

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, MADE ON THE DATE HEREINAFTER SET FORTH BY W & W Properties, an Indiana general partnership, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Hamilton County, State of Indiana, which is more particularly described as:

Block "A" in the plat of Johnson Addition, Second Section, as per plat thereof, recorded in Plat Book 2, pages 132 and 133 in the Office of the Recorder of Hamilton County, Indiana.

ALSO: Part of the East Half of the Southwest Quarter of Section 25, Township 18 North, Range 3 East in Clay Township, Hamilton County, Indiana, described as follows:

Beginning on the North line of the Southwest Quarter of Section 25, Township 18 North, Range 3 East at the Northwest corner of Johnson Addition, Second Section, as per plat thereof recorded in Plat Book 2, pages 132 and 133 in the Office of the Recorder of Hamilton County, Indiana, said corner being 818.80 feet South 88 degrees 51 minutes 03 seconds West (assumed bearing) from the Northeast corner of said Southwest Quarter; thence South 17 degrees 47 minutes 03 seconds East on the West line of said Johnson Addition, 316.02 feet to the North line of Wilson Village Condominiums as recorded in Plat Book 8, pages 42 through 61 in said Recorder's Office; thence South 89 degrees 54 minutes 13 seconds West on said North line 78.71 feet; thence North 84 degrees 18 minutes 56 seconds West on said North line 188.63 feet; thence South 89 degrees 54 minutes 13 seconds West on said North line 18.00 feet; thence North 00 degrees 05 minutes 47 seconds West on said North line 42.00 feet; thence South 89 degrees 54 minutes 13 seconds West on said North line 207.38 feet to the West line of the East Half of said Southwest Quarter; thence North 00 degrees 05 minutes 47 seconds East on said West line 40.00 feet; thence North 89 degrees 54 minutes 13 seconds East 134.48 feet to the point of curvature of a curve to the left having a radius of 80.00 feet; thence Northeasterly curving to the left on said curve an arc distance of 5.24 feet; thence North 00 degrees 05 minutes 47 seconds West parallel with said West line 208.40 feet to the North line of said Southwest Quarter; thence North 88 degrees 51 minutes 03 seconds East on said North line 350.74 feet to the place of beginning, containing, 2.50+ acres, more or less.

This Instrument Recorded April 11, 1984
Way L. Clark, Recorder, Hamilton County, Ind.

Subject to the right-of-way of Guilford Road across the west side thereof and to the right-of-way of West Main Street across the entire north side thereof.

Subject also to a 15 foot wide sanitary sewer, sanitary sewer force main and access walk easement recorded January 4, 1980.

Subject further to all other legal easements and rights-of-way.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed

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subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
Definitions

Section 1. "Association" shall mean and refer to Wilson Terrace Property Owner's Association, Inc., an Indiana not for profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean any real property acquired by the association (including the improvements thereto) and owned by the Association for the common use and enjoyment of the owners.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 6. "Boundaries" of each lot in Wilson Terrace shall be as shown on the plat, provided that on those lot lines where a common wall is shared by residences constructed on adjoining lots the lot line shall be, for all purposes, the center of the common wall as constructed.

Section 7. "Declarant" shall mean and refer to W & W Properties, its successors and assigns if such successor or

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assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

Membership and Voting Rights

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- A. When the total votes outstanding in the Class A membership equal seventy-five percent (75%) of the total votes outstanding in the Class B membership, or
- B. On January 1, 2002.

ARTICLE III

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properites, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to

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the Association: (a) annual assessments or charges, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, 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 interest, costs and reasonable attorney's fees 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 assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of any Common Area, the dwellings constructed on lots, and other property described in Section 3 of this Article.

Section 3. Maintenance by the Association. The Association shall provide maintenance of the course of the stream flowing through the drainage and utility easement over and across lots 11, 12, 19 and 20, as shown on the plat of Wilson Terrace recorded in Plat Book 10, page 126-127 in the Office of the Recorder of Hamilton County, Indiana. The Association shall also be responsible for the exterior maintenance of the lots and dwellings upon those lots within Wilson Terrace including but not limited to: paint, repair, replacement and care for, roofs, gutters, downspouts, exterior building surfaces, lawns, trees, shrubs, the project identification sign located at entrance to project in the right-of-way of Wilson Terrace, employment of a contractor for the removal of trash and refuse collected by the owners of the lots, and dusk to dawn lights in front yards, all as originally installed by Declarant and such other exterior improvements as the Association deems necessary by a vote of two-thirds (2/3) of all of its membership. The Association is not responsible for the maintenance or repair of glass surfaces, doors, windows, walks, stoops, drives or patios.

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Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Four Hundred Eighty Dollars (\$480.00) per year.

- A. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- B. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- C. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Insurance. The owner of each lot within Wilson Terrace shall be responsible for purchasing an all risk, homeowner's policy of insurance insuring the dwelling on his lot. The amount of such required insurance must be sufficient to equal the reasonable replacement value of the dwelling and conform to such other requirements as are set out in the By-Laws of Wilson Terrace Property Owner's Association, Inc.

The Association shall also obtain comprehensive public liability insurance in such limits as the Board of Directors shall deem appropriate, together with other liability insurance if deemed necessary or appropriate by the Board of Directors. Such insurance shall insure to the benefit of each individual Owner, the Association, the Board of Directors, and any manager or company acting on behalf of the Association.

All premiums for all such insurance shall be paid by the Association as part of the maintenance Assessment.

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Each Owner shall have the right to purchase any additional insurance he may deem necessary, and each Owner shall be solely responsible for insurance on the contents of his dwelling including all floor and wall coverings, and fixtures and betterments installed by the Owner, as well as insurance coverage for additional living expense as may be occasioned by the rebuilding of any dwelling. It shall be the individual responsibility of each Owner, at his own expense, to provide as he sees fit, homeowner's liability insurance, theft and other insurance covering personal property damage and loss.

Section 6. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association 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, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

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Section 8. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 9. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the sale of each Lot by Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 10. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of three percent (3%) above the prime rate of interest being charged by the Union State Bank of Carmel, Indiana. The Association may bring an action at law against the Owner personally obligated to pay the same, including an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding

in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IV

Architectural Control

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior maintenance, replacement, addition to, change or alteration therein be made until the plans and specification showing the nature, kind, shape, color, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony or external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE V

Character of the Development

Section 1. In General. Every Lot in the Development, unless it is otherwise designated by the Developer, is a residential lot and shall be used exclusively for residential purposes.

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 dwelling house, and in no event shall any such accessory constructed upon a residential Lot under these Restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation.

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Section 3. Association's Right to Perform Certain Maintenance. In the event that the Owner of any Lot in the Development shall fail to maintain the improvements situated thereon in accordance with the provisions of these restrictions, the Association shall have the right, by and through its agents or employees or contractors, to enter upon said Lot and repair, 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 therefore to the Association shall be added to and become a part of the annual charge to which said Lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

Section 4. Exterior Maintenance. The Association shall in addition to Common Area, maintain the lots and exteriors of buildings including roofs, downspouts and gutters, but not sidewalks stoops, patios and driveways.

ARTICLE VII

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 Committee, except signs advertising a lot or lots within Wilson Terrace for sale.

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.

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Section 4. Vehicle Parking. No campers, trailers, boats or similar vehicles shall be parked on any street or Lot in the Development. No trucks, one (1) ton or larger in size, 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 the street in the Development.

Section 5. Driveway. There shall be no driveway access to Main Street on Lot 1 and Lots 3 through 13 inclusive.

Section 6. Garbage 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.

Section 7. Antennas. No television, radio or satellite antennas shall be located on any lot except with prior written approval of the Association.

ARTICLE VII

General Provisions

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by 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 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended

during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an Instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 11th day of April, 1984.

This Instrument Recorded April 11 1984
Mary L. Clark, Recorder, Hamilton County, Ind

W & W PROPERTIES
Declarant
Thomas D. Wilson
Thomas D. Wilson, Partner

ATTEST:
Steven Wilson
Steven Wilson, Partner

STATE OF INDIANA)
COUNTY OF HAMILTON) SS:

RECEIVED
FOR RECORD
APR 11 4 15 PM '84
HAMILTON CO. IND.

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, personally appeared the within named Thomas D. Wilson and Steven Wilson, Partners of W & W Properties, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions to be their voluntary act and deed.

WITNESS, my hand and notarial seal this 11th day of April, 1984.

Douglas B. Floyd
Notary Public
Resident of Hamilton County

My Commission Expires:
March 1, 1986

This instrument prepared by Douglas B. Floyd, Attorney at Law, 198 South 9th Street, Post Office Box B, Noblesville, Indiana 46060.

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