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DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
TREMONT AT CASTLETON HOMEOWNERS ASSOCIATION
(a not-for-profit corporation)

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SHARON EICHENBERRY
RECORDER
MILTON, CO., IN

This Declaration made and entered into this 22 day of
September, 1987, by Daniel R. Nichols and Associates, an
Indiana Partnership (hereinafter referred to as "Developer")

WITNESSETH:

WHEREAS, the Developer is the owner of a certain parcel
of real estate in Hamilton County, Indiana, which real estate
is more particular y described in Article II, Section 1, hereof;
and,

WHEREAS, the Developer desires to create on the real estate
hereinunder consideration, a residential subdivision with
certain amenities and common areas for the use and/or benefit
of the owners and residents of the homes in the subdivision;
and,

WHEREAS, it is necessary that the Developer provide, for
the preservation of the values of the properties and amenities
and common areas within the subdivision, and for the maintenance
thereof; and,

WHEREAS, the Developer desires to subject the real estate
described in Article II, Section 1, together with such additions
thereto as may hereinafter be, from time to time made, to the
covenants, restrictions, easements, charges and liens hereinafter

This Instrument Recorded 9-25-1987
Sharon K. Cherry, Recorder, Hamilton County, Ind.

43317

set forth, each and every one of which is for the benefit of the property and owners thereof; and,

WHEREAS, the Developer deems it necessary for the efficient preservation of the values and amenities in the subdivision, to create an entity which should be delegated and assigned the power of maintaining and administering the common properties, amenities and facilities and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, the Developer has incorporated under the laws of the State of Indiana, as a not-for-profit corporation, Tremont at Castleton Homeowners Association, Inc., for the purpose of exercising the above mentioned functions, all as set forth herein.

NOW, THEREFORE, Daniel R. Nichols and Associates declares that the real estate described in Article II, Section 1, of this Declaration and such additions thereto as may hereafter be made pursuant to Article II, Section 4, and any other Article and Section hereof, is and shall be hereafter called, transferred, sold, conveyed, and occupied, subject to the covenants, restrictions, easements, assessments, charges and liens (sometimes hereinafter referred to as "Covenants and Restrictions") hereinafter set forth.

8743317

ARTICLE I
DEFINITION

Section 1. The following words when used in this declaration or any supplemental declaration (unless the context shall prohibit), shall have the following meaning:

- (a) "Corporation" shall mean and refer to Fremont at Castleton Homeowners Association, Inc.;
- (b) "Properties" shall mean and refer to all such properties and additions thereto as are subject to this declaration or any supplemental declaration under the provisions of Article II hereof;
- (c) "Common Property" shall mean and refer to those areas of land shown on 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 any plot of land shown upon any recorded subdivision map that the properties within the subdivision and excepting therefrom the common properties as defined in Section 1(c) hereof;
- (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;

-3-
87 43317

(f) "Owner" shall mean and refer to the recorded Owner whether one or more persons or entities, of the fee simple title to any Lot or Dwelling Unit situated upon the Properties of this subdivision. Owner shall not mean or refer to the mortgage unless and until such mortgage holder has acquired title pursuant to foreclosure or any other proceedings in lieu of foreclosure;

(g) "Subdivision" shall mean and refer to Tremont at Castleton Subdivision as platted and approved by the appropriate authorities of Hamilton County, Indiana,

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

Section 1. Property. The real property which is, and shall be held, transferred, sold, conveyed, and occupied, subject to this Declaration, is located in Hamilton County, Indiana, and is more particularly described as follows:

(H.I. legal for entire subdivision attached as Exhibit "A" and incorporated by reference.)

all of which said property shall hereinafter be referred to as "Properties".

Section 2. Easements to Owners. Developer hereby grants an easement in favor of each Owner for the use, enjoyment, and

87 43317

-4-

benefit 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 Common Properties.

Developer hereby covenants and declares that all areas within the Subdivision now owned by it which are not included in the definition of "Lot" and have not been dedicated to the public for street rights-of-way or other easement purposes, shall be conveyed to the Corporation as and for the Common Properties, at such time after Developer has sold and conveyed ninety percent (90%) of the Lots in the Subdivision to initial Owners as, in the discretion of the Developer, will be in the best interests of the Owners and the Subdivision, by a general warranty deed free and clear of all liens and encumbrances, except the lien of current taxes, rights-of-way, the provisions of these covenants and restrictions and other easements and restrictions of record. Developer may, in its sole discretion, convey the said Common Properties to the Corporation prior to the sale and conveyance of ninety percent (90%) of the Lots in the Properties, should Developer determine such conveyance to be in the best interests of the Owners and the Subdivision.

Section 4. Additions to the Properties. Additional lands may become subject to this Declaration in the following manner:

- (a) Upon approval in writing of the Corporation pursuant to Article 6 of its Articles of Incorporation or any amendment thereof, the Owner of any property who is desirous

87 45317⁻⁵⁻

of adding it to the jurisdiction of the Corporation, may file of record a Supplementary Declaration of Covenants and Restrictions which shall extend the scheme of the covenants and restrictions of this Declaration to such property. A Supplemental Declaration adopting by reference the provisions of this Declaration in its entirety shall be sufficient to conform with this Section. In addition, such Supplementary Declaration may contain such complementary additions and modification 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 Properties.

(b) Upon a merger or consolidation of the Corporation with another corporation, as provided in its Articles of Incorporation, or by the laws of the state of Indiana, 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 the Corporation as a surviving corporation may administer the covenants and restrictions established by this Declaration with the Properties, except as hereinafter provided.

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 which is part of the Properties and which is subject by covenants of record to assessment by this Corporation shall be a member of the corporate membership, 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 as defined in this Article III, Section 1, with the exception of Daniel R. Nichols and Associates. Except as otherwise set forth in the Articles of Incorporation, Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by this Article III, Section 1. When more than one (1) person holds such interest or interests in any Lot, all such persons shall be members and the vote for

such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. Class B members shall be Daniel R. Nichols and Associates. The Class B member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership by Article III, provided, however, that the Class B membership shall be cancelled and ceases to exist upon conveyance of the Common Properties from Developer to the Corporation.

ARTICLE IV.

COVENANT FOR MAINTENANCE AND ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer for each Lot owned by it within the Properties hereby covenants and each purchaser of any Lot by acceptance of a deed 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 or charges; (2) special assessments for capital improvements, such assessment 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 the Properties and in particular, for the improvement and maintenance of the 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, installation and maintenance of street lights, the grass cutting, yard maintenance and snow removal of the Common Properties, and adjacent street rights-of-way, payment of applicable utility charges and repair, replacement and additions thereto and for the cost of labor, equipment, materials, management and supervision for the Common Properties, right-of-way areas, and all recreational facilities located thereon, all as may be approved by the Board of Directors, from time to time.

Section 3. Basis and Maximum of Annual Assessments.
Until the year beginning January, 1968, the annual assessment.

shall be Two Hundred and No/100 Dollars, (\$200.00), per Lot owned by Class A members of the Corporation. From and after January 1st, 1988, the annual assessment may be increased by vote of the members of the Corporation, as hereinafter provided, for the next succeeding two (2) years and at the end of each such period of two (2) years for succeeding period of two (2) years. Notwithstanding the foregoing, Lots within the Properties owned in fee by the Class B members shall not be subject to annual assessments as provided herein, however, the Developer shall participate in and contribute to the expense of maintaining the Common Properties and right-of-way areas, as may be reasonably required in the best interests of the Properties.

The Board of Directors of the Corporation may, after consideration of current maintenance costs and future needs of the Corporation, fix the actual assessment for any year at a lesser amount.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized by Section 3 hereof, the Corporation may levy in any assessment 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 II, 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 meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (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 subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessment provided for herein shall commence on the date fixed by the Board of Directors of the Corporation as the date of commencement, or the date upon which the fee simple of the Lot is vested in the member.

The first annual assessment shall be made for the balance of the calendar year and shall be pro-rated and shall become due and payable on the day that the fee simple is vested in the Lot Owner. The amount of the assessment pro-rated as required in Section shall be determined by dividing the total annual

assessment fixed by Article IV, Section 3, by twelve (12) and multiplying by the total number of calendar months or parts thereof remaining to the end of the year. The assessments for any year after the first year shall become due and payable on the 1st day of January of each year.

The proration contemplated by this paragraph shall apply not only to the first assessment, but to any property which is hereafter added to the Properties now subject to assessment at a time other than the beginning of any assessment period.

The due date for any special assessment under Section 4 hereof, shall be fixed in the Resolution authorizing such assessment, which resolution may authorize payment in equal installments no less than monthly, provided the entire special assessment is paid during the calendar year to which it is applicable.

Section 8. Duties of the Board of Directors. The Board of Directors of the Corporation shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period 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.

7

Section 9. Fund for Capital Expenditures. All sums assessed by the Corporation shall be determined and established by using generally accepted accounting principles approved on a consistent basis and shall include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas and facilities, which funds shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas and facilities. The said fund for capital expenditures in repair and replacement of Common Areas and facilities shall be maintained in a separate interest bearing account with a bank or savings and loan association authorized to conduct business in Johnson County, Indiana. Assessments collected for contribution to this fund shall not be subject to Indiana gross income tax or adjusted gross income tax.

Section 10. Effect of Nonpayment of Assessments; The Personal Obligation of the Owner; The Lien; Remedies of Corporation. If the assessments are not paid on the date or dates 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. If, under Section 7 installment

payments of special assessments have been authorized, then failure to pay any one installment within ten (10) days after the due date shall accelerate the payment of all installments and the entire unpaid balance of such assessment shall immediately become due and owing without further notice. The Grantee of any Lot in the Properties shall be jointly and severally liable with the Grantor for all unpaid assessments against the latter for his share of the Common Properties' expenses, as herein provided, incurred up to the time of the conveyance, without prejudice, however, to the Grantees' right to recover from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee shall be entitled to a statement from the Corporation setting forth the amount of unpaid assessments against the Grantor and such Grantee shall not be liable for, nor shall the Lot so conveyed be subject to a lien for any unpaid assessments against the Grantor in excess of the amount certified by the Corporation to the Grantee.

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 thirteen percent (13%) per annum, and the Corporation may bring an action at law against the Owner personally obligated to pay the same or 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 11. Subordination of Lien to Mortgages. The lien of the assessment 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 12. "Junior Lien" Provision Any promises 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 mortgages shall not operate to affect or impair the lien hereof, but said charges as shall have accrued up to the foreclosure on 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

of Grantee taking title free of the lien hereof for all such charges that have accrued up to the time of the foreclosure, but subject to the lien hereof for all said charges that shall accrue subject to the foreclosure or deed given in lieu of foreclosure.

ARTICLE V

INCORPORATION OF PLAT RESTRICTIVE COVENANTS

The Developer has caused to be executed and placed of record with the Recorder of Hamilton County, Indiana, certain Restrictive Covenants governing construction upon and the use of all Lots with the Properties; and here declares that those said Restrictive Covenants of Tremont at Castlement subdivision, and all subsequent restrictive covenants recorded in connection with the platting of subsequent sections of Lots within the Properties are hereby incorporated in this Declaration and thus may be enforced by the undersigned and the Corporation as these Covenants are enforced.

ARTICLE VI

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 Daniel R. Nichols and Associates, the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty-five (35) 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 damages and against the land to enforce any lien created by these covenants; and failure by Daniel R. Nichols and Associates 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 way effect any other provisions which shall remain in full force and effect.

Section 4. Payment of Fees and Expenses of Litigation. Class A members and others acting for, on behalf of, or through any Class A member violating the terms and restrictions of these Covenants shall be responsible for and pay all professional fees and expenses for any litigation, arbitration or other pro-

ceedings, including negotiations, and time and services otherwise incurred in enforcing the terms and provisions of this Declaration and/or the Restrictions of the Plat of Tremont at Castleton and the collection of assessments and other sums due by these provisions.

IN WITNESS WHEREOF, the Developer, Daniel R. Nichols and Associates, an Indiana Partnership, has caused this document to be executed by one of its General Partners the day, month and year first mentioned.

DANIEL R. NICHOLS AND ASSOCIATES

BY Daniel R. Nichols, Partner
Daniel R. Nichols, Partner

STATE OF INDIANA) SS:
COUNTY OF JOHNSON)

Before me a Notary Public in and for said County and State, personally appeared DANIEL R. NICHOLS AND ASSOCIATES, by DANIEL R. NICHOLS, who executed the within Declaration stating that the representations therein contained are true and correct to the best of his knowledge and belief.

WITNESS my hand and Notarial Seal this 24th day of September, 1987.

Signature Mary Frances Garbe
Notary Public

Printed MARY FRANCES GARBE

County of Residence: Johnson

My Commission Expires:


This instrument prepared by John P. Wilson, Attorney at Law,
P. O. Box 1331, Greenwood, Indiana 46116.

This Instrument Recorded 9.25 1987
Sharon K. Cherry, Recorder, Hamilton County, Ind.

EXHIBIT "A"

PART OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 17 NORTH, RANGE 5 EAST OF THE SECOND PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SAID QUARTER QUARTER SECTION; THENCE SOUTH 00 DEGREES 15 MINUTES 30 SECONDS WEST ON AND ALONG THE EAST LINE THEREOF 1380.15 FEET TO THE SOUTHEAST CORNER OF THE SAID QUARTER QUARTER SECTION; THENCE SOUTH 89 DEGREES 52 MINUTES 54 SECONDS WEST (2 1/2") ALONG THE SOUTH LINE THEREOF 400.02 FEET; THENCE NORTH 00 DEGREES 13 MINUTES 30 SECONDS EAST 411.22 FEET; THENCE NORTH 65 DEGREES 18 MINUTES 07 SECONDS WEST 47.94 FEET; THENCE NORTH 89 DEGREES 46 MINUTES 10 SECONDS WEST 172.08 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT WHICH HAS A RADIUS OF 274.31 FEET A CURVED DISTANCE OF 66.37 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH 09 DEGREES 15 MINUTES 07 SECONDS EAST 86.21 FEET; THENCE NORTH 71 DEGREES 45 MINUTES 37 SECONDS WEST 154.46 FEET; THENCE NORTH 27 DEGREES 59 MINUTES 25 SECONDS EAST 66.79 FEET; THENCE NORTH 15 DEGREES 05 MINUTES 36 SECONDS WEST 217.52 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 30.00 FEET; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS EAST 190.05 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE RIGHT WHICH HAS A RADIUS OF 175.00 FEET A CURVED DISTANCE OF 3.42 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING SOUTH 89 DEGREES 26 MINUTES 22 SECONDS WEST 3.42 FEET; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS EAST 255.00 FEET TO THE NORTH LINE OF THE SAID QUARTER QUARTER SECTION; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ON AND ALONG THE SAID NORTH LINE 730.16 FEET TO THE POINT OF BEGINNING CONTAINING 18.847 ACRES, MORE OR LESS.

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