

DECLARATION OF COVENANTS AND RESTRICTIONS

HICKORY WOODS DEVELOPMENT

THIS DECLARATION, made this 19th day of May, 1987, by H-N Enterprises, an Indiana partnership, (hereinafter referred to as the "Developer"). WITNESSETH:

WHEREAS, the Developer is the owner of all of the lands contained in the legal description (Exhibit "A") attached hereto and made a part hereof, which lands will be subdivided and known as the Hickory Woods Development (hereinafter referred to as the "Development"), and subdivided portions of the Development will be more particularly described on the plats of the various sections thereof which will be recorded in the office of the Recorder of Hamilton County, Indiana; and

WHEREAS, the Developer is about to sell and convey the lots and parcels situated within the platted areas of the Development, and before doing so, desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions, and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit of the subdivided lots and lands in the Development and the future owners thereof.

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved,

Recd. for Record
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Sharon K. Cherry, Recorder, Hamilton County, IN

subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of the platted lands and sale of said lots 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 the lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Developer and everyone of the Developer's successors in title to any real estate in the Development. The Developer specifically reserves unto itself the right and privilege, prior to the recording of the plat by the Developer of a particular lot or tract within the Development as shown on Exhibit "A", to exclude any real estate from the Development, or to include additional real estate.

1. DEFINITIONS. The following are the definitions of the terms as they are used in this Declaration.

A. "Committee" shall mean the Hickory Woods Control Committee, composed of three (3) members appointed by the Developer who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the Developer. The Developer may, at its sole option, at any time hereafter, relinquish to the Association the power to appoint and remove one or more members of the Committee.

B. "Association" shall mean the Hickory Woods Property Owners Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in paragraph 9 of this Declaration.

C. "Lot" shall mean any numbered parcel of residential real estate described by one of the plats of the Development, which is recorded in the office of the Recorder of Hamilton County, Indiana.

D. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing signed, with respect to the Developer by a partner or the Association by the President or a Vice-President thereof, and with respect to the Committee, by two members thereof.

3. "Owner" shall mean a person, partnership, trust or corporation who has or is acquiring any right, title or interest, legal or equitable, in and to a lot, but excluding those persons having such interest merely as security for the performance of an obligation.

2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every lot in the Development, unless it is otherwise designated by the Developer in the plat, is a residential lot and shall be used exclusively for single-family residential purposes; provided, however, that the Developer may retain a sales office in each section of the Development until the Developer has sold all lots in such section. No structure shall be erected, placed or permitted to remain upon any of said lots except a single-family dwelling house and such outbuildings as are usually accessory to a single-family dwelling house. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded plats shall be used in a manner consistent with the zoning and use designated in the plan filed by the Developer. However, the Developer reserves unto itself the right to change the character of such designated use at any time in the future by applying to the Fishers, Indiana, Plan Commission and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Developer's planned use.

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

C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any lot shall be occupied or used for residential purposes or human

habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties.

3. RESTRICTIONS CONCERNING SIZE, PLACEMENT, AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

A. Minimum Living Space Area.

- (1) SINGLE STORY HOUSE: The minimum square footage area of living space for a single story house shall be eighteen hundred (1800) feet. A two car attached garage or larger shall be required. The garage area shall not be included in the living area total square footage.
- (2) MULTI-LEVEL HOUSE: The minimum square footage area for a multi-level type house shall be twenty-two hundred (2200) feet. A two car attached garage or larger shall be required. The garage or porch area shall not be included in the living area total square footage.

B. Residential Set-Back Requirement.

- (1) GENERAL: Unless otherwise provided in these Restrictions or on the recorded plat, no dwelling house or above grade structure shall be constructed or placed on any lot in the Development except as provided herein.
- (2) FRONT SET-BACKS: Unless otherwise provided in these Restrictions or on the recorded plat, all dwelling houses or above grade structures shall be constructed or placed on lots in the Development so as to comply with the set-back lines, as established in plats of the various sections of the Development.
- (3) SIDE YARDS: The side yard set-back lines shall not be less than ten (10) feet from either side line on a Lot.
- (4) REAR YARDS: The rear yard set-back line shall be at least thirty (30) feet from the rear lot line, but if the lot abuts on the drainage detention area or easement (as designated on the recorded plat of Hickory Woods Section I), the Committee may determine that the location of the rear set-back line adjacent to the drainage detention area or easement shall be otherwise.

C. Fences and Mailboxes. No fence shall be erected nearer to the front lot line than the front house line unless the same shall be a shrub, growth or hedge, not to exceed four (4) feet in height or fifteen (15) feet in length. All fences shall be no

more than four (4) feet in height if the fence is within twenty (20) feet of any side or rear lot line. No fence, wall, hedge, tree or shrub planting which obstructs sight lines and elevations between three (3) and twelve (12) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting points forty (40) feet from the intersection of said street lines or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended. The same sight line limitations shall apply to any lot within ten (10) feet of the intersection of a street right-of-way line with the edge of the driveway pavement or alley line. No driveway shall be located within seventy-five (75) feet of the intersection of two street lines. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any mailbox must be approved by the Committee as to size, location, height and composition before it may be installed.

D. Use of Land. The use of all lots shall be in accordance with the Town of Fishers, Indiana, Zoning Ordinance, February 28, 1972, and any amendments thereto.

E. Exterior Construction. All dwelling houses shall have brick to grade. The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding, or any other similar material. No dwelling house shall have prefabricated flues that extend above the highest roof line and chimney chases shall be of masonry construction. All dwelling houses shall have a driveway and the same shall be paved with asphalt or concrete. Except to Lots 1 and 17 in Section I, a sidewalk no less than four (4) feet in width shall be required across that portion of a lot which is considered the frontage. Installation and maintenance of said sidewalk shall be the responsibility of the individual lot owners.

F. Heating Plants. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house.

G. Diligence in Construction. Every building whose construction or placement on any lot in the Development is begun shall be completed within six (6) months after the beginning of such construction or placement. No improvement which has been partially or totally 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.

H. Prohibition of Used Structures. All structures constructed or placed on any lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

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

- (1) Mow the lot at such time as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.
- (2) Remove all debris or rubbish.
- (3) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (4) Cut down and remove dead trees.
- (5) Keep the exterior of all improvements in such state of repair or maintenance as to avoid their becoming unsightly.

J. Association's Right to Perform Certain Maintenance. In the event that the Owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual charge to which said lot is subject, and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

K. Yard Lights. Each Owner of a lot in the Development, other than the Developer, shall install a yard light at the time a house is constructed upon the lot. The type of light and the location of the light on the lot must be approved by the Committee. Each light must be controlled by an electric eye so that it will be lighted from dusk to dawn.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

A. Construction of Sewage Lines. All sanitary sewage lines on the lots shall be designed and constructed in accordance with the provisions and requirements of the Hamilton County Board of Health. No storm water (subsurface or surface) shall be discharged into sanitary sewers. Copies of all permits, plans, and designs relating to the construction of a sanitary sewer service line shall be submitted in duplicate to the Committee at the time of the submission of all other plans or documents required for the obtaining from the Committee a permit to build on a lot.

5. GENERAL PROHIBITIONS.

A. In General. No noxious or offensive activities shall be permitted on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another lot in the Development.

B. Signs. No signs or advertisements except professional or "For Sale" signs shall be displayed or placed on any lot or structures in the Development without the prior written approval of the Committee.

C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

D. Vehicle Parking. No trucks, campers, trailers, boats, or similar vehicles shall be parked on any street in the Development. No such vehicle shall be parked on a lot in view from any street in the Development for more than a 48-hour period.

E. Garbage and Other Refuse. No Owner of a lot 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 F below. All houses built in the Development shall be equipped with a garbage disposal unit.

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

G. Model Homes. No Owner of any lot shall build or permit the building upon a lot of any dwelling house that is to be used as a model home or exhibit house without permission from the Developer.

H. Temporary Structures. 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.

I. Ditches and Swales. It shall be the duty of every Owner of every lot designed for the natural flow of surface water to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection. All Owners, if necessary, shall install dry culverts between the road rights of way and their lots in conformity with specifications and recommendations of the Committee.

J. Utility Services. Easement for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat or plats. No utility services shall be installed under finished streets except by jacking, drilling or boring.

K. Wells and Septic Tanks. No water wells shall be drilled on any of the lots nor shall any septic tanks be installed on any of the lots in the Development, without the approval of the Committee and the Hamilton County Department of Health.

L. Subdivision of Individual Lots. No lot shall be subdivided into parcels for additional residential purposes.

M. Ingress and Egress onto Hague Road. No ingress or egress (pedestrian or vehicular) shall be permitted onto Hague Road from lots 18, 23, 33, 34, 35, 36, 66, 67, and 85 as described on the recorded plat or plats.

6. HICKORY WOODS CONTROL COMMITTEE.

A. Power of Committee.

- (1) No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Development 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. In addition, such plans and specification shall show elevation of the proposed improvements as it relates to the existing street elevation. 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 $1/4" = 1'$, or to such other scale as the Committee may require. There shall also be submitted, where applicable, any permits or reports required under these Restrictions.

- (2) POWER OF DISAPPROVAL. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:
- (a) 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;
 - (b) The design or color scheme or a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures;
 - (c) The proposed improvement, or any part thereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of other Owners of lots.
- (3) POWER TO GRANT VARIANCES. The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions, and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Development.

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of all submitted material 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.

C. Liability of Committee. Neither the Committee nor any agent thereof, nor the Developer, nor the Association, 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.

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

7. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER.

Whenever two or more contiguous lots in the Development shall be owned by the same person, and such Owner shall desire to use two or more of said lots as a site for a single dwelling house, he shall apply in writing to the Committee for permission so to use the lots. If permission for such a use shall be granted, the lots constituting the site for a single dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to the lots, so long as the lots remain improved with one single dwelling house.

8. HICKORY WOODS PROPERTY OWNERS' ASSOCIATION, INC.

A. In General.

- (1) There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the Hickory Woods Property Owners' Association, Inc.", which is referred to as the "Association."
- (2) Owners of lots who are engaged in the business of constructing houses may apply to the Committee for a determination that they own a lot or lots not for their own use but for resale. If the Committee determines that such is the purpose for which the lot or lots are held, the Owner shall not become a member of the Association and shall not be required to pay the annual charge. The determination shall terminate upon the first to occur of (a) revocation by the Committee,

(b) sale of the lot, or (c) occupancy of a residence upon the lot.

B. Purpose of the Association.

- (1) The general purpose of the Association is to care for, maintain, and provide necessary liability insurance protection of the drainage detention and easement area located on portions of Lots 15, 16, 17, 19, 20, and 21 of Hickory Woods Section I and such other easement areas that the corporation may become responsible for.
- (2) Additional purposes of the Association are to provide a means for the promulgation and enforcement of regulations necessary to govern the use of such parcels as may be the responsibility of the Association as well as the responsibility for enforcement of powers delegated to the Association herein or in the Articles of Incorporation.

C. Purpose of the Assessments. The charges or assessments levied by the Association shall be used for the purpose of promoting the health, safety and welfare of the members of the Association, and, in particular, for the care and maintenance and the provision for necessary insurance protection of the drainage detention and easement areas located on parts of Lots 15, 16, 17, 19, 20, and 21 of Hickory Woods Section I and such other easement areas that the corporation may become responsible for, as well as the enforcement of the powers and responsibilities delegated to the Association herein or in the Articles of Incorporation.

D. Membership. Every Owner of a lot subject to assessment, except as herein provided to the contrary, shall be entitled and required to be a member of the Association. If title to a lot is held by more than one person, each of such persons shall be a member. An Owner of more than one lot shall be entitled to, and there shall be required, one membership for each such lot. Each such membership shall be appurtenant to the lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that lot. Except as herein otherwise expressly provided, no person or entity other than an Owner or Developer may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to a lot.

E. Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of the record title of a lot and then only to such transferee, by assignment, intestate succession, testamentary disposition, foreclosure of mortgage of record, or other legal

process. It shall be the responsibility of each Owner, upon becoming entitled to membership, to so notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a member, in its sole discretion. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the transferee of title of such lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

F. Voting. The Association shall have two (2) classes of voting membership, as follows:

1. Class A: Class A members shall be all Owners of lots, with the exception of the Developer prior to termination of Class B membership, and shall be entitled to one (1) vote for each lot owned with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one person holds title to any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-Owner or other persons have filed a general voting authority with the Secretary applicable to all votes until rescinded.
2. Class B: Class B members shall be the Developer and all successors and assigns of Developer designated by Developer as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled, on all matters requiring a vote of the membership of the Association, to five (5) votes for each lot owned by it and identified as a lot on any recorded plat of the real estate described in Exhibit "A" which has not been conveyed by Developer to another person. The Class B membership shall cease and terminate upon the first to occur of (a) the date upon which the written resignation of the Class B members is delivered to the resident agent of the Association; (b) one hundred twenty (120) days after

seventy-five percent (75%) of the lots in the Development have been conveyed to Owners other than Developer; or (c) three (3) years after the date of recording of the first conveyance of a lot to an Owner other than Developer.

Developer shall be entitled to one (1) Class A membership for each lot of which it is the Owner on or after the termination of Class B membership.

G. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the right to use the facilities of the Association of any Owner (i) for any period during which any of the Association's charges owed by the Owner remain unpaid; (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

H. Personal Obligations. Developer, for each lot owned by it in the Development, hereby covenants and agrees, and each Owner of a lot by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed therein, shall be and is deemed to covenant and agree to pay to the Association: (1) annual assessment or charge for the payment or provision of all expenses of administration of the Association and all other expenses incurred or to be incurred by the Association in connection with the performance by the Association of its duties, obligations and responsibilities under this Declaration, which expenses may include, but shall not be limited to, the expenses and costs of hazard and liability insurance and for and the care and maintenance of the drainage detention and easement areas for which the Association is responsible, and an adequate reserve fund for the care and maintenance of those areas and any other property that must be maintained by the Association; and (b) such assessment to be established and collected as hereinafter provided. Any assessments authorized herein, together with interest, costs, and reasonable attorneys' fees, shall be a continuing lien from the first day of June on annual assessments against the lot assessed. Such assessment shall be due and payable in advance upon the purchase of a lot in the Development; provided, however, if a lot is purchased after the June assessment date, then the Association may pro-rate the assessment until the next June. 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 lot on the date said assessment became due and

payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the office of the Recorder of Hamilton County, Indiana.

9. ASSESSMENTS.

A. Purpose of Assessments. The assessments levied by the Association shall be used to care for and maintain, and provide liability insurance for, those drainage and detention easement areas and for payment of any other costs and expenses incurred by the Association in connection with the performance of its duties, obligations, and responsibilities hereunder. An adequate reserve fund shall be maintained for working capital and for periodic maintenance.

B. Annual Assessments. Except as set forth herein, until June 1, 1988, the maximum annual assessment shall be sixteen 50/100----- Dollars (\$ 16.50) per lot for each lot upon which a living unit has been constructed. Payment of annual assessments shall be in advance upon conveyance of a lot to an Owner.

1. From and after June 1, 1988, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessments permitted for the previous year, on a cumulative basis, without a vote of the membership.
2. From and after June 1, 1988, the maximum annual assessment may be increased more than ten percent (10%) above the maximum assessments permitted for the pervious year by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting called for this purpose.
3. The Board of Directors may fix the annual assessments at any amount not in excess of the maximum permitted hereby.

C. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, (1) the cost of any construction, reconstruction, repair or replacement of a detention area or easement, provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

D. Notice and Quorum. Written notice of any meeting of Members called for the purpose of taking any action authorized under Sections B.2. and C hereof, shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Members entitled to cast sixty percent (60%) of the total votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

E. Commencement of Initial Annual Assessment. The annual assessment provided for herein shall commence as to all lots subject to this Declaration on the first day of the month following the month of recording of the instrument by which such lots became a part of the Development. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year for which such assessment is imposed.

F. Commencement of Annual Assessment. By March 1 of each year the Board shall fix the amount of annual assessment against each lot for the following calendar year and shall send written notice thereof to each Owner. The due date for payment of the annual assessment shall be June 1. At the time the Board fixes the amount of the annual assessment it shall adopt a budget for the following calendar year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

G. Proof of Payment. Upon written demand of an Owner or mortgagee, at any time and for a reasonable charge, the Association shall furnish a written certificate signed by an officer of the Association setting forth whether there are any then unpaid annual or special assessments levied against such Owner's or mortgagee's lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

H. Nonpayment of Assessments. Any assessments which are not paid when due shall be deemed delinquent. If an assessment is not paid within thirty (30) days after the delinquency date, it shall bear interest from the delinquency date at the rate of twelve percent (12%) per annum and shall become a continuing lien in favor of the Association on the lot against which assessed and the improvements thereon and the Association may bring an action at law or in equity against the person personally obligated to pay the same, including interests, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of

such assessment and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit.

I. Recording and Enforcement of Liens. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the lot, the name of the person personally obligated to pay the same and a description of the lot. Such a notice shall be signed by an officer of the Association and it or a notice of lien or adverse claim thereof may be recorded in the office of the Recorder of Hamilton County, Indiana. No notice of lien shall be recorded until there is a delinquency in payment of the assessment for thirty (30) days. Upon such a delinquency for thirty (30) days, the Association shall proceed promptly to enforce the lien or, in its discretion, to sue the person personally liable to pay the lien for the delinquency. Such lien shall be enforced by action in the same manner in which mortgages on real property may be foreclosed in Indiana. In any such foreclosure, the person personally obligated to pay the lien shall be required to apy all costs of foreclosure including reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. the person personally obligated to pay the lien shall also be required to pay to the Association any assessments against the lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the foreclosed interest in the lot as the Owner thereof.

The Association shall, upon written request, report to any mortgagee of a lot any assessments remaining unpaid for longer than thirty (30) days after the same shall have become due, provided, however, that such mortgagee first shall have furnished to the Association and written notice of the mortgage under which it claims and its notice address.

J. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage ("First Mortgage") and to tax liens and liens for special assessments in favor of any taxing and assessing unit of government. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or remedies provided in a first mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to charges which were payable prior to such sale or transfer. No such sale or transfer shall relieve a lot from liability for any assessments thereafter becoming payable or from the lien thereof or shall relieve the person personally

obligated to pay the same from personal liability for assessments payable prior to such sale or transfer or acquisition. Any delinquent assessments the lien for which is extinguished by reason of this provision may be reallocated and assessed to all lots as a common expense.

K. Limitations on Assessments Owed by Developer. Notwithstanding anything to the contrary contained herein, Developer shall be obligated to pay, as to any and all lots owned by it from time to time, only ten percent (10%) of the assessments (whether regular annual assessments or special assessments) payable hereunder by Owners (other than Developer) of lots, and all such lots owned by Developer shall be subject to a lien hereunder only for amounts determined under this Section K.

L. Initial Working Capital and Start-up Fund. At the closing of the initial sale of each lot by Developer to an Owner other than Developer (or an Owner set forth under 8.A(2)), whether or not the lot is then improved with a living unit, the purchaser of such lot shall pay to the Association an amount equal to the annual assessment applicable to the lot purchased, which amount shall be held and used by the Association as a working capital fund and start-up fund for the initial year of operation of the Association, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Developer shall pay to the Association the required contribution to the Association's working capital fund and start-up fund for all of such lot then owned by it which remain unsold, which amount Developer shall then be entitled to recover directly from the subsequent purchaser of such unsold lots, who shall pay the same to Developer for Developer's own account in lieu of making payment thereof to the Association.

10. REMEDIES.

A. In General. The Association or any part to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

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

recurrence or continuation of such violation or violations of these Restrictions.

11. EFFECT OF BECOMING AN OWNER.

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

12. TITLES.

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

13. DURATION.

The foregoing covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2016, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the Owners of sixty-six percent (66%) of the lots.

14. SEVERABILITY.

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

IN TESTIMONY WHEREOF, witness the signature of the Declarant
this 19th day of May, 1987.

M-N ENTERPRISES, an Indiana
Partnership

By Keith F. Macy
Keith F. Macy, partner

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State,
personally appeared Keith F. Macy, partner of M-N Enterprises, an
Indiana Partnership, who acknowledged the execution of the
foregoing Declaration of Restrictions for and on behalf of the
partnership.

Witness my hand and seal this 19th day of May, 1987.

John M. Kyle
John M. Kyle
Notary Public
Resident of Hamilton County

My commission expires:

February 15th, 1989

This instrument was prepared by John M. Kyle, Attorney at Law,
198 South 9th Street, Post Office Box E, Noblesville, IN 46060.