

Covenants

For

Cricket Knoll

Deed Record 312p. 186-201 - 16 pages

Hamilton County

5894

DECLARATION OF COVENANTS AND
RESTRICTIONS FOR
CRICKET KNOLL

BOOK 312 PAGE 186

BRENWICK DEVELOPMENT COMPANY, INC., an Indiana corporation, and JAMES A. CANULL, JR. and NANCY CANULL, husband and wife, hereby establish the following standards, covenants and restrictions for the purpose of

- (a) establishing minimum standards pertaining to the development, use and maintenance of certain real estate more particularly described in Exhibit "A" attached hereto and referred to herein as the Subdivision, and
- (b) insuring the stability of land and improvement values in the Subdivision, and
- (c) apportioning rights and responsibilities in regard to facilities and services available to the Owners of Lots in the Subdivision.

This Instrument Recorded May 16 1979
MARY L. CLARK, RECORDER, HAMILTON COUNTY, IND.
ARTICLE I

RECEIVED FOR RECORD
AT 11 O'CLOCK A.M.

MAY 16 1979

Purposes and Definitions

BOOK _____ PAGE _____
Mary L. Clark
RECORDER HAMILTON COUNTY, INDIANA

Section 1.01. Covenants. Developer, James A. Canull, Jr. and Nancy Canull declare that the standards, covenants and restrictions contained in this Declaration shall be imposed on, apply to and run with the real estate described in Exhibit "A" and shall inure to the benefit of and be a charge upon the Owners and occupants of such real estate.

Section 1.02. Definitions. For ease of reference, the following definitions shall apply throughout this Declaration:

- (a) "Developer" means Brenwick Development Company, Inc. or any successor who becomes legal or equitable owner of substantially all of the real estate comprising the Subdivision not previously conveyed to Owners.
- (b) "Entry Way" means the structures constructed by Developer as an entrance to the Subdivision (exclusive of the street pavement, curbs and drainage structures

and tile), the traffic island, and the grassy area surrounding such structures which are not a part of the Lot to which they abut.

- (c) "Lot" means a platted lot as shown on the Plat.
- (d) "Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) building plans, including elevation and floor plans, (iii) material plans and specifications, (iv) landscaping plan, and (v) all other data or information which the Planning Committee may request.
- (e) "Maintenance Costs" means all of the costs necessary to keep the Entry Way or other facility to which the term applies, operational and in good condition, including but not limited to the cost for all upkeep, maintenance, repair, replacement of all or any part of such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying easement or right of way, and any other expense related to the continuous operation of the facility.
- (f) "Owner" means any person, firm or corporation who acquires legal title to a Lot. Developer and James A. Canull, Jr. and Nancy Canull, husband and wife, shall also be considered Owners so long as any of them own a Lot.
- (g) "Planning Committee" means the committee referred to in Section 2.02 of this Declaration.
- (h) "Plat" means the plat recorded MAY 15, 1979, 1979, in Plat Book 7, Page 98-99, in the Office of the Recorder of Hamilton County, Indiana.
- (i) "Pro-rata" means equally among all Owners to whom the Maintenance Cost is assessed.
- (j) "Subdivision" means the real estate described in Exhibit "A".
- (k) "Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and out-buildings and recreational facilities usual and incidental to the use of a residential lot. For the purposes of this Declaration the improvements located on the date hereof on Lot 5 as shown on the Plat shall be deemed a "Residence".

- (1) "Zoning Authority" with respect to any action means the Carmel Building Commissioner, or where he lacks capacity to take the action, or fails to take such action, the governmental body or bodies, administrative or judicial, in whom authority is vested under applicable law to hear appeals from, or review the action, or the failure to act, of the Commissioner, and shall also apply to the legal successors in interest to such Commissioner or body or bodies.

ARTICLE II

Administration of Standards, Covenants and Restrictions

Section 2.01. Enforcement. All of the standards, covenants and restrictions contained herein shall be administered and enforced by Developer in good faith until it transfers such responsibility to the Planning Committee, which shall thereafter exercise such responsibilities. Such transfer shall occur on or before the later of (i) December 31, 1983, or (ii) the date Developer owns less than ten percent (10%) of the Lots. Nothing in this Section is intended to prevent the Zoning Authority from enforcing any provision of these covenants which embodies a requirement of applicable law, administrative or statutory, relating to zoning or an exception thereto.

Section 2.02. Planning Committee. Until assignment of the responsibility for the administration of the standards, restrictions and covenants contained in this Declaration to the Planning Committee as contemplated by Section 2.01 of this Declaration, the Planning Committee shall consist of three (3) persons appointed by Developer. After assignment of such responsibilities, the Planning Committee shall consist of three (3) persons elected by the Owners in such manner as they may among themselves determine. The Planning Committee

may adopt a Code of By-Laws to regulate the conduct of its affairs.

Section 2.03. Approvals by Planning Committee. Prior to construction of any Residence upon a Lot and prior to any remodeling, alteration or addition to a Residence upon a Lot, a Lot Development Plan therefor shall be submitted to the Planning Committee, which shall either approve or disapprove the Lot Development Plan within fifteen (15) days from the receipt thereof. In the event the Planning Committee fails to approve or disapprove the Lot Development Plan within fifteen (15) days after receipt thereof, such failure shall be deemed approval.

ARTICLE III

Construction of Residences

Section 3.01. Land Use. Lots may be used only for residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in the Subdivision than the number of original Lots described on the Plat.

Section 3.02. Size of Residence. No Residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a ground floor area of 2,000 square feet, if a one-story structure, or 1,400 square feet if a higher structure, but in the case of a building higher than one story, there must also be at least 600 square feet in addition to the ground floor area. In no event shall any Residence have a floor area of less than 2,000 square feet.

Section 3.03. Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling, except that the structure located as of the date hereof on Lot 5 may be used as a rental unit.

Section 3.04. Building Location and Grade Line Elevation. No building may be erected between the building line shown on the Plat and the front Lot line; and no structure or part thereof may be built or erected nearer than five (5) feet to any side Lot line or nearer than twenty (20) feet to any rear Lot line. A minimum grade line elevation, shown on the Plat, is hereby established for each Lot and no grade line can be constructed lower than said minimum without the written consent of the Planning Committee.

Section 3.05. Building Completion. Unless a delay is caused by strikes, war, court injunction or acts of God, the exterior of any Residence built upon any Lot shall be completed within one (1) year after the date of commencement of the building process, after which time the Planning Committee may re-enter, take possession of the Lot, without notice, and sell the Lot together with improvements; and after payment of liens and expenses, pay the balance of the sale proceeds to the Owner of the Lot at the time of sale.

Section 3.06. Driveways. All driveways shall be paved and maintained dust free.

Section 3.07. Yard Lights. Each Owner shall provide and maintain on his Lot a front yard light which must operate from dusk to dawn. The location, size and type of light shall be subject to the approval of the Planning Committee.

Section 3.08. Storage Tanks. Any gas or oil storage tanks used in connection with a Lot shall be either buried or

located in a Residence such that they are completely concealed from public view.

Section 3.09. Construction. All construction upon a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Planning Committee.

Section 3.10. Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Planning Committee. Such mailboxes shall be installed upon posts approved as to type, size and location by the Planning Committee.

ARTICLE IV

Maintenance of Property

Section 4.01. Vehicle Parking. No camper, motor home, truck, trailer or boat may be stored on any Lot in open public view.

Section 4.02. Signs. No sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than five (5) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent, or may be displayed by a builder to advertise the property during construction and sale.

Section 4.03. Fencing. Except for Lots 5 and 36, no fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge".

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Section 4.04. Vegetation. Owners shall not permit the growth of weeds and volunteer trees and bushes, and shall keep their Lots reasonably clear from such unsightly growth at all times. Failure to comply shall authorize the Planning Committee to cut weeds and clear the Lot of such growth at the expense of the Owner thereof and the Planning Committee shall have a lien against the cleared Lot for the expense thereof.

Section 4.05. Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

Section 4.06. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 4.07. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance.

Section 4.08. Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot.

Section 4.09. Street Parking. No vehicle shall be parked on any street within the Subdivision or in the rights of way thereof.

ARTICLE V

Entry WayBOOK 312 PAGE 193

Section 5.01. Construction of Entry Way. Developer shall construct the Entry Way, which construction may be within the right-of-way of the street servicing the Subdivision. Developer reserves an easement in such right-of-way for construction of the Entry Way.

Section 5.02. Maintenance of Entry Way. Prior to December 31, 1981, Developer shall maintain the Entry Way. After such date, the Planning Committee shall maintain the Entry Way and the Maintenance Costs thereof shall be paid Pro-rata by the Owners of Lots upon which Residences are located. Grass, trees, shrubs and other plantings constituting a part of the Entry Way shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to the Subdivision.

ARTICLE VI

Easements

Section 6.01. Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as may be created by Developer pursuant to written instruments recorded in the office of the Recorder of Hamilton County, Indiana, Lots are subject to drainage easements, sewer easements and utility easements, either separately or in any combination of the three, as shown on the Plat, which are reserved for the use of Owners, public utility companies and governmental agencies as follows:

- (a) Drainage Easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the Subdivision and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Developer, and by the Planning Committee. Said easements are for the mutual use and benefit of the Owners.
- (b) Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over the storm and sanitary waste disposal system designed to serve the Subdivision for the purpose of installation and maintenance of sewers that are a part of said system.
- (c) Utility Easements (UE) are created for the use of all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement, but a paved driveway necessary to provide access to a Lot from a public street shall not be deemed a "structure" for the purpose of this restriction.

ARTICLE VII

Liens For Assessments

Section 7.01. Lien for Maintenance Costs. Developer, James A. Canull, Jr. and Nancy Canull covenant, and each Owner of any Lot by acceptance of a deed thereto, whether or not it

shall be so expressed in such deed, is deemed to covenant and agree to pay as the same become due in the manner herein provided (i) his Pro-rata share of the Maintenance Costs relating to the Entry Way and (ii) such additional charges for Maintenance Costs or other expenses of the Planning Committee as may be made by the Planning Committee pursuant to its Code of By-Laws (such Pro-rata share and additional charges being hereinafter referred to as "Assessments"). All such Assessments, together with interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made until paid in full. Said Assessments shall also be the personal obligation of the Owner of the Lot at the time when the Assessment became due and payable.

Section 7.02. Effect of Nonpayment; Remedies of Association. Any Assessment not paid within thirty (30) days after the date the same became due and payable shall bear interest from the due date at a percentage rate no greater than eighteen percent (18%) per annum to be established by the Planning Committee. The Planning Committee shall be entitled to institute in any court of competent jurisdiction such procedures, at law or in equity, by foreclosure or otherwise, to collect the delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Planning Committee in collecting it. If the Planning Committee has provided for collection of any Assessment in installments, upon default in the payment of any one (1) or more installments, the Planning Committee may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Entry Way or by abandonment of his Lot.

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Section 7.03. Subordination of Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 7.04. Certificates. The Planning Committee shall, upon demand, at any time, furnish a certificate in writing signed by a member thereof that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

ARTICLE VIII

Amendments and Revisions

Section 8.01. Amendments Before Assignment to Planning Committee. Developer hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to the assignment of the responsibility for administration thereof to the Planning Committee pursuant to Article II. Such amendments shall be in writing, executed by Developer, and recorded with the Recorder of Hamilton County, Indiana. No such amendment, however, shall restrict or diminish the rights or

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increase or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment. Developer shall give notice in writing to such Owners of any amendments. Developer shall not have the right at any time by amendment of this Declaration or otherwise to grant or establish any easement through, across or over any Lot which Developer has previously conveyed except with the consent of the Owner of such Lot.

Section 8.02. Amendments After Assignment to Planning Committee. At any time after the assignment of the responsibility for administration to the Planning Committee pursuant to Article II, the provisions herein contained may be amended by the Owners of sixty percent (60%) of the Lots. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of an Owner with respect to a Lot conveyed to such Owner prior to the amendment without the consent of that Owner. The Planning Committee shall give notice in writing to Owners of any amendments. The Planning Committee shall not have the right at any time by amendment of this Declaration or otherwise to grant or establish any easement through, across or over any Lot which has previously been conveyed except with the consent of the Owner of that Lot.

ARTICLE IX

Miscellaneous

Section 9.01. Benefit. The rights, privileges and responsibilities of Developer as provided herein may be freely transferred or assigned, separate from or together with any conveyance of all or part of the real estate comprising the

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Subdivision. No such assignment shall relieve Developer from its obligations hereunder and Developer shall remain primarily liable to the Owners for the performance thereof. Wherever the term Developer is used herein, it shall be deemed to include the successors and assigns of Developer (but not individual Owners of Lots purchased from Developer in the ordinary course of business).

The standards, restrictions and covenants contained herein shall be binding upon and inure to the benefit of the Owners of Lots within the Subdivision, their successors and assigns.

Section 9.02. Validity. In the event any covenant, standard or restriction is invalid, the invalidity of such covenant, standard or restriction shall not affect the validity of the other and remaining covenants, standards or restrictions, which shall remain in full force and effect.

Section 9.03. Enforcement. The standards, covenants and restrictions contained in this Declaration may be enforced by Developer, the Planning Committee, the Zoning Authority or any Owner by action for injunctive relief, for damages, or both. There shall be no rights of reversion or forfeiture of title resulting from any violations.

Section 9.04. Execution by Canulls. James A. Canull, Jr. and Nancy Canull, husband and wife, have joined in the execution of this Declaration solely for the purpose of subjecting Lot 5 to the terms hereof and shall have no liability with respect hereto except as the Owner of such Lot.

Section 9.05. Special Exceptions. Anything in this Declaration to the contrary notwithstanding, improvements existing as of the date of this Declaration on Lots 5 and 36

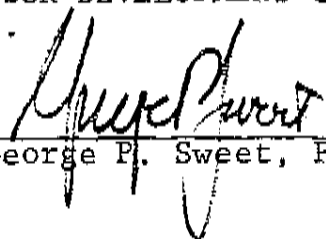
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shall be deemed in compliance with the terms and conditions of this Declaration.

Section 9.06. Non-Liability of Developer. Developer shall not have any liability to an Owner or to any other person or entity with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence and an Owner, by an acceptance of a deed from Developer to a Lot, shall be deemed to agree to indemnify and hold Developer free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed.

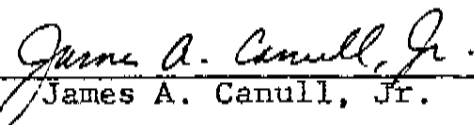
EXECUTED this 8th day of MARCH, 1979.

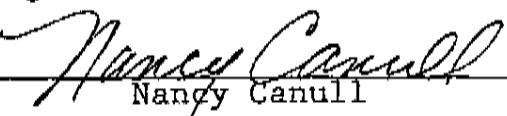
BRENNICK DEVELOPMENT COMPANY, INC.

By 
George P. Sweet, President

Attest:


Tom Charles Huston, Secretary


James A. Canull, Jr.


Nancy Canull

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

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Before me, a Notary Public in and for said County and State, personally appeared George P. Sweet and Tom Charles Huston, the President and Secretary, respectively, of Brenwick Development Company, Inc., an Indiana corporation, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions, and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this 9th day of March, 1979.



Louis A. Kari
Notary Public Residing in
Marion County
DORIS A. KARR
(printed signature)

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared James A. Canull, Jr. and Nancy Canull, husband and wife, and acknowledged execution of the foregoing Declaration of Covenants and Restrictions.

WITNESS my hand and Notarial Seal this 8th day of March, 1979.



Patricia Aikman
Notary Public Residing in
Marion County
PATRICIA AIKMAN
(printed signature)

This instrument prepared by Tom Charles Huston, Attorney-at-Law, 1313 Merchants Bank Building, Indianapolis, Indiana 46204.

EXHIBIT A
Real Estate Description

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Part of the Southeast Quarter of Section 30, Township 18 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Quarter Section; thence North 00 degrees 04 minutes 10 seconds East along the East line thereof 1320.00 feet; thence North 89 degrees 47 minutes 38 seconds West 496.51 feet to a found stone at the Southeast corner of a tract of land conveyed to James A. Canull, Jr. and Nancy L. Canull (husband and wife) by Warranty Deed as recorded in Book 278, page 373 in the Office of the Recorder of Hamilton County, Indiana; thence North 00 degrees 05 minutes 01 second West along the East line of said Canull tract 675.23 feet; thence North 89 degrees 54 minutes 59 seconds East 1.90 feet to the Place of Beginning, said place of beginning being the angle point on the West line of Lot 70 in "Cool Creek Estates - Third Section" as recorded April 28, 1967, in Plat Book 3, page 21, in said Recorder's Office (the next three courses are along the Westerly boundaries of said plat); thence South 01 degree 03 minutes 52 seconds West 76.829 feet; thence South 35 degrees 52 minutes 17 seconds East 355.871 feet; thence South 48 degrees 07 minutes 21 seconds East 376.13 feet (measured) 375.844 feet (plat) to a point on the Northerly line of "Cool Creek Estates - First Section" (re-plat) as recorded June 14, 1966, in Plat Book 3, page 10 in said Recorder's Office (the next four courses are along the Northerly boundaries of said plat); thence South 58 degrees 32 minutes 40 seconds West 363.24 feet; thence South 89 degrees 32 minutes 40 seconds West 408.899 feet; thence South 00 degrees 27 minutes 20 seconds East 65.00 feet; thence South 89 degrees 32 minutes 40 seconds West 175.00 feet to an angle point on the Easterly line of Lot 100 in "Cool Creek Estates - Fourth Section" as recorded May 20, 1968, in Plat Book 3, page 50 in said Recorder's Office (the next two courses are along the Easterly boundaries of said plat); thence North 19 degrees 12 minutes 09 seconds East 70.000 feet; thence North 47 degrees 52 minutes 56 seconds West 196.672 feet; thence North 00 degrees 12 minutes 02 seconds West 0.35 feet to the South line of a tract of land conveyed to Virgil V. and Rachel Thornberry (husband and wife) by Warranty Deed as recorded in Deed Record 137, page 73 in said Recorder's Office; thence South 89 degrees 47 minutes 58 seconds West along South line of said Thornberry tract 125.26 feet to the Easterly right of way line of State Road #431 (the next four courses are along said East right of way line); thence North 01 degree 11 minutes 52 seconds West 118.65 feet; thence North 00 degrees 00 minutes 00 seconds 800.00 feet; thence North 04 degrees 07 minutes 05 seconds East 250.65 feet; thence North 30 degrees 58 minutes 03 seconds East 86.08 feet to the South right of way line of State Road #234; thence North 88 degrees 45 minutes 39 seconds East along said South right of way line 258.08 feet to a point which lies North 00 degrees 04 minutes 10 seconds East parallel with the East line of said Quarter Section, 1246.91 feet from a found stone at the Southeast corner of said Thornberry tract; thence North 88 degrees 45 minutes 39 seconds East along said South right of way line 16.38 feet; thence South 00 degrees 00 minutes 00 seconds 168.59 feet; thence North 90 degrees 00 minutes 00 seconds East 317.48 feet to the East line of said Canull tract; thence South 00 degrees 05 minutes 01 second East along the East line of said Canull tract 402.27 feet; thence North 89 degrees 54 minutes 59 seconds East 1.90 feet to the Place of Beginning, containing 23.157 acres, more or less.

This Instrument Recorded May 16 1979
MARY L. CLARK, RECORDER, HAMILTON COUNTY, IND.