

8922092

BERKLEY GROVE - SECTION TWO

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this 26th day of SEPTEMBER, 1989, by MANN REALTY COMPANY, an Indiana Partnership, (hereinafter referred to as the "Developer"), WITNESSETH:

WHEREAS, the Developer is the owner of all the lands contained in the area shown on Exhibit "A", attached hereto and made a part hereof, which lands will be subdivided and known as BERKLEY GROVE - SECTION TWO, (hereinafter referred to as the "Development"), and will be more particularly described on the plat 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 residential lots 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 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, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having an interest 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 every one of the Developer's successors in title to any real estate in the Development. The Developer specifically reserves unto itself the right and privilege, prior to the recording of the plat by the Developer of a particular lot or tract within the Development as shown on Exhibit "A", to exclude any real estate so shown from the Development, or to include additional real estate.

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

A. "Committee" shall mean the Berkley Grove Architectural Review 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 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 Berkley Grove Property Owners' Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in paragraph 9 of the Declaration.

C. "Lot" shall mean any parcel of residential real estate described by the plat of the Development which is recorded in the office of the Recorder of Hamilton County, Indiana, excluding, however, parcels of real estate designated as "Blocks".

D. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed, with respect to the Developer or the Association by the President or a Vice President thereof, and with respect to the Committee, by two (2) members thereof.

This Instrument Recorded 10-4 1989 Sharon K. Cherry, Recorder, Hamilton County, IN

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E. "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.

F. "Town" shall mean Town of Fishers, Hamilton County, Indiana.

## 2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every numbered lot platted as a part of the Development is for residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house and such outbuildings as are usually accessory to a single-family dwelling house. No double occupancy dwelling shall be permitted on any part of the Development. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded plat shall be used in a manner consistent with the zoning and use designated in the plan filed by the Developer with the Department of Community Development in the Town of Fishers. 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 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 residential 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 residential 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 of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed.

D. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions, and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-way, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

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

A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of porches, terraces, garages, carports, accessory buildings or portions thereof, or similar facilities not modeled and decorated for regular and continuous habitation, shall in no case contain less than 1,200 square feet for one-story dwellings or 1,600 square feet for multi-level dwellings. Basements shall not be included in the computation of the minimum living area, except for that portion of a walkout basement which is to be finished as a living area.

### B. Residential Set-Back Requirements.

(1) Front Set-Backs. Unless otherwise provided in these Restrictions or on the recorded plat, all dwelling houses and above-grade structures shall be constructed or placed on residential lots in the Development so as to comply with the set-back lines, as established on the plat of the Development.

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(ii) Side Yards. The side yard set-back lines shall not be less than ten (10) feet from the side line of the lot, unless approved by the Committee and the Fishers Board of Zoning Appeals.

(iii) Rear Yards. The rear set-back line shall be at least twenty-five (25) feet from the rear lot line, unless approved by the Committee and the Fishers Board of Zoning Appeals.

C. Fences, Mailboxes, and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence or mailbox must be approved by the Committee as to size, location, height, and composition before it may be installed. A standard mailbox design will be established by the Committee. Mailbox placement may be undertaken without special review if the proposed type and placement conforms to the standard design. A lot must have at least two (2) trees growing upon it in the front yard by the time the house is completed.

D. Exterior Construction. 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 house shall have metal prefabricated flues that extend above the highest roof line. All driveways must be paved with asphalt or concrete. All outbuildings shall be constructed of wood or wood products.

E. Garages Required. All residential dwellings in the Development shall include an enclosed garage.

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 residential lot in the Development shall be completed within nine (9) months after the beginning of such construction or placement. 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.

H. Sales of Lots by Developer. Every lot within the Development shall be sold to a builder approved by the Developer or developed by the Developer.

I. Prohibition of Used Structures. All structures constructed or placed on any numbered 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.

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

(i) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.

(ii) Remove all debris or rubbish.

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.

(iv) Cut down and remove dead trees.

(v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

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(vi) Within sixty (60) days following completion of a house on a lot, the Owner shall landscape the lot, weather permitting.

K. 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, but not the obligation, 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 assessment to which said lot is subject and may be collected in any manner in which such annual assessment 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.

L. Owner's Responsibility for Tree and Shrub Maintenance. The Town of Fishers shall require all owners to respect the following with regard to the maintenance of trees and shrubs.

(i) The owner of the dominant real estate adjacent to the area between the street and the sidewalk and/or right-of-way easement line on which any tree or shrub is planted shall be responsible for the maintenance and removal of the tree or shrub if such removal is necessary.

(ii) If, after notice from the Town, the said owner fails to maintain or remove a dead tree or shrub or any dead or dangerous limbs or branches thereon, the Town may remove said shrub or limbs and collect the costs thereof from the owner.

(iii) The Town of Fishers and all public utilities retain their ownership and right to access to the area between the street and the right-of-way easement line of the dominant owner and retains the right to reasonably remove any tree or shrub impeding necessary work to be performed by the Town of Fishers and/or all public utilities, or other properly authorized users.

(iv) Neither the Town of Fishers nor any public utility or other properly authorized user of the Town's property located between the street and the sidewalk and/or right-of-way easement line shall be liable to the owner of the dominant real estate for any damages done to trees or shrubs located upon Town property between the street and the sidewalk and/or right-of-way easement line as a result of actions of the Town of Fishers or any public utility or other authorized user or their agents or employees in the performance of their duties.

(v) 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.

(vi) 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 (2) street lines.

M. Gas Pipeline Easement Restriction. On the northerly portions of Lots 32-34, 50, 51, and 67-73, there is denoted on the plat of Berkley Grove, Section Two, a thirty-three (33) foot easement, within which is located a natural gas pipeline. Although the owners of the aforementioned lots may otherwise enjoy the full use of their property within the easement, no landscaping, fences, walls, or other structures may be constructed or placed within the easement.

N. Above-Ground Swimming Pools Prohibited. No above-ground swimming pools shall be permitted to be constructed on any lot. The Committee shall determine whether or not a pool shall be defined as above-ground.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

A. Outside Toilets. No outside toilets shall be permitted on any lot in the Development (except during a period of construction).

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the Town of Fishers. No storm water (subsurface or surface) shall be discharged into sanitary sewers.

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 shall be displayed or placed on any lot or structures in the Development, except entry signs and home or lot sales signs.

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 one (1) ton or larger in size, campers, trailers, boats, or similar vehicles shall be parked on any street in the Development.

E. Garbage and Other Refuse. No Owner of a lot in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any 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. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Every outdoor receptacle for ashes, trash, rubbish, or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

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

H. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot.

I. Open Drainage, Ditches and Swales.

(i) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the Town Engineer. Property owners must maintain these swales as sodden grassways or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate-sized culverts or other approved structures have been permitted by the Town Engineer.

Culverts must be protected, especially at the ends, by head walls or metal end sections, and, if damaged enough to retard the water flow, must be replaced.

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(ii) Any property owner altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days' notice, by registered mail, to repair said damage, after which time, if no action is taken, the Town will cause said repairs to be accomplished and the bill for such repairs will be sent to the affected property owners for immediate payment.

J. Utility Services. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No utility services shall be installed, constructed, repaired, removed, or replaced 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, unless public sewer tap-in is unavailable.

L. Dusk-To-Dawn Lighting. Each lot shall maintain continuous dusk-to-dawn lighting to be controlled by a photocell, in lieu of public street lighting. Said dusk-to-dawn lighting shall be placed in the front yard on a free-standing pole located not more than ten (10) feet from the edge of the driveway.

6. BERKLEY GROVE ARCHITECTURAL REVIEW COMMITTEE.

A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) Generally. No dwelling, building structure or improvement of any type or kind, including yard lights, 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. 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 materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require.

(ii) 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 of 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 hereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of other owners.

(iii) 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 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, 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. Further, the Committee does not make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

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

E. Continuation of Committee. When the Developer notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.

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 to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single-dwelling house.

8. OWNERSHIP, USE AND ENJOYMENT OF COMMONS. "Commons" and "Common Areas" shall mean those areas, including Block A and Block B on the plat of Section One and other common areas designated on this plat and future plats of Berkley Grove. Any commons depicted on the recorded plats of the Development shall remain private, and neither the Developer's execution of recording of the plats nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as, a dedication to the public of the commons.

A license upon such terms and conditions as the Developer, and the successors, assigns or licensees of the Developer, shall from time to time grant, for the use and enjoyment of the Commons, is granted to the persons who are from time to time members of the Association. Ownership of any Commons shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as the Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such Commons to the Association.

9. BERKLEY GROVE PROPERTY OWNERS ASSOCIATION, INC.

A. In General.

(i) 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 "Berkley Grove Property Owners Association, Inc.", which is referred to as the "Association". Every owner of a residential

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lot in the Development shall be a member of the Association and shall be subject to all the requirements and limitations imposed in these Restrictions on other owners of residential lots within the Development and on members of the Association, including those provisions with respect to the payment of an annual assessment.

**B. Classes of Membership.** The Association shall have two classes of voting membership:

**Class A.** Class A members shall be all owners with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person holds an interest in 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 lot.

**Class B.** The Class B member(s) shall be the Developer, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever earlier occurs:

(a) On the date the Developer sells the last lot which it owns in the Development, and the Developer no longer owns any lots or land in the Development; or

(b) On January 17, 1995.

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

**D. Professional Management.** No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

**E. Responsibilities of the Association.**

(i) The Association shall maintain the landscaping in and along Hague Road and the landscape easements shown on the plat(s) and shall keep such areas in a neat, clean and presentable condition at all times.

(ii) The Association shall maintain and repair the Common Areas shown on the plat(s) including improvements thereon.

(iii) The Association shall maintain the landscaping and any signage in and on the islands located in the right-of-way at the entrance of Meadow Ridge Drive and shall keep such areas in a neat, clean and presentable condition at all times.

(iv) The Association may procure and maintain casualty insurance for the Common Areas, liability insurance (including Directors' and officers' insurance) and such other insurance as it deems necessary or advisable.

(v) The Association may contract for such service as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

#### 10. COVENANT FOR MAINTENANCE ASSESSMENTS.

**A. Creation of the Lien and Personal Obligation of Assessments.** Each owner of any lot in the subdivision, except the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and operating deficits, such assessments to be established and collected as hereinafter provided. The annual and special

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assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

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

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

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

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

**F. Effect of Non-Payment of Assessments; Remedies of the Association.** Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the owner or owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing

in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorneys' fees, incurred by the Association in collecting the same. Every interest in such lot, whether as an owner or otherwise is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to this subparagraph of the Restrictions.

The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specified lot have been paid or that certain assessments against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

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

H. Suspension of Privileges 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 services to be provided by the Association together with the right to use the facilities of the Association, of any member or associate member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member or associate member remains unpaid; (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.

#### 11. REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, together with right to collect costs and reasonable attorney's fees, 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, reoccurrence or continuation of such violation or violations of these Restrictions.

C. Enforcement by Town of Fishers Municipal Plan Commission. These Restrictions may be enforced by the Fishers Plan Commission of the Town of Fishers, Indiana, or its successors or assigns, pursuant to whatever powers or procedures are statutorily available to it for such purposes.

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12. 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 the rights and powers of the Developer, Committee and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with the Developer, Committee and 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.

13. TITLES.

The 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.

14. 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, 2008, 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 seventy-five percent (75%) of the numbered lots in the Development.

15. 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.

16. AMENDMENT.

These Restrictions may be amended by a vote of seventy-five percent (75%) of the then lot owners of all lots in the Development.

IN TESTIMONY WHEREOF, witness the signature of the Developer this 26<sup>th</sup> day of SEPTEMBER, 1989.

MANN REALTY COMPANY, an Indiana Partnership

By: [Signature]  
Gerald Davis Mann III, Partner

"DEVELOPER"

8922092

STATE OF INDIANA )  
 ) SS:  
COUNTY OF )

Before me, a Notary Public in and for said County and State, personally appeared Gerald Davis Mann II, a Partner of Mann Realty Company, an Indiana Partnership (Developer herein), and acknowledged the execution of the foregoing instrument this

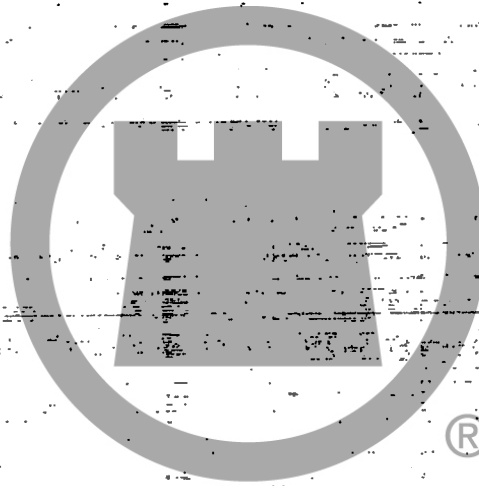
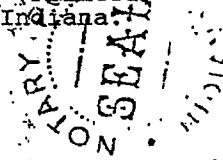
26<sup>th</sup> day of September, 1989

Sharon L. Nowakowski Notary Public  
(Printed)  
Resident of \_\_\_\_\_ County, Indiana.

My Commission expires:

Feb 20, 1991

SHARON L. NOWAKOSKI  
NOTARY PUBLIC STATE OF INDIANA  
MARION COUNTY  
MY COMMISSION EXP. FEB. 20, 1991



CHICAGO TITLE

This instrument prepared by: J. Bradley Cook, Attorney at Law  
198 South 9th Street, P. O. Box E  
Noblesville, Indiana 46060

8922092

LAND DESCRIPTION

BERKLEY GROVE - SECTION TWO

A part of the South Half of Section 1, Township 17 North, Range 4 East, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Southwest corner of said South Half; thence North 00°06'49" East (assumed bearing) along the West line of said South Half a distance of 2,652.13 feet to the Northwest corner of said South Half; thence North 88°59'38" East along the North line of said South Half a distance of 1,740.48 feet to the POINT OF BEGINNING; thence continuing North 88°59'38" East along said North line of said South Half a distance of 945.73 feet to the North Quarter corner of said South Half; thence North 89°17'39" East along the North line of said South Half a distance of 465.21 feet to the West Right-of-Way line of the Norfolk and Western Railroad; thence South 27°43'56" West along said West Right-of-Way a distance of 1,028.87 feet; thence North 76°05'17" West a distance of 190.97 feet to the point of curvature of a curve to the right having a central angle of 13°49'13" and a radius of 187.99 feet; thence Southerly along said curve an arc distance of 45.34 feet (said arc being subtended by a chord having a bearing of South 20°49'20" West and a length of 45.23 feet) to the end point of said curve; thence South 27°43'56" West a distance of 47.35 feet; thence North 62°16'04" West a distance of 125.00 feet; thence South 27°43'56" West a distance of 72.31 feet; thence North 87°12'59" West a distance of 260.63 feet; thence North 80°23'23" West a distance of 171.12 feet; thence South 09°36'37" West a distance of 175.00 feet; thence North 80°23'23" West a distance of 41.00 feet to the point of curvature of a curve to the right having a central angle of 02°21'11" and a radius of 235.22 feet; thence Westerly along said curve an arc distance of 9.66 feet (said arc being subtended by a chord having a bearing of North 79°12'47" West and a length of 9.66 feet) to the end point of said curve; thence South 15°04'58" West a distance of 125.77 feet; thence North 80°23'23" West a distance of 32.18 feet; thence North 63°23'31" West a distance of 78.30 feet to the point of curvature of a curve to the left having a central angle of 13°45'11" and a radius of 544.51 feet; thence Southerly along said curve an arc distance of 130.70 feet (said arc being subtended by a chord having a bearing of South 17°12'30" West and a length of 130.39 feet) to the end point of said curve; thence North 76°15'28" West a distance of 162.93 feet; thence North 13°44'32" East a distance of 199.74 feet; thence North 26°44'54" East a distance of 451.04 feet; thence North 02°16'24" East a distance of 625.67 feet to the point of beginning. Containing 27.3506 Acres (1,191,393.879 Square Feet) more or less.

This Instrument Recorded 10-4 1989  
Sharon K. Cherry, Recorder, Hamilton County, IN

892 2092