

9006717

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FOR RECORD

DECLARATION OF COVENANTS,

Mar 29 11 25 AM '90

CONDITIONS AND RESTRICTIONS

SHARON K. CHERRY
RECORDER

FOR ROHRER MEADOWS

~~HEREBY~~ CONVEYANCE made this 13 day of MARCH 1990 by THE

C. P. MORGAN CO., INC., an Indiana corporation ("Developer"),

WITNESSETH THAT:

WHEREAS, Developer is the owner of certain property located in Hamilton County, Indiana, which is more particularly described in Exhibit "A", attached hereto and by reference made a part hereof, which land has been subdivided for development of single family housing (the "Development") as more particularly described on the plats thereof recorded on Mar. 29, 1990, in Noblesville, Indiana, as Instrument Nos. 9006718, 9006719, Book No. __, Pages __ and future plats thereof to be recorded in the Office of the Recorder of Hamilton County, Indiana (the "Plats"); and

WHEREAS, Developer is improving and selling the residential lots situated within the Development and, before doing so, desires to subject and impose upon all real estate located within the Development mutual and beneficial restrictions, covenants, conditions and charges (the "Restrictions") under a general plan or scheme of improvement and maintenance for the benefit of the lots and lands in the Development and future owners thereof:

WHEREAS, Developer has caused or will cause the incorporation of Rohrer Meadows Homeowners' Association, Inc., an Indiana not-for-profit corporation, for performing certain duties hereinafter set forth:

NOW, THEREFORE, Developer hereby declares that all of the lots and lands located within the Development shall be held, sold, conveyed 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 maintenance of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real

INSTR. # 9006717

property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Developer's successors in title to any real estate in the Development.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Rohrer Meadows Homeowners' Association, Inc., an Indiana not-for-profit corporation formed or to be formed, and its successors and assigns.

Section 2. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 3. "Common Areas" shall mean and refer to those areas and all improvements located thereon for recreation areas, theme structures, street entrances or mounds thereon, lights, park areas, street landscaping, and any other areas so designated on the Plats.

Section 4. "Developer" shall mean and refer to The C. P. Morgan Co., Inc., an Indiana corporation.

Section 5. "Development" shall mean and refer to the residential development which now exists or may hereafter be created within the real estate located in Hamilton County, Indiana, which is more particularly described in Exhibit "A" attached hereto and by reference made a part hereof.

Section 6. "Development Period" shall mean and refer to the period of time during which Developer owns any one (1) Lot within the Development.

Section 7. "Easements" shall mean and refer to certain "Drainage Easements" and "Utility Easements", and those certain "Signage Easements", which are reflected on the Plats.

Section 8. "Lot" shall mean any parcel of real estate, whether residential or otherwise, described by the Plats.

ARTICLE II

**ASSOCIATION MEMBERSHIP
AND VOTING RIGHTS**

Section 1. Members. Every owner of a Lot which is subject to assessment and Developer shall be a member of the Association.

Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Class of Members. The Association shall have two (2) classes of membership:

Class A. Class A members shall be all owners of Lots within the Development, with the exception of the Developer, and such members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member shall be the Developer, which shall be entitled to three (3) votes for each Lot owned at any time. Class B membership of Developer shall expire at such time as Developer no longer retains an ownership interest in the Development.

Section 3. Association. The Class A and B members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4. Mandatory Membership. Membership shall be mandatory with mandatory assessments as hereinafter provided and shall be subject to any reasonable rules and regulations of the Association not in conflict with the provisions hereof, the Articles of Incorporation and By-Laws of the Association and any applicable federal, state or local constitution, statute, ordinance, rule or regulation. Such rules and regulations shall be applied uniformly and in a non-discriminatory manner except as provided herein.

ARTICLE III

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Personal Obligation and Lien of Assessments. Developer, for each Lot owned within the Development, hereby covenants and each other owner is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and

(2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The assessments described herein shall be mandatory upon all of the Lots and shall commence at the time a Lot is conveyed to an owner (other than to a builder during the construction period). The annual 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 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 became due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by such successors.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the members of the Association and for the maintenance of the Easements and Common Areas and other purposes as specifically provided herein.

Section 3. Maximum Annual Assessments.

(a) Until December 31, 1991, the maximum annual assessment on any Lot conveyed by Developer shall be One Hundred Fifty and no/100 Dollars (\$150.00) per Lot.

(b) Thereafter, the maximum annual assessment may be increased by not more than twenty per cent (20%) in any year by the Board of Directors.

(c) The maximum annual assessment may be increased by more than twenty per cent (20%) in any year by a vote of a majority of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any property 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.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members at least ten (10) days in advance of the meeting. The presence in person or of proxies of members entitled to vote constituting the representation of a majority of the total votes shall constitute a quorum.

Section 6. Uniform Rate of Assessment. Both annual and special assessments for capital improvements and operating deficits must be fixed at a uniform rate for all members and may be collected on an annual or monthly basis as determined by the Board of Directors.

Section 7. Due Dates and Notices. The Board of Directors shall fix any increase in the amount of the annual 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 Board of Directors shall deem appropriate shall be sent to every member subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments as to 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.

Section 8. 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 (pursuant to Section 7 hereof), 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 owner, his heirs, devisees, successors and assigns. The personal obligation of the then 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 any 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 eighteen per cent (18%) per annum and the Association may bring an action at law against the 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 attorneys' fee to be fixed by the court, together with the costs of the action in favor of the prevailing party.

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

Section 9. Subordination of Lien to Mortgages. The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage. No sale or transfer shall relieve any Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IV

DEVELOPER'S RIGHTS

So long as Developer owns any Lot in the Development, Developer shall, at its option, have the right to perform the functions of the Association and the Board of Directors and to maintain, and/or manage the Development. Developer's right to manage shall include the right to set annual assessments subject to the limitations herein contained and provided that such assessments shall be reasonably related to the actual cost of maintaining and operating the Easements and Common Areas and to adopt rules and regulations governing the use of the Development. Such rights shall be subject to the following:

- (a) Developer may manage or cause to be managed the Development and it shall have the right to assess and collect the maximum annual assessment as set forth in

Article III, Section 3 above. After December 31, 1991, Developer may increase the amount of annual assessment so long as such increase shall not exceed the maximum percentage increase permitted by such Article III, Section 3, without vote of the members, unless a greater increase is approved by the membership as therein provided.

(b) Developer shall have the right to transfer the management of the Development, or any part thereof, to the Association at any time it believes that the Association is able to manage the Development without undue difficulty. Developer's right to manage the Development shall expire when Developer no longer retains any ownership interest in any portion of the Lots. So long as the management of the Development is being borne by Developer, the rights of the Association to manage the Development and set assessments shall be suspended.

Notwithstanding any provision hereof to the contrary, at all times and from time to time prior to the sale of the last Lot in the Development, Developer, its successors and assigns, hereby reserve the right: (a) to erect and maintain within the Development all advertising signs, banners, lighting and other sales aids or devices for the purpose of promoting the sale of residences and Lots within the Development; (b) to maintain sales, business or construction offices or trailers within the Development, including model homes and model display areas to facilitate the construction and sale of Lots and residences within the Development; and to utilize the Common Areas for ingress, egress and parking in connection with the construction and sale of Lots and proposed improvements within the Development.

ARTICLE V

MAINTENANCE BY ASSOCIATION

The Association shall provide all maintenance and repairs to the Easements and Common Areas as deemed necessary or appropriate by the Board of Directors. The Board shall further make reasonable arrangements for snow removal within the Development.

In the event that the need for maintenance or repair is caused through the willful or negligent act of any member, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment for which such member is liable, shall be deemed to be a mandatory assessment as to any Owner and shall be the personal obligation of such member enforceable as provided in Article III, Section 8.

ARTICLE VI

INSURANCE

Section 1. Liability Insurance. The Association may purchase liability insurance in such amount or amounts and in such form as the Board of Directors shall deem appropriate from time to time. Such liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, Developer (if it has any interest in the Properties), all Owners and all other persons as the Board of Directors may determine.

The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. 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, Developer, the Association, its Board of Directors and any managing agent acting on behalf of the Association.

Section 2. Casualty and Restoration. Damage to or destruction of the Easements or Common Areas or any portion thereof or improvements thereof shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose.

ARTICLE VII

RESERVATION OF EASEMENTS

The Easements relating to utilities are hereby created and reserved for the use of all public utility companies (not including

transportation companies), governmental agencies and the Association, for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. The Easements relating to drainage are hereby created and reserved: (i) for the use of Developer during the Development Period for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Development and adjoining property and (ii) for the use of the Association and the Hamilton County Drainage Board for access to and maintenance, repair and replacement of such drainage system, provided, however, that the owner of any Lot in the Development subject to an Easement shall be required to keep the portion of said Easement on his Lot free from obstructions so that the surface water drainage will be unimpeded. The delineation of the Easements shall not be deemed a limitation on the rights of any entity for whose use any such Easement is created and reserved to go on any Lot subject to such Easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this paragraph. No permanent structures, except decks, fences, patios, driveways or walkways, which structures shall not unreasonably impair the use of the Easements, shall be created or maintained upon said Easements. The owners of Lots in the Development shall take and hold title to the Lots subject to the Easements herein created and reserved.

ARTICLE VIII

GRANT OF EASEMENT

Developer hereby conditionally grants, conveys and declares a non-exclusive easement for the reasonable use and enjoyment of the park area of the Development (the "Park"), as such is more particularly described on the Plats, for the benefit of certain real estate heretofore subdivided for development and known as Rohrer Woods as described on the plats thereof recorded on December 2, 1988, in Noblesville, Indiana, Section I as Instrument No. 8825612, Book No. 16, Pages 86-88, and Section II as Instrument No. 8825613, Book

No. 16, Pages 89-91, in the Office of the Recorder of Hamilton County, Indiana ("Rohrer Woods"). The easement granted herein is subject to the following conditions:

(a) Rohrer Woods Homeowners' Association, Inc., an Indiana not-for-profit corporation ("Woods Association"), prior to the use and enjoyment of the Park by Rohrer Woods, shall elect to contribute one-half (1/2) of the total annual costs associated with the maintenance, repair or replacement of and insurance for the Park, its facilities and landscaping, and shall notify the Developer, or after the Development Period the Association, in writing of such election;

(b) The terms and conditions as contained or may be contained in this Declaration or any amendments thereto and the Plats; and

(c) Any rules and regulations or restrictions as may be adopted by the Association or imposed by any governmental authority.

The easement granted herein shall, upon receipt of the written notice of election described in subparagraph (a) of this Article VIII, and so long as Rohrer Woods continues to contribute towards the maintenance of the Park as described in subparagraph (a) herein, be permanent, shall burden the Park and benefit Rohrer Woods, and shall be binding upon Developer, Association, and their successors and assigns, and shall benefit Rohrer Woods.

ARTICLE IX.

GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Developer, the Association, the persons in ownership from time to time of the Lots or other real estate within the Development and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and 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.

Section 2. Amendment. This Declaration may be amended at any time by an instrument recorded in the Office of the Recorder of Hamilton County, Indiana, executed by the Association and approved by at least a majority of Class A and B members; provided, however, none of the rights or obligations of Developer reserved hereunder may be amended or changed without Developer's written and recorded approval. This Declaration may be amended by Developer, if it then has any ownership interest in the Development, at any time within two (2) years after the recordation hereof by written instrument recorded in the Office of the Recorder of Hamilton County, Indiana. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-five (25) years from the date of recordation in the Office of the Recorder of Hamilton County, Indiana, and shall be automatically extended for successive periods of ten (10) years each unless prior to the expiration of any such ten (10)-year period it is amended in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 3. Annexation. Additional property may be annexed to the Development by Developer within three (3) years from the date of recordation hereof by the recording of a declaration applicable to such annexed real estate which incorporates the terms of this Declaration. Thereafter, additional property may be annexed to the Developer with the consent of a majority of the members of the Association by the recording of a declaration applicable to such annexed real estate which incorporates the terms of this Declaration.

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed as of the date first above written.

THE C. P. MORGAN CO., INC.


By: William Blake
William Blake, Vice President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared WILLIAM BLAKE, the VICE PRESIDENT of The C. P. Morgan Co., Inc., an Indiana corporation, who after having been duly sworn, acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for and on behalf of said corporation.

DATED this 13th day of MARCH, 1990.

Deana H. Guyton
(DEANA H. GUYTON) Notary Public



My Commission Expires:
12/4/92

My County of Residence is:
MARION

This Instrument was prepared by Brian J. Tuohy, Attorney.

X:G11\1020.bem

Part of the Northwest Quarter of Section 24, Township 18 North, Range 3 East in Hamilton County, Indiana described as follows:

Beginning at a square head bolt at the Southeast corner of said quarter; thence on an assumed bearing of South 88 degrees 39 minutes 50 seconds West along the South line thereof and along the North line of Hunters Creek South Section Two the of which is recorded in Plat Book 13, page 103 in the Office of the Recorder of Hamilton County, Indiana, a distance of 1414.58 feet to a 5/8 inch rebar with a yellow cap marked "Schneider Engr. Corp." at the Southeast corner of Rohrer Woods Section Two the plat of which is recorded in Plat Book 16, page 89-91; thence North 00 degrees 00 minutes 00 seconds East along the East line of said Rohrer Woods Section Two a distance of 546.24 feet to the Northeast corner thereof; thence South 88 degrees 39 minutes 22 seconds West along the North line of said Rohrer Woods Section Two a distance of 3.00 feet to a 5/8 inch rebar with yellow cap marked "Schneider Engr. Corp." at a Southeast corner of Hunters Creek Village Section Four the plat of which is recorded in Plat Book 12, pages 28-30; thence North 00 degrees 09 minutes 58 seconds West along an East line of said Hunters Creek Village Section Four a distance of 111.33 feet to a 5/8 inch rebar with yellow cap marked "Schneider Engr. Corp." at a corner of said Hunters Creek Village Section Four; thence North 88 degrees 28 minutes 33 seconds East along a South line of said Hunters Creek Village Section Four a distance of 756.09 feet to a 5/8 inch rebar with yellow cap marked "Schneider Engr. Corp." at a Southeast corner thereof; thence continuing North 88 degrees 28 minutes 33 seconds East along the Easterly extension of said South line a distance of 120.00 feet to a 5/8 inch rebar with yellow cap marked "Schneider Engr. Corp."; thence South 00 degrees 09 minutes 54 seconds East parallel with the East line of the Northwest Quarter a distance of 147.52 feet to a 5/8 inch rebar with yellow cap marked "Schneider Engr. Corp."; thence North 89 degrees 44 minutes 30 seconds East a distance of 539.87 feet to a railroad spike on the East line of said Quarter; thence South 00 degrees 09 minutes 54 seconds East along said East line a distance of 502.73 feet to the point of beginning.

This Instrument Recorded 3-29 1980
Sharon K. Chewy, Recorder, Hamilton County, IN

9006717

INSTR. # 9006718

INSTRUMENT NUMBER 9006718

DATE OF PLAT 11-28-89

RECORDING DATE 3-29-90

RECORDING FEE \$35.00

TIME 11:25 A.M.

GRANTOR (DEVELOPER/OWNER) C.P. Morgan Co., Inc.

GRANTEE (NAME OF PLAT) Rohrer Meadows Sec One "A"

LEGAL DESCRIPTION Pt NW 1/4 Sec 24 Twp 18N Rge 3E

6.25 acres, more or less

BOOK & PAGE PC 1 Slide 89

NUMBER OF LOTS 15 lots-6 through 20 and Block B

TRANSFERRED: YES NO

DATE OF TRANSFER 3-29-90

This Instrument Recorded 3-29 1990
Sharrp K. Cherry, Recorder, Hamilton County, IN