

9228304

DECLARATION OF COVENANTS AND RESTRICTIONS

This Declaration of Covenants and Restrictions is made and entered into this 1st day of April, 1992, by and among Rex E. Jones and Constance Doughty Jones, Husband and Wife, Richard A. Lewis and Karen Lewis, Husband and Wife, and N. Jay Hittinger.

RECEIVED FOR RECORD
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SHARON K. CHERRY
RECORDER
HAMILTON CO. IN

WITNESSETH:

WHEREAS, Rex E. Jones and Constance Doughty Jones (hereinafter collectively "Jones") own an undivided one-third (1/3) interest in Lot 3 in Tamanend, an addition in Hamilton County, Indiana, as per plat thereof recorded July 10, 1986 in Plat Book 13, pages 17-19, in the Office of the Recorder of Hamilton County, Indiana (the "Real Estate"); and

WHEREAS, Richard A. Lewis and Karen Lewis (hereinafter collectively "Lewis") own an undivided one-third (1/3) interest in the Real Estate; and

WHEREAS, N. Jay Hittinger ("Hittinger") owns an undivided one-third (1/3) interest in the Real Estate; and

WHEREAS, the parties desire to establish certain covenants and restrictions with respect to the Real Estate.

NOW, THEREFORE, in consideration of the premises and the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Jones, Lewis and Hittinger, as the

This instrument recorded 7-24-1992
Sharon K. Cherry, Recorder, Hamilton County, Indiana

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Upon receipt of such payments, Jones shall pay the full amount of the payment due and payable in connection with the Mortgage on or before the due date. Jones shall give Lewis and Hittinger notice of any payments due, other than the regular monthly payments to the holder of the Mortgage, immediately upon receipt thereof.

Jones, Lewis and Hittinger acknowledge that the balance of the Note secured by the Mortgage is due to Shelby on or before October 1, 1992 and it will be necessary to obtain new financing at that time. Jones, Lewis and Hittinger agree that they will not obtain financing or encumber the Real Estate, or their interest therein, without the prior written consent of Jones, Lewis and Hittinger.

4. Jones, Lewis and Hittinger agree that they shall each be responsible for one-third (1/3) of all real estate taxes and assessments assessed against or due and payable in connection with the Real Estate commencing with the real estate taxes due and payable in May 1992. Lewis and Hittinger shall pay their share of the real estate taxes and any assessments due and payable in connection with the Real Estate to Jones at least ten (10) days prior to the due date of such real estate taxes or assessments. Upon receipt of such payments, Jones shall pay the full amount of the real estate taxes and assessments to the appropriate taxing authority on or before the due date. Jones shall give Lewis

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and Hittinger notice of any real estate taxes or assessments assessed against or due and payable in connection with the Real Estate immediately upon receipt.

5. Jones, Lewis and Hittinger agree that they shall incur no other costs, expenses or charges in connection with the Real Estate, other than those imposed or required by law, without the prior written consent of Jones, Lewis and Hittinger. Jones, Lewis and Hittinger shall each be responsible for one-third (1/3) of any such costs, expenses or charges which they agree to incur or are imposed or required by law.

6. If any of Jones, Lewis or Hittinger fail to make a payment required hereunder when due (a "Non-Paying Owner"), either of the other owners (the "Paying Owner") may make the payment for and on behalf of the Non-Paying Owner. Any such payment by a Paying Owner shall be deemed a full recourse loan from the Paying Owner to the Non-Paying Owner payable in its entirety within thirty (30) days and bearing interest at the rate of fifteen percent (15%) per annum. If the loan plus the accrued interest is not paid within ten (10) days of demand following the end of said thirty (30) day period, then the Paying Owner shall have the right and option, exercisable by written notice to the Non-Paying Owner, to purchase the Non-Paying Owner's interest in the Real Estate. The total purchase price for the Non-Paying Owner's interest in the

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Real Estate shall be equal to eighty percent (80%) of the fair market value of the Non-Paying Owner's interest in the Real Estate as determined by an MAI-certified appraiser selected by the Paying Owner. The Paying Owner shall receive as a credit against the purchase price the amount of the outstanding loan plus accrued interest from the Paying Owner to the Non-Paying Owner, the Non-Paying Owner's pro-rata share of any outstanding loans secured by a mortgage on the Real Estate and the cost of the appraisal. The Paying Owner exercising an option to purchase the interest in the Real Estate of a Non-Paying Owner may rescind his option to purchase by giving written notice of such rescission to the Non-Paying Owner within thirty (30) days after his receipt of the determination of fair market value. In the event the Paying Owner does not rescind, the closing on the sale of the Non-Paying Owner's interest in the Real Estate shall be held within sixty (60) days after the determination of the fair market value of the Non-Paying Owner's interest in the Real Estate. The Paying Owner's right to purchase such interest shall be in addition to any other legal remedies available to the Paying Owner by reason of the Non-Paying Owner's breach of his obligation.

7. Jones, Lewis and Hittinger shall not sell, transfer, mortgage or in any other manner encumber or dispose of their interest in the Real Estate, except as specifically

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provided herein, without the prior written consent of Jones, Lewis and Hittinger. In the event of the death of either Rex E. Jones or Constance Doughty Jones, the interest of the deceased party in the Real Estate shall vest in the survivor. In the event of the death of either Richard A. Lewis or Karen Lewis, the interest of the deceased party in the Real Estate shall vest in the survivor. In the event of the death of (a) Rex E. Jones and Constance Doughty Jones or (b) Richard A. Lewis and Karen Lewis or (c) N. Jay Hittinger (the "Deceased Owner"), the other owners ("Surviving Owners") shall have the option to purchase the Deceased Owner's interest in the Real Estate. The option may be exercised at any time before sixty (60) days after the appointment of a personal representative for the Deceased Owner. The total price for the Deceased Owner's interest in the Real Estate shall be equal to the fair market value of the Deceased Owner's interest in the Real Estate as determined by an MAI-certified appraiser selected by the Surviving Owners. The Surviving Owners shall receive as a credit against the purchase price the amount of the Deceased Owner's pro-rata share of any outstanding loans secured by a mortgage on the Real Estate and the cost of the appraisal. The Surviving Owner exercising an option to purchase the interest in the Real Estate of a Deceased Owner may rescind his option to purchase by giving written notice of such rescission to the personal representative of the

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Deceased Owner within thirty (30) days after receipt of the determination of fair market value. In the event the Surviving Owner does not rescind, the closing on the sale of the Deceased Owner's interest in the Real Estate shall be held within sixty (60) days after the determination of the fair market value of the Deceased Owner's interest in the Real Estate. In the event that more than one (1) Surviving Owner desires to purchase the Deceased Owner's interest, such Surviving Owners shall purchase such interest in the same proportion as their ownership of the Real Estate.

If any owner (the "Transferring Owner") intends to sell his interest in the Real Estate in a bona fide transaction, he shall give notice to the other owners (the "Non-Transferring Owners") of his intention to sell such interest. The notice shall state the name and address of the proposed transferee and the amount of the consideration and the other terms of the sale. Within fifteen (15) days of receipt of the notice, the Non-Transferring Owners shall have the right to purchase the Transferring Owner's interest in the Real Estate for the same consideration and upon the same terms as the proposed transferee. If more than one (1) Non-Transferring Owner desires to purchase the Transferring Owner's interest in the Real Estate, such interest shall be purchased by such Non-Transferring Owners in the same proportion as the Non-transferring Owners' interest in the

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Real Estate. In the event the proposed sale is not consummated by the Transferring Owner with the proposed transferee in accordance with the terms contained in the notice within thirty (30) days of the election by the Non-Transferring Owners not to purchase the interest proposed to be transferred, the Transferring Owner shall not be permitted to transfer his interest in the Real Estate without again presenting any offer to sell his interest to the Non-Transferring Owners in accordance with the provisions of this paragraph.

8. Hittinger is hereby granted an option to purchase the Real Estate for a term commencing on the date of execution of this Declaration of Covenants and Restrictions and expiring three (3) years from such date for a purchase price as hereinafter set forth. The option set forth herein shall be deemed validly and effectively exercised if notice of the exercise thereof is either mailed by certified mail, return receipt requested, to Jones at 11660 Fall Creek Road, Indianapolis, Indiana 46256 and Lewis at 706 Tabernash Trace, Fishers, Indiana 46038 on or before the expiration date of such option, or delivered in person to Jones and Lewis at such addresses on or before such expiration date. The purchase price for the Real Estate shall be an amount equal to the sum of (a) Two Hundred Thousand Dollars and (b) the interest on Two Hundred Thousand Dollars from the date of

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expiration of this Declaration of Covenants and Restrictions to the date of closing at the prime rate as is in effect from time to time at Shelby. The closing on the purchase and sale of the Real Estate shall be held within forty-five (45) days of the date of exercise of the option by Hittinger.

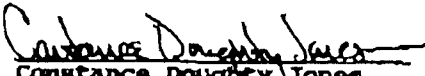
9. This Declaration of Covenants and Restrictions shall terminate upon the occurrence of any of the following events:

- (a) The disposition by Jones, Lewis and Hittinger of all of their interest in the Real Estate;
- (b) The ownership of the Real Estate by only one of Jones, Lewis or Hittinger; or
- (c) The mutual agreement of all of those owning an interest in the Real Estate.

10. This Declaration of Covenants and Restrictions may be amended only by a unanimous vote of all of those owning an interest in the Real Estate.

IN WITNESS WHEREOF, the undersigned have executed this Declaration of Covenants and Restrictions the day and year first above written.


 Rex E. Jones


 Constance Doughty Jones

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STATE OF ILLINOIS)
COUNTY OF) SS:

Before me, a Notary Public in and for said County and State, personally appeared REX E. JONES and CONSTANCE DOUGHTY JONES, who acknowledged the execution of the foregoing instrument, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 1 day of April, 1992.

Ronald J. McCahey
Notary Public - Signature

Ronald J. McCahey
Notary Public - Printed

My Commission Expires:

11-8-92

County of Residence:

Marietta



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Richard A. Lewis
 Richard A. Lewis

Karen Lewis
 Karen Lewis

STATE OF INDIANA)
) SS:
 COUNTY OF)

Before me, a Notary Public in and for said County and State, personally appeared RICHARD A. LEWIS and KAREN LEWIS, who acknowledged the execution of the foregoing instrument, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 1 day of April, 1992.

[Signature]
 Notary Public - Signature

Sharon F. McPherson
 Notary Public - Printed

My Commission Expires:
11-9-98

County of Residence:
Madison



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N. Jay Hittinger
N. Jay Hittinger

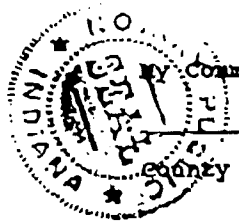
STATE OF INDIANA)
COUNTY OF HAMILTON) SS:

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

Witness my hand and Notarial Seal this 1st day of April, 1992.

Lynn R. Busby
Notary Public - Signature

Lynn R. Busby
Notary Public - State of Indiana
Marion County
My Commission Expires May 17, 1993



My Commission Expires: _____
County of Residence: _____

This instrument Recorded 7-24-1992
Sharon K. Cherry, Recorder, Hamilton County, Indiana

This instrument was prepared by Jeffrey A. Hearn, Attorney at Law, 3905 Vincennes Road, Suite 100, Indianapolis, Indiana 46268

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