagee as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same restriction on distribution shall apply to the distribution of any condemnation awards in connection with any taking of any of the Common Properties. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds in excess of amounts needed to repair damage or pay off any first mortgage or any condemnation awards to be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

Section 5. Insurance by Owners. Each Owner shall be solely responsible for any and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored any-

where on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation.

ARTICLE XI

Restrictions, Covenants and Regulations

Section 1. Restrictions on Use. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Properties shall be in addition to any other covenants or restrictions contained herein or in any subdivision plat of any part of the Real Estate heretofore or hereafter recorded, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners of the Corporation shall be entitled to injunctive relief against any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by the Owner thereof and his or her family. In the event a non-owner desires to occupy a Dwelling Unit to facilitate a pending sale or for any other purpose, such occupancy shall require approval by the Corporation.
- (b) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or on the Common Properties which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common

Properties. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Properties which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

- (c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit or on any Lot.
- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or place on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of the Dwelling Unit without the prior consent of the Board of Directors.
- (e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Properties, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Properties, caused by his pet. The tethering of pets in any area outside an Owner's fenced Lot does not constitute "attended". The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time.
- (f) Nothing shall be done or permitted in any Dwelling Unit or Lot which might cause injury to the reputation of the subdivision developed or to be developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.
- (g) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Real Estate or any street. The Common Properties shall be kept free and clear of rubbish, debris and other unsightly materials.

- (h) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate.
- (i) All Owners and members of their families, their guests, or invitees, and all occupants of any same, who use and enjoy the Common Properties or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation and use of the Common Properties.
- (j) No boats, campers, trailers of any kind, buses, mobile homes, trucks, motorcycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the Real Estate; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage. No repair work shall be done on the Real Estate on any vehicles, including passenger vehicles.
- (k) No Owner shall remove any tree without the written approval of the Board.
- (l) Each Owner shall keep his Lot in good order, condition and repair and free of debris including, but not limited to, the pruning, trimming and cutting of all trees and shrubbery, all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Lot shall fail to so maintain his Lot, the Corporation after notice to the Owner and approval by two-thirds (2/3) vote of all Owners, shall have the right to enter upon said Lot to correct, repair, maintain and restore the Lot. All costs incurred by the Corporation related to such correction, repair, maintenance or restoration shall be and constitute a Special Assessment against such Lot, payable by the Owner upon demand by the Corporation.
- (m) All garbage, trash and refuse shall be stored in appropriate containers inside the Dwelling Units (including garages) and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collections as are designated by the Board.

- (n) No construction, additions, removal, erection, building, rebuilding or other material change shall be allowed on a lot or Dwelling Unit including, but not limited to the erection of walls and fences without the prior consent of the Board.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including but not limited to any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Applicable Date, the right to use and maintain the Common Properties and any Lots and Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units and Lots owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction and sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Properties, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

ARTICLE XII

Amendment of Declaration

Section 1. Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and

adopted in the following manner:

- (a) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.
- (c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
- (d) Adoption. Any proposed amendment to this Declaration must be approved during the first twenty years by a vote of the Owners to which not less than ninety percent (90%) of the votes of the Corporation are allocated and thereafter by seventy-five percent (75%) of such Owners. The instrument of amendment must be signed by such Owners and recorded. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with provisions hereof.
- (e) Recording. Each amendment to the Declaration shall

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be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

Section 2. Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of Declarant's lender or Mortgagee, (b) to induce any Agency or Lendor to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements, (d) or to correct clerical or typographical errors.

ARTICLE XIII

Acceptance and Ratifications

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules and regulations as adopted by the Board of Directors, as each may be amended or supplemented from time to

time. The acceptance of a deed of conveyance or the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XIV

Benefit and Enforcement

The Declaration and the Restrictions shall run with and bind the Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Marion County, Indiana and expiring June 30, 2013, after which time they shall be automatically extended for successive periods of ten (10) years each unless by vote of a majority of the then Owners of the Lots it is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same.

In the event of a violation, or threatened violation, of any of the covenants, conditions or restrictions set forth in this Declaration, Declarant (so long as Declarant remains an owner of any part of the Real Estate), the Board, or any Owner shall have the right to enforce the covenants, conditions and restrictions contained herein and to pursue any and all remedies, at law or in equity, available under applicable Indiana Law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof. The failure or delay at any time of Declarant, the Corporation, the Owners, or any other Person entitled to enforce this Declaration and the Restrictions, to enforce any of the same shall in no event be deemed a waiver of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

ARTICLE XV

Miscellaneous

Section 1. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the

By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 2. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the By-Laws and each shall be enforceable to the greatest extent permitted by law.

Section 3. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 5. Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

IN WITNESS WHEREOF, D.E. MURPHY, INC.,
Declarant, has executed this Declaration on the day and year first
hereinabove set forth.

By: *Daniel E. Murphy*
President Daniel E. Murphy

ATTEST:

Michael A. Murphy
Secretary Michael A. Murphy

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Subscribed and Sworn to before me a Notary Public in and
for the County of Marion, State of Indiana, this 21st day of
April, 19 83.

Witness my hand and Notarial Seal this 21st day of April,
19 83.

Judith A. McConigal
Notary Public (Judith A. McConigal)
Marion County

My Commission Expires:
December 15, 1985

This instrument was prepared by Stephen D. Mears, Attorney at
Law.

EXHIBIT A

Legal Description of Real Estate:

Part of the Southwest quarter of Section 15, Township 16 North, Range 3 East in Marion County, Indiana, more particularly described as follows:

Beginning at a point in the West line of said quarter section 1418.50 feet North of the Southwest corner thereof; run thence North along and with said West line 55.50 feet; thence Southeastwardly deflecting right 95 degrees 21 minutes a distance of 672.50 feet to a point in the centerline of the Cold Springs Road; thence Southwardly along and with said center line and deflecting right 101 degrees 28 minutes a distance of 25.00 feet; thence Westwardly deflecting right 75 degrees 52 minutes a distance of 663.08 feet to the place of beginning, containing 0.611 acres, more or less.

Also, part of the Southwest quarter of Section 15, Township 16 North, Range 3 East in Marion County, Indiana, more particularly described as follows:

Beginning at a point in the West line of said quarter 1474 feet North of the Southwest corner thereof; thence in a Southeasterly direction 675 feet to a point in the center line of the Meyers Road; thence North 18 degrees 24 minutes West 494 feet upon and along the center line of said road, said point being the intersection of the Meyers Road with a county road running West therefrom; thence North 88 degrees 30 minutes West upon and along the center line of said county road 512 feet to a point in the West line of said quarter section; thence South upon and along said West line 417 feet to the place of beginning, containing 5.94 acres, more or less.

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RECORDER-MARION CO.

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CROSS REFERENCE

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AMENDMENT TO DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS OF
OLDFIELDS COUNTRY HOMES

WHEREAS Declarant has previously caused to be recorded a certain Declaration of Covenants, Conditions and Restrictions of Oldfields Country Homes (Declaration) which Declaration appears as Instrument No. 83 32251 in the Office of the Recorder of Marion County, Indiana, and;

WHEREAS Declarant reserved therein the right to amend such Declaration in conformity with the terms thereof;

NOW, THEREFORE, Declarant amends such Declaration as follows:

1. Article 1, Section 2 is hereby amended to read as follows:

Section 2. Definition of Terms. When used herein, the following words and terms shall have the following meanings unless the context clearly requires otherwise:

APPROVAL
OF
ENGINEER'S CERTIFICATION
METROPOLITAN DEVELOPMENT
COMMISSION
DIVISION OF PLANNING & ZONING
PLAT COMMITTEE
AUG 18 1983

(a) "Act" shall mean and refer to the Indiana Not for Profit Corporation Act of 1971 as amended from time to time;

(b) "Applicable Date" shall mean and refer to the date determined pursuant to Article III, Section 2 of this Declaration;

(c) "Articles" shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time;

(d) "Board" or "Board of Directors" shall mean and refer to the governing body of the Corporation elected, selected or appointed as provided for in the Articles, Bylaws and this Declaration;

(e) "Bylaws" shall mean and refer to the Code of Bylaws of the Corporation, as the same may be amended

APPROVED THIS 18th day of August 1983.

[Signature]
Recorder

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from time to time;

- (f) "Common Expenses" shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Properties, all sums lawfully assessed against the owners by the Corporation, and all sums, costs and expenses declared by this Declaration to be Common Expenses;
- (g) "Common Properties" shall mean and refer to (i) all portions of the real estate shown on any recorded sub-division plat of the real estate which are not Lots, (ii) to the extent herein established, such portions of the real estate as are herein declared to be Common Properties even though located on or constituting part of one or more lots, including but not limited to recreational easements (iii) to the extent herein established, such improvements located, installed or established in, to, on, under, across or through the real estate as are herein declared to be Common Properties whether located, installed or established entirely or partially on lots or portions of the real estate which are not lots or both; and (iv) items deemed Common Properties for purposes of maintenance;
- (h) "Corporation" shall mean and refer to Oldfields Country Homes Homeowners' Association, Inc., an Indiana Not for Profit Corporation which Declarant has caused to be incorporated under such name or a similar name, its successors and assigns;
- (i) "Declarant" shall mean D. E. Murphy, Inc. d/b/a Oldfields Country Homes of Indianapolis, Indiana, and any successors and assigns whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgages requiring title to any portion of the real estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant;
- (j) "Dwelling Unit" shall mean and refer to any building, structure or portion thereof situated on the real estate designed and intended for use and occupancy as a residence by one single family whether such dwelling is detached or attached to another Dwelling Unit;

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- (k) "Lot" shall mean and refer to any portion of the real estate (excluding any part of the common properties) designed and intended for use as a building site for, or developed and improved for use as, a dwelling unit, as designated by Declarant by deed of the same to another person.
- (l) "Mortgagee" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;
- (m) "Owner" shall mean and refer to the record owner (whether one or more persons) of the fee simple title to any lot, but in any event shall not include or mean to refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any lot, but upon so acquiring title to any lot, a mortgagee or tenant shall be an Owner;
- (n) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity or combination thereof;
- (o) "Plat" shall mean and refer to the sub-division or plats of the real estate and any additional real estate annexed to the real estate recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented;
- (p) "Real Estate" shall mean and refer to the parcel of Real Estate in Marion County, Indiana, described in the first recital clause of this Declaration and defined therein as the Real Estate or to any other parcel of real estate which may become subject to this Declaration by annexation;
- (q) "Restrictions" shall mean and include all Agreements, Covenants, Conditions, Restrictions, Easements, Assessments, Charges, Liens, and all other provisions set forth in this Declaration as the same may be amended from time to time.

2. Article IV, Section 8 (a) is amended by the addition of a sub-section (v) as follows:

- (v) change the method by which the obligations of unit owners are determined, including assessments,

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homeowner's dues or any other charges contemplated by this Declaration.

3. Article IX, Mortgages, is hereby amended by the addition of a new Section V, which section reads in its entirety:

Section 5. Rights Not to be Impaired. Any right of first refusal which may now or hereafter be granted to the Corporation shall be described or denominated and shall not operate to impair the rights of a first mortgage to:

- (a) Foreclose or take title to a unit, pursuant to the remedies provided in the Mortgage; or
- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or
- (c) Sell a unit acquired by such mortgages.

4. Declarant hereby amends the Bylaws previously recorded with the Declaration as Instrument No. 83-32250, to correct typographical errors contained in Section 4.01. Section 4.01 should read as follows:

Section 4.01. The affairs of the Corporation shall be governed by a Board of Directors composed of nine (9) persons, all of whom must be Owners.

IN WITNESS WHEREOF, D. E. Murphy Inc d.b.a. Offfields Country Homes Declarant, has executed this Declaration on the day and year first hereinabove set forth.

BY: Daniel E. Murphy
President

DANIEL E. MURPHY

83 58979

ATTEST:

Michael A. Murphy
Secretary

MICHAEL A. MURPHY

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Subscribed and sworn to before me a Notary Public in and for
the County of Marion, State of Indiana, this 15th day of

AUGUST, 19 83.

Witness my hand and Notarial Seal this 15th day of
AUGUST, 19 83.

Signature

WALFORD R. HURT

Printed

NOTARY PUBLIC

Montgomery County

My Commission Expires:

12/5/86

This instrument was prepared by Stephen D. Mears, Attorney at Law.

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CROSS REFERENCE

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AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF OLDFIELDS COUNTRY HOMES

12-12-75
(6)

WHEREAS, D. E. Murphy, Inc., d/b/a Oldfields Country Homes has previously caused to be recorded a certain Declaration of Covenants, Conditions and Restrictions of Oldfields Country Homes (Declaration), subjecting certain real estate to the provisions of Indiana Law, which Declaration appears as Instrument No. 83-32251 in the Office of the Recorder of Marion County; and

WHEREAS, D. E. Murphy, Inc. reserved therein the right to amend such Declaration in conformity with the terms thereof; and

WHEREAS, all the owners of the subject real estate are desirous of amending the insurance provisions of the Declaration, specifically Article X thereof;

NOW THEREFORE, D. E. Murphy, Inc. hereby amends and declares that this Amendment shall supercede and replace such prior Article X in its entirety.

ARTICLE X

Insurance

Section 1. Casualty Insurance. (a) Each Owner shall purchase insurance from a company of his choice issuing casualty insurance affording "all risk insurance" substantially the same as that afforded by standard form 3 coverages insuring his Dwelling Unit and lot in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the Dwelling Unit. Each policy shall indicate that the Corporation is an Additional Insured and each Owner shall utilize a standard form #3 policy affording property and liability coverage. The Board of Directors shall be responsible for reviewing at least annually the

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amount and type of such insurance and for determining that each Owner has the required insurance in full force and effect. If an Owner permits his insurance to lapse, the Board may pay the premium then due on account of such Owner's policy and may assess such amount against such Owner.

(b) Each Owner's policy of insurance herein described shall contain a provision that the insurer acknowledges that a common wall exists between Dwelling Units; and that the insurer agrees to pay for at least fifty percent (50%) of any loss to a common wall that is covered by such policy.

(c) The Corporation shall purchase a casualty insurance policy with an "agreed amount and inflation guard endorsement" affording fire and extended coverage insurance insuring all Common Properties owned by the Corporation including, but not limited to utilities and recreational equipment, if any, in an amount consonant with the full replacement value of the improvements. If the Board of Directors can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage for such improvements. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense of all Owners. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each Owner.

Section 2. Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insur-

ance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time; provided, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

Section 3. Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workman's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and

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any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

Section 4. General Provisions. The premiums for all the Corporation's insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the Mortgagee of each Lot.

WHEREFORE, the Owners have executed the foregoing Amendment to Declaration of Covenants, Conditions and Restrictions of Oldfields Country Homes this 27th day of November, 1984.

D. E. MURPHY, INC.
By: *Daniel E. Murphy*
Daniel E. Murphy, President

ATTEST:

Michael A. Murphy
Michael A. Murphy, Secretary

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for said County and State,

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personally appeared Daniel E. Murphy, known to me to be the President of D. E. Murphy, Inc., and Michal A. Murphy, known to me to be the Secretary of D. E. Murphy, Inc. and acknowledged the execution of the foregoing Amendment to Declaration of Covenants, Conditions and Restrictions of Oldfields Country Homes.

Witness my hand and Notarial Seal this 27th day of November, 1984.

My Commission Expires:

March 3, 1987

County of Residence:

Hamilton

David Powner ✓
David Powner

David M. Nichols ✓
David M. Nichols

Nancy D. Smith ✓
Nancy D. Smith

Benny S.P. Ko ✓
Benny S.P. Ko

Roland K. Swingley ✓
Roland K. Swingley

David W. Phelps ✓
David W. Phelps

Paul E. Smith ✓
Paul E. Smith

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

MARALU ANN BERRY

Printed

Maralu Ann Berry

Signature

NOTARY PUBLIC

Craig H. Bradley
Craig H. Bradley

Martha Powner ✓
Martha Powner

Bonnie C. Nichols ✓
Bonnie C. Nichols

Michael W. Fisher ✓
Michael W. Fisher

Vicky W.K. Ko ✓
Vicky W.K. Ko

Natasha L. Swingley ✓
Natasha L. Swingley

Miriam J. Phelps ✓
Miriam J. Phelps

Donna J. Smith ✓
Donna J. Smith

Before me, a Notary Public, in and for said County and State, personally appeared David Powner, Martha Powner, David E. Nichols, Bonnie C. Nichols, Nancy D. Smith, Michael W. Fisher, Benny S.P. Ko, Vicky W.K. Ko, Roland K. Swingley, Natasha L. Swingley, Craig Bradley,

850004330

David W. Phelps, Miriam J. Phelps, Paul E. Smith Donna J. Smith and acknowledged the execution of the foregoing Amendment to Declaration of Covenants, Conditions and Restrictions of Oldfields Country Homes.

Witness my hand and Notarial Seal this 27th day of November

1984

My Commission Expires:

September 3 1987

County of Residence:

Hamilton

MARALI ANN BERRY

Printed

Marali Ann Berry

Signature

NOTARY PUBLIC

This instrument was prepared by Stephen D. Mears, Attorney at Law,
120 Monument Circle, Suite 301, Indianapolis, In 46204
(634-0992).

AMENDMENT TO DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS OF
OLDFIELDS COUNTRY HOMES

1

WHEREAS Declarant has previously caused to be recorded certain Declaration of Covenants, Conditions and Restrictions of Oldfields Country Homes (Declaration) which Declaration appears as Instrument No. 83 32251 in the Office of the Recorder of Marion County, Indiana, and;

WHEREAS all the owners of the subject real estate are desirous of amending said Declaration;

NOW, THEREFORE, Declarant amends such Declaration as follows:

1. Section 4.01. The affairs of the Corporation shall be governed by a Board of Directors composed of five (5) persons, all of whom must be owners.

IN WITNESS WHEREOF, OLDFIELDS COUNTRY HOMES HOME OWNERS ASSOCIATION, INC., Declarant, has executed this Declaration on this 3 day of February, 1995.

By: Stephen Mirkiff
President
STEPHEN MIRKIFF

ATTEST:

Kathryn Ransburg
Secretary KATHRYN E. RANSBURG
STATE OF INDIANA)

)SS;

COUNTY OF MARION)

Before me, a Notary Public, in and for said County and State, personally appeared Stephen Mirkiff, President of the Board of Directors of Oldfields Country Homes and Kathryn Ransburg, Secretary of the Board of Directors of Oldfields Country Homes and acknowledged the execution of the foregoing Amendment to the Declaration of Covenants, Conditions and Restrictions of Oldfields Country Homes.

Witness my hand and Notarial Seal this 3 day of Feb, 1995.

My commission Expires
3-1-98

Joan Dacy Notary Public
Signature
JOAN DACY
Printed
Resident of Marion County