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 For Amendment to Declaration # 6469 Apr 20, 1992  
 see Misc 126 pg 502  
 Bonnie L. Hoffman Esq  
 5341 See Misc Book 130  
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
 OF  
 ORCHARD ESTATES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ORCHARD ESTATES (the "Declaration") is made this 14th day of October, 1987, by Old North Salem Road Development Group, Inc., an Indiana corporation (hereinafter referred to as the "Developer"), which is located principally at 2702 North Talbott Street Indianapolis, Indiana 46205.

ENTERED FOR RECORD

BOOK

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WITNESSETH:

Bonnie L. Hoffman  
 HENDRICKS COUNTY RECORDER

WHEREAS, the Developer, as purchaser, has entered into a certain Agreement to Purchase Real Estate, dated August 3, 1987, with Orchard Estates, an Indiana general partnership, as seller (the "Contract Seller"), which Agreement to Purchase Real Estate is recorded in the Office of the Recorder of Hendricks County as Instrument No. 4328, Book No. 296, Page No. 826, dated September 28, 1987, pursuant to which the Developer is purchasing certain real estate more particularly described and contained in Exhibit A attached hereto and made a part hereof;

WHEREAS, the Developer will cause the real estate described in Exhibit A to be subdivided and developed for residential use under the name "Orchard Estates" (the "Development"), and will be more particularly described on the plats of the various sections thereof, or by other legal description, recorded and to be recorded in the Office of the Recorder of Hendricks County, Indiana; and

WHEREAS, the Developer intends to sell and convey the residential Lots situated within the platted areas of the Development and before doing so desires to provide for the preservation and enhancement of property values, amenities and appurtenances in the Development contributing to the personal and general health, safety and welfare of the residents thereof, and for the maintenance of the real estate and improvements thereon, and to this end, desires to subject to and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions, easements, liens, and charges (the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the Lots and lands in the Development and future Owners thereof.

NOW, THEREFORE, the Developer and Contract Seller hereby declare that all of the platted Lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in the Development, and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said Lots situated therein. All of the Restrictions shall run with the land and shall be binding upon 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 each and every one 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 plat by the Developer of a particular Lot or tract within the Development as shown on Exhibit A, to exclude any real estate so shown from the Development, or to include additional real estate.

I. Definitions. The following are the definitions of certain terms as they are used in this Declaration.



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A. Association. "Association" shall mean and refer to the Orchard Estates Property Owners Association, Inc., more particularly described in Section II hereof.

B. Committee. "Committee" shall mean and refer to the Orchard Estates Development Review Committee referred to in Section IV hereof, which Committee shall be composed of four (4) members appointed by the Association who shall be subject to removal by the Association at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment made by the Association. Approvals, determinations, permissions or consents required herein shall be deemed given if they are given in writing signed by three (3) members of the Committee.

C. Common Area. "Common Area" shall mean and refer to those areas, including property and improvements, set aside on any recorded subdivision plat of the Development, whether such plat is heretofore or hereafter recorded, which are not Lots (or other real estate to be divided into Lots) to which the Lot Owners have the right to use and enjoy, or over which the Association has an easement or right of duty for maintenance for the use and enjoyment of the Lot Owners, and for the use, maintenance, repair, and/or replacement of which the Association may apply assessment monies as further provided herein.

D. Contract Seller. "Contract Seller" shall mean and refer to Orchard Estates, an Indiana general partnership, which partnership is the seller of the real estate described in Exhibit A pursuant to the Agreement to Purchase Real Estate described above.

E. Developer. "Developer" shall mean and refer to the Old North Salem Road Development Group, Inc., 2702 North Talbott Street, Indianapolis, Indiana 46205.

F. Development. "Development" shall mean and refer to the subdivision of the real estate described in Exhibit A.

G. Lot. "Lot" shall mean and refer to any parcel of real estate, whether residential or otherwise, described by one of the plats of the Development which is recorded or to be recorded in the Office of the Recorder of Hendricks County, Indiana.

H. Owner. "Owner" shall mean and refer to a person who has or is acquiring any fee title or interest in and to a Lot.

I. Restrictions. "Restrictions" shall mean and refer to the agreements, covenants, conditions, restrictions, easements, assessments, changes, lines and all other provisions set forth in this Declaration, as the same may be amended from time to time.

## II. Orchard Estates Property Owners Association, Inc.

A. In General. 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 "Orchard Estates Property Owners Association, Inc.," which is referred to herein as the "Association." Every Owner of a Lot in the Development shall become a member of the Association in accordance with the terms and conditions of this Declaration, and the Articles of Incorporation and By-Laws of the Association and shall be subject to all the requirements and limitations imposed in these Restrictions on other Owners of Lots within the Development and on members of the Association, including those provisions with respect to the payment of an annual charge.

B. Classes of Membership. The Association shall have two (2) classes of membership with the following voting rights:

Class A. Class A members shall consist of all fee owners of Lots in the Development with the exception of the Developer. When more than one (1) person holds a fee interest in any Lot, all such persons shall be members. However, Class A members shall be entitled to only one (1) vote for each Lot owned, and the vote for any Lot shall be exercised as the Owners thereof



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may agree among themselves. Class A membership shall automatically terminate when such member ceases to be a fee owner of Lots, and any person acquiring a fee ownership in any Lot shall automatically become a Class A. member. Any person who holds an interest in a Lot merely as security for the performance of an obligation shall not be a member of the Association until such person realizes upon the security and takes a fee interest in and to such Lot.

**Class B.** The Class B member(s) shall be the Developer and all of its successors and assigns designated by it in a written notice mailed or delivered to the registered agent of the Association. Each Class B member shall be entitled to three (3) votes for each Lot in the Development in which it has fee ownership. Class B membership shall cease and be automatically converted to Class A membership upon the happening of either of the following events, whichever occurs first:

(a) when the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership; or

(b) on August 1, 1993.

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

**D. Professional Management.** No contract or agreement for professional management of the Association nor any other contract with Developer shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

**E. Responsibilities and Purposes of the Association.** Unless otherwise limited in this Declaration, or in the Articles of Incorporation and By-Laws of the Association, the Association shall have the power to exercise all of the statutory powers specified in Section 4 of the Indiana Not-for-Profit Corporation Act of 1971, as it may be amended from time to time. Consistent with the foregoing, and not by way of limitation, the Association is created and formed for the following specific purposes:

1. **On-going Legal Entity.** To create an on-going legal entity responsible for the continuous and adequate maintenance of the Development, and to provide any other services that the Board of Directors of the Association may deem appropriate for the health, safety and welfare of the members and the protection and enhancement of property values within the Development.
2. **Operation of Common Areas.** To provide a means whereby the Common Areas and such other areas and recreational facilities within the Development or in the proximity thereto as may be conveyed to the Association, established by it, or used by it, may be operated, maintained, repaired or replaced.
3. **Enforcement of Regulations.** To provide a means for the promulgation and enforcement of regulations necessary to govern the use and enjoyment of such Common Areas and other areas and recreational facilities within the Development as may be conveyed to or used by the Association.
4. **Regulation of Design and Construction.** Subject to the provisions of Section II hereof, to regulate design and construction throughout the Common Areas and the Development during the initial development stages and afterwards, in order to promote a high quality, aesthetically pleasing, architecturally sound environment and to generally maintain and enhance property values throughout the Development.



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5. Regulation of Offensive Activities. To regulate noxious or offensive activities throughout the Common Area and Properties which may become unreasonable annoyances or nuisances to members of the Association.

III. Delegation of Enforcement to the Association. The Developer hereby delegates and assigns to the Association, its successors and assigns, the responsibility of preserving and enhancing the values of properties subject to the Restrictions set forth in this Declaration. The Association shall cause a Development Review Committee to be formed in accordance with this Declaration and the Association's By-Laws to perform the duties and to exercise the powers enumerated below.

IV. The Orchard Estates Development Review Committee. The Committee has the right to promulgate and enforce reasonable rules to regulate the external design, appearance, use, location and maintenance of Lots, land and improvements subject to the Restrictions in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

A. Powers of the Committee. In order to execute the responsibility provided for in this Section IV, the Committee shall have the powers to:

1. Approve or disapprove plans and specifications for all proposed new construction on land subject to the Restrictions.

2. Approve or disapprove plans and specifications for all improvements of property on land subject to the Restrictions. The Committee shall determine that residential dwelling structures or other buildings and grounds subject to the Restrictions are maintained in a satisfactory manner consistent with the Restrictions.

NO RESIDENTIAL DWELLING STRUCTURE, OTHER BUILDING, NEW CONSTRUCTION, IMPROVEMENTS, CHANGES NOR ALTERATIONS OF ANY TYPE OR KIND SHALL BE CONSTRUCTED OR PLACED ON ANY LOT IN THE DEVELOPMENT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE COMMITTEE. SUCH APPROVAL SHALL BE OBTAINED ONLY AFTER WRITTEN APPLICATION HAS BEEN MADE TO THE COMMITTEE BY THE LOT OWNER REQUESTING AUTHORIZATION FROM THE COMMITTEE. SUCH WRITTEN APPLICATION SHALL BE IN A MANNER AND FORM PRESCRIBED FROM TIME TO TIME BY THE COMMITTEE, AND SHALL BE ACCOMPANIED BY THREE (3) COMPLETE SETS OF PLANS AND SPECIFICATIONS FOR ANY SUCH PROPOSED STRUCTURE, BUILDING, CONSTRUCTION, IMPROVEMENT, CHANGE OR ALTERATION.

B. Duties of the Committee. The Committee shall have up to thirty (30) days in which to approve or reject any plans submitted pursuant to this Section II or any other provision in this Declaration.

C. Submission of Plans and Specifications to the Committee. All plans and specifications must be submitted to the Committee for approval, with three (3) duplicate copies, and conform to the following minimum specifications:

1. All plans, drawings and blueprints of proposed residential dwelling structures or other buildings shall be of professional quality and drawn to a scale of not less than 1/4" = 1'. All plot plans shall be drawn to a scale of not less than 1" = 30'.

2. Plans shall be submitted for each of the following elements of new construction: plot plan; front elevation; rear elevation; side elevation; floor plan of each floor; and foundation plan.

3. All plans shall specify primary building material proposed to be used, i.e. brick, stone, wood, etc.

4. All plot plans shall provide and identify the following items: proposed location of residential dwelling structure or other buildings, and driveway on lot; location of



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any easements and undisturbed areas; location of proposed fences, screening, walkways, and walls; existing and proposed grades; location of all trees outside of the building and parking areas which are of a twelve (12) inch caliper diameter; and the type of trees designated on the plot plan.

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

**E. Inspection by the Committee.** The Committee may inspect any and all such work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

**V. Architectural Guidelines.** The construction of any new project, structure, building or improvement or any addition to an existing structure or building or any exterior alteration or change to an existing structure or building must have the written approval of the Committee prior to the commencement of such construction project, structure, building, improvement, addition, alteration or change. Any residential dwelling structure or other building or improvement, addition, alteration or change to an existing residential dwelling structure or other building shall be compatible with the design character of the original structure or building. Any new detached structures shall be compatible with the current residential dwelling structure or other building. Any and all construction projects, structures, buildings, improvements, additions, alterations or changes to existing structures shall, in all respects, conform to the Restrictions and other limitations set forth in this Declaration.

**VI. Character of the Development.**

**A. In General.** Every numbered Lot in the Development, unless it is otherwise designated by the Developer, is a residential Lot and shall be used exclusively for single-family residential purposes. No structure shall be erected, placed or permitted to remain upon any of the Lots except a single-family residential dwelling structure and one outbuilding as is usually accessory to a single-family residential dwelling structure. For purposes of this provision, "outbuilding" shall mean and refer to a detached garage structure. Such outbuilding shall not exceed one thousand (1,000) square feet in size and shall be constructed of materials compatible with the design character of the current or original structure. No such outbuilding shall be permitted if the plans and specification for the primary residential dwelling structure provide for, or if the original or existing structure includes, an attached garage thereto. All tracts of land located within the Development which have not been designated by numbering as Lots in the recorded plats shall be Common Areas and shall be used in a manner consistent with the zoning and use designated in a master plan by the Developer.

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

**C. Occupancy or Residential Use of Partially Completed Dwellings House Prohibited.** No residential dwelling structure or other building constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the residential dwelling structure shall have been substantially completed in accordance with the approved building plan shall be made by the Committee and such decision shall be binding on all parties.



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D. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations of affecting the Development, all of which are incorporated herein by reference.

VII. Restrictions Concerning Size, Placement and Maintenance of Residential Dwelling Structures and other Structures.

A. Minimum Living Space Areas. The minimum square footage of living space of all residential dwelling structures or other buildings constructed on various lots in the Development shall be One Thousand Five Hundred (1,500) square feet. However, the minimum square footage of living space of residential dwelling structures constructed on Lots numbered 29-41, 43-50, 65-70 and 91-92 shall be One Thousand Seven Hundred (1,700) square feet.

B. Masonry. Fireplaces and/or chimneys shall consist of brick or stone masonry. Metal flues shall be covered with masonry or stone veneer. All residential dwelling structures shall have a minimum of a fifty percent (50%) area of brick or stone veneer to the elevation facing the street.

C. Tree Preservation. No tree of more than twelve (12) inches caliper diameter outside of any building and parking area of a Lot, shall be removed without the prior written approval of the Committee and such approval shall be granted only upon proof of unusual hardship in the practical utilization of the Lot. Accordingly, all plot plans submitted to the Committee for approval shall designate thereon all trees more than twelve (12) inches caliper diameter outside of the building and parking area and removal or destruction of such trees without the consent of the Committee shall result in liability to the Owner to replace said trees.

D. Color and material of Homes. Colors of residential dwelling structures and any related buildings, improvements, additions, changes or alterations shall generally consist of subdued, earthen tones or white and be compatible with other structures in the immediate area.

E. Fences, walls and Screening. All fences, walls, screens, and similar such improvements shall be subject to the restrictions and terms of this Subsection E. No fence or screen shall obstruct sight lines for vehicular traffic. Except for decorative fences (as defined by the Committee), fences shall not be nearer to the front of a residential dwelling structure than the rear foundation line of such residential dwelling structure. Fences may be privately installed but shall be constructed to professional levels of quality. Non-professional installed fences shall be subject to inspection by the Committee following completion thereof and final approval of the Committee with respect thereto, if any, shall be withheld until successful completion of such inspection.

1. Height Restriction. The specific fence height restrictions are as follow:

a. Unless the rear line of the particular Lot abuts a major arterial roadway or offers some circumstances unique to the particular property fencing and walls above the grade shall not exceed four (4) feet above grade.

b. Patio screens/privacy fences shall not exceed six (6) feet in height.

2. Material and Finish:

a. Wood fencing or screening shall conform with the architectural design of the community.

b. Chain link or other galvanized metal fencing shall not be permitted unless it is vinyl coated or covered with similar coated material.



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c. All fencing or screening shall have finished material on both sides, subject however, to the condition that, if only one side has finished materials, that side must face the public side or adjoining property.

d. Walls above grade shall be constructed of natural stone masonry or attractive timber.

**F. Landscaping and Plantings.** Landscape improvements include, subject to the Committee's discretion and regulations, improvements such as terraces, retaining walls, unusual vegetation coverings, walks, bank treatment, detached patios, and cabanas. With respect to such proposed improvements, the applicant or Lot Owner shall submit to the Committee:

1. Three (3) copies of a plot plan showing proposed location of the property improvements on the Lot and existing grades at the nearest property line with proposed finished grades as applicable to the improvement.

2. Three (3) copies of additional plans as required in order to evaluate the appearance of the improvement and type of construction including the type of material used, the color of the finished improvement and type of vegetation, if any.

Landscaping and planting in general shall not require approval of the Committee. However, trees, hedges and shrubs which restrict sight lines for vehicular traffic shall be cut back or removed. Shrubs shall not unduly restrict the view of the amenities from other properties. Special landscaping beyond that normally associated with a single-family residential dwelling structure or similar such buildings is required to be approved by the Committee prior to installation. Satisfactory lawns, by seeding or sodding the Lot, shall be required as soon as possible following completion of a residential dwelling structure, weather conditions permitting.

**G. Exterior Antennas.** No television or radio antennas may be erected by any Lot Owner on the exterior of a residential dwelling structure or similar such building in the Development. However, inside attic antennas are technically sufficient and acceptable.

**H. Swimming Pools.** Construction of permanent backyard swimming pools must be approved by the Committee prior to commencement of any construction work related thereto. Temporary swimming pools above grade having a depth of less than twenty-four (24) inches shall not require such approval. ®

An application for the construction of a permanent type backyard swimming pool shall be accompanied by an application for an acceptable fence design. The design shall conform to county and municipal regulations for such fencing, if any.

**I. Tennis Courts, Racquetball Courts, Paddle Ball Courts, etc.** Construction of tennis courts, racquetball courts, paddle courts, squash courts, etc. are required to be approved by the Committee prior to commencement of any construction work related thereto. Lighted courts are not permitted. An application to the Committee for the construction of a racquet sport court shall be accompanied by an application for an acceptable fence design.

**J. Driveways and Patios.** All driveways shall be paved, such pavement consisting of asphalt or concrete. Approval of the Committee shall be required prior to construction of any extension, widening or rerouting of existing driveways.

**K. Retaining Walls.** Approval of the Committee shall be required prior to installation of any retaining wall. Retaining walls which divert ground water onto adjoining properties or which otherwise substantially change the existing drainage pattern are not permitted.

**L. Play Equipment.** Children's play equipment, including but not limited to, sandboxes, temporary swimming pools having a depth



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of less than twenty-four (24) inches, swing and slide sets, playhouses and tents shall be permitted without prior approval of the Committee, provided, however, that such equipment shall not be more than six (6) feet high, shall be in good repair (including paint) and every reasonable effort shall have been made to screen or shield such equipment from view. With respect to equipment higher than six feet, prior approval by the Committee of the design, location, color, material and use shall be required.

**M. Mailboxes.** Size, location, height and composition of every mailbox shall be approved by the Committee prior to installation and shall conform to specifications set forth by the United States Postal Service and/or Postmaster General.

**N. Diligence in Construction.** Each and every residential dwelling structure or other building erected on any and all Lot(s) shall be completed within twelve (12) months immediately following the commencement date of such construction. No improvement which has been partially or totally destroyed by fire or otherwise, shall be allowed to remain in such state of disrepair or damage for more than three (3) months from the time of such destruction or damage.

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

1. Mow the Lot at such times 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 a state of repair or maintenance as to avoid their becoming unsightly.
6. Within sixty (60) days following completion of a house on a Lot, the Owner shall landscape the Lot, weather permitting.

**P. Association's Right to Perform Certain Maintenance.** In the event that any Owner of a Lot in the Development shall fail to maintain his Lot and any improvements situated thereon in accordance with the provision of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost of such maintenance incurred by the Association shall be collected in a reasonable manner from the Owner. Neither the Association nor any of its agent, employees, or contractors shall be liable for any damage which may result from maintenance work performed hereunder. Powers of enforcement of such lien shall be under the same terms and conditions of enforcement of lien as set forth in Section \_ hereof.

**Q. Miscellaneous.**

1. Exterior lighting shall not be directed in such a manner as to create unreasonable annoyance to adjacent properties.
2. Trash and garbage containers shall not be permitted to remain conspicuous except on days of trash collection.
3. Lot owners shall make a reasonable effort to keep



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garage doors closed except during times of actual use of the garage facility.

4. Collapsible and removal clothes lines will be permitted by the Committee but permanent clothes lines will not be approved by the Committee.

DEPENDING UPON THE ELEVATION OF THE FIRST FLOOR LEVEL AND OTHER LOWER LEVELS OF ANY RESIDENTIAL DWELLING, STRUCTURE OR OTHER BUILDING CONSTRUCTED IN THE DEVELOPMENT, THE OWNER THEREOF IS ADVISED THAT THE GRADE BETWEEN SAID FLOOR LEVELS AND THE GRAVITY SEWER CONNECTION AT THE STREET SHOULD BE DESIGNED TO INSURE ADEQUATE FALL AND THEREBY AVOID POSSIBLE BACK UP OF SANITARY SEWAGE DURING PEAK FLOW PERIODS. MARGINAL GRADE DIFFERENCES BETWEEN THE FLOOR LEVELS AND THE GRAVITY SEWER CONNECTION AT THE STREET SHOULD BE CORRECTED WITH APPROPRIATE CHECK VALVING.

#### VIII. General Prohibitions.

A. In General. No noxious or offensive activities shall be carried 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 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 an unreasonable annoyance or nuisance.

D. Garbage, Trash and Other Refuse. No Owner of a Lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any Owner accumulate or permit the accumulation of out of doors of such refuse on his Lot except as may be permitted in Subparagraph E, below. All residential dwelling structures or similar such buildings built in the Development shall be equipped with a garbage disposal unit.

E. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any residential dwelling structure or other building in the Development shall be buried below the surface of the ground. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

F. Model Homes. No Owner of any Lot in the Development shall build or permit the construction of any residential dwelling structure or other building upon said Lot, which structure or building is to be used as a model home or exhibit, without the prior approval of the Developer.

G. Temporary Structures. No temporary house, tent, garage or other outbuilding shall be placed or erected on any Lot.

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

I. Utility Services. Utility services shall be installed underground in such a manner as to minimize removal of trees.

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



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K. Trailers, Mobile Homes, Etc. No trailers, mobile homes, barns or other similar structures shall be placed or constructed on any Lot in the Development without the prior written consent of the Committee.

IX. 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 the said Lots as a site for a single-dwelling residential structure, such Lot Owner shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as the Lots remain improved with a one-single dwelling residential structure.

X. Remedies.

A. In General. Any party 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 the Developer shall not be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

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

XI. Covenant For Maintenance Assessments.

A. Creation of the Lien and Personal Obligations of Assessments. Each Owner of any Lot in the Development, except the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

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

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



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D. Notice and Quorum for Any Action Authorized Under Subsections C and D. Written notice of any meeting of the Association called for the purpose of taking any action authorized under Section C or D shall be sent to all members of such Association not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of the aggregate votes of the membership of shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

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

F. Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due, then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such Lot, binding upon the then Lot Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Lot Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Lot Owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action in favor of the prevailing party.

No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

G. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

H. Suspension of Privileges and Membership. Notwithstanding any other provision contained herein, the Board of Directors of the



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Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member or associate members:

(1) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member or associate member remains unpaid;

(2) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Association; and,

(3) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

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

**XIII. Real Estate Taxes.** Real estate taxes on each Lot, and on any residential dwelling structure or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Areas shall be paid by the Association.

**XIV. Utilities.** Each Owner shall pay his or her own utilities which shall be separately metered to each Lot and/or residential dwelling structure and related improvements.

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

**XVI. Duration.** The foregoing covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under such parties until December 31, 2037, at which time this Declaration shall have no further force or effect. This Declaration may be amended, or revoked in whole or in part, by the Association at any time in accordance with Article XVIII hereof and upon the affirmative vote of an absolute majority of the eligible votes entitled to be cast by members of the Association.

**XVII. Severability.** Each and every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

**XVIII. Amendments or Revocation.** This Declaration may be amended, or revoked in whole or in part, by an instrument signed by the Association. Any amendment or revocation must be recorded in the Office of the Recorder of Hendricks County, Indiana. No such amendments or revocation shall be effective unless written notice of the proposed amendment or revocation is sent to every Owner of a Lot at least thirty (30) days in



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advance of recordation thereof, and no such amendment or revocation shall be effective with respect to any permanent easements or other permanent rights or interest relating to the Common Areas created herein.

IN TESTIMONY WHEREOF, witness the signature of Developer and the Contract Seller this 14th day of October, 1987.

OLD NORTH SALEM ROAD DEVELOPMENT GROUP, INC. (the "Developer")

By: C. Neil Ott  
Printed: C. Neil Ott  
Title: President

By: Joseph A. Giacoletti  
Printed: Joseph A. Giacoletti  
Title: Secretary/Treasurer

ATTEST:

James B. Funk  
Printed: James B. Funk

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared C. Neil Ott and Joseph A. Giacoletti, the President and the Secretary/Treasurer, respectively, of Old North Salem Road Development Group, Inc., who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for and on behalf of said Corporation, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 14th day of October, 1987.

James L. Polk  
Notary Public  
JAMES L. POLK  
Printed

My Commission Expires: 7-9-91  
County of Residence: Marion

This Instrument Prepared By: Timothy P. Brazill, Esq., Follen Brazill & Bennett, 47 South Meridian Street, Suite 305, Indianapolis, Indiana, 46204, (317) 632-4448.



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Amendment to The Declaration of Covenants, Conditions and Restriction of Orchard Estates, recorded as Instrument No. 5941, Book 113, pages 126-139, dated November 4, 1987. Orchard Estates (Darville Plat Book, ~~148~~ 148A 6).

On November 15, 1989, members of Orchard Estates Property Owners Association, Inc. voted to amend the Declaration of Covenants, Conditions and Restriction of Orchard Estates.

The amendment was to Section VII. A. Minimum Living Space Area, page 131, which presently reads:

"The minimum square footage of living space of all residential dwelling structures or other buildings constructed on various Lots in the Development shall be One Thousand Five Hundred (1,500) square feet. However, the minimum square footage of living space of residential dwelling structures constructed on Lots numbered 29-41, 43-50, 65-70, and 91-92 shall be One Thousand Seven Hundred (1,700) square feet."

The section was amended to read:

"The minimum square footage of living space of all residential dwelling structures or other buildings constructed on various Lots in the Development shall be One Thousand Eight Hundred (1,800) square feet in all phases."

All property owners have been notified of the amendment and were given 30 days to respond.

This statement has been prepared by Debby Rodney, Secretary, Orchard Estates Property Owners Association, on January 15, 1990.

ENTERED FOR RECORD

BOOK

120

JAN 18 1990

*Debby Rodney*  
Debby Rodney, Secretary



STATE OF INDIANA  
COUNTY OF HENDRICKS

Subscribed and sworn to before me this 16th day of January, 1990.

My Commission expires: Nov. 18, 1990  
Resident of Hendricks County.

*Pat Blawie*  
Notary Public



Amendments to the Declarations of Covenants, Conditions and Restriction of Orchard Estates, recorded as Instrument No.5941 Book 113 dated November 4, 1987. Orchard Estates (Danville Plat Book 14)

On August 11, 2000, members of Orchard Estates Property Owners Association, Inc. voted to amend the Declaration of Covenants, Conditions and Restriction of Orchard Estates.

The amendment was to Section VI. A. Character of the Development, which presently reads:

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

This section was amended to read:

In General. Every numbered lot in the Development unless it is otherwise designated by the Developer, is a residential Lot and shall be used exclusively for single-family residential purposes, with the exception of Approved Mini-Barns. The location sight of the mini-barn must be approved by the Development Review Committee, after consulting adjacent neighbors, before construction may begin. Final approval will be granted or denied by the Development Review Committee. The mini-barn must be a permanent structure made to complement the house on the lot where it is located. The minimum size is 10ft x 12ft. The maximum size is 12ft x 20ft. It must have a minimum of 6ft walls, maximum of 9ft walls, from ceiling to floor, before the roof. It must be made of wood or masonry. The roof must have shingles as much the same style and color as possible to match shingles used on the house on the lot. The mini-barn must have doors that are a minimum of 3ft wide and a maximum of 5ft wide. If the doors are larger than 3ft, double doors must be used. No overhead doors in the mini-barn. No visible space can be seen between the ground and the structure. Wood type skirting may be used. Only one freestanding storage structure per lot. The mini-barn must be landscaped and painted within 60days, weather permitting.

All property owners have been notified of the amendment and were given more than 30 days to respond.

This statement has been prepared by JoAnn Engel, President, Orchard Estates Property Owners Association, on January 10, 2001

200100000812  
Filed for Record in  
HENDRICKS COUNTY IN  
THERESA D LYNCH  
01-10-2001 03:00 pm  
AMEND COVEN 11.00

JeAnn Engel, President Book 212 Page 80B - 80B

*JeAnn Engel*  
President

CHICAGO TITLE



*JeAnn Engel*  
*Hendricks - Hendricks*  
*March 2, 2008*