

641109

Schererville

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIAR RIDGE COUNTRY CLUB ADDITIONS

This Declaration, made this 3rd day of July, 1981, by the Mercantile National Bank of Indiana, solely as Trustee under that certain Trust Agreement dated the 20th day of December, 1976, and known as Trust No. 3523, and the Mercantile National Bank of Indiana, solely as Trustee under that certain Trust Agreement dated the 26th day of May, 1981, and known as Trust No. 4114, hereinafter referred to collectively as "Owner", and by Powers - Rueth and Associates, an Indiana Limited Partnership, hereinafter referred to as "Developer".

FILED

AUG 20 1981

RECITALS, INTENT AND PURPOSES

James O. Thum
AUDITOR LAKE COUNTY

WHEREAS, the Owner holds title to certain property in the Town of Schererville, Lake County, Indiana, which is more particularly described on "Exhibit A" attached hereto and incorporated herein by reference; and

WHEREAS, the Developer desires to create on this property, called Briar Ridge Country Club Additions, a residential planned community which if carried to full and final completion, will consist of residential dwelling units consisting of single family homes and low rise multi-family buildings. As part of the Briar Ridge Country Club Additions plan development, various community facilities, such as walks, roads, streets, landscaping, open spaces, green belts, storm water drainage and retention systems, sprinkling, street illumination, security stations and security personnel, fencing and parking areas are or may be provided for the benefit and enjoyment of persons residing in the dwelling units. The area of the property and the common area in the planned unit development will require uniform and continuing care and maintenance for the primary benefit and enjoyment of the persons residing in the planned unit development; and

WHEREAS, the Owner holds title to certain property in the Town of Dyer, Lake County, Indiana which may be incorporated into the Briar Ridge Country Club Additions as provided in Article III hereof; and

STATE OF INDIANA
LAKE COUNTY
AUG 20 1981
FILED

WHEREAS, the Developer has formed the Briar Ridge Property Owners Association, Inc., a not-for-profit corporation, for the purpose of providing for the orderly and proper administration and maintenance of the common area, and for the preservation and enhancement of those portions of the planned development which are improved by the Developer from time to time, and to administer and enforce covenants, conditions and restrictions of this Declaration and to collect and disburse assessments and charges hereinafter created; and

WHEREAS, the Developer may from time to time convey or cause to be conveyed portions of Briar Ridge Country Club Additions herein

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defined as common area, to the Property Owners Association, and subject portions of this property to this Declaration and to the covenants, restrictions, conditions, easements and liens described in this Declaration for the benefit of all or part of the properties and each owner of a lot or unit thereon and which shall attach to and constitute covenants running with the land;

NOW, THEREFORE, the Owner and the Developer hereby declare that all of the property as described on "Exhibit A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the property. These easements, covenants, restrictions and conditions shall run with the property as part of a general plan of development and shall be binding on all parties having or acquiring any right, title or interest in the property or any part thereof, and shall inure to the benefit of each owner thereof.

I. DEFINITIONS.

As used herein or elsewhere in these documents, unless otherwise provided, or unless the context requires otherwise, the following terms shall be defined as provided in this Article.

A. Assessment: that portion of the cost of constructing, maintaining, repairing, and managing the common area as set forth herein which is to be paid by each owner of a lot or unit, in the manner set forth in the Articles of Incorporation and the By-Laws of the Association.

B. Association: The Briar Ridge Property Owners Association, Inc., a not-for-profit corporation organized under the laws of the State of Indiana and its successors. Copies of the Articles of Incorporation and the By-Laws are attached hereto and made a part hereof as "Exhibit B" and "Exhibit C" respectively.

C. Common Area: shall mean all property owned by the Association for the common use and enjoyment of the members of the Association and consisting of private rights of way, greenbelts, storm water drainage and retention system and other areas conveyed to the Association pursuant to Article III. D. hereof.

D. Declaration: this instrument, including any provision of which from time to time may be lawfully amended and/or supplemented by additional property as provided in Article III. E. hereof.

E. Developer: Powers - Rueth and Associates, an Indiana Limited Partnership, solely as beneficiary of Trust No. 3523 dated the 20th day of December, 1976.

F. Expenses: the actual and estimated cost of:

1. Maintenance, management, operation, repair and

replacement of the walks, roads, streets, street illumination, garbage removal, snow removal, sprinkler system, landscaping, open spaces, green belts, storm water drainage and retention systems, security stations and personnel, fencing, parking areas, and other improvements to the common area, whether the same be initially installed by the Developer or by the Association. Further, the expenses shall include the cost of construction or improvement of those facilities determined by the Association to be for the benefit and betterment of those persons living within the Briar Ridge Country Club Additions and to be used by such owners and owned, operated and managed by the Association.

2. Management and administration of the Association, including but not limiting the same, to compensation paid by the Association to a managing agent, accountants, attorneys, and other employees, if any;
3. All sums lawfully assessed against lot or unit owner by the Association;
4. Expenses agreed upon as common expenses by the Association;
5. Any other items held by or in accordance with other provisions of this Declaration, or as required by statute.

G. Lot: shall mean and refer to that portion of the property designated for single family residences.

H. Lot or Unit Owner: shall mean and refer to the record owner of a lot or unit, whether one or more persons or entities who own fee simple title in any lot or unit which is part of the property, including contract buyers, but excluding those having such interest merely as security for performance of an obligation.

I. Member: shall mean and refer to every person or entity who holds membership in the Association.

J. Plat: is hereby designated as "Exhibit D" attached hereto and incorporated herein by reference and shall mean:

1. the Plat of the Briar Ridge Country Club Additions, Unit 1, dated the 18th day of August, 1981 and recorded as Document Number 641111 in Plat Book 053 at page 79 in the Office of the Recorder of Lake County, Indiana on the 20th day of August, 1981;

2. the Plat of Phase One of Briar Ridge Country Club Additions, Unit 5, dated the 2nd day of July, 1981, and recorded as Document Number 641110 in Plat Book 053 at page 78 in the Office of the Recorder of Lake County, Indiana on the 20th day of August, 1981, and
3. such other recorded plats of subdivision that may be approved and recorded under the provisions of Article III. D. and E. hereof.

K. Property: means that it includes the land, buildings, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto as set forth in "Exhibit A" and all other property that may be included in future expansions as set forth in Article III. E. hereof.

L. Unit: an enclosed space consisting of a single family living area located on that portion of the property designated for multi-family dwellings.

II. MEMBERSHIP AND VOTING RIGHTS.

A. Membership. Every person or entity who is the owner of a fee or equitable title of a lot or unit in the property shall be a member of the Association. For the purpose of determining membership, such ownership will be deemed to have vested upon delivery to the Owner of a duly executed deed, or as to subsequent owners, upon delivery to the Association of a certified copy of a duly executed deed or other instrument establishing a change of record title to a lot or unit. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. The membership shall be appurtenant to and may not be separated from ownership of any lot or unit which is within the properties. Nothing herein contained shall be interpreted so as to exclude the Developer from membership while it or its successors in interest, if any, owns one or more lots or units, or any part of the properties.

B. Voting Rights. There shall be one vote and one voting member for each lot or unit regardless of the number of persons who may have the ownership interest in a lot or unit or the manner in which title is held by them. The vote of the owners of a lot or unit owned by more than one person shall be cast by the person named in a certificate signed by all of the owners of the lot or unit and filed with the secretary of the Association. Such certificate shall be valid until revoked by a subsequent certificate. If the certificate is not on file, the vote of such owner shall not be considered in determining the requirement for a quorum nor for any other purpose.

C. Number and Term of Board of Directors. The initial Board of Directors shall consist of seven (7) directors who shall serve for one (1) year. Each year thereafter until the last lot, unit or part of the property (including any area of future expansion) is sold, the Developer shall have the right to select and designate a majority of the Directors.

D. Election of Board of Directors. Election of directors shall be conducted in the following manner:

1. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws and the Articles of Incorporation of the Association.

2. Vacancies in the Board of Directors may be filled until the date of the next annual meeting by the remaining directors.

3. Anything herein contained to the contrary notwithstanding, for so long as the Developer owns any lot, unit or any of the property (including any area of future expansion), it shall be entitled to elect a majority of the directors, which directors need not be owners of a lot or unit within the properties.

III. PROPERTY RIGHTS.

A. Owners' Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the common area, which shall be appurtenant to and shall pass with title to every lot or unit subject to the following provisions:

1. The right of the Association to charge reasonable admission and other fees for the use of any facilities situated upon any common area;
2. The right of the Association to suspend the voting rights and the right to use of any recreational facilities by an owner for any period during which any assessment against his lot or unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the public rules and regulations of the Association;
3. The right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, corporation, or utility for such purposes and subject to such conditions as may be agreed by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by fifty percent (50%) of all of the owners then existing, has been recorded in the Public Records

of Lake County, Indiana;

4. The right of the Association to pass reasonable rules and regulations;
5. The right of the Association to limit the number of guests of members for use of the common areas;
6. The right of the Association to levy assessments as provided in this Declaration;
7. The easements of record and any easements which may hereinafter be granted for utilities, such as drainage, water, gas, sewer, electricity, communication, cable television, and such other easements as may be necessary or desirable;
8. The right of the Developer to the use of the common areas and facilities without charge during the sales and construction period on the property as a part of the overall development program;
9. The right of the Association, in accordance with the Articles and By-Laws, to borrow money for the purpose of improving the common area and constructing facilities thereon and to secure such loans by mortgages on the common area. The rights of such mortgagee in said common area shall be senior to the rights of the owners hereunder.

B. Access Easement. Every member shall have an easement for ingress and egress to his lot or unit over and across the common area and such other easements that are designated on the plat for access to such common area. Such easements shall be appurtenant to and shall pass with the title to every lot or unit.

C. Delegation of Use. Any member may delegate, in accordance with the By-Laws and Rules and Regulations of the Association, his right of enjoyment to the common area to his family, his tenants or contract purchasers who reside on the property.

D. Title to the Common Area. The Owner and Developer hereby covenant for themselves, their successors and assigns, that they will cause to be conveyed fee simple title to the common area to the Association, free and clear of all encumbrances and liens, except for the Covenants and Restrictions contained herein, public zoning ordinances, current real estate taxes, if any (which shall be prorated among the parties), and utility easements to be granted for sewer, drainage, water, gas, electricity, communications and such other easements as may be necessary or desirable. Conveyance of said title to such common area shall be by deed to the Association which shall be executed and delivered contemporaneously with the recording of each plat of subdivision as each of said subdivisions in the future are

incorporated into the Briar Ridge Country Club Additions. A portion of the property which may be incorporated into Briar Ridge Country Club Additions in the future is described on the attached "Exhibit A". However, the Developer makes no binding commitments or representations as to the extent or depth of said future developments; and such future incorporation of subdivisions into the Briar Ridge Country Club Additions and the improvement of the property shown on "Exhibit A" are within the absolute and sole discretion of the Developer.

E. Future Expansion. The Developer may, in its sole discretion, develop certain real estate located in the Town of Dyer and lying adjacent to the property described on "Exhibit A" into a planned unit development. In the event the planned unit development is approved by all governmental bodies having jurisdiction thereof, the Developer may, in its sole discretion, incorporate said planned unit development into the Briar Ridge Country Club Additions, a planned unit development. The incorporation of the planned unit development shall be evidenced by a document executed by the Developer and recorded in the Office of the Recorder of Lake County, Indiana and thereafter said planned unit development shall be subject to all of the terms, provisions and restrictions contained in this Declaration.

F. Parking Rights. The Association may provide parking spaces for the convenience of owners, their families and guests while using the common areas. The use of such parking areas shall be subject to rules and regulations adopted by the Association.

IV. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Creation of the Lien and Personal Obligation of Assessments. Developer, for each lot or unit owned within the property, hereby covenants, and each owner of any lot or unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements; such assessments to be fixed, established, and collected from time to time, as hereinafter provided. Each assessment, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the lot or unit and shall be a continuing lien thereon. Each such assessment, together with such interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the owner of such lot or unit at the time when the assessment was levied. The personal obligation shall not pass to successors in title unless expressly assumed.

B. Purpose of Assessments. The assessments levied by the Association 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 common area, services, utilities and facilities devoted to this purpose and related to the use and enjoyment of the common area and of the lots and units.

Such assessments may include, but are not limited to, the cost and charges to the Association of all taxes, insurance, repair, replacement, construction and maintenance of the common area, including any walks, roads, streets, street illumination, garbage removal, snow removal, sprinkler system, landscaping, open spaces, green belts, storm water drainage and retention systems, security stations and personnel, fencing, parking areas, and the construction and maintenance of any buildings as may from time to time be authorized by the Board of Directors, and other facilities, activities, and charges required by this Declaration or that the Board of Directors shall determine to be necessary or desirable to meet the primary purpose of the Association.

C. Annual Assessments. The amount of the annual assessments shall be fixed by the Board of Directors of the Association each year and shall be based upon the projected budget prepared by the Board of Directors for that year.

D. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment for the purpose of paying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the common area, including the necessary fixtures and personal property related thereto, PROVIDED THAT, any such assessment shall have the assent of two-thirds of the votes of all members entitled to vote at a meeting called for this purpose.

E. The Allocation of Assessments. Both annual and special assessments shall be allocated by the Association against a lot or unit by dividing the total aggregate amount of such annual or special assessments by the number of lots or units. Assessments shall be collected on a monthly, quarterly, or other basis as determined by the Board of Directors and shall be assessed equally among all lots and units.

F. Date of Commencement of Annual Assessments. Annual assessments may commence for all lots and units in Briar Ridge Country Club Additions on the first day of the month following the month in which the Developer conveys title to the lot or unit within the Briar Ridge Country Club Additions. The Board of Directors shall fix the amount of the annual assessment against each lot or unit at least thirty (30) days in advance of each annual assessment period. In the event the Board of Directors fails to establish said assessment as provided, the amount of the last annual assessment shall remain in effect for the ensuing year, or until such time as the annual assessment is fixed by the Board of Directors. Written notice of any change in the amount of the annual assessment shall be sent to every owner subject to the assessment. All notices to owners shall be mailed to the address shown on the records of the Association. Monthly assessments shall be due on the first day of each month, or quarter or otherwise as determined by the Board of Directors. A new owner shall be liable for payment of the monthly assessment on the first day of the month

following conveyance of title. The Association shall upon demand at any time furnish a certificate in writing, signed by an officer of the Association, setting forth whether the assessments on a specified lot or unit have been paid, and a reasonable charge may be made for the issuance of this certificate. Such certificate shall be conclusive evidence of payment of any assessment.

G. Remedies for Non-Payment of Assessments. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of one percent (1%) per month, and the Association may bring an action of law against the owner personally obligated to pay the assessment, or foreclose the lien against the property; either action shall include interest, costs and reasonable attorneys' fees which shall be added to the amount of the assessment and included in a judgment rendered. The Board of Directors shall perfect such lien by filing notice of the same within sixty (60) days from the date such assessment was due and may foreclose the lien under the laws of the State of Indiana governing mechanics' and materialmen's liens. In such foreclosure, the delinquent owner may be required to pay a reasonable rental for the lot and the Association in such foreclosure shall be entitled to the appointment of a receiver to collect such delinquent assessment. The Association may, in addition to such foreclosure action, file suit to recover a money judgment for unpaid common expenses and such action shall not constitute a waiver of the lien securing such unpaid assessment. If the Board of Directors determines to file foreclosure to collect such unpaid assessments, the Board of Directors acting on behalf of the Association shall have the power to bid in the lot or unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. No owner may waive or otherwise escape liability for the assessments by non-use of the common area or abandonment of his lot or unit.

V. SUBORDINATION OF THE LIEN TO MORTGAGES.

The lien of the assessments provided for herein shall be subordinate to a lien of any first mortgage. The sale or transfer of any lot or unit shall not affect the assessment lien. The sale or transfer of any lot or unit pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such assessment as to payments which became due prior to such sale or transfer.

VI. ARCHITECTURAL CONTROL.

No building, wall, improvement or other structure shall be commenced, erected or maintained on the property and no exterior addition, change or alteration shall be made until the plans and specifications, plot lay-out, exterior elevations, and landscaping

which shall show the nature, kind, shape, height, materials and location of the improvement to be made shall have been submitted to and approved in writing as to the harmony of external design and location in relationship to the surrounding structures, topography, and lot lines by the Architectural Control Committee appointed by the Board of Directors of the Association. In addition, each owner intending to build shall submit a resume as to the experience and financial responsibility of the proposed contractor who is to perform the work. This provision shall not apply to any construction or improvement made by the Developer in connection with the development of the property.

Neither the Developer, the Association, nor the Architectural Control Committee, nor any member thereof, shall be liable for any damage, loss or prejudice suffered or claimed by any owner or contractor who submits such plan on account of (a) any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions; (b) any structural or other defects in any work done according to such plans and specifications; (c) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (d) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, and (e) the development of any property within Briar Ridge Country Club Additions. Any person submitting plans to the Architectural Control Committee shall hold the Developer, the Association, the Architectural Control Committee, or any member thereof, harmless from all damage, loss or prejudice suffered or claimed by any third party, including attorneys' fees incurred.

VII. INSURANCE.

The insurance which may be carried upon the common area and personal property shall be governed by the following provisions:

A. Authority to Purchase. All insurance policies upon the common area and personal property shall be purchased by the Association for the benefit of the members of the Association. If the insurance companies issuing said policies agree, such policies shall provide that the insurer waives its rights of subrogation as to any claims against lot or unit owners, the Association, the members thereof and their respective servants, agents and guests. Such policies and endorsements shall be deposited with the Association and held as part of the records of the Association.

B. Policies to be Secured by the Association are as follows:

1. Casualty. The buildings and other insurable improvements upon the common area and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined annually by the insurance

company affording such coverage. Such coverage shall afford protection against:

- (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement;
 - (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the building, including but not limited to, vandalism, malicious mischief, windstorm and water damage;
2. Public liability, officers, directors, and employees liability for errors and omissions, and property damage in such amounts and such forms as may be required by the Association.
 3. Workmens Compensation policy to meet the requirements of law;
 4. All liability insurance shall contain cross-liability endorsements to cover liabilities of the lot owners as a group to a lot owner.

C. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as common expenses.

D. Beneficiary of Policies. All insurance policies purchased by the Association shall be for the benefit of the Association and shall provide that all proceeds payable as a result of losses thereunder shall be paid to the Association. Proceeds received from insurance policies shall be used by the Association to repair or replace the property damaged. In the event the proceeds are insufficient, the Association may levy assessments to cover such deficiency.

E. Disposal of Proceeds. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance after payment of all costs of the reconstruction or repair for which the proceeds of the policies were received, such balance shall be retained by the Association and regarded as miscellaneous revenue to the Association.

F. Insurance Adjustments. Each member shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under policies purchased by the Association.

VIII. CONVEYANCES

Each owner who sells his lot or unit shall require that his purchaser provide to the Association a copy of the instrument of conveyance. In addition, each owner upon such sale shall endorse to his purchaser his Certificate of Membership in the Association and shall deliver to his purchaser copies of all documentation received by the seller at the time of the initial purchase. The Association shall thereafter issue a new certificate in the name of the purchaser.

IX. USE RESTRICTIONS.

A. Conveyance. Each lot and unit shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof.

B. Use. Lots and units shall be occupied by a single family only and shall be used as a family dwelling. Townhouse buildings consisting of single family dwellings joined together by party walls and common exterior roofs and foundations and low rise condominium buildings containing single family living units shall be erected only in those areas designated multi-family.

C. Construction. All buildings or structures on the property shall be of new construction.

D. Front and Rear Set Back. In those areas designated for single family residences the minimum front yard set back line shall be fifty (50) feet. In those areas designated for multi-family dwellings, the minimum front yard set back line shall be twenty-five (25) feet. Rear lot lines, if any, shall be as designated on the plat.

E. Side Lot Lines. In those areas designated for single family residences the side lot lines shall not be less than twenty-five (25%) percent of the width of the lot with a minimum of ten (10%) percent of the width of the lot allocated on one side. In those areas designated for multi-family dwellings, side lot lines may be a zero side lot line as to one side yard but the total side yard lot line shall be not less than fifteen (15%) percent of the width of the lot as to the other side lot line. When no zero lot line is used, the minimum total of the side lot line shall be not less than twenty (20) feet with at least seven (7) feet allocated to one side lot line.

F. Height, Occupancy and Density. No building shall exceed three (3) stories in height. No building shall occupy more than thirty (30%) percent of the lot area. The density of use shall be restricted to an average of six (6) units per acre within those areas designated for multi-family use.

G. Minimum Floor Area. All residential structures shall comply with the following:

1. All one story residential structures with basement shall have a minimum first floor area of 2,000 square

feet.

2. All one and one half story residential structures with basement shall have a minimum first floor area of 1,700 square feet.
3. All bi-level and tri-level residential structures shall have a minimum first floor area of 1,800 square feet, not including the lower levels of said structure.
4. All four-level split residential structures shall have a minimum first floor area of 1,650 square feet not including the lower levels of said structure.
5. All two-story residential structures with basement shall have a minimum total floor area of 2,400 square feet.
6. The above minimum floor areas do not include porches, breezeways, or attached garages.
7. The minimum floor area for a unit within a multi-family dwelling shall be 900 square feet.

H. Signs. No advertising signs (except one of not more than six (6) square feet "For Rent" or "For Sale" sign per lot or unit), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on property, nor shall the property be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any lot or unit or any resident thereof. No business activities of any kind whatsoever shall be conducted in any building or in any portion of the property; provided, the foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of Developer, its agents and assigns during the construction and sale of the property.

I. Parking of Vehicles. Recreational vehicles, campers, boats, trailers, trucks or other commercial vehicles shall not be stored or parked within the property, including the streets and common area unless specific areas for such purposes are designated by the Association.

J. Permanent Structures. No structure of a temporary character, such as a trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on the property at any time as a residence, either temporarily or permanently.

K. Kind of Construction. No building previously constructed elsewhere shall be moved upon any of the property.

L. Approval Prior to Construction. No residence or structure shall be commenced, erected, or maintained on any of the property

until the plans and specifications have been submitted to and approved by the Architectural Control Committee as provided in Article VI.

M. Common Area. Common area is reserved for the common use and enjoyment of the owners, their families and invitees, subject to rules and regulations governing such use and enjoyment as may be adopted by the Association.

N. Regulations. Regulations concerning use of the property may be promulgated by the Association as hereinabove set forth; provided, however, that copies of such regulations are furnished to each lot or unit owner prior to the time that the same become effective. The initial regulations, which shall be deemed effective until amended by the Association are attached hereto and made a part hereof as "Exhibit E".

X. AMENDMENT

Amendments to the Declaration shall be proposed and adopted as follows:

- A. Notice. Notice of the subject matter of the proposed amendment in reasonably detailed form shall be included in the Notice of any meeting at which a proposed amendment is considered.
- B. Resolution. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association, and after being proposed and approved by either of such bodies, must be approved by the other. Directors and lot or unit owners not present at the meeting considering such amendment may express their position in writing or by proxy. An amendment must be adopted by not less than seventy-five percent (75%) of the total number of Directors and fifty-five percent (55%) of the total membership of the Association.
- C. Recording. A copy of each amendment shall be certified by at least two (2) officers of the Association as having been duly adopted and shall be effective when recorded in the Office of the Recorder of Lake County, Indiana. Copies of the same shall be sent to each lot or unit owner and his mortgagee in the manner elsewhere provided for the giving of notices but the same shall not constitute a condition precedent to the effectiveness of such amendment.
- D. Exceptions. The provisions contained in this article shall not apply or govern acts of the Developer taken pursuant to the provisions of Article III. D. and E.

XI. TERMINATION

The Declaration shall be terminated, if at all, by the agreement of all the lot and unit owners and their respective mortgagees, which agreement shall be evidenced by an instrument or instruments executed in the manner required for the conveyance of real property. The termination shall become effective when such agreement has been recorded in the Office of the Recorder of Lake County, Indiana.

XII. GENERAL PROVISIONS.

A. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no manner affect or invalidate any of the other provisions, which other provisions shall remain in full force and effect.

B. Enforcement. The Association, or any owner, shall have the right to enforce any provision of this Declaration by any proceeding of law or equity. Any owner found to be in violation by a court of competent jurisdiction of any provision of this Declaration shall also be liable for reasonable attorneys' fees incurred by the Association, or incurred by any owner, in prosecuting such action. The amount of such attorneys' fees together with court costs, if unpaid, shall constitute an additional lien against the defaulting owner's lot or unit, enforceable as other liens herein established. Failure by the Association or by any owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

C. No Dedication to Public Use. Nothing contained in this Declaration shall be construed or deemed to constitute a dedication, express or implied, of any part of the common area to or for any public use or purpose whatsoever.

XIII. CAPACITY OF TRUSTEE.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally, but this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Mercantile National Bank of Indiana on account of this instrument or on account of any representation, covenant, undertaking or agreement of said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, the Mercantile National Bank of Indiana,
as Trustee, has caused this instrument to be signed by its ~~SENIOR VICE~~
~~PRESIDENT AND TRUST OFFICER~~, and attested by its ~~ASSISTANT VICE PRESIDENT AND TRUST OFFICER~~
and its seal to be hereunto affixed this JULY day of JULY, 1981.

OWNER:

MERCANTILE NATIONAL BANK OF INDIANA
as Trustee under that certain Trust
Agreement dated December 20, 1976
and known as Trust No. 3523.

By: SEE SIGNATURE PAGE ATTACHED

ATTEST:

MERCANTILE NATIONAL BANK OF INDIANA
as Trustee under that certain Trust
Agreement dated May 26, 1981 and
known as Trust No. 4114.

By: SEE SIGNATURE PAGE ATTACHED

ATTEST:

DEVELOPER:

POWERS - RUETH AND ASSOCIATES,
an Indiana Limited Partnership,

By: Donald S. Powers
Donald S. Powers
General Partner

By: Harold G. Rueth
Harold G. Rueth, General Partner
of Rueth Development Company,
General Partner

This instrument prepared by Palmer C. Singleton, Jr., Singleton, Levy,
Crist & Johnson, 9013 Indianapolis Boulevard, Highland, Ind. 46322.

TRUSTS NO. 3523 and 4114, DECLARATION OF COVENANTS, ETC., FOR BRIAR RIDGE COUNTRY CLUB
ADDITION DATED JULY 2, 1981

~~**~~ And Trust Agreement dated 26th day of May, A.D. 1981, creating TRUST NO. 4114

THIS INSTRUMENT ~~is executed~~ by the undersigned Trustee, not personally but solely as Trustee under the terms of that ~~certain~~ agreement dated the 20th day of December, A.D. 1976, creating Trust No. 3523** ; and it is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding, that each and all of the covenants, undertakings, representations and agreements herein made are made and intend, not as personal covenants, undertakings, representations and agreements of the Trustee, individually, or for the purpose of binding it personally, but this instrument is executed and delivered by the MERCANTILE NATIONAL BANK OF INDIANA, as Trustee, solely in the exercise of the powers conferred upon it as such Trustee under said agreement and no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against the MERCANTILE NATIONAL BANK OF INDIANA, on account hereof, or on account of any covenant, undertaking representation or agreement herein contained, either expressed or implied, all such personal liability, if any, being hereby expressly waived and released by the parties hereto or holder hereof, and by all persons claiming by or through or under said parties or holder hereof.

IN WITNESS WHEREOF, said MERCANTILE NATIONAL BANK OF INDIANA has caused its name to be signed to these presents by a SENIOR VICE PRESIDENT AND TRUST OFFICER and its corporate seal to be hereunto affixed and attested by its ASSISTANT VICE PRESIDENT & TRUST OFFICER the day and year first above written.

MERCANTILE NATIONAL BANK OF INDIANA
as Trustee aforesaid and not personally,
OF TRUSTS NO. 3523 and 4114
By H.F. SMIDDY, JR.
Senior Vice President and Trust Officer

ATTEST: Andres Roche
ANDRES ROCHE, Assistant Vice President and Trust Officer

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

I, Christine VanNatta, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY, that H. F. SMIDDY, JR. of the MERCANTILE NATIONAL BANK OF INDIANA, a national banking association, and ANDRES ROCHE of said national banking association, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Senior Vice President and Trust Officer and Assistant Vice President and Trust Officer, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said national banking association, as Trustee, for the uses and purposes therein set forth; and the said ANDRES ROCHE did also then and there acknowledge that he, as custodian of the corporate seal of said national banking association, did affix the said corporate seal of said national banking association to said instrument as his own free and voluntary act, and as the free and voluntary act of said national banking association, as Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 3rd day of JULY 1981.
Christine VanNatta
CHRISTINE VAN NATTA, Notary Public

My Commission Expires:
4/19/83

FILED
AUG 20 1981

EXHIBIT "A"

Part of Section 5 and Section 6, Township 35 North, Range 9 West of the Second Principal Meridian, being more particularly described as follows: Commencing at the Southwest corner of said Section 5; thence South 88° 51' 23" East, a distance of 971.51 feet to the place of beginning; thence continuing South 88° 51' 23" East, along the South line of said Section 5, a distance of 3454.81 feet; thence North 19° 34' 03" West, a distance of 523.87 feet to a point of curve; thence Northerly, on a curve concave to the East and having a radius of 340.00 feet, an arc distance of 388.59 feet to a point, which point bears North 13° 10' 27" East, 367.78 feet from the last described point of curve; thence North 45° 54' 57" East, a distance of 100.00 feet to a point on the Westerly right-of-way line of the Penn Central Railroad; thence North 44° 05' 03" West, along said Westerly right-of-way line, a distance of 5571.58 feet to a point of curve; thence North-westerly, along said Westerly right-of-way line, on a curve concave to the Northeast and having a radius of 11,509.2 feet, an arc distance of 789.52 feet to a point on the West line of Section 5, which point bears North 42° 07' 08" West, 789.38 feet from the last described point of curve; thence South 0° 00' 00" West, along the West line of said Section 5, a distance of 98.57 feet; thence South 88° 38' 38" West, a distance of 356.83 feet; thence South 60° 00' 00" West, a distance of 315.49 feet; thence South 0° 00' 00" West, parallel with the West line of said Section 5, a distance of 1055.88 feet; thence South 21° 48' 05" East, a distance of 215.41 feet; thence South 41° 59' 14" East, a distance of 672.68 feet; thence North 90° 00' 00" East, a distance of 100.00 feet to a point on the West line of said Section 5; thence continuing North 90° 00' 00" East, a distance of 70.00 feet; thence South 0° 00' 00" West, parallel with the West line of said Section 5, a distance of 849.50 feet; thence South 57° 24' 23" West, a distance of 83.08 feet to a point on the West line of said Section 5; thence continuing South 57° 24' 23" West, a distance of 303.52 feet; thence South 30° 04' 21" West, a distance of 287.93 feet; thence South 0° 00' 00" West, parallel with the West line of said Section 5, a distance of 193.08 feet; thence South 23° 11' 55" East, a distance of 306.48 feet; thence South 47° 00' 35" East, a distance of 135.97 feet; thence South 70° 49' 16" East, a distance of 190.38 feet to a point on the West line of said Section 5; thence continuing South 70° 49' 16" East, a distance of 1028.40 feet; thence South 0° 00' 00" West, a distance of 1144.58 feet to the place of beginning, all in Lake County, Indiana, excepting therefrom the following described parcel:

A part of Section 5, Township 35 North, Range 9 West of the Second Principal Meridian described as follows: Commencing at the Southwest corner of said Section 5; thence South 88° 51' 23" East, along the South line of said Section 5, a distance of 971.51 feet; thence North 0° East, a distance of 569.39 feet to the point of beginning; thence North 0° East, a distance of 575.19 feet; thence South 70° 49' 16" East, a distance of 37.33 feet; thence North 82°

52' 30" East, a distance of 322.27 feet; thence North 38° 39' 35" East, a distance of 358.01 feet; thence North 0° East, a distance of 471.73 feet; thence North 64° 24' 15" East, a distance of 221.76 feet; thence North 90° East, a distance of 300.00 feet; thence South 4° 45' 49" East, a distance of 602.08 feet; thence South 38° 39' 35" East, a distance of 320.16 feet; thence South 63° 26' 06" East, a distance of 223.61 feet; thence North 90° East, a distance of 150.00 feet; thence South 0° East, a distance of 150.00 feet; thence North 90° West, a distance of 150.00 feet; thence South 36° 52' 12" West, a distance of 250.00 feet; thence South 68° 11' 55" west, a distance of 269.26 feet; thence North 90° West, a distance of 900.00 feet; thence South 75° 57' 50" West, a distance of 206.16 feet; thence North 90° West, a distance of 28.68 feet to the point of beginning, containing 286.719 acres, more or less, all in Lake County, Indiana.