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TO: Holly FAT
(NAME) (FIRM)

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MESSAGE: 8747190

Provides for Homeowners Assoc. w/
Automatic Membership - Assmnts. to be
Lien if unpd -
Subordinate to 1st
M+G -

8747190

RECEIVED
FOR RECORDING
HAMILTON COUNTY INDIANA
SHARON K. CHERRY
REC'D 11 54 AM '87

DECLARATION OF ADDITIONAL COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
SMOKEY RIDGE SECTIONS I, II, III, IV, V AND VI

THIS DECLARATION made this 22nd day of September, 1987, by
Paul Lipps and Craig Sharpe, ("Developer"), WITNESSETH THAT:

WHEREAS, Developer is the owner of certain property located
in Hamilton County, Indiana, which is more particularly described
in Exhibit "A" and "B" attached hereto and by reference made a
part hereof, which land has been subdivided for development of
single family housing (the "Development") Smokey Ridge Sections
I, II, III, IV, V and VI are more particularly described on the
final plat for Smokey Ridge Section I recorded on MARCH 5,
1987, as Instrument No. 87-25053 in the office of the
Recorder of Hamilton County, Indiana and on the plats to be
recorded for Smokey Ridge Section II - IV referred to collective-
ly as (the "Plats"); and

WHEREAS, Developer is about to sell and convey the residen-
tial lots situated within the Development and, before doing so,
desires to subject and impose upon all real estate located within
the Development mutual and beneficial restrictions, covenants,
conditions and charges (the "Restrictions") under a general plan
or scheme of improvement and maintenance for the benefit of the
lots and lands in the Development and future owners thereof; and

WHEREAS, Developer has caused or will cause the incorpora-
tion of Smokey Ridge Homeowners Association, Inc., an Indiana
not-for-profit corporation, for performing certain duties here-
inafter set forth:

NOW, THEREFORE, Developer hereby declares that all of the
lots and lands located within the Development shall be held,
sold, conveyed and improved, subject to the following Restric-
tions, all of which are declared and agreed to be in furtherance
of a plan for the improvement and maintenance of said lots and
land in the Development, and are established and agreed upon for
the purpose of enhancing and protecting the value, desirability

This Instrument Recorded 11-10 1987
Sharon K. Cherry, Recorder, Hamilton County, Ind

INSTR. # 87 47190

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 Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Developer's successors in title to any real estate in the Development.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Smokey Ridge Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

Section 2. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 3. "Common Area" shall mean those areas, if any, set aside, leased or owned by the Association for the benefit, use and enjoyment of the Owners and personal property leased or owned by the Association for the benefit, use and enjoyment of the Owners, including but not limited to islands in the streets and grassy areas between the brick walls and Carey Road.

Section 4. "Developer" shall mean and refer to Paul Lipps and Craig Sharpe.

Section 5. "Development" shall mean and refer to the residential development which now exists or may hereafter be created within the real estate located in Hamilton County, Indiana, which is more particularly described in Exhibit "A" attached hereto and by reference made a part hereof.

Section 6. "Lot" shall mean any parcel of real estate, whether residential or otherwise, described by any plat of the Development which is recorded in the office of the Recorder of Hamilton County, Indiana.

ARTICLE II

COMMON AREAS

Section 1. Members' Rights and Easements of Enjoyment.

Every member shall have a non-exclusive right and easement in and to the Common Areas which shall be appurtenant to and shall pass with membership in the Association subject to the following provisions:

- (a) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Areas;
- (b) The rights of Developer as provided in this Declaration; and
- (c) All other rights, obligations and duties as set forth in this Declaration, as the same may be supplemented or amended.

Section 2. Use of Common Areas. The Association shall have the right to construct on or within the Common Areas as described on the Plat certain improvements for the benefit of all members, which improvements may include theme signage at the entrance to the Development provided, however, that such improvements do not interfere with the primary purpose of such Common Areas for the detention of surface drainage.

ARTICLE III

ASSOCIATION MEMBERSHIP
AND VOTING RIGHTS

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

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

Class A. Class A members shall be all Owners of Lots within the Development, with the exception of the Developer, and such members shall be entitled to one (1) vote for each Lot owned. When more than one (1)

person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. Class B member shall be the Developer, which shall be entitled to three (3) votes for each Lot owned at any time. Class B membership of Developer shall expire at such time as Developer no longer retains an ownership interest in the Development.

Section 3. Association. The Class A and B members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4. Mandatory Membership. Membership shall be mandatory with mandatory assessments as hereinafter provided and shall be subject to any reasonable rules and regulations of the Association not in conflict with the provisions hereof, the Articles of Incorporation and By-Laws of the Association and any applicable federal, state or local constitution, statute, ordinance, rule or regulation. Such rules and regulations shall be applied uniformly and in a non-discriminatory manner except as provided herein.

ARTICLE IV

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Personal Obligation and Lien of Assessments. Developer, for each Lot owned within the Development, hereby covenants and each Owner is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The assessments described herein shall be mandatory upon all of the Lots and shall commence upon occupancy of the dwelling. The annual and special assessments, together with interest, costs, and reasonable attorneys' 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 assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by such successors.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the members of the Association and for the maintenance of the Common Areas and other purposes as specifically provided herein.

Section 3. Maximum Annual Assessments.

(a) Until December 31, 1988, the maximum annual assessment on any Lot conveyed by Developer shall be One Hundred and no/100 Dollars (\$100.00) per Lot.

(b) Thereafter, the maximum annual assessment may be increased by not more than twenty percent (20%) in any year by the Board of Directors.

(c) The maximum annual assessment may be increased by more than twenty percent (20%) in any year by a vote of a majority of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any property which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a

majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

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 at least ten (10) days in advance of the meeting. The presence in person or of proxies of members entitled to vote constituting the representation of a majority of the total votes shall constitute a quorum.

Section 6. Uniform Rate of Assessment. Both annual and special assessments for capital improvements and operating deficits must be fixed at a uniform rate for all members and may be collected on an annual or monthly basis as determined by the Board of Directors.

Section 7. Due Dates and Notices. The Board of Directors shall fix any increase in the amount of the annual assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every member subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments as to a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments - Remedies of the Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due (pursuant to Section 7 hereof), then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such Lot, binding upon the then

Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain in his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If any 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 eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both, 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 attorneys' fee to be fixed by the court, together with the costs of the action in favor of the prevailing party.

No Owner may waive or otherwise escape liability for assessments provided for herein by abandonment of his Lot.

Section 9. Subordination of Lien to Mortgages. The lien of 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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

DEVELOPER'S RIGHTS

So long as Developer owns any Lot in the Development, Developer shall, at its option, have the right to perform the functions of the Association and the Board of Directors and to manage the Common Areas. Developer's right to manage shall include the right to set annual assessments subject to the limitations herein contained and provided that such assessments shall be reasonably related to the actual cost of maintaining and operating the Common Areas and to adopt rules and regulations governing the use

of the Development. Such rights shall be subject to the following:

(a) Developer may manage or cause to be managed the Development and it shall have the right to assess and collect the maximum annual assessment as set forth in Article IV, Section 3 above. After December 31, 1988, Developer may increase the amount of annual assessment so long as such increase shall not exceed the maximum percentage increase permitted by such Article VII, Section 3, without vote of the members, unless a greater increase is approved by the membership as therein provided.

(b) Developer shall have the right to transfer the management of the Development, or any part thereof, to the Association at any time it believes that the Association is able to manage the Development without undue difficulty. Developer's right to manage the Development shall expire when Developer no longer owns any of the Lots. So long as the management of the Association is being borne by Developer, the rights of the Association to manage the Lots and set assessments shall be suspended.

ARTICLE VI

MAINTENANCE

Maintenance Obligations of Association. The Association shall provide all maintenance and repairs upon the Common Areas and brick perimeter walls as deemed necessary or appropriate by the Board of Directors and to promptly take action to correct any problems that are not being serviced by the responsible adjacent lot owners. The Board shall further make reasonable arrangements for snow removal, if necessary, from the public streets within the Development.

The Association shall also perform the obligations of Lipps and Sharpe under the Drainage Agreement effecting the subdivision and recorded in the office of the Hamilton County Recorder.

In the event that the need for maintenance or repair is caused through the willful or negligent act of any member, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment for

which such member is liable, shall be deemed to be a mandatory assessment as to any Owner and shall be the personal obligation of such member enforceable as provided in Article IV, Section 8.

Maintenance Obligations of Lot Owners Adjacent to Retention Areas and Drainage Swails. The final plat shows a system of rear yard retention areas and drainage swails. By acceptance of a deed each lot owner in Smokey Ridge II and III agrees to maintain the portion of the retention areas and drainage swails on or adjacent to their property.

No fencing, storage buildings, wood piles or any other type of obstruction may be placed on or over the retention area or drainage swails. Individual lot owners further agree to regularly mow the retention areas and drainage swails on or adjacent to their property and keep them well maintained and free of any debris or obstruction.

ARTICLE VII

INSURANCE

Section 1. Liability Insurance. The Association may purchase liability insurance in such amount or amounts and in such form as the Board of Directors shall deem appropriate from time to time. Such liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, Developer (if it has any interest in the Properties), all Owners and all other persons as the Board of Directors may determine.

The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, Developer, the Association, its Board of Directors and any managing agent acting on behalf of the Association.

Section 2. Casualty and Restoration. Damage to or destruction of the Common Areas or any portion thereof shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose.

ARTICLE VIII

EASEMENTS

Section 1. By Developer. Developer hereby reserves an easement unto itself and hereby reserves unto itself the right to sell, convey, transfer and grant an easement or easements and rights-of-way across and through the Common Areas for the purposes of installing ditches, tiles, pipes and other types of drains, sewers and sewer lines, utility lines, ducts, wires, pipes and the like. Developer further reserves unto itself the right to dedicate any portion of the Common Areas or any utility line, sewer, drain, roadway or the like to any governmental body, municipality, utility or the like, including the right to dedicate public streets and roads. The interest of each member of the Association in the Common Areas shall be and is subject to the easements and rights hereby created and shall be and is subject at all times to the right of property authorities who service the utilities and easements hereby created or hereafter granted. Any such grant by Developer shall be by recorded instrument. This right of Developer shall expire at such time Developer no longer retains any ownership interest in the Development.

Section 2. By the Association. Subject to the easements and rights specified in Section 1 hereof, the Association shall have the right to sell, convey, transfer and grant easements and rights-of-way across and through the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. Such sale, conveyance, transfer, grant or dedication shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for such purpose; provided, however, no grantee shall be required to ascertain the

compliance with the terms and provisions hereof regarding such member approval and may rely upon the representations of the Board of Directors and the officers of the Association. Any instrument duly executed by the officers of the Association granting any easement or dedication as herein provided shall be binding upon the Association as to any grantee taking in good faith.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Developer, the Association, the persons in ownership from time to time of the Lots or other real estate within the Development and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended at any time by an instrument recorded in the Office of the Recorder of Hamilton County, Indiana, executed by the Association and approved by at least a majority of Class A and B members; provided, however, none of the rights or obligations of Developer reserved hereunder may be amended or changed without Developer's written and recorded approval. This Declaration may be amended by Developer, if it then has any ownership interest in the Development, at any time within two (2) years after the recordation hereof by written instrument recorded in the Office of the Recorder of Hamilton County, Indiana. This Declaration shall run

with the land and shall be binding upon all parties claiming under them for a period of twenty-five (25) years from the date of recordation in the Office of the Recorder of Hamilton County, Indiana, and shall be automatically extended for successive periods of ten (10) years each unless prior to the expiration of any such ten (10) year period it is amended in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 3. Annexation. Smokey Ridge Section I may be annexed to the Development and the Homeowners Association by Developer at any time after the date of recordation hereof by the recording of a declaration applicable to such annexed real estate which incorporates the terms to this Declaration. Additional property may be annexed to the Development with the consent of a majority of the members of the Association by the recording of a declaration applicable to such annexed real estate which incorporates the terms of this Declaration.

Section 4. Incorporation of Smokey Ridge Covenants and Restrictions. The covenants and restrictions recorded with the secondary plats of Smokey Ridge Sections I, II, III, IV, V and VI and are hereby incorporated as though set forth in full herein and shall be binding upon the lot owners and Smokey Ridge I, II, III, IV, V and VI Homeowners Association.

Section 5. Discharge into Storm Drainage System. No home constructed in the subdivision shall permit the direct or indirect discharge of water conditioning equipment into the storm drainage system. No noxious, contaminating or harmful chemicals including herbicides, pesticides and the like, shall be permitted to directly or indirectly enter the storm system so as to enter the presently defined drainage ways.

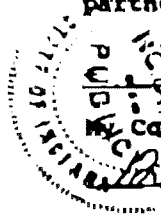
IN WITNESS WHEREOF, Developer has caused this Declaration to be executed as of the date first above written.

Paul R. Lipps
Paul Lipps

Craig Sharpe
Craig Sharpe

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Paul Lipps, who having been duly sworn, acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for and on behalf of said partnership.



Witness my hand and Notary Seal 22nd day of September, 1987.

My Commission Expires: 12-14-87

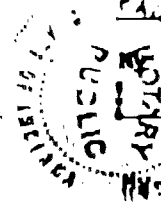
Pamela Ann Kreegar
Notary Public

My County of Residence: Hamilton

Pamela Ann Kreegar
Printed Name

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Craig Sharpe, who having been duly sworn, acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for and on behalf of said partnership.



Witness my hand and Notary Seal 22nd day of September, 1987.

My Commission Expires: 12-14-87

Pamela Ann Kreegar
Notary Public

My County of Residence: Hamilton

Pamela Ann Kreegar
Printed Name

This instrument was prepared by James K. Wheeler, attorney.

Part of the Southeast Quarter of Section 19, Township 18 North, Range 4 East in Clay Township, Hamilton County, Indiana, described as follows:

Beginning at the Southeast corner of the Southeast Quarter of Section 19, Township 18 North, Range 4 East; thence North 00 degrees 05 minutes 23 seconds West (assumed bearing) on the East line of said Southeast Quarter 647.42 feet; thence North 89 degrees 54 minutes 31 seconds West parallel with the South line of the Southeast Quarter 1009.24 feet; thence South 00 degrees 05 minutes 23 seconds East parallel with the East line 350.00 feet; thence South 89 degrees 54 minutes 31 seconds East parallel with the South line 336.41 feet; thence South 00 degrees 05 minutes 23 seconds East parallel with said East line 297.42 feet to the South line of said Southeast Quarter; thence South 89 degrees 54 minutes 31 seconds East on said South line 672.83 feet to the place of beginning, containing 12.703 acres, more or less.

Except 40.00 feet by parallel lines off the entire east side of the above described tract.

"EXHIBIT A"

Part of the East Half of Section 19 and part of the Southwest Quarter of Section 20 all in Township 18 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Beginning at a point on the East line of said Section 19 North 00 degrees 03 minutes 30 seconds East (assumed bearing) 647.42 feet of the Southeast corner of said Section 19; thence South 89 degrees 59 minutes 52 seconds West parallel with the South line of the said Half Section 1345.65 feet to the West line of the East Half of the Southeast Quarter of said Section 19 as established on September 19, 1891 as shown in the Hamilton County Surveyor's Records; thence North 00 degrees 04 minutes 09 seconds East along the said West line 1393.03 feet to the South line of right of way of the Indiana Railroad, formerly the Indianapolis Northern Traction Company, as located February, 1987; thence North 66 degrees 24 minutes 00 seconds East along the said South line 1424.55 feet to the West right of way line of Carey Road; thence South 00 degrees 00 minutes 02 seconds East along the said West right of way line and parallel with the East line of the Northeast Quarter of said Section 19, 458.92 feet to the south line of the Northeast Quarter of said Section 19; thence North 89 degrees 54 minutes 28 seconds East along the said South line 40.00 feet to the Northwest corner of the Southwest Quarter of said Section 20; thence South 89 degrees 15 minutes 08 seconds East along the North line of the said Southwest Quarter 40.00 feet to the proposed East right of way line of Carey Road; thence South 00 degrees 03 minutes 30 seconds West parallel with the West line of the said Southwest Quarter and along the proposed East right of way line of said Carey Road 417.42 feet; thence North 89 degrees 15 minutes 08 seconds West parallel with the North line of the said Southwest Quarter 40.00 feet to the East line of the Southeast Quarter of said Section 19; thence South 00 degrees 03 minutes 30 seconds West along the said East line 1587.02 feet to the point of beginning, containing 67.50 acres, more or less.

and

Part of the Northeast Quarter of Section 19, Township 18 North, Range 4 East of the Second Principal Meridian in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Southeast corner of the Northeast Quarter of Section 19 (stone found), thence on assumed bearing of North 00 degrees 00 minutes 00 seconds East along the East line of said Northeast Quarter 478.70 feet to the Southeasterly right of way line of the Indianapolis Northern Traction Company right of way line and the Point of Beginning of the following described parcel of land; thence continue North 00 degrees 00 minutes 00 seconds East along said East line a distance of 36.00 feet to the centerline of said right of way of the Indianapolis Northern Traction Company; thence South 66 degrees 25 minutes 56 seconds West along said centerline a distance of 1292.25 feet to the South line of the Northeast Quarter of said Section 19; thence North 89 degrees 54 minutes 15 seconds East along said South line a distance of 82.85 feet to the Southeasterly right of line of said Traction Company; thence North 66 degrees 25 minutes 56 seconds East along said Southeasterly right of way line a distance of 1201.86 feet to the Point of Beginning of the above described parcel of land, containing 0.945 acres more or less.

Both tracts containing a total of 68.493 acres more or less.

This Instrument Recorded 11-10 1997
Sharon K. Chasty, Recorder Hamilton County, Ind

"EXHIBIT B"

8747190