

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, MADE ON THE DATE HEREINAFTER SET FORTH BY  
Hughey, Inc., 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:

This Instrument Recorded Aug 10 1984  
Mary L. Clark, Recorder, Hamilton County, Ind.

Part of the Northeast Quarter and part of the Northwest  
Quarter of Section 25, Township 18 North, Range 3 East in  
Clay Township, Hamilton County, Indiana, described as  
follows:

Commencing at the Southeast corner of the West Half of the  
Northeast Quarter of Section 25, Township 18 North, Range 3  
East; thence South 88 degrees 50 minutes 00 seconds West  
(assumed bearing) on the South line of said Northeast Quarter  
1157.72 feet to the Southeast corner of Christie's Thornhurst  
Addition, First Section Amended, as per plat thereof,  
recorded in Plat Book 2, pages 59-60 in the Office of the  
Recorder of Hamilton County, Indiana; thence North 00 degrees  
06 minutes 16 seconds West on the East line of said Addition,  
200.00 feet to the Northeast corner of said Addition; thence  
South 88 degrees 50 minutes 00 seconds West on the North line  
of said Addition, 5.18 feet to the West line of Wood Acre  
Park, as per plat thereof, recorded in Plat Book 9, page 136  
in said Recorder's Office, being the place of beginning of  
the within described subdivision; thence South 88 degrees 50  
minutes 00 seconds West on the North line of aforesaid  
Christie's Thornhurst Addition, 414.82 feet to a corner of  
Lot #29 in Christie's Thornhurst Addition, Second Section, as  
per plat thereof, recorded in Plat Book 2, page 89 in said  
Recorder's Office; thence North 29 degrees 54 minutes 06  
seconds East on the East line of said Addition, 135.80 feet  
to the Southeast corner of Lot #28 in said Addition; thence  
North 00 degrees 11 minutes 58 seconds West on the East line  
of said Addition, 335 feet to the Northeast corner thereof;  
thence South 88 degrees 47 minutes 02 seconds West on the  
North line of said Addition, 181.41 feet to the Southeast  
corner of Wildwood Estates, as per plat thereof, recorded in  
Plat Book 3, page 16 in said Recorder's Office, thence North  
00 degrees 06 minutes 16 seconds West on the East line of  
said Wildwood Estates, 399.30 feet to a point 200.00 feet  
South 00 degrees 06 minutes 16 seconds East from the North  
line of the Southeast Quarter of the Northwest Quarter of  
said Section 25; thence North 88 degrees 40 minutes 35  
seconds East 527.20 feet to a point 1051.90 feet North 00  
degrees 13 minutes 06 seconds West from the South line of  
aforesaid Northeast Quarter, being also the Northwest corner  
of aforesaid Wood Acre Park; thence South 00 degrees 13  
minutes 06 seconds East on the West line of said Wood Acre  
Park, 851.90 feet to the place of beginning, containing 8.524  
acres, more or less.

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

NOW THEREFORE, Declarant hereby declares that all of the  
properties described above shall be held, sold and conveyed  
subject to the following easements, restrictions, covenants, and  
conditions, which are for the purpose of protecting the value and

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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 Woodacre West Property Owner's Association, Inc., 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 all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

- A. The area designated as variable drainage, utility and walkway easement within Block A and the area designated as 15 foot drainage, utility and walkway easement within Block A on the plat of the properties as recorded in the office of the Recorder of Hamilton County, Indiana.
- B. The area designated as Block B on the plat of the properties as recorded in the office of the Recorder of Hamilton County, Indiana.
- C. The walkway easement designated on the west side of lots 1 through 11 inclusive on the plat of the properties as

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against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

C. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

**ARTICLE III**

**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 member 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:

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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 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 4. 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. Owners of lots 12 through 17 inclusive shall be specially assessed annually for the maintenance of the improvements within.

Section 5. 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.

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at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. 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, except that owners of lots 12 through 17 shall be assessed, in addition to the uniform assessment, a special assessment for maintenance of the improvements within the easement across Block B and lots 12 through 17 inclusive for ingress and egress from Rogers Road to lots 12 through 17 inclusive. The amount of the special assessment for lots 12 through 17 inclusive shall be set by the members of the Association who are owners of lots 12 through 17 inclusive in the same manner as the special assessments are established by the full membership of the Association.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. 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 8. 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 two percent (2%) above the prime rate of interest

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being charged by the American Fletcher National Bank of Indianapolis, 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 9. 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 V**

**Architectural Control**

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration in any existing structure be made until the plans and specification showing the nature, kind, shape, 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.

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ARTICLE VI

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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.

Section 3. 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.

Section 4. Association'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 Association shall have the right, by and through its agents or 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 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.

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ARTICLE VII

General Prohibitions

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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.

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 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. Parking. Parking parallel to the curb of Rogers Road shall be permitted only on the East side of Rogers Road from the south line of Lot 31 to the north line of Lot 20. No parallel parking shall be permitted on the West side of Rogers Road.

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. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any Lot nor shall any overnight camping be permitted on any Lot.

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ARTICLE VIII

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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, 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. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. 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 3rd day of August, 1984.

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HUGHEY, INC.  
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By *Albert L. Hughey*  
Albert L. Hughey, Vice  
President

ATTEST:  
*Michael Hughey*  
Michael Hughey Assistant Vice  
President

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF HAMILTON )

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, personally appeared the within named Albert L. Hughey and Michael Hughey, Vice President and Assistant Vice President, respectively, of Hughey, Inc., 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 3rd day of August 1984.

*Douglas B. Floyd*  
Notary Public  
Resident of Hamilton County

My commission expires:  
March 6th, 1986

This Instrument Recorded Aug 10 1984  
Mary L. Clark, Recorder, Hamilton County, Ind.

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

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