

CROSS REFERENCE

840093371

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
WINDSONG

RECORDED  
IN  
MARION COUNTY  
NOV 29 1984 129490  
COUNTY AUDITOR  
*Edw. S. G...*

CROSS REFERENCE

THIS DECLARATION made this 19th day of November, 1984, by The Shorewood Corporation, an Indiana corporation (hereinafter referred to as the "Developer").

WITNESSETH:

WHEREAS, Developer is the owner of all of the lands contained in the area described in Exhibit "A" attached hereto and made a part hereof, which lands will be subdivided and known as "Windsong" (hereinafter referred to as the "Development"), and will be more particularly described on the plats of the various sections thereof recorded and to be recorded in the Office of the Recorder of Marion County, Indiana; and

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

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property, or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the Development. The Developer specifically reserves unto itself the right and privilege, prior to the recording of the plat by the Developer of a particular lot or tract within the Development as shown on Exhibit "A", to exclude any real estate so shown from the Development, or to include additional real estate.

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RECORDER-MARION CO.  
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1. EXCLUSION FROM PREVIOUS DECLARATION. Developer hereby excludes the Development from the terms and conditions of the Declaration of Restrictions of Geist Harbours recorded as Instrument #79-97441 and #81-29285 in the Office of the Recorder of Marion County, Indiana, pursuant to Developer's rights therein reserved.

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

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

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

C. Approvals, determinations, permissions or consent required herein shall be deemed given if they are given in writing signed, with respect to Developer thereof, and with respect to the Committee, by two members thereof.

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

E. "Association" shall mean "Kingsong Property Owners Association, Inc.", and shall be created as an Indiana not-for-profit corporation and its membership shall consist of lot owners who pay mandatory assessments for security control, snow removal, liability insurance, landscape easement maintenance, fertilizing and weed control and Common Area facilities' operation and maintenance.

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

G. "Original Builder" shall mean and refer to Hansen & Horn Contractors, Inc., in those instances where a lot is first conveyed by Developer to said Hansen & Horn Contractors, Inc., for the purpose of the construction of a dwelling unit thereon by the said Hansen & Horn Contractors, Inc.

### 3. CHARACTER OF THE DEVELOPMENT.

A. In General. Every numbered lot in the Development, unless it is otherwise designated by Developer, is a residential lot and shall be used exclusively for single-family residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house and one outbuilding as is usually accessory to a single-family dwelling house. Such outbuilding shall not exceed 120 square feet in size and shall be constructed of materials other than metal. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded plats shall be Common Area and shall be used in a manner consistent with the zoning and use designated in a master plan by Developer.

B. Residential Use of Accessory Outbuildings Prohibited. No accessory outbuildings shall be erected on any of the residential lots prior to the erection thereon of a single-family dwelling house, and in no event shall any such accessory outbuilding or any temporary structure which may be constructed upon a residential lot under these Restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation.

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

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

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

A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development shall be as specified in the recorded plats of the various sections of the Development.

B. Residential Size and Set-Back Requirements.

(1) In General. Residential lot size and set-back requirements shall be set forth in the plat restrictions accompanying each recorded plat.

C. Fences, Mailboxes and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence or mailbox must be approved by the Committee as to size, location, height, and composition before it is installed. A lot must have at least two trees growing upon it in the front yard by the time the house is completed, weather conditions permitting, and if this requires planting by the owner, the Committee must approve the size and location of such trees.

D. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding or any other similar material. All driveways must be paved from their point of connection with the abutting street or road to a point of connection with the garage apron.

E. Heating Plants and Garages. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. Heating plants shall have ductwork capable of handling central air-conditioning. Every house in the Development must have at least a two-car garage, attached or detached.

F. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

G. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

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

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

(ii) Remove all debris or rubbish.

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

(iv) Cut down and remove dead trees.

(v) Where applicable, prevent debris and foreign material from entering Geist Reservoir, or, when any such debris has entered Geist Reservoir from the lot, remove the same immediately.

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

(vii) Within sixty (60) days following completion of a house on a lot, the owner shall landscape the lot, weather permitting.

I. Developer's and Association's Right to Perform Certain Maintenance. In the event that any owner of a lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these restrictions, the Developer and the Association shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these restrictions. The cost therefore to the Developer or the Association shall be collected in any reasonable manner from the owner. Neither the Developer nor the Association or any of its agents, employees, or contractors shall be liable for any damage which may result from maintenance work performed hereunder. Powers of enforcement of such lien shall be under the same terms and conditions of enforcement of liens as set forth in Paragraph 9, Sub-Paragraph B under Use Of The Reservoir, following.

5. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

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

Neither Indianapolis Water Company, nor the Developer, nor the Windsong Property Owners Association, Inc., nor any officer, agent, employee or contractor thereof, nor any homeowner, shall be liable for any damage which may result from enforcement of this paragraph.

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the City of Indianapolis Department of Public Works.

6. GENERAL PROHIBITIONS.

A. In General. No noxious or offensive activities shall be carried on on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Development.

B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development without the prior written approval of the Committee.

C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

D. Vehicle Parking. No trucks, campers, trailers, recreational vehicles, boats, boat trailers or similar vehicles shall be parked on any street or lot in the Development, unless the same shall be screened in such a manner that it is not visible to the occupants of the other lots in the Development, the users of any street in the Development, or to persons upon Geist Reservoir. A determination of what constitutes adequate screening shall be the determination of the Committee and shall be illustrated on the plot plan showing improvements to be placed on the lot.

E. Garbage, Trash and Other Refuse. No owner of a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in Sub-Paragraph F, below. All houses built in the Development shall be equipped with a garbage disposal unit.

F. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

G. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.

H. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot, except upon lands specifically designated by the Developer for camping purposes, and then only subject to such rules as may be adopted by the Developer for the use of camping areas.

I. Docks and Piers. No pier, dock or other structure may be constructed in such a manner that any portion thereof extends more than 25 feet from the shore into Geist Reservoir and in no event shall any pier, dock or other structure be erected that does not conform to the specifications established by the Committee, which are as follows:

- (i) All docks must be floating and secured to avoid release by flood waters.
- (ii) There shall be no covered boat docks without the specific written approval of the Development Control Committee.
- (iii) All docks shall be white, gray, blue or natural in color.
- (iv) Anchoring devices must be hidden.
- (v) Plans for all boat docks must be submitted to the Development Control Committee for approval before installation is made.
- (vi) There shall be no individual launch sites or ramps constructed on any residential lot.
- (vii) Any boathouse constructed upon a lot may not protrude into the Reservoir, but must be constructed and excavated back into the lot. The plans for any boathouse must be approved by the Committee.

(viii) In all instances of the above-recited installations such construction shall conform to the requirements of the Indiana Department of Natural Resources and the Indianapolis Department of Public Works.

J. Beaches. No beach may be constructed on Geist Reservoir unless the plans and specifications for the beach are submitted to and approved by the Committee. Beaches shall be constructed of sand only, which shall not extend farther than 25 feet from the shoreline into Geist Reservoir. No spoil materials shall be placed or allowed to collect in Geist Reservoir which result from beach construction.

K. Ditches and Swales. It shall be the duty of every owner of every lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon

his lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection. All owners, if necessary, shall install drive culverts between the road right-of-way and their lots in conformity with specifications and recommendations of the City of Indianapolis department of transportation.

L. Utility Services. Utility services shall be installed underground in or adjacent to public rights-of-way to minimize removal of trees.

M. Wells and Septic Tanks. No water wells shall be drilled on any of the lots nor shall any septic tanks be installed on any of the lots in the Development without the approval of the Committee.

N. Pumping. The pumping of water from Geist Reservoir is prohibited by recorded agreement with the Indianapolis Water Company.

O. Antennas. No exposed antennas shall be permitted within the development.

7. WINDSONG DEVELOPMENT CONTROL COMMITTEE.

A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner of the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require. There shall also be submitted, where applicable, the permits or reports required under Paragraph 3 of these Restrictions.

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

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

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

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

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within 30 days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

C. Liability of Committee. Neither the Committee nor any agent thereof, nor the Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

D. Piers, Boat Docks and Boathouses. When the Committee shall permit the construction or placing of a structure wholly or partly within Geist Reservoir, such permit shall constitute a license, and only a license, from the Indianapolis Water Company and the Developer or its successors in title to Geist Reservoir, and said structures must have the prior approval of the Committee.

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

F. Continuation of Committee. When the Developer notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.

8. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER.

Whenever two or more contiguous lots in the Development shall be owned by the same person, and such owner shall desire to use two or more of said lots as a site for a single-dwelling house, he shall apply in writing to the Committee for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one-single dwelling house.

9. USE OF THE RESERVOIR.

A. All operation of boats upon Geist Reservoir is pursuant to a license that shall be exercised in accordance with the limitations made by the joint committee of the Developer and the Indianapolis Water Company made according to the procedures set out in the License Agreement recorded as Instrument No. 70-46985, in the Office of the Recorder of Marion County, Indiana, and Instrument No. 4863, Book 121, as recorded in the Office of the Recorder of Hamilton County, Indiana. That committee shall have the power to assess fines for the violation of any limitations on boat traffic on Geist Reservoir in accordance with the schedule of fines promulgated by it, and which shall become a charge upon the lot owner by the person against whom the fine is assessed.

B. Any fine so assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot subordinate only to the lien of a first mortgage until paid in full, and shall also be a personal obligation of the owner or owners of that lot. Such charge shall bear interest at the rate of 10% per annum until paid in full. If in the opinion of the Developer, such charge has remained due and payable for an unreasonably long period of time, the Developer may, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any Court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorney's fees, incurred by the Developer in collecting the same. Every owner of a lot in the Development and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person

who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Developer all fines that shall be made pursuant to this Paragraph 9 of the Restrictions.

10. REMEDIES.

A. In General. Any party to whose benefit these Restrictions inure, including the Developer or Indianapolis Water Company (with respect to activities that affect Geist Reservoir), may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer nor Indianapolis Water Company shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

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

11. WINDSONG PROPERTY OWNERS ASSOCIATION, INC.

A. In General.

(1) There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "Windsong Property Owners Association, Inc.", which is referred to as the "Association". Every owner of a residential lot in the Development shall be a member of the Association and shall be subject to all the requirements and limitations imposed in these Restrictions on other Owners of residential lots within the Development and on members of the Association, including those provisions with respect to the payment of an annual charge.

B. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person hold an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B member(s) shall be the Developer, who shall be entitled to three (3) votes for each lot owned and the first Board of Directors during their respective terms, who shall have no voting rights. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership (based on 253 total lots in the Development); or

(b) On January 1, 1969.

C. Board of Directors. The Members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

D. Professional Management. No contract or agreement for professional management of the Association nor any other contract with Developer shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

E. Responsibilities of the Association.

(i) The Association shall maintain the landscaping in and along Windhaven Boulevard and the landscape easements shown on the plat(s) and shall keep such areas in a neat, clean and presentable condition at all times.

(ii) The Association shall maintain and repair the Common Areas shown on the plat(s) including improvements thereon.

(iii) The Association shall provide for the operation of the pool and cabana located within the Development.

(iv) The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance (including directors' and officers' insurance) and such other insurance as it deems necessary or advisable.

(v) The Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

12. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Creation of the Lien and Personal Obligation of Assessments.

Each Owner of any lot in the subdivision, except the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and the landscape easements on the Development and other purposes as specifically provided herein.

C. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

D. Notice and Quorum for Any Action Authorized Under Sections C and D. Written notice of any meeting called for the purpose of taking any action authorized under Section C or D shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the

subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

E. Date of Commencement of Monthly Assessments: Due Dates.

The monthly assessment provided for herein shall commence for each lot on the date of conveyance to an Owner other than the original Builder as defined in Paragraph 2 (G) hereof. The Board of Directors shall fix any increase in the amount of the monthly assessment at least 30 days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any lot shall be binding upon the Association as of the date of its issuance.

F. Effect of Nonpayment of Assessments: Remedies of the Association.

If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due, then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such lot, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within 30 days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of 12% per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action in favor of the prevailing party.

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

G. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

H. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member or associate member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member or associate member remains unpaid; (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

13. EFFECT OF BECOMING AN OWNER.

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

14. TITLES.

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

15. DURATION.

The foregoing covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2014, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of 10 years, unless changes in whole or in part by vote of those persons who are then the Owners of a majority of the numbered lots in the Development.

16. SEVERABILITY.

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions.

Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

IN TESTIMONY WHEREOF, witness the signature of Developer this 19th day of November, 1984.

THE SHOREWOOD CORPORATION

BY:

Stanley E. Hunt  
Stanley E. Hunt, President

ATTEST:

John F. Culp  
John F. Culp, Secretary

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF HAMILTON    )

Before me, a Notary Public in and for said County and State, personally appeared Stanley E. Hunt and John F. Culp, the President and the Secretary, respectively, of The Shorewood Corporation, who acknowledged execution of the foregoing Declaration of Covenants, Conditions and Restrictions for and on behalf of Grantor, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 19th day of November, 1984.

Nancy R. McDonald  
Nancy R. McDonald  
Notary Public

My Commission Expires: 2-16-87

My County of Residence: Hamilton

This instrument prepared by the Shorewood Corporation