73. 7439

# DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS made this 25th day of July, 1973 by MUD CREEK DEVELOPMENT CO., an Indiana partnership (hereinafter referred to as "Developer").

W I T N E S S E T H:

WHEREAS, the Developer is the owner of the land described on Exhibit A attached hereto and made a part hereof and desires to create thereon a residential community with certain common facilities for the benefit of said community; and

WHEREAS, the Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common facilities and to this end desires to subject the real property described in said Exhibit A to the covenants and restrictions and easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and of each owner of any part thereof; and

WHEREAS, the Developer has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administrating the community properties and facilities and administrating and enforcing the covenants and restrictions in collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Developer shall cause to be incorporated under the laws of the State of Indiana a not-for-profit corporation which will perform the duties herein set forth and shall own the common properties;

NOW, THEREFORE, the Developer declares that the real property described in Exhibit A is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth. All of the restrictions shall run with the land and shall be binding upon the Developer and upon parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part thereof subject to such restrictions and shall inure to the benefit of the Developer and everyone of Developer's successors in title to any real estate in the development. The Developer specifically reserves unto itself until such time as the community is completed the right to decide which lands shall be conveyed to the not-for-profit corporation.

## ARTICLE I.

## Definitions

Section 1. The following words, when used in this Declaration, or any supplemental declaration, (unless the context shall prohibit) shall have the following meanings:

A. "Corporation" shall refer to or mean the not-for-profit corporation to be incorporated by the Developer for the purposes of holding title to and maintaining and/or constructing the common properties.

B. "Common Properties" shall refer to or mean those areas specifically described in Exhibit B, attached hereto and made a part hereof.

C. "Properties" shall refer to or mean the lands described in Exhibit A.

D. "Parcel" shall refer to or mean any parcel of real estate conveyed by the Developer to any owner of same for the ultimate purpose of building thereon a residential structure.

E. "Owner" shall refer to or mean the record owner, whether it be one or more persons or entities of the fee simple title to any parcel situated within the properties and is therefore a member of the not-for-profit corporation and shall also include the Developer and those instances where it holds title to any parcel of real estate within the properties but notwithstanding any applicable theory of mortgage shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or in any proceeding in lieu of foreclosure.

## ARTICLE II.

## Building and Use Limitations

Section 1. All parcels hereinafter conveyed except the common properties shall be used for residential purposes only and no business, commercial or manufacturing enterprise shall be conducted on said premises except for home occupation uses as governed by local zoning ordinances. No building shall be altered, placed or permitted to remain on any parcel other than one (1) single family dwelling not to exceed thirty-five (35) feet in height and a private garage not to exceed twenty (20) feet in height with sufficient space to accomodate not more than four (4) vehicles.

Section 2. No building, fence, wall or other structure shall be commenced, erected or maintained upon the land subject to these covenants, nor shall any exterior addition to or changes or alterations therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of same shall have been submitted to and approved in writing by the Developer or an authorized agent acting on behalf of the Developer. The Developer or its agent shall approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it. Failure to approve or disapprove within the aforesaid thirty (30) day period will be deemed to be approval of said plans and specifications and, this Section will have been deemed to be fully complied with. At its

discretion, the Developer may delegate the authority contained in this Section to an appropriate controlled committee of the corporation, such delegation to be given in writing by the Developer together with notice of same to any existing owner of record at the time of said delegation.

Section 2a. Power of Disapproval. The Developer or its designee may refuse to grant permission to construct, alter, remodel or make the requested improvement when:

(i) The plans, specifications, drawings or other materials submitted are themselves inadequate or incomplete, or, show the proposed improvement, structure, exterior, etc. to be in violation of these restrictions;

(ii) The design or color scheme of the proposed improvement is not in harmony with the general surroundings of the lot or with the community as a whole;

(iii) The proposed improvement or any part thereof would, in the opinion of the Developer or its designee, be contrary to the interest, welfare or rights or all or any part of other parcel owners.

Section 2b. Power to Grant Variances. The Developer or its designee may allow reasonable variances or adjustments of these restrictions where literal application would result in unnecessary hardship but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these restrictions and covenants and no variance or adjustment shall be granted which is materially detrimental or injurious to other parcels in the development.

Section 2c. Liability of Developer. Neither the Developer nor its designee shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it nor for any defects or work done according thereto.

Section 2d. Inspection. The Developer or its designee may inspect work being performed to assure compliance with these restrictions and to assure that the work being performed is in accordance with the approved plans and specifications.

Section 3. No trailer or similar type structure, basement, tent, shack, garage, barn or other out building shall be at any time used as a residence, temporarily or permanently, nor shall any structure of a temporary character or any building in the process of construction be used as a residence.

Section 4. All fences, walls, hedges, out buildings or landscape design shall be subject to approval as provided for in Section 2 of this Article.

Section 5. No animals, livestock or poultry of any kind shall be raised, bred or kept on any parcel except dogs, cats or other household pets provided that they create no nuisance to other owners and that they are not kept, bred or maintained for any commercial purpose.

Section 6. No parcel shall be used or maintained for a dumping ground for rubbish, trash, garbage or other waste but rather such shall be kept in a sanitary container. No outside toilet shall be permitted on any parcel (except during the period of construction and then only with the consent of the Developer). All sewage systems shall be designed and constructed in accordance with the appropriate provisions and requirements of the appropriate governmental authorities. Copies of all permits, plans and designs related to construction of sewer systems shall be submitted to the Developer at the time of submission of all other plans and documents required herein. Each parcel shall be required to submit plans and designs relating to private water supply to the Developer for approval in accordance with the terms and conditions hereof.

Section 7. No obnoxious or offensive activities shall be carried on upon any parcel covered by these covenants, nor shall anything be done on any of the lands covered hereby that shall become or be an unreasonable annoyance or nuisance to any owner of another parcel in the development.

Section 8. No signs or advertisements shall be displayed or placed on any parcel or structures in the development without the prior written consent of the Developer. Entrance upon any parcel for the removal of such violation shall not be regarded as a trespass.

Section 9. Any boats, trailers or vehicles other than private passenger cars shall be parked and stored in an area designated by the Developer. No such vehicles are to remain on any parcel for a period in excess of twenty-four (24) hours. All driveways and paved areas on all parcels shall be of bituminous construction equal to or greater than the type of construction of the common drive.

Section 10. No residence shall be erected on any parcel that has a gross floor area exclusive of open porches and garages of less than two thousand (2,000) square feet.

Section 11. No existing trees may be removed from any parcel in the development without the review and approval of the Developer.

Section 12. All utilities to be installed shall be subject to the approval as required in Section 2 hereof.

Section 13. All buildings permitted to be built on any parcel must be completed within one (1) year after construction is commenced. The exterior finish of any building shall be subject to the approval as required in Section 2 hereof.

Section 14. A number of easements are reserved along and within ten (10) feet of any property line of any parcel for the construction and perpetual maintenance of conduits,

poles, wires and fixtures, if any, for electrical service, telephone and other public or quasi public utilities. Sewers and drainage shall not be considered a violation of said easement if wires or conduits pass over or through some portion of a parcel not within the easement reserved herein, as long as the same does not hinder construction of buildings on the parcel.

Section 15. No owner of any parcel shall burn or permit burning out of doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such garbage or refuse. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from the common drive at any time except at times when refuse collections are being made. Every tank for the storage of fuel which is installed shall be installed in a manner so as not to be visible from the common drive.

Section 16. It shall be the duty of every owner of every parcel on which any part of an open storm drainage ditch or swail is situated to keep such portion thereof as may be situated upon his parcel continuously unobstructed and in good repair. All construction shall be done in such a manner so as to assure reasonable drainage.

Section 17. No building, structure or appurtenance thereto shall be located within twenty-five (25) feet of any parcel property line.

Section 18. Any owner of any parcel shall be responsible for cutting and controlling weeds and vegetation on his respective parcel. Each owner hereby grants to the grantor or the corporation an easement for ingress and egress to allow for weeds to be cut when in the discretion of the grantor or corporation the same becomes necessary. The costs incurred in cutting weeds shall be charged to the owner and shall constitute an assessment under Article V hereof.

## ARTICLE III.

## Membership and Voting Rights in Corporation

Section 1. Membership. Every person or entity that is owner of any parcel within the properties and the Developer, either as an owner or successor in interest to any owner, shall be a member of the corporation. Any person or entity that holds such interest mereby as a security for the performance of an obligation shall not be a member. Such membership shall be evidenced by a certificate of membership being issued by the corporation to such parcel owner and shall hereafter be evidenced by a certificate of membership being issued by the corporation contemporaneously with the transfer of title to any subsequent purchasers of parcels within the properties. Membership shall also include land contract vendees.

Section 2. Voting Rights. The corporation shall have two (2) classes of voting membership:

Class A - This class shall be all those owners as defined herein with the exception of the Developer,

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Section 2. Voting Rights. The corporation shall have two (2) classes of voting membership:

Class A - This class shall be all those owners as defined herein with the exception of the Developer,

its successors or assigns. Class A members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership by this Article. When more than one (1) person holds such interest or interests in any lot, all such persons shall be members and 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 such lot.

Class B - This class shall be the Developer, its successors or assigns. Class B membership shall automatically terminate and cease to exist after a period of five (5) years, or, at such time as the Developer ceases to have any legal or equitable interest in and to the properties, whichever occurs first.

## ARTICLE IV.

## Property Rights in Common Properties

Section 1. Member's Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every member shall have a right and easement of enjoyment in and to the common properties as they are designated by the Developer, and, such easement shall be appurtenant to and shall pass with the title to any parcel.

Section 2. Title to Common Properties. The Developer shall retain the legal title to the common properties until such time as it determines that the best interest of the development would be served by conveying same to the corporation.

Section 3. Extent of Member's Easements. The non-exclusive rights and easements of enjoyment created hereby shall be subject to the following: (a) The Developer and the corporation, in accordance with its articles and by-laws, may borrow money for the purpose of maintaining, repairing or improving the common properties or erect new structures and facilities on said common properties and, in aid thereof, may mortgage said properties. The member's rights and easements in the common properties shall be subordinate to any mortgage given by the Developer or corporation as security for the funds borrowed for said improvements. Any indebtedness which shall be created for the purpose of making the aforesaid repairs, maintenance or improvements to the common properties shall be an obligation of the corporation. In the event of a default upon any such mortgage, the lendor or mortgagee shall have only the rights afforded under the mortgage or security agreement and under the laws of the State of Indiana, including the right after taking possession of the properties to charge admission and other fees as a condition to continued enjoyment by the members and, if necessary, to open the enjoyment of such properties to a wider public. If the common property is returned to the corporation, all rights of the members herein shall be restored and be the rights of the corporation to take such steps as are reasonably necessary to protect the above described property against foreclosure and the rights of the corporation as provided in its articles and by-laws to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations and the right of the corporation to charge reasonable admission and other fees for the use of said common properties.

## ARTICLE V.

### Covenants for Assessments

Section 1. Creation of Lien and Personal Obligation of Assessments. The owner of each parcel, thereby being a member of the corporation, hereby covenants, and ea[illegible] purchaserand subsequent successor in interest to the [illegible] of any parcel by the acceptance of a deed therefor whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the corporation: (a) regular maintenance assessments; (b) special assessments for maintenance or repairs; and, (c) capital improvement assessments. All such assessments are to be fixed, established and collected from time to time as hereinafter provided. All assessments or charges, together with interest thereon, and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the corporation shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the properties and, in particular, for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the common properties situated upon the properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto and the costs of labor, equipment and materials, management and supervision thereof. Assessments may also be provided for the purpose of providing such municipal services, including, but not limited to, trash and garbage pick-up, which are not provided by local and municipal authorities.

Section 3. Basis of Assessments. All assessments levied by the corporation shall be equally divided among the corporation's members. Assessments may be levied by the corporation in accordance with its articles and by-laws and shall be made upon vote of a simple majority of each class of memberships at the annual meeting of the corporation, or, at a special meeting, called in accordance with the corporation's articles and by-laws.

Section 4. Quorum for Any Action Authorized Under This Article. The quorum for any action required with regard to levying of assessments shall be the presence at the meeting of a majority of persons or entities qualified to vote as members represented in person or by appropriate proxy.

Section 5. Notices. A written or printed notice stating the place, date and hour of the meeting at which any assessment matter is to be discussed, be it an annual meeting or special meeting, shall be delivered or mailed by the secretary or the officer or person calling the meeting to each member of record entitled to vote at such meeting by the articles of incorporation at the address which appears on the records of the corporation at least ten (10) days before the date of meeting. Notice of any meeting of members may be waived in writing and filed with the secretary or by attendance in person.

Section 6. Voting. Except as otherwise provided in the articles of incorporation, every member shall have the right at every meeting to one (1) vote for each membership standing in his name on the books of the corporation. In all elections of directors, every member shall have the right to multiply the number of votes he is entitled to have by the number of directors to be elected and the product shall represent the number of votes he may cast at the election. He may cast all his votes represented by such product for one (1) candidate or distribute them among any two (2) or more candidates. A member may vote in person, by proxy executed in writing or in any other manner the by-laws provide. No proxy shall be valid after eleven (11) months from the date of its execution unless a longer time is expressly provided in the proxy.

Section 7. Due Dates for Payments of Assessments. Payments of any assessments levied under this Article shall be due after appropriate notice to the members as fixed in the resolution authorizing such assessment. Written notice of every assessment shall be sent or delivered to every owner subject thereto. The corporation shall, upon demand, at any time furnish to any owner liable for said assessments a certificate in writing signed by an officer of the corporation setting forth whether said assessment have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Duties of Board of Directors. The management, affairs and policies of the corporation shall be vested in the board of directors, each of whom must be a member of the corporation in good standing. The number of directors shall be three (3) unless otherwise provided in the by-laws of the corporation. The board of directors of the corporation shall prepare a roster of the properties and assessments applicable thereto at least thirty (30) days in advance of such assessment due date. Such assessment roster shall be kept by the secretary of the corporation and shall be open to inspection by any owner. The board of directors shall have such other duties as provided for in the articles of incorporation and by-laws of the corporation.

Section 9. Affect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of the Corporation. If the assessments are not paid on the date when due, then such assessments shall become delinquent and shall, together with such interest thereon and reasonable costs of collection thereof as hereinafter, become a lien as of the time notice of same is recorded by an officer, agent or attorney of the corporation in the Office of the Recorder of Marion County, Indiana, which lien shall be extinguished if released of record or expire if a suit to foreclose the lien is not commenced within one (1) year of the date of the aforementioned notice is recorded. Said lien shall bind such property in the hands of the then owner, his heirs, devisees, successors and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of the delinquency at the rate of eight percent (8%) per annum, and, the corporation

may bring an action at law against the owner personally obligated to pay same, or, to foreclose the lien against the property 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 reasonable attorney's fees to be fixed by the court, together with costs of the action. Any lien so filed shall likewise include a reasonable attorney's fee as same is determined by the board of directors and, in no event, however, shall such a fee be greater than the amount actually paid by the corporation.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the property subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such mortgage. Such sale shall not relieve the property from liability for any assessment thereafter becoming due nor from the lien of any such subsequent assessment.

Section 11. Junior Lien Provision. If any premises subject to the lien hereof shall become subject to the lien of a mortgage: (a) the foreclosure of the lien hereof shall not operate to affect or impair the lien of the mortgage; and (b) the foreclosure of the lien of the mortgage or the acceptance of a deed in lieu of foreclosure by the mortgagee shall not operate to affect or impair the lien hereof, except, the lien hereof for said charges as shall have accrued up and to the foreclosure or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage with the foreclosure purchaser or deed in lieu of grantee taking title free of the lien hereof for all charges which have accrued up to the time of the foreclosure or a deed given in lieu of foreclosure but subject to the lien hereof for all said charges that shall accrue subsequent to the foreclosure or deed given in lieu of foreclosure.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all common properties, as they are defined by conveyance to the corporation; (b) all properties exempted from taxation by the laws of the State of Indiana upon the terms and to the extent of such legal exemption. Notwithstanding, any provisions herein no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

## ARTICLE VI.

## General Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforced by the corporation or the owner of any land subject to this Declaration, his respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the parcels has been recorded agreeing to change said covenants and restrictions in whole or in part.

Section 2. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages and against the land or to enforce any lien to recover assessments created by these covenants and failure by the corporation or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. To any such action at law or equity, there shall be added the costs of such action and a reasonable attorney's fee to be determined by the court and shall be assessed against any party found to be in violation of these covenants and restrictions.

Section 3. Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed post-paid to the last known address of the person who appears as a member or owner on the records of the corporation at the time of such mailing.

Section 4. Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Declaration of Covenants and Restrictions as of the day and year first above written.

MUD CREEK DEVELOPMENT CO.,
an Indiana partnership

By: David R. Snapp, Jr.
David R. Snapp, Jr., Partner

By: James W. Stanley
James W. Stanley, Partner

STATE OF INDIANA )
) SS:
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared David R. Snapp, Jr. and James W. Stanley, partners of Mud Creek Development Co., an Indiana partnership, who acknowledged execution of the foregoing Declaration of Covenants and Restrictions for and on behalf of Mud Creek Development Co., and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this 23rd day of July, 1973.

Notary Public

Commission Expires:

SEAL 10-23-74

THIS INSTRUMENT PREPARED BY:
Ronald C. Smith

EXHIBIT A

Part of the North west quarter of the North east Quarter of Section 19, Township 17 North, Range 5 East in Marion County, Indiana, more particularly described as follows, to-wit:

Beginning at the north east corner of said quarter/quarter section thence south, in and along the east line thereof 1320' feet; thence west, parallel to the north line thereof 660' feet; thence north, parallel to the said East line 1320' feet to a point in said North line; thence east, in and along said north line 660' feet to the place of the beginning. Containing in all, 20.0 acres.

EXHIBIT B

Beginning at the NE corner of the NW 1/4 of the NE 1/4 of Section 19, T17N, R5E, in Marion County, Indiana, and running West parallel to the North line a distance of 342.0 feet; thence South parallel to the West line for a distance of 57 feet to the point of beginning; thence West parallel to the North line for a distance of 294.0 feet to a point; thence South parallel to the West line a distance of 603.0 feet to a point; thence East parallel to the North line for a distance of 294.0 feet to a point; thence North parallel to the West line for a distance of 603.0 feet to the point of beginning. The area contains 4.07 acres more or less.

A 24.0 foot easement, beginning at the NE corner of the NW 1/4 of NE 1/4 and running parallel to the North line of the property for a distance of 15.0 feet to a point; thence a 24.0 foot width strip parallel to a line at S 08° -00' W for a distance of 182.0 feet; thence along a line S 17° -00'W for a distance of 400.0 feet; thence along a line S 26° -30'W for a distance of 138.0 feet; thence along a line S 37° -30'W for a distance of 79.0 feet; thence along a line S 17° 15'W for a distance of 212.0 feet; thence along a line S 00° -00'W for a distance of 104.3 feet; thence along a line S 68° -12'E for a distance of 355.42 feet to a point on the East property line

A 24.0 foot easement, beginning at a point "N" (coordinates of 748.42 feet South and 266.90 feet East from the NE corner of NW 1/4 of NE 1/4) and running S 17° -15'W for a distance of 172.34 feet to a point; thence a 24.0 foot width strip North parallel to the East line for a distance of 315.0 feet; thence West parallel to the North line for a distance of 24.0 feet to a point.

A 12.0 feet utility easement, beginning at the NE corner of NW 1/4 of NE 1/4 and running parallel to the North line of the property for a distance of 585.0 feet to a point; thence South parallel to West line for a distance of 57.0 feet to a point, thence West parallel to the North line for a distance of 12.0 feet to a point, thence North parallel to the West line for a distance of 57.0 feet to a point on the North line of the property, thence East parallel to the North line a distance of 12.0 feet to the point of beginning

A 10.0 foot easement beginning 1188.0 feet South of the NE corner of the NW 1/4 1/4 and running parallel to the East line for a distance of 132.0 feet to a point; thence along a line parallel to the South line for a distance of 10.0 feet to a point; thence North along a line parallel to the East line for a distance of 132.0 feet to a point; thence East along a line parallel to the South line for a distance of 10.0 feet to a point on the East line.

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AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS

THIS AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS made this 12th day of September, 1975, by MUD CREEK DEVELOPMENT CO., an Indiana partnership:

WITNESSETH:

WHEREAS, MUD CREEK DEVELOPMENT CO. executed a certain Declaration of Covenants and Restrictions dated the 23rd day of July, 1973, recorded in the Office of the Recorder of Marion County, Indiana, on November 15, 1973, as Instrument No. 73-73439; and

WHEREAS, MUD CREEK DEVELOPMENT CO. wishes to amend said Declaration of Covenants and Restrictions.

NOW, THEREFORE, MUD CREEK DEVELOPMENT CO. declares that the aforesaid Declaration of Covenants and Restrictions shall be amended in the following manner:

1. The Exhibit "A" attached to the aforesaid Declaration of Covenants and Restrictions is hereby deleted therefrom and in lieu thereof Exhibit "A" attached hereto is substituted.

2. That Exhibit "B" of the aforesaid Declaration of Covenants and Restrictions is hereby deleted in its entirety and a new Exhibit "B" attached hereto is substituted.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

MUD CREEK DEVELOPMENT CO.,
an Indiana partnership,

By David R. Snapp, Jr., Partner

By James W. Stanley, Partner

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared DAVID R. SNAPP, JR. and JAMES W. STANLEY, partners of MUD CREEK DEVELOPMENT CO., an Indiana partnership, who acknowledged execution of the foregoing Amended Declaration of Covenants and Restrictions for and on behalf of MUD CREEK DEVELOPMENT CO., and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this 12th day of September, 1975.

Notary Public
(Ronald C. Smith)

My Commission Expires:

10/24/77

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Prepared By:

The undersigned, JAMES W. STANLEY and JOANN M. STANLEY, husband and wife, being the titled owners of a portion of the lands covered by this document, hereby acknowledge the aforesaid Amended Declaration of Covenants and Restrictions, and hereby agree to subordinate their parcel of real estate to the aforesaid Amended Declaration, and hereby join in and acknowledge the aforesaid Amended Declaration.

James W. Stanley
JAMES W. STANLEY

Joann M. Stanley
JOANN M. STANLEY

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Personally appeared before me, the undersigned Notary Public in and for said County and State, JAMES W. STANLEY and JOANN M. STANLEY, husband and wife, who acknowledged the execution of the foregoing as their free act and deed, this 11th day of October, 1975.

WITNESS my hand and seal in conformation of same.

Donna Marie McKinley Notary Public

My Commission Expires:

9-14-79

## CONSENT BY MORTGAGEE

Comes now the undersigned, UNION FEDERAL SAVINGS AND LOAN ASSOCIATION, as the holder of a certain construction mortgage on the parcel of real estate owned by JAMES W. STANLEY and JOANN M. STANLEY, husband and wife, and consents to the Amended Declaration of Covenants and Restrictions attached hereto.

DATED this 15th day of ~~October~~ December, 1975.

ATTEST:

UNION FEDERAL SAVINGS AND LOAN ASSOCIATION

By Elmer Briskey
Elmer Briskey, Asst. Vice President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Personally appeared before me, the undersigned Notary Public in and for said County and State, Elmer Briskey, as Asst. Vice President, of UNION FEDERAL SAVINGS AND LOAN ASSOCIATION, and acknowledged to me that he executed the aforesaid Consent by Mortgagee for and on behalf of said UNION FEDERAL SAVINGS AND LOAN ASSOCIATION, and that he is authorized to do so on its behalf, this 15th day of December, 1975.

WITNESS my hand and notarial seal in conformation of same.

Marian E. McClellan
Notary Public

My Commission Expires:

MARIAN E. McCLELLAN
My Commission Expires October 10, 1978
Johnson County

76 04897

EXHIBIT "A"

Part of the Northwest 1/4 of the Northeast 1/4 of Section 19, Township 17 North, Range 5 East, in Marion County, Indiana, more particularly described as follows:

Beginning at the Northeast corner of the said quarter quarter section; thence North 90 degrees 00 minutes West 660.00 feet; thence South 0 degrees 06 minutes 19 seconds East parallel to the East line of the said quarter quarter section 1320.00 feet; thence South 90 degrees 00 minutes East 660.00 feet to the said East line; thence North 0 degrees 06 minutes 19 seconds West on and along the said East line 1320.00 feet to the Place of Beginning containing 20.00 acres, more or less, subject to all legal rights of way and easements.

76 - 0497

EXHIBIT "A"

EASEMENT NO. 1

A non-exclusive easement for the purpose of ingress and egress and public utilities, described as follows:

24 feet in width lying 12 feet on each side of the following described centerline:

Beginning on the North line of the said quarter quarter section 15.00 feet West of the Northeast corner thereof; thence South 5 degrees 02 minutes 18 seconds West on and along the centerline of an existing driveway 182.00 feet; thence South 17 degrees 59 minutes 04 seconds West on and along the said centerline 400.00 feet; thence South 24 degrees 21 minutes 04 seconds West on and along the said centerline 138.00 feet; thence South 40 degrees 19 minutes 58 seconds West on and along the said centerline 79.00 feet; thence South 16 degrees 58 minutes 17 seconds West 204.78 feet; thence South 0 degrees 06 minutes 19 seconds East 104.30 feet; thence South 66 degrees 37 minutes 49 seconds East 353.25 feet to a point on the East line of the above described 20.00 acre tract that is 132.00 feet North of the Southeast corner thereof.

EASEMENT NO. 2

A non-exclusive easement for the purpose of ingress and egress and public utilities, described as follows:

Beginning at a point that is 844.05 feet South of and 304.45 feet West of the Northeast corner of the said quarter quarter section, said point being on the Westerly line of the above described Easement No. 1; thence South 16 degrees 58 minutes 17 seconds West 81.73 feet; thence North 0 degrees 06 minutes 19 seconds West 304.22 feet; thence North 90 degrees 00 minutes West 12.00 feet; thence North 0 degrees 06 minutes 19 seconds West 24.00 feet; thence South 90 degrees 00 minutes East 36.00 feet to a point on the West line of Parcel #4 in Mud Creek Development Corporation plat; thence South 0 degrees 06 minutes 19 seconds East 250.05 feet to the Place of Beginning.

EASEMENT NO. 3

A non-exclusive easement for the purpose of ingress and egress and public utilities described as follows:

Beginning on the North line of the said quarter quarter section 585.00 feet West of the Northeast corner thereof; thence North 90 degrees 00 minutes West on and along the said North line 12.00 feet; thence South 0 degrees 06 minutes 19 seconds East 57.00 feet; thence South 90 degrees 00 minutes East 12.00 feet; thence North 0 degrees 06 minutes 19 seconds West 57.00 feet to the Place of Beginning.

EASEMENT NO. 4

An easement for public utilities described as follows:

10 feet in width lying West of, adjacent and parallel to the following described line; thence beginning at the Southeast corner of the above described 20.00 acre tract; thence North 0 degrees 06 minutes 19 seconds West on and along the East line thereof 132.00 feet.

CROSS REFERENCE 85 78640

SECOND AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS

This Second Declaration of Covenants and Restrictions made this 11th day of September, 1985, by Mud Creek Development Company, an Indiana partnership, (hereinafter known as "the Developer"), James W. Stanley and Joann M. Stanley, husband and wife, David R. Snapp, Jr. and Susan Jane Snapp, husband and wife, and James R. Howard and Christine B. Howard, husband and wife, all of Marion County, in the State of Indiana,

WITNESSETH:

WHEREAS, Mud Creek Development Company executed a certain Declaration of Covenants and Restrictions dated the 23rd day of July, 1973, recorded in the Office of the Recorder of Marion County, Indiana, on November 15, 1973, as Instrument No. ~~73-73439~~, and first amended the 12th day of September, 1975, Instrument No. 76-497.

SEP 12 85 U 24732

WHEREAS, Mud Creek Development Company, James W. Stanley and Joann M. Stanley, David R. Snapp and Susan Jane Snapp, and James R. Howard and Christine B. Howard wish to amend said Declaration of Covenants and Restrictions and are all of the fee holders of the real estate designated in Exhibit A in the Amended Declaration dated the 12th day of September, 1975, as Instrument No. 76-497.

NOW, THEREFORE, Mud Creek Development Company, James W. Stanley and Joann M. Stanley, David R. Snapp, Jr. and Susan Jane Snapp, and James R. Howard and Christine B. Howard declare that all of the Declaration of Covenants and Restrictions shall be amended as follows:-

1. Exhibit B of the Amended Declarations dated the 12th day of September, 1975 as to Easement No. 2 and Easement No. 3 are hereby deleted.

2. The Declaration of Covenants and Restrictions dated the 23rd day of July, 1973, as Instrument No. 73-73439 are hereby deleted and the following substituted therefor:

WHEREAS, the Developer desires to provide for the preservation of the values and amenities in said community and to this end desires to subject the real property described in said Exhibit A to the covenants and restrictions and easements, hereinafter set forth, each and all of which is and are for the benefit of said property and of each owner of any part thereof;

NOW, THEREFORE, the Developer declares that the real property described in Exhibit A is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, and easements (sometimes referred to as "covenants and restrictions") hereinafter set forth. All of the restrictions shall run with the land and shall be binding upon the Developer and upon parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part thereof subject to such restrictions and shall inure to the benefit of the Developer and everyone of Developer's successors in title to any real estate in the development.

RECEIVED FOR RECORD SEP 12 11 46 AM '85 SECRETARY OF MARION CO.

ARTICLE I

Definitions

Section 1. The following words, when used in this Declaration, or any supplemental declaration, (unless the context shall prohibit) shall have the following meanings:

A. "Properties" shall refer to or mean the lands described in Exhibit A.

B. "Parcel" shall refer to or mean any parcel of real estate conveyed by the Developer to any owner of same for the ultimate purpose of building thereon a residential structure.

C. "Owner" shall refer to or mean the record owner, whether it be one or more persons or entities of the fee simple title to any parcel situated within the properties, and shall also include the Developer and those instances where it holds title to any parcel of real estate within the properties but notwithstanding any applicable theory of mortgage shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or in any proceedings in lieu of foreclosure.

## ARTICLE II

### Building and Use Limitations

Section 1. All parcels hereinafter conveyed shall be used for residential purposes only and no business, commercial or manufacturing enterprise shall be conducted on said premises except for home occupation uses as governed by local zoning ordinances. No building shall be altered, placed or permitted to remain on any parcel other than one (1) single family dwelling not to exceed thirty-five (35) feet in height and a private garage not to exceed twenty (20) feet in height with sufficient space to accommodate not more than four (4) vehicles.

Section 2. No building, fence, wall or other structure shall be commenced, erected or maintained upon the land subject to these covenants, nor shall any exterior addition to or changes or alterations therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of same shall have been submitted to and approved in writing by the Developer or an authorized agent acting on behalf of the Developer. The Developer or its agent shall approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it. Failure to approve or disapprove within the aforesaid thirty (30) day period will be deemed to be approval of said plans and specifications and, this Section will have been deemed to be fully complied with. At its discretion, the Developer may delegate the authority contained in this Section to an appropriate controlled committee, such delegation to be given in writing by the Developer together with notice to same to any existing owner of record at the time of said delegation.

Section 2a. Power of Disapproval. The Developer or its designee may refuse to grant permission to construct, alter, remodel or make the requested improvement when:

(i) The plans, specifications, drawings or other materials submitted are themselves inadequate or incomplete, or, show the proposed improvement, structure, exterior, etc. to be in violation of these restrictions.

(ii) The design or color scheme of the proposed improvement is not in harmony with the general surroundings of the lot or with the community as a whole;

(iii) The proposed improvement or any part thereof would, in the opinion of the Developer or its designee, be contrary to the interest, welfare or rights or all or any part of other parcel owners.

Section 2b. Power to Grant Variances. The Developer or its designees may allow reasonable variances or adjustments of these restrictions where literal application would result in unnecessary hardship but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these restrictions and covenants and no variance or adjustment shall be granted which is materially detrimental or injurious to other parcels in the development.

Section 2c. Liability of Developer. Neither the Developer nor its designee shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it nor for any defects or work done according thereto.

Section 2d. Inspection. The Developer or its designee may inspect work being performed to assure compliance with these restrictions and to assure that the work being performed is in accordance with the approved plans and specifications.

Section 3. No trailer or similar type structure, basement, tent, shack, garage, barn or other out building shall be at any time used as a residence, temporarily or permanently, nor shall any structure of a temporary character or any building in the process of construction be used as a residence.

Section 4. All fences, walls, hedges, out buildings or landscape design shall be subject to approval as provided for in Section 2 of this Article.

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Section 5. No animals, livestock or poultry of any kind shall be raised, bred or kept on any parcel except dogs, cats, or other household pets provided that they create no nuisance to other owners and that they are not kept, bred or maintained for any commercial purpose.

Section 6. No parcel shall be used or maintained for a dumping ground for rubbish, trash, garbage or other waste but rather such shall be kept in a sanitary container. No outside toilet shall be permitted on any parcel (except during the period of construction and then only with the consent of the Developer). All sewage systems shall be designed and constructed in accordance with the appropriate provisions and requirements of the appropriate governmental authorities. Copies of all permits, plans and designs related to the construction of sewer systems shall be submitted to the Developer at the time of submission of all other plans and documents required herein. Each parcel shall be required to submit plans and designs relating to private water supply to the Developer for approval in accordance with the terms and conditions hereof.

Section 7. No obnoxious or offensive activities shall be carried on upon any parcel covered by these covenants nor shall anything be done on any of the lands covered hereby that shall become or be an unreasonable annoyance or nuisance to any owner of another parcel in the development.

Section 8. No signs or advertisements shall be displayed or placed on any parcel or structures in the development without the prior written consent of the Developer. Entrance upon any parcel for the removal of such violation shall not be regarded as a trespass.

Section 9. Any boats, trailers or vehicles other than private passenger cars are not to remain on any parcel for a period in excess of twenty-four (24) hours.

Section 10. No residence shall be erected on any parcel that has a gross floor area exclusive of open porches and garages of less than two thousand (2,000) square feet, except for the residence existing on Lot 9 for more than fifty (50) years.

Section 11. No existing trees over four (4) inches in diameter except for Lot 9 may be removed from any parcel in the development without the review and approval of the Developer.

Section 12. All utilities to be installed shall be subject to the approval as required in Article II, Section 2 hereof.

Section 13. All buildings permitted to be built on any parcel must be completed within one (1) year after construction is commenced. The exterior finish of any building shall be subject to the approval as required in Article II, Section 2 hereof.

Section 14. No owner of any parcel shall burn or permit burning out of doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such garbage or refuse.

Section 15. It shall be the duty of every owner of every parcel on which any part of an open storm drainage ditch or swail is situated to keep such portion thereof as may be situated upon his parcel continuously unobstructed and in good repair. All construction shall be done in such a manner so as to assure reasonable drainage.

Section 16. No building, structure or appurtenance thereto shall be located within fifteen (15) feet of any parcel property line.

Section 17. Any owner of any parcel shall be responsible for cutting and controlling weeds and vegetation on his respective parcel.

## ARTICLE III

## General Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforced by the owner of any land subject to this Declaration, his respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said

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covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the parcels has been recorded agreeing to change said covenants and restrictions in whole or in part.

Section 2. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages and against the land or to enforce any lien to recover assessments created by these covenants and failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. To any such action at law or equity, there shall be added the costs of such action and a reasonable attorney's fee to be determined by the court and shall be assessed against any party found to be in violation of these covenants and restrictions.

Section 3. Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postpaid to the last known address of the person who appears as an owner of record at the time of such mailing.

Section 4. Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Amendment. These Declarations of Covenants and Restrictions may be amended after notice to all fee holders by a vote of two-thirds (2/3) of the fee holders and the filing of signed amendments with the Marion County Recorder's Office.

IN WITNESS WHEREOF, the undersigned have executed this Second Amended Declaration of Covenants and Restrictions as of the day and year first above written.

James W. Stanley

Joann M. Stanley

David R. Snapp, Jr.

Susan Jane Snapp

James R. Howard

Christine B. Howard

MUD CREEK DEVELOPMENT COMPANY

by James W. Stanley partner

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 James W. Stanley and Joann M. Stanley, husband and wife, David R. Snapp and Susan Jane Snapp, husband and wife and James R. Howard and Christine B. Howard, husband and wife, who acknowledged the execution of the foregoing

Declaration, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 11th day of September, 1985.

Notary Public and resident of Marion County, IN

My commission expires:

May 21, 1989

STATE OF INDIANA )
)SS:
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared James W Stanley, partner of Mud Creek Development Company, who acknowledged the execution of the foregoing Declaration for and on behalf of said Grantor, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 11th day of September, 1985.

Notary Public and resident of Marion County, IN

My commission expires:

May 21, 1989

Prepared by: Jerry M. Burton, attorney at law.

Return to: Jerry M. Burton, 9247 N. Meridian, #210, Indianapolis, IN 46260

EXHIBIT "A"

Part of the Northwest 1/4 of the Northeast 1/4 of Section 19, Township 17 North, Range 5 East, in Marion County, Indiana, more particularly described as follows:

Beginning at the Northeast corner of the said quarter quarter section; thence North 90 degrees 00 minutes West 660.00 feet; thence South 0 degrees 06 minutes 19 seconds East parallel to the East line of the said quarter quarter section 1320.00 feet; thence south 90 degrees 00 minutes East 660.00 feet to the said East line; thence North 0 degrees 06 minutes 19 seconds West on and along the said East line 1320.00 feet to the Place of Beginning containing 20.00 acres, more or less, subject to all legal rights of way and easements.

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CROSS REFERENCE

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(5)

# THIRD AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS

This Third Declaration of Covenants and Restrictions made this 5th day of May, 1986, by Mud Creek Development Company, an Indiana partnership, (hereinafter known as "the Developer"), James W. Stanley and Joann M. Stanley, husband and wife, David R. Snapp, Jr. and Susan Jane Snapp, husband and wife, and James R. Howard and Christine B. Howard, husband and wife, all of Marion County, in the State of Indiana,

WITNESSETH:

WHEREAS, Mud Creek Development Company executed a certain Declaration of Covenants and Restrictions dated the 23rd day of July, 1973, recorded in the Office of the Recorder of Marion County, Indiana, on November 15, 1973, as Instrument No. 73-73439; first amended the 12th day of September, 1975, Instrument No. 76-497 and second amendment the 11th day of September, 1985 as Instrument No. 85-78640.

WHEREAS Mud Creek Development Company, James W. Stanley and Joann M. Stanley, David R. Snapp and Susan Jane Snapp, and James R. Howard and Christine B. Howard wish to amend said Declaration of Covenants and Restrictions and are all of the fee holders of the real estate designated in Exhibit A in the Amended Declaration dated the 12th day of September, 1975, as Instrument No. 76-497.

NOW, THEREFORE, Mud Creek Development Company, James W. Stanley and Joann M. Stanley, David R. Snapp, Jr. and Susan Jane Snapp, and James R. Howard and Christine B. Howard declare that all of the Declaration of Covenants and Restrictions shall be amended as follows:

1. Exhibit B of the Amended Declarations dated the 12th day of September, 1975 as to Easement No. 2 and Easement No. 3 are hereby deleted.

2. The Declaration of Covenants and Restrictions dated the 23rd day of July, 1973, as Instrument No. 73-73439 are hereby deleted and the second amendment dated the 21st day of September, 1985 is rewritten and added to as follows:

WHEREAS, the Developer desires to provide for the preservation of the values and amenities in said community and to this end desires to subject the real property described in said Exhibit A to the covenants and restrictions and easements, hereinafter set forth, each and all of which is and are for the benefit of said property and of each owner of any part thereof;

NOW, THEREFORE, the Developer declares that the real property described in Exhibit A is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, and easements (sometimes referred to as "covenants and restrictions") hereinafter set forth. All of the restrictions shall run with the land and shall be binding upon the Developer and upon parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part thereof subject to such restrictions and shall inure to the benefit of the Developer and everyone of Developer's successors in title to any real estate in the development.

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## ARTICLE I

## Definitions

Section 1. The following words, when used in this Declaration, or any supplemental declaration, (unless the context shall prohibit) shall have the following meanings:

A. "Properties" shall refer to or mean the lands described in Exhibit A.

B. "Parcel" shall refer to or mean any parcel of real estate conveyed by the Developer to any owner of same for the ultimate purpose of building thereon a residential structure.

C. "Owner" shall refer to or mean the record owner, whether it be one or more persons or entities of the fee simple title to any parcel situated within the properties, and shall also include the Developer and those instances where it holds title to any parcel of real estate within the properties but notwithstanding any applicable theory of mortgage shall not

mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or in any proceedings in lieu of foreclosure.

D. "Committee" shall refer to lot owners, or parcel owners 1 through 9 of Mud Creek Development located at 9500 East 86th Street, Indianapolis, Indiana.

## ARTICLE II

### Building and Use Limitations

Section 1. All parcels hereinafter conveyed shall be used for residential purposes only and no business, commercial or manufacturing enterprise shall be conducted on said premises except for home occupation uses as governed by local zoning ordinances. No building shall be altered, placed or permitted to remain on any parcel other than one (1) single family dwelling not to exceed thirty-five (35) feet in height and a private garage not to exceed twenty (20) feet in height with sufficient space to accommodate not more than four (4) vehicles.

Section 2. No building, fence, wall or other structure shall be commenced, erected or maintained upon the land subject to these covenants, nor shall any exterior addition to or changes or alterations therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of same shall have been submitted to and approved in writing by the Developer or an authorized agent acting on behalf of the Developer. The Developer or its agent shall approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it. Failure to approve or disapprove within the aforesaid thirty (30) day period will be deemed to be approval of said plans and specifications and, this Section will have been deemed to be fully complied with. At its discretion, the Developer may delegate the authority contained in this Section to an appropriate controlled committee, such delegation to be given in writing by the Developer together with notice to same to any existing owner of record at the time of said delegation.

Section 2a. Power of Disapproval. The Developer or its designee may refuse to grant permission to construct, alter, remodel or make the requested improvement when:

(i) The plans, specifications, drawings or other materials submitted are themselves inadequate or incomplete, or, show the proposed improvement, structure, exterior, etc. to be in violation of these restrictions.

(ii) The design or color scheme of the proposed improvement is not in harmony with the general surroundings of the lot or with the community as a whole;

(iii) The proposed improvement or any part thereof would, in the opinion of the Developer or its designee, be contrary to the interest, welfare or rights or all or any part of other parcel owners.

Section 2b. Power to Grant Variances. The Developer or its designees may allow reasonable variances or adjustments of these restrictions where literal application would result in unnecessary hardship but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these restrictions and covenants and no variance or adjustment shall be granted which is materially detrimental or injurious to other parcels in the development.

Section 2c. Liability of Developer. Neither the Developer nor its designee shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it nor for any defects or work done according thereto.

Section 2d. Inspection. The Developer or its designee may inspect work being performed to assure compliance with these restrictions and to assure that the work being performed is in accordance with the approved plans and specifications.

Section 3. No trailer or similar type structure, basement, tent, shack, garage, barn or other out building shall be at any time used as a residence, temporarily or permanently, nor shall any structure of a temporary character or any building in the process of construction be used as a residence.

Section 4. All fences, walls, hedges, out buildings or landscape design shall be subject to approval as provided for in Section 2 of this Article.

Section 5. No animals, livestock or poultry of any kind shall be raised, bred or kept on any parcel except dogs, cats, or other household pets provided that they create no nuisance to other owners and that they are not kept, bred or maintained for any commercial purpose.

Section 6. No parcel shall be used or maintained for a dumping ground for rubbish, trash, garbage or other waste but rather such shall be kept in a sanitary container. No outside toilet shall be permitted on any parcel (except during the period of construction and then only with the consent of the Developer). All sewage systems shall be designed and constructed in accordance with the appropriate provisions and requirements of the appropriate governmental authorities. Copies of all permits, plans and designs related to the construction of sewer systems shall be submitted to the Developer at the time of submission of all other plans and documents required herein. Each parcel shall be required to submit plans and designs relating to private water supply to the Developer for approval in accordance with the terms and conditions hereof.

Section 7. No obnoxious or offensive activities shall be carried on upon any parcel covered by these covenants nor shall anything be done on any of the lands covered hereby that shall become or be an unreasonable annoyance or nuisance to any owner of another parcel in the development.

Section 8. No signs or advertisements shall be displayed or placed on any parcel or structures in the development without the prior written consent of the Developer. Entrance upon any parcel for the removal of such violation shall not be regarded as a trespass.

Section 9. Any boats, trailers or vehicles other than private passenger cars are not to remain on any parcel for a period in excess of twenty-four (24) hours.

Section 10. No residence shall be erected on any parcel that has a gross floor area exclusive of open porches and garages of less than two thousand (2,000) square feet, except for the residence existing on Lot 9 for more than fifty (50) years.

Section 11. No existing trees over four (4) inches in diameter except for Lot 9 may be removed from any parcel in the development without the review and approval of the Developer.

Section 12. All utilities to be installed shall be subject to the approval as required in Article II, Section 2 hereof.

Section 13. All buildings permitted to be built on any parcel must be completed within one (1) year after construction is commenced. The exterior finish of any building shall be subject to the approval as required in Article II, Section 2 hereof.

Section 14. No owner of any parcel shall burn or permit burning out of doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such garbage or refuse.

Section 15. It shall be the duty of every owner of every parcel on which any part of an open storm drainage ditch or swail is situated to keep such portion thereof as may be situated upon his parcel continuously unobstructed and in good repair. All construction shall be done in such a manner so as to assure reasonable drainage.

Section 16. No building, structure or appurtenance thereto shall be located within fifteen (15) feet of any parcel property line.

Section 17. Any owner of any parcel shall be responsible for cutting and controlling weeds and vegetation on his respective parcel.

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Section 18. All owners of residential lots or parcels designated as 1 through 9 upon and along the driveway easement No. 1 described in the Declarations for Easements for Access and Public Utilities dated August 30, 1973 as Instrument No. 73-73440 and amended as Instrument No. 76-497 in the Office of the Recorder of Marion County, will be responsible, jointly and severally, for the continuous and unobstructed use of the driveway easement and jointly responsibile for maintenance. The cost shall be shared by each lot owner at one-ninth (1/9) of the expense of clearing or maintenance costs including repair or resurfacing. Any and all disputes or disagreements will be subject to a vote by committee members of Mud Creek Development 1 through 9, one vote per lot, with two-thirds (2/3) of the majority being a binding decision in all matters. The majority of the committee shall have the same rights of enforcement as set forth in Article III, Section 2 of this Amended Declaration of Covenants and Restrictions.

## ARTICLE III

## General Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit c and be enforced by the owner of any land subject to this Declaration his respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the parcels has been recorded agreeing to change said covenants and restrictions in whole or in part.

Section 2. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages and against the land or to enforce any lien to recover assessments created by these covenants and failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. To any such action at law or equity, there shall be added the costs of such action and a reasonable attorney's fee to be determined by the court and shall be assessed against any party found to be in violation of these covenants and restrictions.

Section 3. Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postpaid to the last known address of the person who appears as an owner of record at the time of such mailing.

Section 4. Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Amendment. These Declarations of Covenants and Restrictions may be amended after notice to all fee holders by a vote of two-thirds (2/3) of the fee holders and the filing of signed amendments with the Marion County Recorder's Office.

IN WITNESS WHEREOF, the undersigned have executed this Third Amended Declaration of Covenants and Restrictions as of the day and year first above written.

Warren H. Palmer
WARREN H. PALMER

James W. Stanley
James W. Stanley

Barbara L. Thomasberg
BARBARA L. THOMASBERG

Joann M. Stanley
Joann M. Stanley

860038337

David R. Snapp, Jr.

Susan Jane Snapp

James R. Howard

Christine B. Howard

MUD CREEK DEVELOPMENT COMPANY

by David R. Snapp partner

STATE OF INDIANA )
)SS:
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared James W. Stanley and Joann M. Stanley, husband and wife, David R. Snapp and Susan Jan Snapp, husband and wife, and James R. Howard and Christine B. Howard, husband and wife, who acknowledged the execution of the foregoing Declaration, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 5th day of May, 1986.

Notary Public and resident of Marion County, IN
Nancy L. Stephenson

My commission expires:
March 24, 1989

STATE OF INDIANA )
)SS:
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared David R. Snapp, Jr., partner of Mud Creek Development Company, who acknowledged the execution of the foregoing Declaration for and on behalf of said Grantor, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 5th day of May, 1986.

Notary Public and resident of Marion County, IN
Nancy L. Stephenson

My commission expires:
March 24, 1989

Prepared by: Jerry M. Burton, attorney at law.

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