

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this 13th day of November, 1973, by RALPH L. WILFONG, Owner, (hereinafter sometimes referred to as "Declarant" or "Developer"),

WITNESSETH THAT

WHEREAS, The Declarant is desirous of developing a residential community which will encompass the property described in Article II of this Declaration and desires to create on said property recreation facilities and other common facilities for the benefit of the community; and,

WHEREAS, Declarant desires to provide for the preservation of the values and amenities of said community and for the operation and maintenance of said facilities, and to this end desires to subject the real estate described in Article II, together with such other additions as may hereafter be made thereto, to the covenants, restrictions, conditions and charges (hereinafter referred to as "covenants and restrictions") hereinafter set forth; and,

WHEREAS, Declarant has deemed it desirable for the effective preservation of values and amenities in said community to create an agency to which should be delegated and assigned the power and authority of maintaining and administering the facilities and enforcing the covenants and restrictions and collecting the assessments and charges hereinafter created; and,

This Instrument Recorded Nov. 14, 1973
LURE M. HEDGES, RECORDER HAMILTON COUNTY, IND.

WHEREAS, there has been, or will be, incorporated under the laws of the State of Indiana as a not-for-profit corporation, Village Farms, Inc., for the purpose of exercising and carrying out said functions.

NOW, THEREFORE, Ralph L. Wilfong hereby declares that the platted lots and land located within The Village Farms, Section One, as more fully set out in Article II, Section 1, of these Declarations and all platted lots and lands that may be made additions to the Development as set out in Article II, Section 2, of these Declarations shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of lots and lands in the Development and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the restrictions shall run with the land and shall be binding upon the Developer and the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property and any part or parts thereof subject to such covenants and restrictions and shall inure to the benefit of the Developer and everyone of Developer's successors in title to any of the real estate in the Development. The Developer specifically reserves unto himself the right and privilege, prior to the recording of the plat of a particular lot or tract within the Development to exclude any real estate as shown from the Declaration or to include additional real estate.

ARTICLE IDefinitions

The following words, when used in this Declaration or any Supplemental Declaration, (unless the context shall prohibit) shall have the following meanings:

- (a) "VILLAGE" shall mean and refer to VILLAGE FARMS, INC.
- (b) "DEVELOPMENT" shall mean and refer to all such properties and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions hereof.
- (c) "VILLAGE PROPERTIES" shall mean and refer to all such properties and additions there-to conveyed to and owned by Village.
- (d) "VILLAGE OF MOUNT CARMEL" shall mean and refer to the existing residential lands platted as Village of Mount Carmel, Sections 1, 2, 3, 4, and 5, as recorded in the Officer of the Recorder of Hamilton County, Indiana.

ARTICLE IIProperty Subject to this Declaration and Provisions for Additions Thereto

Section 1. Development. Declarant is the owner or has an interest in and is in the process of developing approximately 1,200 acres in The Village Farms community, consisting of residential, recreational and commercial lands, and to that end has platted, or is platting, Section One of The Village Farms, the legal description of which is attached and marked "Exhibit A" and made a part of this Declaration, subject to the covenants and restrictions of this Declaration.

Section 2. Additions to the Development. Additional property may become subject to this Declaration in the following manner:

- (a) By Developer: Additional properties may be added to the Development and subject to the covenants and restrictions: (i) upon the filing and recording of a plat of The Village Farms, which plat

shall incorporate this Declaration of Covenants and Restrictions by reference; (ii) upon the filing and recording of a Supplementary Declaration of Covenants and Restrictions by Declarant or his successors or assigns. A Supplementary Declaration incorporating by reference the provisions of this Declaration shall be sufficient to conform with this section. In addition, such Supplementary Declaration may contain such complementary additions 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 the covenants established by this Declaration within the Development.

(b) By Owners of Lots in the Village of Mount Carmel, Sections 1 through 5. The owner of any lot in the platted additions known as the Village of Mount Carmel, Sections 1, 2, 3, 4 and 5, as recorded in the Office of the Recorder of Hamilton County, Plat Book 2, 2, 2, 3, 4, Pages 86, 114, 227, 33-36, 82-83, respectively, may subject their lot in said additions to this Declaration of Covenants and Restrictions and to the jurisdiction of Village by filing and recording a Supplementary Declaration of Covenants and Restrictions, together with a description of owners' lots in said platted subdivision. A Supplementary Declaration incorporating by reference the provisions of this Declaration shall be sufficient to conform with the requirements of this section. In addition, such Declaration may contain such complimentary additions not 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 the covenants established by this Declaration within the Development.

(c) By Others. Upon approval in writing of Village pursuant to the vote of its members as provided in its Bylaws, and only upon such approval, the owner of any property who is desirous of adding it to the jurisdiction of Village may file and record a Supplementary Declaration of Covenants and Restrictions which shall extend the scheme of covenants and restrictions

of this Declaration to such property. Such Supplementary Declaration of Covenants and Restrictions may contain such complementary additions and modifications of such 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 the covenants contemplated by this Declaration within the Development.

ARTICLE III

Character of the Development

Section 1. In General. Every numbered lot in the Development, unless it is otherwise designated by the Developer, is a residential lot and shall be used exclusively for single family residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots, except a single family dwelling house and such outbuildings as are usually accessory to a single family dwelling house. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded plats may be subject to other land use, including commercial, provided the same is consistent with the development of a planned community. The Developer reserves unto himself the right to change the character of the designated commercial or other land use at any time in the future, and, where necessary, to apply to the necessary governmental body for such reclassification, rezoning or variance of use as needed to accommodate the Developer's planned use.

Section 2. Residential Use of Accessory Outbuildings Prohibited. No accessory outbuildings shall be erected on any of the residential lots prior to the erection thereon of a single family dwelling house, and in no event shall any such accessory outbuilding or any temporary structure which may be constructed upon a residential lot under these restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation.

Section 3. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall

be made by the Developer and such decision shall be binding upon all parties.

ARTICLE IV

Restrictions Re Construction Improvement and Maintenance

Section 1. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of porches, terraces, garages, carports, accessory buildings, or basements shall be designated on the recorded plats of the sections within the Development.

Section 2. Residential Setback Requirements.

(a) Front Yards. The front building setback lines shall be all as set forth upon the plats of the Development.

(b) Cul De Sacs. If the particular lot abuts on a cul de sac, the front building setback line shall be as shown on the plat of that lot.

Section 3. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within twelve (12) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

Section 4. Time in Which to Build Structures. The time or times within which the owners of the residential lots within the Development must construct and complete, ready for habitation, houses on their lots after their purchase of the lot will be designated on the recorded plats of the section within the Development, or if no such designation is made, then within one year after purchase. If a house is not completed upon a lot within the prescribed time, the Developer shall have the right and option to repurchase for a price, in cash, equal to the owner's cost basis in the lot and the fair market value of such improvements, but not to exceed the owner's direct cost of such improvement.

Section 5. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

Section 6. Maintenance of Lots and Improvements. The owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly; and, specifically, such owner shall:

- (a) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.
- (b) Remove all debris or rubbish.
- (c) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (d) Cut down and remove dead trees.
- (e) Where applicable, prevent debris or foreign material from entering the Lake, or, when any such debris has entered the Lake from the lot, remove the same immediately.
- (f) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

Section 7. Developer's Right to Perform Certain Maintenance. In the event that the owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these restrictions, the Developer shall have the right, but not the obligation, by and through his agents and employees or contractors to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these restrictions. The cost therefor to Developer shall be collected in any reasonable manner from the owner. Neither the Developer nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

ARTICLE V

General Prohibitions

Section 1. In General. No noxious or offensive activities shall be carried on on any lot in the Development

nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Development.

Section 2. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development without the prior written approval of the Developer.

Section 3. Animals. No animals shall be kept or maintained on any lot in the Development, except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

Section 4. Vehicle Parking. No campers, trailers boats or similar vehicles shall be parked on any street in the Development. No truck shall be parked for overnight or longer storage on any lot in the Development, unless the same shall be parked in such a manner that it is not visible to the occupants of other lots in the Development or the users of any street in the Development.

Section 5. Garbage, Trash and Other Refuse. No owner of a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in Section 6 below.

Section 6. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at anytime, except at the times when refuse collections are being made.

Section 7. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.

Section 8. Trail Easements. The owner of any lot abutting a trail easement agrees to maintain a hedgerow or other screen in the manner and subject to the approval of the Developer, except to the extent the same are maintained by Village.

ARTICLE VI

Village Farms, Inc.

Section 1. Organization. In order to facilitate the management of the Development, Developer has caused to be organized an Indiana not-for-profit corporation, known as Village

Section 2. Common Properties. Declarant may from time to time at Declarant's option convey the Common Properties or any part thereof to Village, and upon such conveyance all obligations of Declarant with respect to the Common Properties or any part thereof thus conveyed shall cease and terminate and Village shall assume the obligations and the management and operation of the same. The conveyance of the Common Properties by Declarant shall be made by quitclaim deed.

Section 3. Management. The corporation, together with the Developer, shall assume the management and operation of the Common Properties until such time as the Common Properties are conveyed to it, at which time the corporation shall assume the exclusive management and operation of the properties so conveyed.

Section 4. Membership. Membership in Corporation shall be restricted to persons, corporations, partnerships or other legal entities (hereinafter referred to as "Persons"), who are owners (legal or equitable) of numbered residential lots or unplatted land as are made subject to the Declaration of Covenants and Restrictions or any Supplemental Declaration under the provisions thereof in the Development or the Village of Mount Carmel.

Section 5. Voting Rights. Village shall have two (2) classes of voting members:

(a) Class A members who shall be entitled to one (1) vote for each numbered residential lot.

(b) Class B members shall be the Developer, or any person who shall hereafter succeed to the Developer's business and properties substantially as a whole. Class B members shall be entitled to four (4) votes for each numbered residential lot and four (4) votes for each one-half (1/2) acre of unplatted land, subject to this Declaration of Covenants and Restrictions.

Section 6. Creation of the Lien and Personal Obligation of Assessments. Class A members, except the builder-owner until the improvements are completed, hereby covenant for each lot owned by him within the Development, 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 Village: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The ann-

ual 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 the 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. The Declarant and Class B members shall not be subject to assessment.

Section 7. Purpose of Assessments. The assessment levied by Village shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members, and in particular, for the improvement and maintenance of the facilities devoted to this purpose.

Section 8. Annual Assessments. The assessment year shall begin May 1st and end April 30th. The annual assessment for the assessment year commencing May 1, 1974, shall be \$120.00 per lot; for the assessment year commencing May 1, 1975, \$156.00 per lot; and for the assessment year commencing May 1, 1976, the annual assessment shall be \$192.00 per lot. Thereafter, the annual assessment may be increased or decreased only by a vote of the members. For any person becoming a member during an assessment year, the annual assessment for such year shall be prorated on a monthly basis to the month immediately following the month of membership.

Section 9. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 8 hereof, Village 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 Village Properties, including the necessary fixtures and personal property related thereto; provided that, any such assessment shall have the assent of two-thirds of Class A and B members, 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 10. Duties of the Board of Directors. The Board of Directors of Village shall prepare a roster of the properties and assessments applicable thereto and shall be kept in the office of Village and open to inspection by any member.

Written notice of the assessment shall thereupon be sent out to every owner subject thereto.

Village shall, upon demand at any time, furnish to any owner liable for said assessment a certificate in writing signed by an officer of Village, 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 11. Effect of Nonpayment of Assessments; the Personal Obligation of the Owner; the Lien Remedies of Village. If the assessments are not paid on the date or dates when due, 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 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 percent (8%) per annum, and Village 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 12. Subordination of the 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 subsequent assessment.

Section 13. "Junior Lien" Provisions. 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, but said charges as shall have accrued up to the date of foreclosure or the acceptance of a deed in lieu of foreclosure shall be subordinate to the lien of the mortgage or deed of trust with the foreclosure pur-

chaser 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 charges that shall accrue subsequent to the foreclosure or deed given in lieu of foreclosure.

ARTICLE VIII

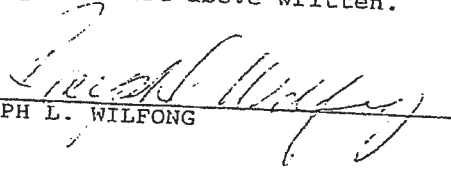
General Provisions

Section 1. Covenants to Run With Land. 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 Village, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a period of twenty (20) years from the date that 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 Village 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. Invalidity 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, the undersigned has executed this Declaration the day and year first above written.


RALPH L. WILFONG


STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

140

BOOK _____ PAGE 415

Before me, a Notary Public in and for said County and State, personally appeared Ralph L. Wilfong, who acknowledged execution of the foregoing Declaration of Covenants and Restrictions.

Witness my hand and Notarial Seal this 13th day of November, 1973.


Margaret S. House
Margaret S. House, Notary Public

My Commission Expires:

December 22, 1974

This Instrument Recorded Nov. 14, 1973
JUNE M. HEDGES, RECORDER HAMILTON COUNTY, IND.

RECEIVED FOR RECORD
AT 10:30 O'CLOCK A M

NOV 14 1973

BOOK _____ PAGE _____
June M. Hedges
RECORDER HAMILTON COUNTY, INDIANA

3157

AMENDMENT TO DECLARATION OF
COVENANTS AND RESTRICTIONS BOOK 142 PAGE 188

The undersigned, being all the owners of real property subject to a certain Declaration of Covenants and Restrictions recorded November 14, 1973, concerning approximately 1,200 acres in The Village Farms community, desire to amend such Declarations of Covenants and Restrictions as follows:

Article VI Section 8, Annual Assessments is hereby amended by deleting Section 8 and restating the same as follows:

"The assessment year shall begin May 1st and end April 30th. The annual assessment for the assessment year commencing May 1, 1974, shall be \$120.00 per lot; for the assessment year commencing May 1, 1975, \$156.00 per lot; and for the assessment year commencing May 1, 1976, the annual assessment shall be \$192.00 per lot. Thereafter, the annual assessment may be increased or decreased by the board of directors of Village Farms, Inc."

The Declarations of Covenants and Restrictions is in all other respects approved and shall remain in full force and effect.

This Instrument Recorded April 22, 1974
JUNE M. HEDGES, RECORDER HAMILTON COUNTY, IND.

RECEIVED FOR RECORD
AT 3:00 O'CLOCK P. M.

APR 22 1974

BOOK _____ PAGE _____
June M. Hedges
RECORDER HAMILTON COUNTY, INDIANA

IN WITNESS WHEREOF, the undersigned has executed

this Amendment the day and year first above written.

Ralph L. Wilfong
Ralph L. Wilfong

By: Michael Lauderbaugh
Lauderbaugh Construction, Inc.

By: Paul E. Estridge
Paul E. Estridge Co.

Larry LaMar
Larry LaMar
Louise LaMar
Louise LaMar

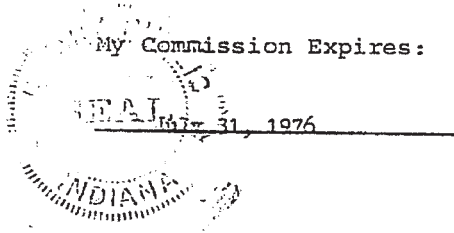
STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Ralph L. Wilfong who acknowledged execution of the foregoing Amendment to Declaration of Covenants and Restrictions.

Witness my hand and Notarial Seal this 19th day of April, 1974.

Patricia E. Neff
Patricia E. Neff, Notary Public

My Commission Expires:




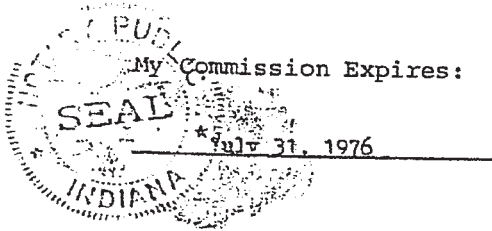
STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

BOOK 142 PAGE 190

Before me, a Notary Public in and for said County and State, personally appeared Michael Lauderbaugh who acknowledged execution of the foregoing Amendment to Declaration of Covenants and Restrictions.

Witness my hand and Notarial Seal this 19th day of April, 1974.



Patricia E. Neff, Notary Public



STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Paul E. Estridge who acknowledged execution of the foregoing Amendment to Declaration of Covenants and Restrictions.

Witness my hand and Notarial Seal this 19th day of April, 1974.


Patricia E. Neff, Notary Public

My Commission Expires:


July 31, 1976

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

BOOK 142 PAGE 182

Before me, a Notary Public in and for said County and State, personally appeared Larry LaMar and Louise LaMar who acknowledged execution of the foregoing Amendment to Declaration of Covenants and Restrictions.

Witness my hand and Notarial Seal this 19th day of April, 1974.



My Commission Expires:

July 31, 1976

Patricia E. Neff
Patricia E. Neff, Notary Public

This Instrument Recorded April 23 1974
JUNE M. HEDGES, RECORDER HAMILTON COUNTY, IND.