

Marion Co.

CROSS REFERENCE

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DECLARATION OF COVENANTS AND RESTRICTIONS FOR SUNNYBROOKE

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR SUNNYBROOKE ("Declaration"), made this 3rd day of June, 1992 by CROOKED CREEK AT GEIST DEVELOPMENT COMPANY, an Indiana corporation (hereinafter referred to as "Declarant",

WITNESSETH THAT:

WHEREAS, Declarant is the owner in fee simple of certain Real Estate located in Marion County, Indiana, more particularly described in the attached Exhibit "A" ("Real Estate");

WHEREAS, Declarant is developing the Real Estate and may develop certain surrounding lands within the tract described in the attached Exhibit "B", upon which Declarant may, but is not obligated to, construct residential housing and which may be platted by Declarant in sections from time to time:

WHEREAS, a portion of the Real Estate, more particularly described in Exhibit "A", has been platted by Declarant as "Sunnybrooke Section II" on June 3, 1992, as Instrument No. 920071047 in the Office of the Recorder of Marion County, Indiana ("Section II"); and

WHEREAS, Declarant desires to subject Section II, the Real Estate and any additional lands as Declarant may from time to time subject to this Declaration (Section II, the Real Estate and any such additional lands are hereinafter collectively referred to as "Sunnybrooke") to the covenants and restrictions ("Covenants") herein in order to further ensure that the Development and use of lots within Sunnybrooke are harmonious and do not adversely affect the value of surrounding lots; and

WHEREAS, Declarant desires to provide for maintenance of the streets, common areas, and other improvements located or to be located in Sunnybrooke, which are of common benefit to the owners of the various lots within said subdivision, and to that end desires to establish certain obligations on said owners and a system of assessments and charges upon said owners for certain maintenance and other costs in connection with the operation of Sunnybrooke;

NOW, THEREFORE, Declarant hereby declares that all of the lots and lands located or to be located within Sunnybrooke as may be platted from time to time shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Covenants. All of the Covenants shall run with the land and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to any real property subject to this Declaration and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any addition thereto, part or parts thereof.

ARTICLE I.

General Purpose of this Declaration

The Real Estate is hereby subjected to the Covenants herein declared to preserve the value of the Real Estate, to ensure proper use and appropriate improvement of the Real Estate, to encourage the construction of attractive buildings and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may be inharmonious with other improvements on the Real Estate or within Sunnybrooke, to preserve and maintain proper setbacks from streets and adequate free space between structures, to provide for adequate

and proper maintenance of the Real Estate so as to ensure a high quality appearance and condition of the Real Estate, all for the purpose of preserving the values of all lots within Sunnybrooke and to ensure desired high standards of maintenance of the Real Estate, to the benefit of all owners within Sunnybrooke.

ARTICLE II.

Definitions for all Purposes of this Declaration

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Article II:

Section 1. Assessment. "Assessment" means the share of the Common Expenses imposed upon each lot, as determined and levied pursuant to the provisions of Article VII.

Section 2. Association. "Association" means Sunnybrooke Homeowners' Association, Inc., an Indiana not-for-profit corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.

Section 3. Sunnybrooke. The term "Sunnybrooke" means and includes all portions of the Real Estate and other real property as may be platted and recorded from time to time by Declarant in accordance with the provisions of this Declaration.

Section 4. Committee. "Committee" shall mean the Sunnybrooke Development Control Committee, composed of three (3) associate members appointed by Declarant, who shall be subject to removal by Declarant at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of Declarant until such time as the subdivision is completely developed, or at such earlier time as Declarant may turn over its responsibilities at which time the Sunnybrooke Homeowner's Association shall appoint from its membership to this Committee; provided, however, such turn over shall occur not later than January 1, 1995.

Section 5. Common Areas. "Common Areas" means certain areas which may be designated by Declarant as Common Areas on the plat or plats of Sunnybrooke, as the same may be recorded from time to time, and which is intended for the common benefit of all lots. Common areas may not be developed nor separated from the plat in accordance with the cluster option.

Section 6. Common Expense. "Common Expense" means the actual and estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Property, and any other cost or expense incurred by the Association for the benefit of the Common Property; provided, however, that there shall not be included in Common Expenses any costs or expenses incurred in connection with the initial installation or completion of the Streets, utility lines and mains, or other improvements constructed by Declarant.

Section 7. Common Property. "Common Property" means all real and personal property which is in the nature of common or public improvements or areas, and which is located in, upon, or under the Common Areas, Easements, or Streets within Sunnybrooke. To the extent Common Property is not publicly dedicated, Common Property includes, but is not limited to, all Streets, curbs, water mains, fire hydrants, the Drainage System, the Sewage System, street lights and signs upon the Streets, public sidewalks, landscaping, lakes, parks, and open spaces.

Section 8. Declarant. "Declarant" means Crooked Creek at Geist Development Co., an Indiana corporation, or any other person, firm, corporation or partnership which succeeds to the interest of Crooked Creek at Geist Development Co., as developer of Sunnybrooke.

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Section 9. Drainage System. "Drainage System" means the storm sewers, subsurface drainage tiles, pipes and structures, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Areas, Easements, or Streets and designed for the purpose of expediting the drainage of surface and subsurface waters from, over, and across Sunnyside.

Section 10. Easements. "Easements" refer to those areas reserved as easements on the plat or plats of Sunnybrooke, as the same may be recorded from time to time.

Section 11. Lot. "Lot" means any of the separate parcels numbered and identified on the plat or plats of Sunnybrooke, as the same may be recorded from time to time.

Section 12. Mortgage. The term "Mortgage" means any holder, insurer, or guarantor of any first mortgage on any Lot.

Section 13. Owner. "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any holder of any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

Section 14. Sewage System. "Sewage System" means any sanitary sewer lines, lift stations, equipment, or facilities located in, upon, or under the Common Areas, Easements, or Streets and designed Lots, as the same are or may be constructed at any time, and any replacement thereof or substitute therefor.

Section 15. Streets. "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the plat or plats of Sunnybrooke, as the same may be recorded from time to time, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots.

ARTICLE III.

Use Restrictions

Section 1. General. Unless otherwise provided in these restrictions or on the recorded plat, no dwellings or above-grade structure shall be constructed or placed on any Lot except as provided herein.

Section 2. Type of Structure. Every Lot in Sunnybrooke, unless otherwise designated by Declarant shall be used exclusively for single family residential purposes.

Section 3. Lot and Dwelling. All Lots shall be not less than five thousand (5,000) square feet in size. All dwellings will have two (2), three(3) or four(4) bedrooms, a two-car garage and a minimum living area of one thousand two hundred (1,200) square feet.

Section 4. Accessory or Temporary Buildings. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any Lot, nor shall any overnight camping be permitted on any Lot.

Section 5. Setback Lines. Front yard, sideyards and rear yards setback lines shall be located as set forth upon the plats of Sunnybrooke, and as required by zoning.

Section 6. Manner of Use. Each Owner shall use and occupy his respective Lot and all Easements and rights-of-way appertaining thereto, in a careful safe, and proper manner and keep his Lot in a clean and safe condition in accordance with this Declaration, applicable zoning ordinances,

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all health, fire, and police requirements and regulations, state statutes, local ordinances, and the lawful directions of proper public officials. No owner shall conduct, or permit any person to permit, any unlawful activity in Sunnybrooke.

Section 7. Outside Grounds. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within Sunnybrooke, any fence, light fixture, basketball goal, or similar structure must be approved by the Committee as to size, locations, height, and composition before it may be installed. A standard mailbox and post will be adopted for Sunnybrooke and installed by the Declarant.

Section 8. Exterior Construction. Each driveway in Sunnybrooke will be of concrete or asphalt material and will not exceed in width the side boundaries of the garage associated therewith. No additional parking will be permitted on a Lot other than in the existing driveway. Each dwelling will have a continuous concrete sidewalk from the driveway to the front porch. All metal windows in Sunnybrooke will be factory painted, no raw aluminum windows will be permitted, and all windows will have an approved thermal break. All gutters and downspouts in Sunnybrooke will be painted on a colored material other than gray galvanized. All garage doors within the development will be of a masonite or wood material. All roofing in Sunnybrooke will be of a shingle-type material with weight no less than two hundred twenty (220) pounds and rating of Class A. All vent stacks shall be placed in inconspicuous locations. No two dwellings with the same facade will be placed side by side. No metal (except for copper or metal roofs over box or bay windows), fiberglass or similar type material, awnings or patio covers will be permitted in Sunnybrooke. No above-ground swimming pools will be permitted on any Lot in Sunnybrooke.

Section 9. Heating Plants. Every dwelling in Sunnybrooke must contain a heating plant installed in compliance with required codes.

Section 10. Damaged Structures. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

Section 11. Used Materials. All structures constructed or placed on any numbered Lot in Sunnybrooke shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.

Section 12. Maintenance of Lots and Improvements. The Owner of any Lot in Sunnybrooke 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. Owners shall be responsible for the following:

- (a) Mow the Lot at such times as may reasonably be required in order to prevent the unsightly growth of vegetation and noxious weeds.
- (b) Remove all debris or rubbish.
- (c) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (d) Cut down and remove dead trees.
- (e) Keep the exterior of all Improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

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Section 13. Building on Contiguous Lots Having One Owner. Whenever two or more contiguous Lots in Sunnybrooke shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single dwelling, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such use shall be granted, the Lots constituting the site for such single dwelling shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots.

ARTICLE IV.

General Restrictions

Section 1. Nuisances. No nuisance shall be permitted to exist or operate upon the Real Estate.

Section 2. Animals. No farm animals, fowls or domestic animals, other than household pets, shall be permitted in Sunnybrooke. All such pets must be kept under control by their owners and must not become a nuisance to other residents.

Section 3. Boats, Trucks, etc. No boats, campers, trailers of any kind, recreations vehicles or commercial vehicles of any kind shall be permitted to park on the Real Estate for more than forty-eight (48) hours unless fully enclosed inside a building.

Section 4. Clothes Drying Area. No outdoor clothes drying area or apparatus shall be allowed.

Section 5. Site Visibility. No fences, wall, hedge, or shrub planting which obstructs sight lines shall be placed or permitted to remain on any corner Lot.

Section 6. Fences. All fences shall be kept in good repair and erected so as to enclose the property and decorate the same without hindrance, encroachment, or obstruction to any Easement, Street right-of-way line, or adjoining Lot. Prior to erection, the plans for all fences must be approved by the Committee.

Section 7. Signs. No billboards or advertising signs of any character shall be exhibited in any way on or above the Real Estate or any part thereof or on any improvement thereon without the written approval of the Committee; provided, however, any Owner may place one sign of not more than six (6) square feet advertising the Lot and Improvements thereon, for sale or rent.

Section 8. Oil and Gas Tanks; Air Conditioners. All oil tanks and bottled gas tanks must be underground. No above or below storage of gasoline will be allowed. Any stationary air conditioning units must be similarly walled-in, screened or appropriately landscaped. Appropriate screening shall be determined by the Committee.

Section 9. Easements for Utilities and Public and Quasi-Public Vehicles. All public and quasi-public vehicles, including, but not limited to police, fire, ambulance and other emergency vehicles, trash and garbage collection, post office vehicles, and privately owned delivery vehicles shall have the right to enter upon the Real Estate and any Lot therein in performance of their duties.

Section 10. Utility Easements. Declarant hereby reserves unto itself, its successors and assigns for purpose of installing and maintaining municipal and public utility facilities and for such other purposes incidental to the development of Sunnybrooke, full facilities, sanitary sewer and water lines, gas and electric lines, communication lines (which shall include cable TV), and such other further public service facilities as Declarant may deem necessary. Provided, however, the

disturbed area shall be restored as nearly as is possible to the condition in which it was found. No permanent structures shall be constructed within an easement area.

Section 11. Landscape Easements. The Landscape Easements, if any, are for the construction, maintenance and improvement of landscaping and earth mounding on certain Lots. Such easements shall be in favor of the Sunnybrooke Homeowners' Association for improvements and maintenance.

Section 12. Utility Lines. All electrical service, telephone and other utility lines shall be placed underground, except where required to be placed above ground by the individual utility supplier or when approved by the Committee. No utility services shall be installed under finished streets except by jacking, drilling, or boring unless specifically approved by the Committee.

Section 13. Lot Access. All Lots shall be accessed from the interior streets of this subdivision. No access is permitted from Sunnyside Road.

Section 14. Obstruction of Common Property. No Owner shall unreasonably interfere with, damage, or obstruct the use of maintenance of any Common Property.

Section 15. Outdoor Lighting. All outdoor lighting on any Lot shall be subject to the approval of the Committee or the Association and all applications for such approval shall be in writing.

Section 16. Construction Easements. An easement, not to exceed five (5) feet from the perimeter of any Lot upon which a building is being constructed, is hereby reserved by Declarant and granted to each builder who is constructing a home upon such Lot, for the sold purpose of entering upon such adjacent Lot if and to the extent necessary to perform such construction.

Section 17. Garbage, Trash and Other Refuse. No Owner of a Lot in Sunnybrooke shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his Lot except as may be permitted in subparagraph 19 below. All dwellings built in the Development shall be equipped with a garbage disposal unit.

Section 18. Trash Receptacles. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street within Sunnybrooke at any time, except at the times when refuse collections are being made.

Section 19. Model Homes. No Owner of any Lot in Sunnybrooke other than Declarant shall build, or permit the building upon said Lot any dwelling that is to be used as a model home or exhibit house.

Section 20. Ditches and Swales. It shall be the duty of every Owner of every Lot in Sunnybrooke 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.

Section 21. Wells and Septic Tanks. No water wells shall be drilled on any of the Lots in Sunnybrooke without the approval of the Committee. No septic tanks shall be installed on any of the Lots.

Section 22. Antennas, Poles, Heat Panels, Etc. No outside antennas, satellite dishes, poles (except for flag poles approved by the Committee), masts, towers, heat panels or other similar structures shall be allowed on any Lot.

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ARTICLE V.

Development Control Committee

Section 1. Powers of Committee.

(a) In General. No dwelling or improvement of any type or kind shall be repainted, constructed or placed on any Lot in Sunnybrooke, and no existing trees shall be removed, without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of one inch (1") equals ten feet (10'), or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or plat plans which shall be prepared by either a registered land surveyor, engineer or architect. Plat plans submitted for Improvement Location Permit shall bear the stamp or signature of the Committee acknowledging the approval thereof.

(b) Power of Disapproval. The Committee may refuse to grant permission to remove trees, repaint, construct, place or make the required improvement, when:

- (1) the plans, specifications, drawings, or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;
- (2) the design or color scheme of a proposed repainting or improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures;
- (3) the proposed improvement, or any part thereof, or proposed tree removal, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of other Owners.

Section 2. Duties of Committee. The Committee shall approve or disapprove proposed improvements within fifteen (15) days after all required information shall have been submitted to it. One copy of submitted materials shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

Section 3. Liability of Committee. Neither the Committee nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

Section 4. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

ARTICLE VI.

Property Rights

Section 1. Rights to Common Property. Title to all Common Property shall be held by the Association and each Owner shall have, as non-exclusive, reciprocal easements appurtenant to his Lot; a right of access to his Lot over all streets; the right of access to and use of the drainage system, the sewage system, and all utility lines and mains abutting or adjacent to his Lot; the right to use of all Common Areas for their intended purposes; provided, however, that no Owner's use of any Common Property shall materially interfere with any other Owner's use thereof.

Section 2. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any Assessment against his Lot remains unpaid;

(b) the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to be the members.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment to the Common Areas and facilities of the Association to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 4. Limited Common Area. There is hereby reserved by the Declarant for the benefit of the Owner of any Lot, a limited common area for the purpose of entering and encroaching upon and adjoining Lot as designated on the plat hereof. Said limited common area is reserved for the limited purpose of performing maintenance and repair work on the dwelling benefited by such easement, and for the encroachment, if any, of the roofs, gutters, overhangs or other improvements resulting from the original construction of the adjacent dwelling. The owner of any house built within three(3) feet of a side-yard property line, shall have an express right of access and use for the limited purposes described above, in the limited common area as measured from the side-yard property line. Said easement area shall be five (5) feet in width as measured from said side-yard property line and as designated on the plat hereof. Any persons entering upon an adjacent Lot under the rights granted hereunder shall be responsible for repair of any damage resulting from the use of such area.

ARTICLE VII.

Covenants for Maintenance Assessments

Section 1. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within Sunnybrooke and promoting the health, safety, and welfare of the Owners, users, and occupants of Sunnybrooke and, in particular, for the improvement, repairing, operating, and maintenance of the Common Property, including, but not limited to, the payment of taxes and insurance thereon and for the cost of labor, equipment, material, and management furnished with respect to the Common Property; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Property which is or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to the Association:

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

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

Section 2. Liability for Assessment. Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien from and after the due date thereof in favor of the Association upon each Lot. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

Section 3. Pro-rata Share. The Pro-rata Share of each Owner for purposes of this Article VII shall be the percentage obtained by dividing one by the total number of Lots shown on the plat or plats of Sunnybrooke ("Pro-rata Share").

Section 4. Basis of Annual Assessments. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner prior to the beginning of each fiscal year of the Association.

Section 5. Basis of Special Assessments. Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessment levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board of Directors of the Association may, at any time, and from time to time levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board of Directors of the Association shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the Annual Assessments.

Section 6. Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The annual Assessments of each Lot in each section of Sunnybrooke shall commence on the first day of the second month following the month in which Declarant first conveys ownership of any Lot in such section to an Owner. The first annual Assessment within each section of Sunnybrooke shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

Section 7. Duties of the Association.

(a) The Board of Directors of the Association shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the

identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (3) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

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

(c) The Association shall notify any Mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

Section 8. Non-payment of Assessments; Remedies of Association.

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

(b) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at an annual rate which is two times the rate in effect for ninety-day U.S. Treasury Bills at the time such Assessment is due, but in no event greater than the maximum rate allowable under any applicable usury laws, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys fees, and in the event a judgement is obtained, such judgement shall include such interest, costs, and attorneys' fees.

Section 9. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amount budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-rate Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

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ARTICLE VIII.

Organization and Duties of Association

Section 1. Organization of Association. The Association shall be organized as a not-for-profit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by Declarant. The membership of the Association shall consist of one class of voting members, with each member having equal voting rights. The members of the Association shall consist of the Owners of Lots in Sunnybrooke, as the same may be platted from time to time, provided that, in the event that any one Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, they shall be treated collectively as one member for voting purposes, so that as to any matter being considered by the Association, only one vote appertains to each Lot.

Section 2. General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Property, the determination of Common Expenses, the collection of annual and special Assessments, and the granting of any approvals whenever and to the extent called for by this Declaration. The Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in Article III and Article IV of this Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

Section 3. Amendment of Declaration. The association shall have the right to amend this Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors, and the subsequent approval of such the Mortgagees of at least two-thirds of the Mortgagees requesting notice of such action; provided, however, that any such amendment of this Declaration shall require prior written approval of Declarant so long as Declarant owns at least six (6) Lots within Sunnybrooke. Each such amendment must be evidenced by a written instrument, signed and acknowledged by duly authorized officers of the Association, and by Declarant when its approval is required, setting forth facts sufficient to indicate compliance with this paragraph, including as an exhibit or addendum thereto a certified copy of the minutes of the Association meeting at which the necessary actions were taken, and such amendment shall not be effective until recorded in the Office of the Recorder of Marion County.

Section 4. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association shall also maintain in force adequate officers and directors insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Property against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provision, in an amount equal to the full insurable value of such Common Property. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Lot Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' assessments on all Lots in Sunnybrooke, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be cancelled or substantially modified for any reason.

Section 5. Condemnation, Destruction. In the event that any of the Common Property shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Property condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Property or turned over to the Owners in proportion to their Pro-rata Shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Property. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Property.

Section 6. Transfer of Control of the Association. Declarant shall transfer control of the Association to the Lot Owners no later than the earlier of: (a) four (4) months after three-fourths (3/4) of the Lots in Sunnybrooke have been conveyed to Lot purchasers or; (b) five (5) years after the first Lot is conveyed in Sunnybrooke.

Section 7. Mortgagees' Rights. The Mortgagees shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Property and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Property, and Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. In addition, neither the Owners nor the Association shall materially impair the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

ARTICLE IX.

Expansion of Subdivision

Method and Scope of Expansion. Declarant, at its option, and from time to time, may expand Sunnybrooke to include all or any parts of the tract described in the attached Exhibit "C", by the addition of further sections consisting of one or more Lots and any Common Property which in the discretion of Declarant is appropriate for addition with such section. Such further sections, if added, shall be added by the recordation of a plat of such section, consistent in detail and layout with plats of sections previously recorded, and by the recordation of an amendment to this Declaration imposing upon such section covenants substantially similar in form and substance to this Declaration.

ARTICLE X.

Term

This Declaration shall be effective until January 1, 2000, and shall automatically renew for terms of ten (10) years each, in perpetuity, unless as of the end of any term the Owners of two-thirds (2/3) of the Lots vote to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken.

ARTICLE XI.

General Provisions

Section 1. Covenants run with the Land. The Covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy, or possession of any portion of the Real Estate.

Section 2. Scope of Covenants. Declarant and each Owner of any Lot by acceptance of a deed therefor whether or not it shall be so expressed in such deed, are deemed to have agreed to each and every one of the various terms, Covenants and conditions, contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein under applicable law; provided, that Declarant shall not be liable for damages of any kind to any person for failing to abide by, enforce or carry out any of the rights or remedies set forth herein. Each Owner shall be liable for any failure to fully comply with all of the terms, Covenants, and conditions, contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however, that the relinquishing of all of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

Section 3. Failure to Enforce not a Waiver of Rights. the failure of Declarant, the Association, or any Owner to enforce any term, Covenant, or conditions, herein contained shall in no event be deemed to be waiver of the right to do so thereafter, nor of the right to enforce any other such term, Covenant, or condition.

Section 4. Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

Section 5. Section Headings. Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they refer.

Section 6. Notices. All notices in connection with this Declaration shall be made in writing and shall be deemed delivered; (a) upon personal delivery to the individual person, or; (b) seventy-two hours after the deposit thereof in any United States main or branch post office, first class postage prepaid, properly addressed to the individual person.

Section 7. Enforcement. Any Owner or Declarant shall have the right to enforce, by a proceeding at law or inequity, all restrictions, condition, or Covenants, imposed by this Declaration, but Declarant shall not be liable for damages of any kind to any person for failure either to abide by, enforce or carry out any of the Restrictions.

920071829

Section 8. Reservations of Declarant. Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, so long as Declarant owns at least six (6) Lots within Sunnybrooke; provided that Declarant shall not be entitled to make any amendment which has a material adverse affect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by Declaration on any Owner.

IN WITNESS WHEREOF, Crooked Creek at Geist Development Company, Inc., has executed this Declaration of Covenants and Restrictions for Sunnybrooke this 3rd day of June, 1992.

CROOKED CREEK AT GEIST DEVELOPMENT COMPANY, INC.

By: Richard E. Jones pres.
Richard E. Jones, President

STATE OF INDIANA)
)SS
COUNTY OF MARION)

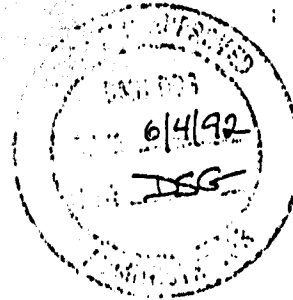
Before me, a Notary Public, in and for said County and State, personally appeared Richard E. Jones, the President for Crooked Creek at Geist Development Company, Inc., whereupon each acknowledged that he executed the foregoing Declaration of Covenants and Restrictions for Sunnybrooke on behalf of said corporation, and being duly sworn, stated that he was duly authorized by proper resolution of the Board of Directors of said corporation, to execute this instrument on behalf of said corporation, and that all corporate action necessary for the execution of this instrument has been taken and done.

Witness my hand and Notarial Seal this 3 day of June, 1992

David S. Gilman
Notary Public DAVID S. GILMAN

My Commission Expires:
March 4, 1994

My County of Residence:
Marion



This Instrument Prepared by Richard E. Jones, President, Crooked Creek at Geist Development Co., Inc.

920071829

SUNNYBROOKE II

EXHIBIT A

Commencing at the Southwest corner of said Northwest Quarter Section; thence North $89^{\circ}59'40''$ East on and along the South line of said Quarter Section 804.25 feet to the centerline of Sunnyside Road; thence North $00^{\circ}16'12''$ East along said centerline 1,639.07 feet to the Northwest corner of a seventy acre tract described in Instrument No. 890060312 as recorded in the Office of the Recorder of Marion County, Indiana; thence North $89^{\circ}59'40''$ East along the North line of said seventy acre tract and parallel with the South line of said Quarter Section 353.41 feet to the Point of Beginning; thence continuing North $89^{\circ}59'40''$ East along said North line 602.56 feet; thence South $18^{\circ}20'03''$ East 362.86 feet; thence South $20^{\circ}46'24''$ West 109.91 feet to a point on a curve concave Northerly having a central angle of $06^{\circ}58'00''$ and a radius of 375.00 feet; thence Easterly along said curve an arc distance of 45.60 feet (said arc being subtended by a chord having a bearing of South $72^{\circ}42'35''$ East and a length of 45.57 feet); thence South $13^{\circ}48'25''$ West a distance of 146.21 feet; thence South $77^{\circ}50'32''$ West 40.06 feet; thence South $40^{\circ}44'52''$ West 120.00 feet; thence North $48^{\circ}49'16''$ West 149.54 feet; thence North $41^{\circ}10'44''$ East 91.35 feet; thence North $50^{\circ}05'36''$ West 269.86 feet; thence North $51^{\circ}12'46''$ West 78.90 feet; thence North $72^{\circ}29'20''$ West 98.29 feet; thence North $77^{\circ}05'58''$ West 124.40 feet; thence North $72^{\circ}29'20''$ West 85.00 feet; thence North $17^{\circ}30'40''$ East 160.00 feet; thence North $00^{\circ}00'20''$ West 76.75 feet to the point of beginning, containing 6.78 acres, more or less, subject to all highways, rights-of-way and easements.

920071823

EXHIBIT B

111-0503
2/6/92 TLK

Certified to: Dick Jones
Jackie Gray

CERTIFICATE OF SURVEY

I, the undersigned, do hereby certify the attached plat to be true and correct to the best of my knowledge and belief, representing a survey made under my direction of the following described real estate:

PARCEL I

Seventy acres off the South end of that part of the Northwest Quarter of Section 33, Township 17 North, Range 5 East, lying East of the center of the Cumberland and Noblesville Road, bounded and described as follows, to-wit:

Beginning at a point on the South line of said Northwest Quarter in the center of said Cumberland and Noblesville Road, thence East along the South line of said Quarter Section to the Southeast corner thereof, thence North along the East line of said Quarter Section, to a point that a line running West therefrom parallel with the South line of said Quarter Section to the center of Cumberland and Noblesville Road and thence South along the center of said road to the Place of Beginning, will enclose 70 acres.

Subject to any and all rights-of-way, easements and restrictions of record, if any.

PARCEL II

EXCEPT, HOWEVER: A part of the Northwest Quarter of Section 33, Township 17 North, Range 5 East in Marion County, Indiana, more particularly described as follows:

Beginning at a point in the centerline of the Sunnyside Road (Cumberland and Noblesville Road) as now located and established, distant 612.17 feet North of the South line of said Northwest Quarter and running thence North upon and along said centerline, a distance of 120.00 feet to a point; thence East and parallel to the South line of said Quarter Section, a distance of 200.00 feet to a point; thence South and parallel to the said Sunnyside Road, a distance of 120.00 feet to a point; thence West and parallel to the South line of said Quarter Section, a distance of 200.00 feet to the Place of Beginning; containing in all 0.55 acre more or less, but subject, however, to all legal easements and rights-of-way.

PARCEL III

EXCEPT, FURTHER, HOWEVER: Part of the Northwest Quarter of Section 33, Township 17 North, Range 5 East, Marion County, Indiana, and more particularly described as follows:

Beginning at a point in the center of Sunnyside Road (Cumberland and Noblesville Road) that is 1484.34 feet North of the South line of said Northwest Quarter Section 33; thence East and parallel to said South line 280.00 feet; thence North and parallel to the centerline of said Sunnyside Road 156.00 feet; thence West and parallel to said South line 280.00 feet to a point in the centerline of said road that is 1640.34 feet North of the said South line; thence South along the said centerline 156.00 feet to the Place of Beginning, containing 1.0 acre more or less and subject to all legal highways, and easements.

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PARCEL IV

EXCEPT, FURTHER, HOWEVER: Part of the Northwest Quarter of Section 33, Township 17 North, Range 5 East, Marion County, Indiana and more particularly described as follows:

Beginning at the Point of Intersection of the South line of said Northwest Quarter Section with the centerline of Sunnyside Road (formerly the Cumberland and Noblesville Road) as now existing, said Point of Beginning being distant 804.25 feet East of the Southwest corner of said Northwest Quarter Section; thence North 00°00'00" East (assumed bearing) on and along said centerline, 612.17 feet; thence North 89°52'45" East parallel to said South line, 200.00 feet; thence North 00°00'00" East parallel to said centerline, 120.00 feet; thence North 89°52'45" East parallel to said South line, 1652.41 feet to a point in the East line of said Northwest Quarter Section; thence South 00°14'40" West on and along said East line, 732.18 feet to a stone found at the Southeast corner of said Northwest Quarter Section; thence South 89°52'45" West on and along said South line, 1849.29 feet to the Point of Beginning, containing 30.642 acres, more or less, subject, however, to a 25 foot strip by parallel lines off of the entire West boundary of the above described Real Estate for Sunnyside Road Right-of-Way purposes.

I further certify the above-described parcels I and III can be consolidated and more accurately described as follows:

OVERALL PERIMETER DESCRIPTION

Part of the Northwest Quarter of Section 33, Township 17 North, Range 5 East, Marion County, Indiana, being more particularly described as follows:

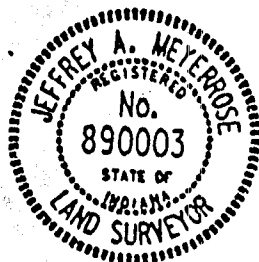
Commencing at the Southwest corner of said Northwest Quarter Section; thence North 89°59'40" East (assumed bearing) on and along the South line of said Quarter Section, a distance of 804.25 feet to the centerline of Sunnyside Road; thence North 00°16'12" East 732.17 feet to the Point of Beginning of the herein described real estate; thence continuing North 00°16'12" East, along said centerline, a distance of 906.90 feet to the Northwest corner of a seventy acre tract, described in Instrument No. 890060312 as recorded in the Office of the Recorder of Marion County, Indiana; thence North 89°59'40" East, along the North line of said seventy acre tract and parallel to the South line of said Quarter Section, a distance of 1873.00 feet to the Northeast corner of said seventy acre tract and the East line of said Quarter Section; thence South 01°09'18" West along the East line of said seventy acre tract, also being the East line of said Quarter Section, a distance of 907.08 feet; thence South 89°59'40" West, parallel with the South line of said Quarter Section, a distance of 1858.99 feet to the Point of Beginning, containing 38.85 acres, more or less, subject to rights-of-way, restrictions, and easements.

Corners were established and improvements were located as shown hereon.

Certified this 7th day of February, 1992

MSE Corporation

920071829



Jeffrey A. Meyerrose
Jeffrey A. Meyerrose
Registered Land Surveyor, No. 890003-IN

920093541

920093541

AMENDMENTS TO DECLARATIONS OF COVENANTS AND RESTRICTIONS FOR SUNNYBROOKE SUBDIVISION AND ALL LANDS SO REFERRED TO AS SUNNYBROOKE

Amendment (I) to Section #7 - Page 4 - to read: a standard mailbox and post will be adopted for Sunnybrooke "BY THE DECLARANT" and installed by the "BUILDERS".

Amendment (II) to Section #8 - Page 4 - to read: all garage doors within the development will be of a "STEEL" masonite, or wood material.

In witness whereof, Sunnybrooke Development Inc., has executed these amendments to the declaration of covenants and restrictions for Sunnybrooke this 28th day of July 1992.

92 71 029
92 71 047

Sunnybrooke Development Inc.

By: Richard E. Jones, Treasurer
Richard E. Jones, Treasurer

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

RECORDED
JUL 29 10 21 52 5
JOHN R. VON ARX
NOTARY PUBLIC
STATE OF INDIANA

Before me, the undersigned Notary Public, in and for said County and State, personally appeared the above and acknowledged the execution of the foregoing instrument as his voluntary act and deed for said company, for the uses and purposes therein expressed.

Witness by Signature and Notarial Seal this 29 day of July, 1992.

Patricia A. Kenney
Notary Public

Patricia A. Kenney
Printed

My Commission Expires: 7-19-94

County of Residence: Hamilton

RECORDED
JUL 29 11 3 55



This Instrument Prepared by Richard E. Jones