

September 7, 1979

008946

DECLARATION OF COVENANTS
AND RESTRICTIONS FOR
HUNTER'S POINTE
All Sections - All Lots

THIS DECLARATION made the date hereinafter set forth by Robert H. Weaver, hereinafter referred to as the "Developer", and/or "Declarant"

W I T N E S S E T H :

WHEREAS, the Developer is the Owner of certain real property hereinafter described, in White River Township, Johnson County, Indiana, and is creating thereon, a residential subdivision and community with permanent park, recreational area and open space for the benefit of the residents of the said subdivision to be known as "Hunter's Pointe", and

WHEREAS, the Developer desires to provide for the preservation of the values of the properties adjacent to and affected by the said park, recreational and common areas and for the maintenance of the said park, recreational, and common areas by the residents of Hunter's Pointe who will eventually own those said areas as herein provided; and to this end desires to subject the real estate described herein, together with such additions as may hereafter be made thereto, to the covenants, restrictions, easements, assessments and liens as hereinafter set forth, each and all of which is and are for the benefit of the said property and the owners thereof; and

WHEREAS, the Developer has determined it desirable, in an effort to insure the preservation of the values of the said residential properties within the subdivision, as well as the park, recreational, and common areas described herein and to provide for the continuing maintenance of those areas, to create an entity in which the ultimate responsibility for that said maintenance, and the power and authority

to administer and enforce the covenants and restrictions and collect and disburse the assessments and charges hereinafter created should be vested, and

WHEREAS, the Developer has or will cause to be incorporated under the Laws of the State of Indiana, a not-for-profit corporation which shall bear the name "Hunter's Pointe Recreation Association, Inc.", the purpose of which shall be the ownership and maintenance of the said park, recreational, and common areas, subject to the terms of these covenants and restrictions and the members of which shall be the owners of lots within the subdivision known as Hunter's Pointe, as designated by the plat thereof.

NOW, THEREFORE, the Developer declares that the real property described in Article II of this Declaration and such additions thereto as may hereafter be made pursuant to the terms of Article II hereof, is and shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, restrictions, easements, charges, assessments and liens (all sometimes referred to as "covenants and restrictions") created and set forth herein.

ARTICLE I

Definitions

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

(a) "Association" shall mean and refer to Hunter's Pointe Recreation Association, Inc., a not-for-profit Indiana corporation.

(b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration under the provisions of Article II hereof and described therein.

(c) "The Lots" shall mean and refer to any numbered plot of land shown upon any recorded plat of "The Properties" and shall include all lots in all sections of the said plat as it now exists or may be hereafter created.

(d) "Park, Recreational, and Common Areas" shall mean and refer to those areas shown on or designated on the recorded subdivision plat of "The Properties" and intended to be devoted to the common use and enjoyment of the owners of "The Properties" and "The Lots".

(e) "Residence" shall mean and refer to any building designed and intended for use or occupancy as a single-family residence upon any of "The Lots".

(f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any of "The Lots" or "Residence" situated upon "The Properties" but shall not mean or refer to any mortgagee unless and until such mortgagee shall acquire title pursuant to foreclosure or any procedure in lieu of foreclosure.

(g) "Contract Purchaser" shall mean those persons or entities acquiring an equitable interest through purchase or contract of any Lot or Residence situated upon the Properties, provided, however, that the term "Contract Purchaser" shall not refer to or mean building contractors constructing residences upon any of "The Lots".

(h) "Member" shall mean and refer to all owners of Lots in Hunter's Pointe who are, by virtue of that ownership, members of the "Association" as provided herein.

Section II. Additional Property.

(a) Upon approval in writing of the Association pursuant to a vote of its members as provided in its Articles of Incorporation, additional property may be included within the properties subject to the provisions of this Declaration, providing that such amendment shall subject such additional properties to the jurisdiction of the Association and permit the use of the park, recreational and common areas by the owners of the said additional property in conjunction with the members of the Association.

(b) Mergers. Upon a merger or consolidation of the Association as provided in its Articles of Incorporation, its property, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the property, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as the surviving corporation to the Merger. The surviving corporation shall be authorized to administer and enforce the covenants and restrictions, assessments and liens and no such merger or consolidation shall effect any revocation, change or addition to the covenants established by this Declaration as to the existing property except as hereinafter provided.

ARTICLE III

Membership and Voting
Rights in the Association

Section 1 Membership. Membership in the Association shall be constituted of all persons or entities who are either record owners of a fee simple interest in any Lot which is a part of The Properties and which is subject by

these covenants of record to assessment by the Association and all persons or entities owning an equitable interest in a contract of purchase for any such Lot, as defined herein; 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 II. Membership Classification and Voting Rights.

The Association shall have three (3) classes of membership with voting rights as follows:

Class A. The class of membership shall consist of all owners of a fee simple interest in any Lot within The Properties, with the exception of the Developer, who shall hold Class B membership as hereinafter provided. Class A members shall be entitled to one (1) vote for each Lot in which they hold the fee simple interest required for membership by this Article III. When more than one person holds such interest in, or interests in, any Lot, all such persons shall be members and the one (1) vote for such Lot shall be exercised as they shall among themselves determine, provided, that in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The Class B membership shall be constituted of the Developer and Hunter's Pointe, Inc., or an assignee of either. The Class B members shall be entitled to one (1) vote for each Lot in which he or it holds the fee simple interest required for membership by this Article III, provided; however, that the Class B membership shall be cancelled upon the conveyance by the Developer or Hunter's Pointe, Inc. of the fee simple title to eighty percent (80%) of the Lots within the Properties now or hereafter platted to Owners as defined herein, and conveyance of the park, recreational and common areas described herein, by the Devel-

oper or Hunter's Pointe, Inc. to the Association as provided herein. Cancellation of the Class B membership shall be in accordance with the provisions of the Articles of Incorporation of the Association and shall not be automatic.

Class C. Class C members, if any, shall be those members constituted of the "Contract Purchasers" of Lots as defined herein. Class C members shall not be entitled to voting rights but shall be permitted to participate in all other affairs of the Association, shall possess all other rights and privileges of the Class A membership and all Lots owned by Class C members shall be subject to the assessment and lien provisions of this Declaration, as well as all other provisions hereof.

ARTICLE IV

Property Rights in the Park, Recreational and Common Areas

Section . The Park, Recreational and Common Areas -
Description and Covenant to Convey. The "Park, Recreational and Common Areas" as defined herein are as more particularly described in the Legal Description of the "Park, Recreational and Common Areas," attached hereto as Exhibit "A" and incorporated herein by this reference. The Developer, for himself and Hunter's Pointe, Inc., hereby covenants and declares that the property so described in Exhibit "A" attached hereto and set aside for the common use and enjoyment of the Members of the Association for recreational purposes shall be conveyed to the Association by special Warranty Deed, subject to all liens and encumbrances then existing of record including the provisions of this Declaration and the lien of current taxes, all easements, restrictions, highways and rights-of-way of record, as soon as reasonably possible

following the completion of the development of fifty percent (50%) of the Lots in Hunter's Pointe. The Developer may, however, in his discretion, convey the said Park, Recreational and Common Areas to the Association earlier than required by this Declaration.

Section II. Members Easements of Enjoyment. Subject to the terms of Section III of this Article IV, every member shall have a right and easement of enjoyment for the use of the Park, Recreational and Common Areas, and such easement shall be appurtenant to and pass with the title to every Lot.

Section III. Extent of Members' Easement. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to take such steps as are reasonably necessary to protect the above described Properties from foreclosure or other encumbrance and

(b) The right of the Association, as provided in its Articles of Incorporation and/or By-Laws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid and for any period not exceeding thirty (30) days for any infraction of its rules and regulations and

(c) The right of the Association to make assessments and charges to cover the costs of maintenance and repair of the Park, Recreational and Common Areas and any improvements owned by the Association.

ARTICLE V

Covenant for Maintenance and Improvement Assessments

Section I. Creation of Lien and Personal Obligation of Assessments. The Developer, being the Owner of all Lots

within the Properties, and the Park, Recreational and Common Areas described in Exhibit "A", hereby covenants, and each subsequent Owner of any Lot by acceptance of a deed of conveyance thereof, is deemed to covenant and agrees to pay to the Developer, and then when legally established and in title to the said Park, Recreational and Common Areas, to the Association (1) Annual assessments or charges; (2) Special assessments for capital improvements, if any, 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 may be provided, shall be a charge on the Lots in this subdivision and shall be a continuing lien upon such Lots against which this assessment is made. Each such assessment together with such interest thereon and costs of collection thereof as is herein provided, shall also be the personal obligation of the person or persons who were the Owners of such Lots at the time such assessment became due, all as provided herein.

Section II. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of maintaining and repairing the Park, Recreational and Common Areas as reasonably necessary to promote the recreation, health, and safety and welfare of the members of the Association, which shall include but shall not be limited to the payment of taxes and insurance thereon and for the cost of labor, equipment, materials, management and supervision required for the maintenance thereof.

Section III. Basis and Amount of Annual Assessments. The initial annual assessment shall be Forty Dollars (\$40.00) per each Lot and shall be distributed evenly among the members of the Association. The Board of Directors of the Association shall determine at the annual meeting of the Board of Directors and members of the Association whether

the initial annual assessment is sufficient to pay the reasonable costs incurred by the Developer and the Association in the maintenance of the Park, Recreational and Common Areas during the preceeding year and shall fix the annual assessment for the following year at that meeting. In lieu of an annual or special assessment of any kind the Class B member of the Association, the Developer, shall provide all sums reasonably necessary, in excess of the total annual assessments, owed to the Association for the normal maintenance of the Park, Recreational and Common Areas, or in lieu thereof, provide the maintenance necessary to maintain the said areas in good condition, during a period from the date of conveyance of the said Park, Recreational and Common Areas to the Association until the cancellation of the Class B membership in the Association as provided herein; provided, however, that no obligation on the part of the Developer, in any manner created by this Declaration, shall constitute a lien or encumbrance upon any Lot in the Properties owned by the Developer.

Section IV. Special Assessments for Capital Improvement. In addition to the annual assessments authorized by Section III hereof, the Association may levy in any assessment year on each of the Lots, 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 an existing capital improvement or other unanticipated expense related to the Park, Recreational and Common Areas, including the repair or replacement of necessary fixtures or personal property related thereto, provided that any such special assessment shall have the approval and vote of two-thirds (2/3) of the voting members of the Association who are voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be sent to all

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, 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 VII. Board of Directors Election and Duties.

The management of the affairs and the authority to conduct the business of the Association shall be vested in the Board of Directors, each of whom must be a member of the Association in good standing; provided, however, that the Developer shall be entitled to maintain three (3) Directorships to be filled by the officers of the Developer or its nominees until such time as the Class B membership in the Association is cancelled as provided herein. The initial Board of Directors shall consist of three (3) Members, with the subsequent number and election of Directors to be in accordance with the Articles of Incorporation and By-Laws of the Association.

Section VIII. Effect of Non-Payment of Assessments.

The Personal Obligation of the Owner; The Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section VI hereof), then interest thereon and cost of collection thereof as hereinafter provided, shall be added to the assessment and the entire sum shall thereupon become a continuing lien on the applicable Lot or Lots which shall bind such property in the hands of the then Owner, his heirs, Grantees, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, 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, a penalty fee shall be added thereto and from that date interest at the rate of ten percent (10%) per annum may be added to the delinquent balance and penalty, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the Property. In the event legal proceedings are commenced, there shall be added to such assessment, delinquent fee and interest, the cost of preparing and filing the Complaint in such action and such costs shall include interest on the total amount as above provided and reasonable attorneys' fees to be fixed by the Court together with the costs of the action.

Section IX. Subordination of the Lien to Mortgage.

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

Section X. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein; (a) all Properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) the Park, Recreational and Common Areas as described herein; (c) all Properties exempted from taxation by the laws of the State of Indiana upon the terms and to the extent of such legal exemption; (d) all Properties owned by the Developer, Hunter's Pointe,

Inc., or their successors and assigns, and held by them or any of them for sale or resale, including any Lots which may have been reacquired by the Developer or Hunter's Pointe, Inc.

ARTICLE VI

General Provisions

Section I. Building and Use Restrictions. All Properties subject to this Declaration shall be used and developed in accordance with the use and development restrictions as set forth in the plat of Hunter's Pointe, All Sections, which Restrictive Covenants are hereby incorporated into this Declaration as if set forth herein verbatim.

Section II. Duration. 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 the Association, or the Owner of any land subject to this Declaration, their respective Grantees, 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 and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots, subject to this Declaration, including all Lots, if any, still owned by the Developer or its successors or assigns, has been recorded, agreeing to change said covenants and restrictions in whole or in part.

Section III. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section IV. 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 recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association 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 V. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, Robert H. Weaver, Declarant, has caused this document to be executed this 6TH day of September, 1979.

Robert H. Weaver
ROBERT H. WEAVER

"DEVELOPER"

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Robert H. Weaver, who acknowledged the execution of the foregoing Declaration, and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this 6TH day of September, 1979.

Louis E. Zickler
Notary Public

LOUIS E. ZICKLER
Printed

My Commission Expires:

23 JUNE 1980

By County of Residence:

MARION

This instrument was prepared by Michael J. Kias, Attorney at Law, 3045 South Meridian Street, Indianapolis, Indiana 46217.

THE PARK ENGINEERING CO., INC.

LEGAL DESCRIPTION OF PARK, RECREATIONAL, AND COMMON AREAS FOR THE USE OF THE MEMBERS OF HUNTERS POINTE RECREATION ASSOCIATION, INC.

PARTS OF THE NORTHEAST AND NORTHWEST QUARTERS OF SECTION 10, TOWNSHIP 13 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN IN JOHNSON COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER SECTION, THENCE WEST ALONG THE NORTH LINE OF SAID QUARTER SECTION; NORTH $09^{\circ}10'54''$ WEST, 280.00 FEET; THENCE, SOUTH $0^{\circ}49'06''$ WEST, 35 FEET, TO THE POINT OF BEGINNING; THENCE SOUTH $0^{\circ}49'06''$ WEST, 174.16 FEET; THENCE, NORTH $88^{\circ}59'30''$ WEST, 137.34 FEET TO THE CENTERLINE OF AN EASEMENT NO. 10831 GRANTED TO INDIANAPOLIS POWER AND LIGHT COMPANY, AS RECORDED IN BOOK NO. 208, PAGE 753, IN THE OFFICE OF THE RECORDER OF JOHNSON COUNTY; THENCE, SOUTHWEST ALONG SAID EASEMENT, SOUTH $38^{\circ}46'34''$ WEST, 655.60 FEET; THENCE, NORTH $0^{\circ}49'06''$ EAST, 690.55 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY OF COUNTY ROAD 800 NORTH; THENCE, EAST ALONG SAID RIGHT-OF-WAY, SOUTH $89^{\circ}10'54''$ EAST, 540.59 FEET TO THE POINT OF BEGINNING. CONTAINING 4.549 ACRES, MORE OR LESS.

SUBJECT TO TWO EASEMENTS IN FAVOR OF INDIANAPOLIS POWER AND LIGHT COMPANY, RECORDED IN THE OFFICE OF THE JOHNSON COUNTY RECORDER IN BOOK 102, PAGE 97, AND IN BOOK 208, PAGE 753.

ALSO, COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER SECTION, THENCE NORTH $0^{\circ}49'04''$ EAST ALONG THE EAST LINE THEREOF, 929.06 FEET; THENCE NORTH $89^{\circ}16'56''$ WEST 410.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH $0^{\circ}43'04''$ WEST 315.00 FEET; THENCE NORTH $23^{\circ}30'08''$ WEST 267.14 FEET; THENCE NORTH $89^{\circ}13'56''$ WEST 340.00 FEET; THENCE NORTH $34^{\circ}22'12''$ WEST 185.80 FEET; THENCE NORTH $0^{\circ}35'40''$ EAST 20.00 FEET; THENCE SOUTH $89^{\circ}23'20''$ EAST 40.76 FEET; THENCE SOUTH $41^{\circ}17'44''$ EAST 135.47 FEET; THENCE SOUTH $89^{\circ}13'56''$ EAST 425.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1.232 ACRES, MORE OR LESS.

ALL TRACTS SUBJECT TO ALL EASEMENTS, HIGHWAYS, AND RIGHTS-OF-WAY OF RECORD.

EXHIBIT "A"

RECEIVED
FOR RECORD
BOOK 53 PAGE 165

SEP 7 4 12 PM '79

S. Haltinger Pitts
JOHNSON COUNTY RECORDER