

PLAT RECORDING # 860031873

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CROSS REFERENCE

DECLARATION OF COVENANTS AND RESTRICTIONS OF VILLAGE GATE, SECTION I

FILED FOR TAXATION APR 17 1966 18-50 860031874

THIS DECLARATION made this 17th day of APRIL, 1966, by SCM REAL ESTATE DEVELOPMENT CORP., an Indiana corporation (hereinafter referred to as "Developer"),

WITNESSETH:

WHEREAS, Developer is the owner or contract purchaser of all of the lands contained in the area described in Exhibit A, attached hereto and made a part hereof, which lands will be subdivided and known as "Village Gate" (together with any additions thereto as herein provided, hereinafter referred to as the "Real Estate" or the "Development"), and will be more particularly described on the plats of the various sections thereof recorded and to be recorded in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, Developer intends to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject to and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges (hereinafter referred to as the "Restrictions"), under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and future home owners thereof.

NOW, THEREFORE, Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon 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 of 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. Developer specifically reserves unto itself the right and privilege, prior to the recording of the plat by Developer of a particular lot or tract within the Development as described in Exhibit A, to exclude any real estate as shown from the Development, or to include additional real estate.

1. DEFINITIONS.

A. The following are the definitions of the terms as they are used in this Declaration.

(i) "Association" shall mean "Village Gate Homeowners Association, Inc.", its successors and assigns and shall be created as an Indiana not-for-profit corporation and its membership shall consist of lot owners who pay mandatory assessments for security control, snow removal, liability insurance, landscape easement maintenance, fertilizing and weed control and Common Area facilities' operation and maintenance.

(ii) "Committee" shall mean the Village Gate Development Control Committee, composed of three (3) members appointed by Developer who shall be subject to removal by Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of Developer until such time as the subdivision is completely developed, at which time the Village Gate Homeowners Association, Inc. shall appoint from its membership this Committee.

(iii) "Common Area" shall mean those areas set aside for conveyance to the Association, as shown on the plat.

(iv) "Common Property" means all real and personal property which is in the nature of common or public improvements or areas, and which is located in, upon, or under the Common Areas, easements, or streets within Village Gate. Without limiting the generality thereof, Common Property shall

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include, to the extent not publicly dedicated, all Streets, curbs, water mains, fire hydrants, the drainage system, the sewage system, street lights and street signs, public sidewalks, lakes, retention ponds, parks, and open spaces.

(v) "Lot" shall mean any parcel of real estate, whether residential or otherwise, described by one of the plats of the Development which is recorded in the Office of the Recorder of Marion County, Indiana.

(vi) "Mortgagee" shall mean any holder, insurer or guarantor of any first mortgage on any Lot.

(vii) "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

B. Approvals, Etc. Approvals, determinations, permissions or consents required herein shall be deemed given if they are given in writing signed, with respect to Developer by an authorized officer or agent thereof, and with respect to the Committee by two members thereof.

## 2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every numbered lot in the Development, unless it is otherwise designated by Developer, is a residential lot and shall be used exclusively for single family residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single family dwelling house. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded plats shall be Common Area and shall be used in a manner consistent with the zoning and use designated in a master plan by Developer, including recreational facilities.

B. Accessory Outbuildings Prohibited. No accessory outbuildings shall be erected on any of the residential lots.

C. Occupancy or Residential Use of Partially Completed Dwelling Houses Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the house shall have been substantially completed in accordance with the approved building plan shall be made by the Committee and such decision shall be binding on all parties.

D. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference.

## 3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

A. Minimum Lot Size and Living Space Areas. The minimum lot size shall be five thousand (5,000) square feet except for all Lots abutting the Hunter's Glen Subdivision to the East of the Development which shall have at least ten thousand (10,000) square feet. All dwellings will have two (2), three (3) or four (4) bedrooms, a two-car garage and a minimum of one thousand two hundred (1,200) square feet of living area and at least six hundred sixty (660) square feet of minimum main floor area in two-story dwellings.

### B. Residential Setback Requirements.

(i) In General. Unless otherwise provided in these restrictions or on the recorded plat, no dwelling or above-grade structure shall be constructed or placed on any residential lot in the Development except as provided herein.

(ii) Definitions. "Side line" means a lot boundary line that extends from the road on which a Lot abuts to the rear line of said Lot. "Rear line" means the Lot boundary line that is farthest from, and substantially parallel to, the

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road on which the Lot abuts, except that on corner Lots, it may be determined from either abutting road.

(iii) Front yards. The front building setback lines shall be all as set forth upon the plats of the Development, but the minimum building setback distance from all right-of-way lines will be twenty (20) feet to all garages and fifteen (15) feet to any portion of the living space of any unit.

(iv) Cul-de-sacs. If the particular Lot abuts a cul-de-sac, the front building setback line shall be as shown on the plat of that Lot.

(v) Side Yards. The side yard setback lines shall maintain a minimum distance between buildings of not less than ten (10) feet. Site plans submitted for Improvement Location Permit on each Lot shall show the building line of improvements on adjacent lots, if any.

(vi) Rear Yards. The rear setback line shall be as set forth on the plats of the Development, and if not designated on the plat, the rear yard setback lines shall be twenty (20) feet, unless Common Area when combined with such rear yards results in at least forty (40) feet between buildings with abutting rear yards separated by Common Area.

(vii) Boulevard. The minimum setback from any boulevard right-of-way adjacent to the Development shall be thirty (30) feet.

C. Fences, Light Fixtures, Etc., Mailboxes, Lawns and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence, light fixture, basketball goal or similar structure must be approved by the Committee as to size, location, height and composition before it may be installed. All metal fencing in the Development will have a factory finish of either brown or black vinyl; no fence will be higher than six (6) feet; no fencing will extend forward of the furthest back corner of the home. Fencing style and color will be consistent with the Development. A standard mailbox and post will be adopted for the Development and installed by the Developer. The Developer is to provide two (2) two-inch calipers at base diameter deciduous shade trees per Lot and shall finish grade and seed or sod the Lot. Each Lot shall have at least one hundred twenty-five (125) square feet of planting bed area.

D. Exterior Construction. All utility facilities in the Development will be underground, except where required to be placed above-ground by the individual utility supplier. Each driveway in the Development will be of concrete or asphalt material and will not exceed in width the side boundaries of the garage associated therewith. No additional parking will be permitted on a Lot other than in the existing driveway. Each dwelling will have a continuous concrete sidewalk from the driveway to the front porch. All garage doors in the Development will be of a Masonite or wood material. All utility meters and HVAC units in the Development will be located in places unseen or screened from the fronts of the dwellings. No outside fuel storage tanks will be permitted above ground and no gasoline storage will be permitted above or below ground in the Development. All metal windows in the Development will be factory painted, no raw aluminum windows will be permitted, and all windows will have an approved thermal break. All gutters and downspouts in the Development will be painted or of a colored material other than gray galvanized. All roofing in the Development will be of a shingle-type material with weight no less than two hundred twenty (220) pounds and rating of Class A. All roof pitches will be four to twelve (4:12) or greater. Plumbing vent stacks shall be placed in inconspicuous locations. No two dwellings with the same facade will be placed side by side. No metal, fiberglass or similar type material awnings or patio covers will be permitted in the Development. No above-ground swimming pools will be permitted on any Lot in the Development. Modular-type construction is not permitted in the Development.

E. Heating Plants. Every dwelling in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the dwelling. Heating plants shall have ductwork capable of handling central air conditioning.

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F. Damaged Structures. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

G. Prohibition of Used Structures and Modular Homes. All structures constructed or placed on any numbered Lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot, nor shall modular constructed structures be placed on any Lot.

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

(i) Mow the Lot at such times as may reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.

(ii) Remove all debris or rubbish.

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.

(iv) Cut down and remove dead trees.

(v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

I. Lot Access. All Lots shall be accessed from the interior streets of this subdivision. No direct access to Lots shall be permitted on any boulevard.

J. Sight Obstructions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the adjoining street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street Lot lines and a line connecting points twenty-five (25) feet from the intersection of said street Lot lines (or in the case of a rounded property corner, from the intersection of the street Lot lines extended to form a corner). The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street Lot line with the edge of a driveway pavement or alley line. As to any trees located within said sight line areas, the Owner thereof shall maintain the foliage line of such trees at a sufficient height to prevent obstruction of such sight lines.

K. Remedies for Failure to Comply. In the event that any Owner fails to fully observe and perform the obligations set forth in Paragraphs 2, 3 or 5, and in the further event that such failure is not cured within thirty (30) days after written notice of the same is given by the Association, the Association and any Owner shall have the right to commence judicial proceedings to abate or enjoin such failure, and to take such further action as may be allowed at law or in equity to correct such failure after commencement of such proceedings. In the event that such failure causes or threatens to cause immediate and substantial harm to any property outside of such defaulting Owner's Lot or to any person, the Association shall have the right to enter upon such Lot for the purpose of correcting such failure and any harm or damage caused thereby, without any liability whatsoever on the part of the Association. All costs incurred by the Association in connection with any act or proceeding undertaken to abate, enjoin, or correct such failure shall be payable by the defaulting Owner upon demand by the Association, and shall immediately become a lien against his Lot, subject to payment and collection in the manner provided for collection of assessments by the Association. The rights in the Owners and the Association under this paragraph shall be in addition to all other enforcement rights hereunder at law or in equity.

#### 4. PROPERTY RIGHTS.

A. Rights to Common Property. Title to all Common Property shall be held in the Association, and each Owner shall have, as non-exclusive, reciprocal easements appurtenant to his Lot, a right of access to his Lot over all streets, the right to the use of all Common Areas for their intended purposes; provided, however, that no Owner's use of any Common Property shall materially interfere

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with any other Owner's use thereof. The Association may own recreational facilities including a club house and swimming pool in common with other homeowners associations with the use thereof to be shared by all members of the owning association.

**B. Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees, and to establish reasonable rules and regulations for the use of any recreational facility situated upon the Common Areas;

(ii) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(iii) the right of the Association to dedicate or transfer all or any part of 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.

No such dedication or transfer shall be effective unless an instrument agreement to such dedication or transfer signed by a majority of each class of members has been recorded.

**C. Delegation of Use.** Any Owner may delegate, in accordance with the By-laws of the Association, his right of enjoyment to the Common Areas and facilities of the Association to the members of his family, his tenants, or contract purchasers who reside on the property.

**D. Umbrella Association.** Ownership, control and maintenance of certain portions of the Common Property, including, but not limited to landscaping and easements for the boulevard, surface drainage system, lakes and retention ponds, and recreation facilities may be placed under the control of or may be jointly controlled with a separate association comprised of associations and/or members of associations in residential developments located in surrounding areas.

**E. Utility Easements.** There is hereby reserved for the purpose of installing and maintaining municipal and public utility facilities and for such other purposes incidental to the development of the property, to be perpetual hereof, from the date of this instrument by the Developer, its successors and assigns full right and authority to lay, operate and maintain such drainage facilities, sanitary sewer and water lines, gas and electric lines, communication lines (which shall include cable television), and such other further public service facilities as Developer may deem necessary. Provided, however, Developer shall restore the disturbed area as nearly as is possible to the condition in which it was found. No permanent structures shall be constructed within an easement area.

**F. Limited Common Area.** There is hereby reserved by the Developer for the benefit of the owner of any Lot, a limited common area for the purpose of entering and encroaching upon an adjoining Lot as designated on the plat hereof. Said limited common area is reserved for the limited purpose of performing maintenance and repair work on the dwelling benefited by such easement, and for the encroachment, if any, of the roofs, gutters, overhangs or other improvements resulting from the original construction of the adjacent dwelling. The owner of any house built within three (3) feet of a side-yard property line, shall have an express right of access and use for the limited purposes described above, in the limited common area as measured from the side-yard property line. Said easement area shall be five (5) feet in width as measured from said side-yard property line and as designated on the plat hereof. Any persons entering upon a Lot under the rights granted hereunder shall be responsible for repair of any damage resulting from the use of the area.

#### **5. Miscellaneous Provisions and Prohibitions.**

**A. Mortgagees' Rights.** The Mortgagees, individually and collectively, have the right, but not the obligation, to pay any taxes or other charges or assessments which are or may become a lien against the Common Area, in the event the same

are not paid by the Association when due. The Mortgagees also have the right, but not the obligation, to pay any overdue premiums on hazard insurance coverage in the event of a lapse of any such policies. Any Mortgagee or Mortgagees making any payment pursuant to this paragraph shall be entitled to reimbursement from the Association promptly upon written demand therefor to the Association.

B. Nuisances. No outside toilets shall be permitted on any Lot in the Development (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to enter the storm drainage system. No discharge from any floor drain shall be permitted to enter into the storm drainage system. By purchase of a Lot, each Owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by Developer, Association, or any homeowner in Village Gate in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees, shall become a charge or lien upon the Lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt. 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.

Neither Developer, any officer, agent, employee or contractor thereof, Association, or any homeowner shall be liable for any damage which may result from enforcement of this paragraph.

C. Construction of Sewage Lines. All sanitary sewage lines on the residential building Lots shall be designed and constructed in accordance with the provisions and requirements of the Metropolitan Department of Public Works. Copies of all permits, plans and designs relating to the construction of a sanitary sewer service shall be submitted in duplicate to the Committee at the time of the submission of all other plans or documents required for the obtaining from said Committee of a permit to build.

D. 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.

E. 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 contained so as not to become a nuisance.

F. Vehicle Parking. No campers, trailers, recreational vehicles, boats or similar vehicles shall be parked on any street or 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 uses of any street in the Development.

G. Garbage, Trash and Other Refuse. No Owner of a Lot in the Development shall burn or permit the burying out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his Lot except as may be permitted in subparagraph F below. All dwellings built in the Development shall be equipped with a garbage disposal unit.

H. Trash Receptacles. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

I. Model Homes. No Owner of any Lot in the Development other than Developer shall build, or permit the building upon said Lot of, any dwelling that is to be used as a model home or exhibit house.

J. Temporary Structure. 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.

K. Ditches and Swales. It shall be the duty of every Owner of every Lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts

upon said Lot as may be reasonably necessary to accomplish the purposes of this subsection. All Owners, if necessary, shall install dry culverts between the road rights-of-way and their Lots in conformity with specifications and recommendations of the Committee.

L. Utility Services. No utility services shall be installed under finished streets except by jacking, drilling or boring unless specifically approved by Developer. All utility facilities in the Development will be underground, except where required to be placed above ground by the individual utility supplier.

M. Wells and Septic Tanks. No water wells shall be drilled on any of the Lots in the Development without the approval of the Committee. No septic tanks shall be installed on any of the Lots.

N. Antennas. Exposed antennas shall require approval by the Association. The maximum height of such antennae shall not exceed five (5) feet above the roof peak.

O. Solar Heat Panels. No solar heat panels shall be allowed on roofs. All such panels must be enclosed within a fenced area within the specific Lot boundary and located to the rear of the dwelling.

## 6. DEVELOPMENT CONTROL COMMITTEE.

### A. Powers of Committee.

(i) In General. No dwelling, building structure or improvement of any type of kind shall be repainted, constructed or placed on any Lot in the Development, and no existing trees shall be removed, without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of one inch (1") equals ten feet (10'), or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or plat plans which shall be prepared by either a registered land surveyor, engineer or architect. Plat plans submitted for Improvement Location Permit shall bear the stamp or signature of the Committee acknowledging the approval thereof.

(ii) Power of Disapproval. The Committee may refuse to grant permission to remove trees, repaint, construct, place or make the requested improvement, when:

(a) the plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;

(b) the design or color scheme of a proposed repainting or improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures;

(c) the proposed improvement, or any part thereof, or proposed tree removal, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of the other Owners.

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within fifteen (15) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in

writing, and, in the event that such notifications is one of disapproval, it shall specify the reason or reasons for such disapproval.

C. Liability of Committee. Neither the Committee nor any agent thereof, nor Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

D. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

7. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER. Whenever two or more contiguous Lots in the Development shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single dwelling, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single dwelling shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as the Lots remain improved with one single dwelling. No double family houses shall be constructed in the Development.

#### 8. REMEDIES.

A. In General. Any party to whose benefit these Restrictions inure, including Developer, Association and any homeowner within Village Gate, may proceed at law or in equity to prevent the occurrence of continuation of any violation of these Restrictions, but neither Developer nor Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

B. Government Enforcement. The Metropolitan Development Commission of Marion County, Indiana, its successors and assigns, shall have no right, power, or authority, to enforce any covenants, commitments, restrictions, or other limitations contained herein other than those covenants, commitments, restrictions, or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance 58-AO-3, as amended, or any conditions attached to approval of the plat of Section I of Village Gate by the Plat Committee.

C. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

9. EFFECT OF BECOMING AN OWNER. The Owners of any Lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of the such contract, the Owner acknowledges the rights and powers of Developer with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners covenant and agree and consent to and with Developer and to and with the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

10. TITLES. The underlined titles preceding the various paragraphs and subparagraphs of the Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

#### 11. DURATION AND AMENDMENT.

A. This Declaration shall be effective for an initial term of twenty (20) years and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless as of the end of any term both the Owners of ninety percent



(90%) of the Lots and the Mortgagees of at least ninety percent (90%) of the Lots vote to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all easements created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein.

B. Developer hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Developer without the approval of any other person or entity, in order to bring these Restrictions or Village Woods into compliance with the requirements of any public agency having jurisdiction thereof or of any agency guaranteeing, insuring, or approving mortgages, so long as Developer owns any Lots within Village Gate; provided that Developer shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of these Restrictions to any Owner or substantially increases the obligations imposed by these Restrictions on any Owner.

12. **RIGHTS OF MORTGAGEES.** Except to the extent otherwise provided herein, no breach of these Restrictions shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to these Restrictions. Notwithstanding any other provision of these Restrictions, neither the Owners nor the Association shall have any right to make any amendment to these Restrictions which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

13. **SEVERABILITY.** Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

14. **HOMEOWNERS ASSOCIATION.** The Association will be created as a not-for-profit corporation under the laws of the State of Indiana. The Declaration of Covenants, Conditions and Restrictions of the Association will be recorded in the office of the Recorder of Marion County, Indiana, and shall be binding with respect to all land contained within this plat. The Association will be responsible for controlling all maintenance and other activities for all areas denoted as common areas (lakes, parks, landscape easements, recreational facilities, etc.) as denoted on the plat.

15. **DEDICATED STREETS.** The streets are hereby dedicated to the public.

IN TESTIMONY WHEREOF, witness the signature of Developer this 17<sup>th</sup> day of APRIL, 1986

SCM REAL ESTATE DEVELOPMENT CORP.

By:   
Sol C. Miller, President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Sol C. Miller, the President of SCM REAL ESTATE DEVELOPMENT CORP., who acknowledged execution of the foregoing Declaration of Covenants, Conditions and Restrictions for and on behalf of Grantor, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 17<sup>th</sup> day of April, 1986.

Deborah L. Cantrell  
(signature)

DEBORAH L. CANTRELL  
(printed name) . NOTARY PUBLIC

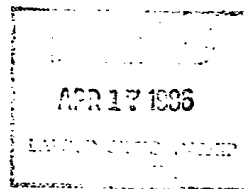
My Commission Expires:  
12-30-89

My County of Residence:

Marion



This instrument was prepared by Phillip J. Stoffregen, ICE MILLER DONADIO & RYAN, One American Square, Box 82001, Indianapolis, Indiana 46282.



APPROVED: 17<sup>th</sup>  
Date: April 1986  
Signature: F.P.R.

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