

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this 20<sup>th</sup> day of May, 1975, by RALPH L. WILFONG, Owner.

## WITNESSETH:

WHEREAS, Declarant is the owner of, or has the right to acquire, the property described in Article II of this Declaration and desires to create thereon recreational facilities and other common facilities for the benefit of the community; and,

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said facilities; and, to this end, desires to subject the real property described in Article II, together with such additions as may hereafter be made thereto, to the covenants, restrictions, easements, charges and liens, hereinafter set forth; and,

WHEREAS, Declarant has deemed it advisable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, there has been incorporated under the laws of the State of Indiana as a not-for-profit corporation, VILLAGE OF MOUNT CARMEL, INC., for the purpose of exercising said functions.

NOW, THEREFORE, Ralph L. Wilfong declares that the real property described in Article II, and such additions thereto as may hereafter be made, is, and shall be, held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE IDefinitions

This Instrument Recorded June 2, 1975  
JUNE M. HEDGES, RECORDER, HAMILTON COUNTY, IND.

Section 1. The following words when used in this Declaration, or any supplemental declaration, (unless the context shall prohibit) shall have the following meanings:

- (a) "CORPORATION" shall mean and refer to VILLIAGE OF MOUNT CARMEL, INC.
- (b) "THE PROPERTIES" shall mean and refer to all such properties and additions thereto, as are subject to this Declaration, or any supplemental declaration under the provisions hereof.
- (c) "CLUB PROPERTIES" shall mean and refer to all such properties and additions thereto conveyed to and owned by the Corporation.
- (d) "OWNER" shall mean and refer to the record owner, whether one or more persons or entitles, of the fee simple title to any lot situated upon The Properties.

ARTICLE II

Property Subject to This Declaration: Additions Thereto

Section 1. Property. The real property which is and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in Hamilton County, Indiana, and is more particularly described as follows:

Part of the East Half of Section 23, Township 18 North, Range 3 East in Hamilton County, more particularly described as follows:

Beginning at the Southeast corner of the Southeast Quarter of said Section 23; running thence North  $0^{\circ}03'48''$  west on and along the east line of said Southeast Quarter 2595.18 feet to a point 40 feet south  $0^{\circ}3'48''$  east from the Northeast corner of said Southeast Quarter; said point also being the Southeast corner of The Village of Mount Carmel, Fifth Section, as recorded in Plat Book 4, Pages 82 and 83 in the Hamilton County Recorder's Office; thence on and along the south line of said Subdivision with the following five courses: due west 471.90 feet; thence north  $3^{\circ}10'$  west 204.75 feet; thence south  $86^{\circ}50'$  west 80 feet to a curve, said curve

having a radius of 580 feet and a delta of  $14^{\circ}30'$ ; thence northerly along said curve to the right 31.78 feet; thence south  $89^{\circ}58'20''$  west 190.60 feet to the Southwest corner of Lot 139 in said Subdivision; thence South  $15^{\circ}27'40''$  East 114.83 feet; thence south  $3^{\circ}10'$  east 330.00 feet; thence south  $8^{\circ}37'$  west 146.92 feet; thence south  $37^{\circ}35'$  west 336.21 feet; thence south  $52^{\circ}15'$  east 35.00 feet; thence south  $37^{\circ}35'$  west 200.36 feet; thence north  $45^{\circ}39'50''$  west 165.97 feet; thence south  $17^{\circ}30'40''$  west 466.65 feet; thence south  $13^{\circ}32'05''$  west 176.09 feet to the Northwest corner of the Southeast Quarter of the Southeast Quarter of said Section 23; thence South  $0^{\circ}0'30''$  west 1319.54 feet on and along the west line of said Southeast Quarter of the Southeast Quarter to the Southwest corner of said Quarter Quarter; thence North  $88^{\circ}55'42''$  east 1331.17 feet to the point of beginning, containing 70.08 acres, more or less.

This subdivision contains 96 lots, numbered from 140 to 147, both inclusive, from 246 to 249, both inclusive, and 301 to 384, both inclusive, with common property as shown on the plat of the Village of Mount Carmel, Sixth Section.

all of which real property shall hereinafter be referred to as "The Properties."

Section 2. Easement to Owner. Declarant hereby grants an easement in favor of each Owner for the use, enjoyment and benefit of the Club Properties, and such easement shall be appurtenant to and shall pass with the title to every lot.

Section 3. Covenant to Convey Club Properties. Declarant hereby covenants and declares that all or part of the common property described in Exhibit "A", attached and made a part of this Declaration, shall be conveyed to the Corporation.

Section 4. Additions to The Properties. Additional lands may become subject to this Declaration in the following manner:

(a) Additional properties (subject to the restrictions of the Articles of Incorporation of the Corporation) may be added to The Properties and subjected to covenants and restrictions upon the filing

and recording of a Supplementary Declaration of Covenants and Restrictions. A Supplemental Declaration adopting by reference the provisions of this Declaration in its entirety shall be sufficient to conform with this section. In addition, such Supplemental Declaration may contain such complimentary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke the covenants established by this Declaration within The Properties.

(b) Upon a merger or consolidation of the Corporation with another corporation, its properties, rights and obligations may, by operation of law, be added to the properties, rights and obligations of the Corporation as a surviving corporation.

ARTICLE III

Membership and Voting Rights  
in the Corporation

Section 1. Membership. Members shall be persons, corporations or partnerships, who, at any time, are owners (legal or equitable) of numbered residential lots or undeveloped land in the Village of Mount Carmel, Sixth Section, or any other subdivision or platted real estate developments made subject to these covenants and restrictions, as amended or supplemented, (hereinafter sometimes referred to as "Project"). A person who has no interest in the real estate in the Project, other than an interest that is held merely as security for the performance of an obligation to pay money (i.e., the interest of a mortgagee) shall not be entitled to membership. Membership shall lapse and terminate when the member shall cease to be the owner of such residential lot or land.

Section 2. Voting Rights. The Corporation shall have two (2) classes of voting members:

- (a) Class A members shall be entitled to one (1) vote for each numbered residential lot.
- (b) Class B members shall be the Developer, or any person, which shall hereafter succeed to the Developer's business and properties substantially as a whole.

Section 3. Associate Members. In addition to Class A and Class B memberships, the Corporation may have Associate Memberships.

#### ARTICLE IV

##### Covenants for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each lot owned by it within The Properties hereby covenants, and each purchaser of any lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Corporation: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as herein provided, 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 such interest thereon and cost of collection thereof, as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessment levied by the Corporation shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members, and in particular, for the improvement and maintenance of the facilities devoted to this purpose.

Section 3. Basis and Maximum of Annual Assessments. Until the fiscal year beginning May 1, 1976, the annual assessment shall be One Hundred Dollars (\$100.00) per lot. From and after May 1, 1976, the annual assessment may be increased, or decreased, by vote of the Owners.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Corporation may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Club Properties, including the necessary fixtures and personal property related thereto; provided that, any such assessment

shall have the assent of two-thirds of Class A and B members, voting in person or by proxy, at a meeting duly constituted for this purpose, written notice of which shall be given to all members at least ten (10) days in advance and shall set forth the purpose of the meeting.

Section 5. Duties of the Board of Directors. The Board of Directors of the Corporation shall fix the date of commencement and the amount of the assessment against each lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto, which shall be kept in the office of the Corporation and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent out to every Owner subject thereto.

The Corporation shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Corporation, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 6. Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien Remedies of Corporation. If the assessments are not paid on the date or dates when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, become a continuing lien on the property, which shall bind such property in the hands of the then Owner, his heirs, devisees, successors and assigns.

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 eight percent (8%) per annum, and the Corporation may bring an action at law against the Owner personally obligated to pay the same, or to foreclose the lien against the property, 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.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon

the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such mortgage. Such sale shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

Section 8. "Junior Lien" Provision. If any premises subject to the lien hereof shall become subject to the lien of a mortgage or deed of trust, (1) the foreclosure of the lien hereof shall not operate to affect or impair the lien of the mortgage or deed of trust; and (2) the foreclosure of the lien of the mortgage or deed of trust or the acceptance of a deed in lieu of foreclosure by the mortgagee shall not operate to affect or impair the lien hereof, but said charges as shall have accrued up to the foreclosure or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage or deed of trust with the foreclosure purchaser or deed in lieu grantee taking title free of the lien hereof for all such charges that have accrued up to the time of the foreclosure or deed given in lieu of foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the foreclosure or deed given in lieu of foreclosure.

ARTICLE V

General Provisions

Section 1. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by Village of Mount Carmel, Inc., or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty-five (35) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then Owners of the lots has been recorded, agreeing to change said covenants and restrictions in whole or in part.

Section 2. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person, or persons, violating or attempting to violate, any covenant or restriction, either to restrain violation or to recover damages and against the land to enforce any lien created

by these covenants; and failure by Corporation or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

*Ralph L. Wilfong*  
Ralph L. Wilfong, Owner

STATE OF INDIANA )  
                          )SS:  
COUNTY OF Hamilton )

Before me, a Notary Public in and for said County and State, personally appeared Ralph L. Wilfong and acknowledged execution of the foregoing Declaration of Covenants and Restrictions.

In Witness Whereof, I have set my hand and affixed my Notarial Seal this 20 day of May, 1975.

*Marilyn J. Harman*  
(Signature)

Marilyn J. Harman  
(Printed)  
NOTARY PUBLIC



My Commission Expires:  
March 31, 1979

This Instrument Recorded June 2, 1975  
JUNE M. HEGGES, RECORDER, HAMILTON COUNTY, IND.

This instrument prepared by Willis K. Kunz, Attorney at Law.

RECEIVED FOR RECORD  
AT 9:45 O'CLOCK a M

JUN 2 - 1975

BOOK \_\_\_\_\_ PAGE \_\_\_\_\_  
*June M. Hegges*  
RECORDER HAMILTON COUNTY, INDIANA



14257

The Declarant, as owner of The Village of Mount Carmel, Eighth Section, which section was recorded May 9, 1978 Instrument Number 13445 A, Book 7, Pages 26-29, in the Office of the Recorder of Hamilton County, does hereby declare that said property described in The Village of Mount Carmel, Eighth Section, is and shall be held, transferred, sold, conveyed and occupied subject to the Declaration of Covenants and Restrictions by Declarant dated the 20th day of May, 1975, and recorded the 2nd day of June, 1975, Instrument Number 15033, Book 146, Pages 135-142 in the Office of the Recorder of Hamilton County, Indiana, which Declaration of Covenants and Restrictions are incorporated herein by reference.

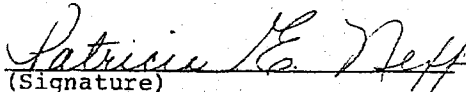
DATED this 22nd day of May, 1978.

  
RALPH L. WILFONG

STATE OF INDIANA )  
                          )SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Ralph L. Wilfong, who acknowledged execution of the foregoing Supplementary Declaration of Covenants and Restrictions.

WITNESS my hand and Notarial Seal this 22nd day of May 1978.

  
(Signature)

Patricia E. Neff, Notary Public  
(Printed) Resident of Marion County

My Commission Expires:  
July 31, 1980

This Instrument Recorded May 23 1978  
JUNE M. HEDGES, RECORDER, HAMILTON COUNTY, IND.

This instrument was prepared by Willis K. Kunz, Attorney at Law.

HAMILTON CO., IND.  
RECORDER  
JUNE M. HEDGES  
MAY 23 12 55 PM '78

SUPPLEMENTARY DECLARATION  
OF COVENANTS AND RESTRICTIONS

14258

BOOK 153 PAGE 763

The Declarant, as owner of The Village of Mount Carmel, Ninth Section, which section was recorded May 9, 1978 Instrument Number 13445 B, Book 7, Pages 30-33, in the Office of the Recorder of Hamilton County, does hereby declare that said property described in The Village of Mount Carmel, Ninth Section, is and shall be held, transferred, sold, conveyed and occupied subject to the Declaration of Covenants and Restrictions by Declarant dated the 20th day of May, 1975, and recorded the 2nd day of June, 1975, Instrument Number 15033, Book 146, Pages 135-142 in the Office of the Recorder of Hamilton County, Indiana, which Declaration of Covenants and Restrictions are incorporated herein by reference.

DATED this 22nd day of May 1978.

  
RALPH L. WILFONG

STATE OF INDIANA )  
                          )SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Ralph L. Wilfong, who acknowledged execution of the foregoing Supplementary Declaration of Covenants and Restrictions.

WITNESS my hand and Notarial Seal this 22nd day of May, 1978.

  
(Signature)

Patricia E. Neff,  
(Printed), Resident of Marion County  
NOTARY PUBLIC

My Commission Expires:

July 31, 1980

This Instrument Recorded May 23 1978  
JUNE M. HEDGES, RECORDER, HAMILTON COUNTY, IND.

This instrument prepared by Willis K. Kunz, Attorney at Law.

RECEIVED  
FOR RECORD  
MAY 23 12 55 PM '78  
JUNE M. HEDGES  
RECORDER  
HAMILTON CO., IND.