

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION made this 15th day of May, 1968, by COLLEGE PROPERTIES, INC., (hereinafter called "Declarant"),

WITNESSETH:

WHEREAS, Declarant COLLEGE PROPERTIES, INC. is the owner or has valid contracts to purchase the real property described in Article II of this Declaration and desires to create thereon a residential community with permanent parks, playgrounds, open spaces, and other common facilities for the benefit of the community, to be known as "College Park"; and,

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in development of said land into a community, for the maintenance of parks, playgrounds, open spaces and other common 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 (as provided in Article II) to the covenants, restrictions, easements, assessments and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

WHEREAS, there has been incorporated under the laws of the State of Indiana a nonprofit corporation, College Park Club, Inc., for the purpose of performing the functions aforesaid; and,

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to delegate and assign the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created to be paid College Park Club, Inc.; and,

NOW, THEREFORE, 'Declarant' declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, assessments and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

#### ARTICLE I

##### Definitions

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 College Park Club, Inc.

(b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any supplemental declaration under the provisions

of Article II hereof.

(c) "Common Properties" shall mean and refer to those areas of land shown and so designated on the plat of any recorded subdivision plat of "The Properties" and intended to be devoted to the common use and enjoyment of the owners of "The Properties".

(d) "Lot" shall mean and refer to (i) any numbered plot of land shown upon any recorded plat of "The Properties"; or (ii) any tract of land not more than 135 feet in width measured at the front lot line, which consists of portions of one or more of such numbered plots, which is improved or is to be improved as a residential lot with one single-family dwelling and accessory buildings, but excepting "Common Properties" as heretofore defined. Width measured at the front lot line in the case of corner lots abutting two streets shall be construed as the narrowest width on either street frontage. In all instances where a re-subdivision or combining of two or more platted Lots in College Park and the various Additions thereof exceed 135' in width measured at the front lot line, then the owner or owners thereof shall be entitled to two voting rights and shall be subject to two assessments and charges as defined in the "Declaration of Covenants and Restrictions". Excepting, however, dwelling units which are commonly known and designated "Cluster Housing" shall be entitled to one voting right and be chargeable with one assessment and charge as

**68 22374**

defined in the "Declaration of Covenants and Restrictions", notwithstanding the definition of "Lot" hereinabove contained.

(e) "Dwelling Unit" shall mean and refer to any portion of a building designed and intended for use and occupancy as a residence by a single family.

(f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Dwelling Unit situated upon "The Properties", but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

## ARTICLE II

### Property Subject to This Declaration; Additions Thereto

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is known and designated as College Park and Additions thereof, which is located in Pike Township, Marion County, Indiana, and contained within the legal description, marked Exhibit "A", attached hereto, and by this reference incorporated herein; all of which real property shall hereinafter be referred to as "Existing Property".

Section 2. Easement to Owner. Declarant hereby grants an easement in favor of each Owner for the use, enjoyment, and benefit

68 22374

of the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 3. Covenant to Convey. Declarant hereby covenants and declares that all areas designated "Common Properties" within any recorded plat of any of "The Properties" as hereinbefore defined in Exhibit A are to be conveyed to the Corporation by a special warranty deed free and clear of all liens and encumbrances except the lien of current taxes and easements and restrictions of record, and any legal highways or rights-of-way.

Section 4. Additions to Existing Property.

(a) Annexation of Other Additions to Existing Property By Corporation. Additional lands may become subject to this Declaration in the following manner:

(1) Upon approval in writing of the Corporation pursuant to a vote of its members as provided in Article VI of the Articles of Incorporation, the Owner of any property who is desirous of adding it to the jurisdiction of the Corporation, may file a record of Supplementary Declaration of Covenants and Restrictions which shall extend the scheme of the covenants and restrictions of this Declaration to such property.

Such supplementary declaration may contain such complementary 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, modify or add to the covenants established by this Declaration within the Existing Property.

(2) Upon a merger or consolidation of the Corporation with another corporation as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may, by operation of law, be added to the properties rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this declaration with the Existing Property except as hereinafter provided.

Section 5. Schools, Churches, etc. Excepted. All other provisions hereof to the contrary notwithstanding, no real estate

68 22374

which would otherwise be subject to this Declaration of Covenants and Restrictions shall be subject to the provisions hereof for so long as the same shall be used for school, church, or other public or quasi-public purposes.

### ARTICLE III

#### Membership and Voting Rights in the Corporation

Section 1. Membership. Every person or entity who is a record owner of a fee interest in any Lot or, in the case of Cluster Housing, every person having a possessory interest in a dwelling unit which is a part of the Properties and which is subject by covenants of record to assessment by this Corporation shall be a member of the Corporation, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

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

Class A. Class A members shall be all those owners or holders of a possessory interest as defined in this Article III, Section 1, with the exception of COLLEGE PROPERTIES, INC. Class A members shall be entitled to one vote for each Lot or dwelling unit in which they hold the interest required for membership by this Article III, Section 1. When more than one person holds such interest or interests in any Lot or dwelling unit, all such persons shall be members and the vote for such Lot or dwelling unit shall be exercised as they

among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or dwelling unit.

Class B. Class B members shall be COLLEGE PROPERTIES, INC. The Class B member shall be entitled to one vote for each Lot or dwelling unit which it holds the interest required for membership by Article III, provided, however, that the Class B membership shall be automatically cancelled and cease to exist after five (5) years from the date of incorporation.

#### ARTICLE IV

##### Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot owned by it and for each dwelling unit in the Cluster Housing area within "The Properties" hereby covenants and each purchaser of any Lot and all holders of title interest in dwelling units in the Cluster Housing area by acceptance of a deed or lease 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; (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 hereinafter 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 residents in College Park Additions, and, in particular, for the improvement and maintenance of property, services and facilities devoted to this purpose and directly related to the use and enjoyment of the "Common Properties" and of the homes situated upon the properties including, but not limited to, the payment of taxes and insurance for the "Common Properties", the grass cutting, yard maintenance and snow removal of the "Common Properties" and repair, replacement and additions thereto and for the cost of labor, equipment, materials management and supervision for the "Common Properties". The assessment shall also be for the purpose of providing such municipal services including, but not limited to, trash and garbage pickup which are not provided by the local municipal authorities and for such items of repair, maintenance and alteration of "The Properties" and/or the individual Dwelling Units as the Board of Directors may, by appropriate action, from time to time authorize.

Section 3. Basis and Maximum of Assessments. Commencing May 1, 1969, the monthly assessment shall be \$4.00 per Lot or Dwelling Unit for maintenance of the "Common Properties", payable monthly

on the first day of each calendar month thereafter until a club house is constructed at which time assessments shall be increased to \$6.00 per Lot or Dwelling Unit, payable in the same manner as hereinabove set forth; excepting, however, the Directors of the Corporation by appropriate corporate resolution may authorize Owners to pay assessments on a quarterly, semi-annual or annual basis. Mortgagees of residential improvements in College Park Additions are expressly authorized to act as agent for the collection of such assessments, but all sums so collected shall be tendered over to College Park Club, Inc., within thirty (30) days from receipt thereof unless, by written agreement with College Park Club, Inc., other arrangements for remittance are made. From and after November 1, 1973, the maximum annual assessment may be increased effective January 1, of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July as compared to said price index twelve months prior thereto. From and after November 1, 1973, the maximum annual assessment may be increased by a vote of the members above that established by the Consumer Price Index formula for the next succeeding two (2) years, and at the end of such period of two (2) years for each such succeeding period of two (2) years, provided that any such change shall have the assent of two-thirds (2/3) of the votes of the Class A members

who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to such members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which College Park Club, Inc., is authorized to participate under its Articles of Incorporation.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized by Section 3 hereof, the Corporation may levy in any 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 "Common Properties", including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of each class of its membership, voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments

Subject to the limitations of Section 3 hereof, and for the periods

therein specified, the Corporation may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period, provided that any such change shall have the assent of two-thirds (2/3) of each class of its membership, voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Corporation is authorized to participate under its Articles of Incorporation and under Article 11, Section 2, hereof.

Section 6. Quorum for Any Action Authorized Under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first duly called meeting of any meeting of the membership as provided in Sections 4 and 5 hereof, the presence at the meeting of members, or of proxies, entitled to cast sixty per cent (60%) of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such

68 22374

subsequent meeting shall be held more than sixty days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments;

Due Dates. Payment of annual assessments provided for herein shall be at the time and in the manner prescribed in Section 3 of Article IV above.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Assessments - Miscellaneous. At such time as any annual assessment is changed as herein provided, the Board of Directors of the Corporation shall fix the date of commencement of the revised assessment at least thirty (30) days in advance of such date 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 person or entity 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 9. Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of Corporation. If th

assessments are not paid on the date when due (being the dates specified in Section 7 hereof), 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. The personal obligation of the then owner to pay such assessments, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

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 per cent (8%) per annum, and the Corporation may bring an action at law against the owner or any person or entity persona obligated to pay the same and 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 10. Subordination of the Lien to Mortgages. The lien of the assessments 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 11. "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, except that the lien hereof for 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 College Park Club, Inc., or the Owner of any land subject to this declaration, his respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) 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 assessments created by these covenants; and failure by College Park Club, Inc., 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, COLLEGE PROPERTIES, INC., Declarant, has caused this document to be executed the day, month and year first mentioned.

COLLEGE PROPERTIES, INC.

By Ralph D. Cornuelle  
President

(SEAL)

ATTEST

R. Herman Wheeler  
Secretary

RECEIVED RECORD  
1968 MAY 15 AM 10 26  
MARCIA M. HORTON  
RECORDER OF MARION COUNTY

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said county and state, personally appeared COLLEGE PROPERTIES, INC., an Indiana corporation, by Ralph D. Cornuelle and R. Herman Wheeler, its President and Secretary, respectively, who, for and in behalf of said corporation acknowledge the execution of the foregoing Declaration of Covenants and Restrictions.

WITNESS my hand and Notarial Seal this 15th day of May, 1968.

Beverly A. Pearson  
Beverly A. Pearson, Notary Public

My Commission Expires:  
November 10, 1969

THIS INSTRUMENT PREPARED BY  
William J. LeGrand, Atty

68 22374

CIVIL ENGINEERING  
LAND SURVEYING

PAUL I. CRIFE, INC.  
130 E. MARKET STREET  
INDIANAPOLIS, INDIANA 46204  
638-3411

SUBDIVISION DESIGN  
BUILDING DESIGN

#6565  
5-13-68

LEGAL DESCRIPTION FOR COLLEGE PARK  
RESIDENTIAL-COLLEGE PARK CLUB, INC.  
ASSESSMENT AREA  
EXHIBIT "A"

Part of Section 17, Township 17 North, Range 3 East in Marion County, Indiana, more particularly described as follows:

Beginning on the South line of the Northeast Quarter of the said Section 17, bearing South 89 degrees 13 minutes 10 seconds West 800.14 feet from the Southeast corner of the Northeast Quarter of the said Section 17; thence South 00 degrees 18 minutes 02 seconds West parallel with the East line of the said Section 880.00 feet; thence South 89 degrees 13 minutes 10 seconds West 1187.40 feet; thence North 00 degrees 30 minutes 00 seconds West 60.27 feet; thence South 89 degrees 30 minutes 00 seconds West 20.88 to a curve having a radius of 1931.99 feet, the radius point of which bears North 00 degrees 30 minutes 00 seconds West; thence Westerly along the said curve 472.08 feet to a point which bears South 13 degrees 30 minutes 00 seconds West of the radius point of the said curve (said point being on a curve having a radius of 895.88 feet, the radius point of which bears South 13 degrees 30 minutes 00 seconds West); thence North-westerly along the said curve 218.90 feet to a point which bears North 00 degrees 30 minutes 00 seconds West of the radius point of the said curve; thence North 00 degrees 30 minutes 00 seconds West 18.00 feet, thence South 89 degrees 30 minutes 00 seconds West 1183.00 feet to a curve having a radius of 100.00 feet, the radius point of which bears North 00 degrees 30 minutes 00 seconds West; thence Westerly and Northerly along the said curve 157.08 feet to a point which bears South 89 degrees 30 minutes 00 seconds West of the radius point of the said curve; thence North 00 degrees 30 minutes 00 seconds West 1140.00 feet to a curve having a radius of 393.21 feet, the radius point of which bears North 89 degrees 30 minutes 00 seconds East; thence Northeasterly along the said curve 157.84 feet to a point which bears North 67 degrees 30 minutes 00 seconds West of the radius point of the said curve; thence North 22 degrees 30 minutes 00 seconds East 110.81 feet to a curve having a radius of 294.91 feet, the radius point of which bears North 67 degrees 30 minutes 00 seconds West; thence Northerly along the said curve 118.38 feet to a point which bears North 89 degrees 30 minutes 00 seconds East of the radius point of the said curve; thence North 00 degrees 30 minutes 00 seconds West 274.12 feet to a curve having a radius of 125.00 feet, the radius point of which bears North 89 degrees 30 minutes 00 seconds East; thence Northerly and Easterly along the said curve 196.35 feet to a point which bears North 00 degrees 30 minutes 00 seconds West of the radius point of the said curve; thence North 89 degrees 30 minutes 00 seconds East 1090.33 feet to the West line of the said Northeast Quarter Section; thence North 00 degrees 35 minutes 04 seconds East along the said West line 343.89 feet to the South right of way line of proposed Interstate 465; thence North 89 degrees 11 minutes 52 seconds East along the said right of way line 1330.95 feet; thence South 89 degrees 22 minutes 12 seconds East along the said right of way line 561.76 feet; thence South 00 degrees 18 minutes 02 seconds West parallel with the East line of the said Section 1626.46 feet to the place of beginning, containing 166.441 acres, more or less.

Subject to legal highways, rights of way and easements.