

*Filed for:
Adams Road Co.
of St. Joseph County*

8410352

DECLARATION OF COVENANTS AND RESTRICTIONS^{4/}
OF KNOLLWOOD PARK VILLAS

THIS DECLARATION made this 31st day of May,
1984, by ADAMS ROAD DEVELOPMENT CORP., an Indiana corporation,
(Declarant).

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner in fee simple title to
real estate located in St. Joseph County, Indiana, more par-
ticularly described on Exhibit "A" attached hereto and herein-
after referred to as the "Property", and certain other real
property adjacent to the Property and more particularly de-
scribed on Exhibit "B" attached hereto, all or a portion of
which may at the discretion of Declarant be made subject to
this Declaration and incorporated into and made a part of the
Property by Declarant recording a plat in the office of the
Recorder of St. Joseph County, Indiana, describing a part or
all of the same and stating in such Plat that the real estate
described therein is subjected to the covenants and restric-
tions of this Declaration.

B. Declarant by execution of this Declaration assures
that all homesites which are conveyed which are a part of the
Property shall be conveyed subject to the terms and conditions
of this Declaration which shall run with the land and be bind-
ing upon all parties having any right, title or interest in the
Property or any part thereof, their heirs, successors and as-
signs and shall inure to the benefit of each Owner.

FILM NO. 8410352
WANDA A. KOWAK
RECORDER
JUN 1 3 58 PM '84
ST. JOSEPH CO.
INDIANA
FILED FOR RECORDING

4

8410352

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

- (a) "Articles of Incorporation" means the Articles of Incorporation of the Association. The Articles of Incorporation are incorporated herein by reference.
- (b) "Association" means Knollwood Park Villas Association, Inc., its successors and assigns, a not-for-profit corporation whose Members shall be the Owners of Homesites.
- (c) "Board of Directors" means the governing body of the Association elected by the Members in accordance with the By-Laws of the Association.
- (d) "Knollwood Park Villas" is the name by which the Property which is the subject of this Declaration shall be known.
- (e) "By-Laws" shall mean the By-Laws of the Association and shall provide for the election of directors and officers and other governing officials of the Association. The By-Laws are incorporated herein by reference.
- (f) "Common Area" means that portion of the Property designated as streets, landscaped areas, retention ponds, entrances, easement areas and other

areas depicted on the Recorded Plat of the Property.

- (g) "Common Expense" means expenses for administration of the Association, for the upkeep, maintenance, replacement, repair, taxes, insurance and other expenses of the Common Area, expenses for maintenance of Buildings and landscaping as set forth herein and all other expenses of the Association.
- (h) "Homesite" means any plot of ground designated as a lot upon a Recorded Plat of the Property. When Homesite is used, it shall be deemed to include the lot and the Dwelling Unit, if any, located thereon.
- (i) "Member" means a member of the Association.
- (j) "Mortgagee" means the holder of a first mortgage lien on a Homesite.
- (k) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who owns the fee simple title to a Homesite.
- (l) "Plat" means the plat of the Property prepared by Valley Engineering Consultants, Inc. under date of April 6, 1984, and recorded as Instrument No. 6406192, in the office of the Recorder of St. Joseph County, Indiana, and also refers to additional and supplemental plats

8410352

covering the Property and covering portions of the real estate described on Exhibit "B" hereto which may be recorded on a later date incorporating portions of that real property into the Property and subjecting the same to this Declaration.

- (m) "Dwelling Unit" means the structure used as a residential living unit located upon a Homesite, including the garage and any appurtenances.
- (n) "Declarant" shall mean and refer to Adams Road Development Corp., an Indiana corporation, and any successors and assigns of it.
- (o) "Institutional Lender" shall mean and refer to any bank, mortgage banker, insurance company, savings and loan association or other financial institution or pension fund, which is the record owner of a first mortgage loan which encumbers any Homesite.

2. Declaration. Declarant hereby expressly declares that the Property shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of the Property. The Property consists of eighty-six (86) Homesites numbered 1 through 86, inclusive, together with the Common Areas. The Common Areas and size of the Homesites are designated on the Plat.

4. Ownership of Common Area. The Common Area shall be conveyed to and owned by the Association or shall be the subject of easements used by the Association and shall be held for

the use and enjoyment of the Members, all of whom shall have the right of enjoyment in and to the Common Area, which right shall pass with title to every Homesite, subject to the provisions of this Declaration and the Rules and Regulations. The Association's rights in the Common Areas include but are not limited to the following:

- (a) The right of the Association upon approval by a written instrument signed by three-fourths (3/4) of all Members and by three-fourths (3/4) of all Institutional Lenders to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Association.
- (b) The right of the Association or its Board of Directors to determine the time and manner of use of Common Areas by the Members.
- (c) The right of the Association to adopt such rules and regulations regarding the Common Area as it deems necessary.

5. Delegation of Use of the Common Area. Any member may delegate, in accordance with provisions of this Declaration and the rules and regulations promulgated by the Association, his right of enjoyment and use of the Common Areas and facilities to Members of his family, his tenants or contract purchasers who reside on any Homesite.

8410352

6. Encroachments and Easements in Common Area. If by reason of inexactness of construction, settling after construction or for any other reasons, any Common Area encroaches upon any Homesite, an easement shall be deemed to exist and run to the Association for the maintenance, use and enjoyment of such Common Area. Each Owner shall have an easement in common with every other Owner to use all pipes, wires, ducts, cables, conduits, utility lines, cable TV systems, irrigation systems and other common facilities, if any, located in the Common Area and serving his Dwelling Unit.

7. Easement for Utilities and Public and Quasi Public Vehicles. All public and quasi public vehicles, including but not limited to, police, fire and other emergency vehicles, trash and garbage collection vehicles, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the streets in the performance of their duties. An easement is also granted to all public utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities on the Common Areas. Provided, however, that nothing herein shall permit the installation of utilities of any type or nature except as initially designed and approved by Declarant on any portion of the Property, by the Association in any Common Area or by the Owner of any Homesite after its conveyance to an Owner. The easement granted herein shall in no way affect any other recorded easement on the Property. An easement is also granted to Association, its officers, agents and employees and to any management companies

8410352

selected by the Association to enter, cross over and otherwise utilize any portion of a Homesite in the performance of its duties granted by this Declaration, the By-Laws and Articles of Incorporation.

8. Association. In order to provide for the maintenance and repair, replacement, administration, operation and ownership of the Common Areas and to perform the functions of maintenance of the landscaping and exterior of Dwelling Units as hereinafter defined, and such other functions as may be delegated and designated for it, the Association has been formed. Each Owner shall become a Member of the Association when a deed to a Homesite is delivered to the Owner and recorded in the records of the Recorder of St. Joseph County, Indiana, conveying title to a Homesite to an Owner, but membership in the Association shall terminate when such person or persons cease to be an Owner and will be transferred by delivery and recording of a deed to the Homesite to the new Owner. The Association shall have one (1) class of Members who shall be all Owners of Homesites. Each person holding an interest in any Homesite shall be a Member; provided, however, that each Homesite represented shall have only one (1) vote. No person or entity other than an Owner may be a Member. Upon recordation of a deed to a Homesite in the office of the Recorder of St. Joseph County, Indiana, membership in the Association shall for all purposes be deemed to have passed to the grantee in the deed from the grantor without any requirement of endorsement or

8410352

assignment of any Certificate of Membership. No Member other than Declarant shall have any right to vote on any matter until the first to occur of the following events: (1) the date upon which the written turnover of control of the Association by Declarant is recorded in the records of the Recorder of St. Joseph County, Indiana, (2) The date Declarant no longer owns any Homesites or (3) December 31, 1993. (The first of the above three events to occur being herein referred to as the Turnover Date.)

The initial Board of Directors shall be as designated in the Articles of Incorporation or thereafter appointed by Declarant and such Directors, notwithstanding any provision in this Declaration or the Articles or the By-Laws to the contrary, shall be the Directors until the Turnover Date or any of them are removed by Declarant or the resignation of one or more of them, and in the event of any vacancy or vacancies occurring in the Board of Directors for any reason prior to the Turnover Date, every such vacancy shall be filled by a person appointed by Declarant, which person or persons shall thereafter be deemed a member of the Board of Directors.

Within 30 days after the Turnover Date, the Association shall elect a Board of Directors and shall continue to do so annually in accordance with and as prescribed by the By-Laws, and the Members shall be entitled to vote for the election of the Board of Directors in accordance with the procedure outlined in the By-Laws. The Board of Directors shall be the

governing body of the Association representing all of the Members and being responsible for the functions and duties of the Association, including but not limited to the management, maintenance, repair, replacement and upkeep of the Common Areas and the payment of all other expenses pertaining to the Common Areas and the performance of services as detailed in this Declaration. Services provided by the Association may be provided through the use of employees of Declarant or other persons or entities selected by the Board of Directors.

9. Right of Board of Directors to Adopt Rules and Regulations. The Board of Directors may promulgate such additional rules and regulations regarding the operation of the Property including but not limited to the use of the Common Area and other items as it may be necessary from time to time. Such rules as are adopted may be amended and supplemented by the vote of a majority of the Board of Directors which shall cause copies of such rules to be delivered and mailed promptly to all Owners.

10. Management Agreement. The Board of Directors may enter into a Management Agreement with a Manager for the Property for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days prior written notice. The Board of Directors may employ Declarant as the Manager or any other Manager chosen by the Board of Directors. Such Management Agreement may be renewed by the parties for additional terms of three (3) or less years.

8410352

11. Real Estate Taxes and Utilities. Real estate taxes are separately assessed and taxed to each Homesite. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Association and treated as a Common Expense. Each Owner shall pay for his own utilities which are separately metered. Any utility charges for the Common Areas shall be paid by the Association and treated as a Common Expense.

12. Landscaping and Plantings. The Association shall maintain the landscaping and lawn of each Homesite on a scheduled basis as determined by the Association. Owners may plant, install or maintain any flowers, trees, shrubbery or other plant materials on a Homesite only in accordance with the landscaping plan approved by the Architectural Control Committee (Landscaping Plan) or in the area designated as the "Personal Patio Garden" for that Homesite on the Landscaping Plan. The Association shall operate and maintain the irrigation system on each Homesite, and shall determine the interval of irrigation. All water utilized in the irrigation system for each Homesite shall be provided by the Owner of that Homesite regardless of whether water from such irrigation system partly irrigates an adjacent Homesite. Each Owner shall be responsible for maintaining at the Owner's expense any trees located on the Owner's Homesite having a trunk diameter of twelve (12) inches or greater, which maintenance shall include but not be limited to pruning and removing any such trees which are dead

8410352

or unsightly or any unsightly, dead or dangerous portions of such trees. Trees having a trunk diameter smaller than twelve (12) inches shall be maintained by the Association. In the event the Association advises an Owner in writing that replacement or removal of a portion or all of a tree or trees which Owner is responsible to maintain is necessary, and the Owner fails to maintain or remove such tree or trees after sixty (60) days prior written notice, (except that notice is waived in cases of emergency), the Association may in its discretion have the tree or trees maintained or removed and charge the Owner as an additional Common Expense for such services.

13. Maintenance of Exterior of Dwelling Units. An Owner may not paint, decorate or make any change in the appearance or any other portion of the exterior of any Dwelling Unit which would vary it from the plans which were approved by the Architectural Control Committee for that Dwelling Unit without the prior written approval of the Board of Directors and Architectural Control Committee. Owners may only change sidewalks or driveways, paint color or roof color, or make additions to the Dwelling Unit, or install swimming pools or make any other change after prior written approval by the Board of Directors and Committee.

The Association shall provide maintenance services for portions of the exterior of each Dwelling Unit at such times and in such amounts as the Association determines from time to time is required. Maintenance by the Association to a Dwelling Unit

3410352

shall be limited to the painting of any exterior surface which was originally painted when the Dwelling Unit was constructed, the cleaning of eavestroughs, gutters and window wells, (if any), minor repairs approved by the Association, and the removal of snow from the sidewalks and driveway according to guidelines for snow removal adopted by the Association. The Association shall not maintain the well, the water pump, the air conditioning or heating system, the windows (except painting as required), the septic system, or any breaking or cracking of any concrete or asphalt surfaces except in the Common Areas. Owner shall replace and repair any portion of the exterior of his Dwelling Unit which is damaged or in need of repair or replacement and shall maintain those portions of the Dwelling Unit which the Association is not required to maintain, which maintenance by the Owner shall include but is not limited to replacement and major repair of siding, roofs, plumbing fixtures, septic systems, heating and air conditioning systems, driveways, sidewalks, exterior lighting fixtures and other mechanical and electrical systems. The Association may at its option notify any Owner of a repair or replacement or any item of maintenance other than those the Association must provide which is needed on the exterior of the Dwelling Unit or on the Homesite and in the event the Owner does not maintain, repair or replace that item within thirty (30) days after such notice is given by the Association, the Association may maintain, repair or replace that item at its expense and charge the cost thereof to the Owner as an additional Common Expense.

8410352

14. Owner's Obligation of Interior Maintenance, Repair, Insurance and Replacement. Each Owner shall promptly furnish, perform and be responsible for at the Owner's expense the repair, maintenance, replacement and decoration of the interior of his Dwelling Unit, and must maintain insurance on the Owner's Dwelling Unit and contents. The Association does not provide or pay for any insurance coverage over a Homesite, Dwelling Unit or contents of the same, such insurance being the Owner's sole responsibility.

15. Maintenance of the Common Areas. The Association shall provide maintenance, replacement and repair services for all Common Areas and all improvements to the Common Areas. Such expense shall be a Common Expense.

16. Assessments. Assessments and payment of assessments shall be as follows:

- (a) Annual Accounting. Annually after the close of each calendar year and prior to the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnished each Member a financial statement prepared by the accountant or accounting firm then serving the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding calendar or fiscal year and all income of the Association during that same year.

8410352

(b) Proposed Annual Budget. Annually, at least ten (10) days before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar or fiscal year estimating the total amount of the Common Expenses for the ensuing year and the amount of each Owner's regular assessment and maintenance assessment for that year, a copy of which shall be provided to each Member at least one week prior to the annual meeting. After the Turnover Date occurs, the annual budget shall be submitted to the Members at the annual meeting of the Association for adoption, and if so adopted, shall be the basis for the Regular Assessments and maintenance assessments (hereinafter defined) for the ensuing and regular fiscal year. At the annual meeting of the Members, the budget shall be approved in whole or in part or may be amended in whole or in part by a majority of the votes cast, provided, however, in no event shall the annual meeting be adjourned without or until the annual budget is approved at such meeting.

The annual budget, the Regular Assessment, the Maintenance Assessment and any Special Assessments shall be established using generally accepted accounting principles applied on a con-

8410352

sistent basis. The Association may provide for a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas and a reserve for painting expense and other anticipated expenses if the Board of Directors and Members of the Association deem the same is appropriate and necessary. Any delay or failure by the Board of Directors to prepare a proposed annual budget and to provide the same to the Members shall not constitute a waiver or release in any manner of the obligations of each Owner to pay the Common Expenses as herein provided. Declarant may at its option supplement the annual budget with its funds from time to time but shall not be required to do so or to pay at any time more than its portion of the Common Expense based upon the Homesites it owns. Payments to the Association by Declarant in excess of amounts it is required to pay as an Owner shall not obligate Declarant to make any such additional payments.

- (c) Regular Assessments, Maintenance Assessments and Special Assessments. After the Turnover Date occurs, the annual budget as adopted shall be used to establish the amount of the Regular Assessment for each Homesite based on those expenses for the next fiscal year which are for services provided to each Homesite in the Property.

8410352

Prior to the Turnover Date occurring, the amount of all Regular, Maintenance and Special Assessments shall be established by the Board of Directors and shall be payable and enforceable as set forth herein. The Regular Assessment shall be based upon a budget prepared by the Board of Directors and provided to each Owner prior to the date the first installment of that assessment is due to be paid. The annual budget shall contain the proposed Regular Assessment on each Homesite which shall be the same amount for each Homesite whether or not the Homesite has a Dwelling Unit located on it or is otherwise improved.

The annual budget shall also include a listing by Homesite of the Maintenance Assessments for each Homesite on which a Dwelling Unit has been built based upon the estimated expense of maintenance to be provided by the Association during the next year for each Homesite as set forth in this Declaration.

Immediately following the adoption of the annual budget, each Owner shall be given written notice of the Regular and Maintenance Assessments against that Owner's Homesite (which Regular Assessment and Maintenance Assessment and any Special Assessment are herein referred to collectively as the "Assessment"). The Assessment

8410352

against each Homesite shall be paid by the Owner of that Homesite in advance in equal monthly installments commencing on the first day of January of such calendar year and on the first day of each calendar month thereafter, through and including the following December 1. Payment of the monthly installments of the Assessments shall be made to the Association at the address provided by the Association to each Owner. The Assessment for the year shall become a lien on each Lot as of January 1 of each calendar year. The above dates of assessment and payment may be changed by the Board of Directors through rules and regulations or provisions in By-Laws without amending this Declaration, and either the Regular Assessment or Maintenance Assessment or both of them may be made payable in one or any other number of installments rather than in monthly installments.

- (d) Special Assessments. From time to time Common Expenses or other expenses of the Association of an unusual or extraordinary nature or not otherwise anticipated or included in the Annual Budget may arise or be deemed necessary to incur by the Board of Directors. In such event the Board of Directors is authorized to adopt a resolution to make such expenditures and shall have the full right, power and authority to make a Special

8410352

Assessment of equal amount upon each Homesite to pay that expense, without a meeting or approval of Owners, which Special Assessment shall become a lien on such Homesite, after approval of such resolution by the Board of Directors at a special or annual meeting called in accordance with the By-Laws.

- (e) Failure of Owner to Pay Assessments. No Owner may become exempt from paying Assessments and Special Assessments or from contributing towards the Common Expenses or any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of the Owner's Homesite. Each Owner shall be personally liable for the payment of all Assessments and by accepting delivery of a deed to a Homesite agrees to this provision and other provisions of this Declaration. Where the Owner constitutes more than one person, liability for Assessments shall be joint and several. Assessments or any installments thereof which are not paid when due shall bear interest on a fluctuating rate equal to the maximum rate of interest which may be charged under the laws of the State of Indiana for consumer loans, adjusted on the first day of each calendar year. If any Owner shall fail, refuse or neglect to make any payment of any

8410352

Assessment when due, the Board of Directors may in its discretion declare the entire balance of unpaid Assessments to be due and payable, with interest, and file a written Notice of Lien against the Owner's Homesite in the office of the Recorder of St. Joseph County, Indiana, which Notice of Lien shall perfect the lien of the Association and have the same force and effect as, and be enforced in the same manner as, a mortgage lien under Indiana law, and shall include attorney's fees, title expenses, interest and any costs of collection. Any Member who is delinquent in paying any assessment may not vote on any Association matter during the period such payment is delinquent. In any action to foreclose the lien, the Owner and any occupant of Dwelling Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Homesite and Dwelling Unit and the Association shall be entitled to the appointment of a receiver for the purpose of preserving the Homesite and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied towards payment of the Assessment. In any action to recover any Assessments, the Association may also recover its reasonable attorney's fees,

8410352

title expenses and costs of collection and interest from the date said Assessments became a lien on the Homesite as set forth in this paragraph until paid in full.

(f) Subordination of Assessment Lien to Mortgage.

Notwithstanding anything contained in this Declaration, the Articles of Incorporation or the By-Laws, any sale or transfer of a Homesite to an Institutional Lender pursuant to a foreclosure of its mortgage or conveyance in lieu thereof or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Assessment as to any installments which became due prior to such sale, transfer or conveyance, provided, however, that the extinguishment of such lien does not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Homesite and Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof from liability for any installments of Assessments thereafter becoming due or from the lien therefor. Any unpaid Assessments, the lien of which has been divested as aforesaid and expenses related thereto shall be deemed to be a Common Expense.

(g) Notice of Unpaid Assessments. The Association shall, upon the request of an Institutional Lender or purchaser who has a contractual right to purchase a Homesite, furnish a statement setting forth the amount of the unpaid Assessments against the Homesite, which statement shall be binding upon the Association and the Members.

17. Exterior Design and Landscaping Design. The exterior design of each Dwelling Unit must be prepared by a designer designated by Declarant and the Landscaping Plan for each Homesite must be prepared or approved by a landscape designer designated by Declarant. Each Homesite must have an irrigation system which complies with Declarant's specifications and is installed by a designated contractor. The landscaping, irrigation system, septic system, Dwelling Unit and all other improvements on the Homesite must be constructed by or under the supervision of a contractor who is on a list of contractors approved by Declarant. Each Owner and his successor in interest and assigns hereby releases Declarant and its successors in interest from any claim, action or cause of action it may have arising from the selection of the builder or design of the Dwelling Unit, landscaping or any other portion of the Homesite.

18. Fences. No perimeter fencing of any type, including but not limited to hedges and other "growing fences", chain link fences, split rail fences or any other kinds of fences are permitted on a Homesite, except as may be approved in advance in writing by the Committee.

8410352

19. Leases. No leases of any Dwelling Units may be entered into without the prior approval of the Association and no such lease may have a duration of longer than one year.

20. ARCHITECTURAL CONTROL COMMITTEE. In order to maintain harmonious structural design, no Dwelling Unit may be erected on any Homesite and no landscaping may be installed, unless and until the plans and specifications for the Dwelling Unit and landscaping have been approved in writing by the Knollwood Park Villas Architectural Control Committee. There is hereby created the Knollwood Park Villas Architectural Control Committee ("Committee") which shall consist of three (3) persons appointed by the Declarant or its successors and assigns who shall serve until they are removed by the Declarant or have resigned. This Committee may designate any one of its members to act on its behalf. In the event of any vacancy on the Committee, the Declarant shall appoint a replacement. The Committee shall have the authority to approve all plans and specifications for all Dwelling Units and the Landscaping Plan for each Homesite in the Property. No construction shall be commenced until the Committee shall have issued its written approval. The decision of the Committee shall be entirely within its discretion. The authority of the Committee shall expire fifteen (15) years after the date of the recording of the Plat on which the affected Homesite is located.

21. (a) LAND AND USE AND BUILDING TYPE. No Dwelling Unit shall be erected, altered, placed or permitted to remain on any Homesite other than one single-family dwelling not to exceed

8410352

two and one-half (2-1/2) stories in height and an attached garage for not more than three (3) cars; exceptions may be made to this section only if they are unanimously approved in writing by the Architectural Control Committee.

(b) HOME OCCUPATIONS. No Homesite shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows may be permitted: any use conducted entirely within the Dwelling Unit and participated in solely by a member of the immediate family residing in said residence, which use is clearly incidental and secondary to the use of the Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with which there is: a) No sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a Dwelling Unit; b) No commodity sold upon the Homesite; c) No person employed other than a member of the immediate family residing on the Homesite; and d) No mechanical or electrical equipment is used, provided that, in no event shall a barber shop, styling salon, beauty parlor, tea room, fortune-telling parlor, animal hospital, or any form of animal care or treatment such as dog trimming, be construed as a home occupation.

22. ARCHITECTURAL CONTROL. No Building or other structure shall be erected, constructed, placed, maintained, or altered on any Homesite, nor shall the natural topography or drainage of any Homesite be altered, until the construction plans for the structure or for the topographical alterations and the

8410352

Landscaping Plan have been approved by the Committee. The exterior design and Landscaping Plan must have the prior approval of the designer designated by Declarant before the same may be presented for approval by the Committee and before the Committee may approve the same. The plans must show floor plan, quality of construction, materials, outside colors to be used, harmony of external design with existing structures and location with respect to lot lines, topography and finish grade elevations and all details regarding landscaping. Two (2) sets of complete plans must be submitted. One (1) will be retained in the Declarant's office and one will be returned to the builder. The Committee's approval or disapproval as required in this Declaration shall be in writing. No structure of any kind which does not comply fully with such approved plans shall be erected, constructed, placed or maintained upon any Home-site, and no changes or deviations in or from such plans as approved shall be made without the Committee's prior written consent. Neither the Declarant, the Committee, nor any member thereof, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence, or non-feasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any structure erected according to such plans or any drainage, well or septic system problems resulting therefrom. Every person and entity who submits plans

8410352

to the Committee agrees, by submission of such plans, that the party making the submission will not bring any action or suit against the Committee or the Declarant to recover any damages or to require the Committee or the Declarant to take, or refrain from taking, any action. All rights of copyright in any plans or specifications or design are waived by the submission to the Committee. Neither the submission of any complete sets of plans to the Declarant's office for review by the Committee, nor the approval thereof by that Committee, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no adjacent Homesite owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described therein. Each Owner agrees that the strict enforcement of this Declaration is necessary to maintain consistent quality in the Property.

23. DWELLING UNIT SIZE.

(a) GENERAL RESTRICTIONS. No Dwelling Unit shall be permitted on any Homesite with a living floor area of the main structure, exclusive of porches, (whether one or two story and whether screened or not), basements, walk-out basement or lower levels and garages, of less than the following number of square feet for the following types of Dwelling Units. Declarant reserves the right to change these specifications in supplemental plats for portions of the Exhibit "B" property which may be made subject to this Declaration when such Plats are placed of record, but any such change would apply only to the real

8410352

property described in that supplemental plat. The minimum square footage for Dwelling Units on the Property described on Exhibit "A" will be the following:

<u>Type of Dwelling Unit</u>	<u>Minimum Square Footage</u>	<u>Minimum Square Footage on First Floor</u>
Ranch Style	1,500 square feet	1,500 square feet
2 Story	1,700 square feet	1,000 square feet
1-1/2 Story, Bi-Level and Tri-Level	1,900 square feet (permitted only on specified terrain)	1,000 square feet

(b) GARAGES. All Dwelling Units must have a full-size attached garage which is capable of storing at least two (2) automobiles but not in excess of three (3) automobiles.

24. BUILDING LOCATION. No Dwelling Unit shall be located on any lot nearer to the right-of-way line than the minimum building setback lines as shown on the recorded Plat. Each Dwelling Unit shall be located no nearer than ten (10) feet from any side lot line but shall have a total combined width for the two (2) side yards of not less than twenty (20) feet. No Dwelling Unit shall be located closer than forty (40) feet to any rear lot line. For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of the Dwelling Units.

25. EASEMENTS. There are strips of ground variable in width, as shown on the Plat, and marked "Easement", reserved for use as roads and for the use of public utilities for the installation of water and sewer mains, poles, ducts, lines and wires, overland drainage flows subject at all times to the proper authorities and to the easement herein reserved. No

8410352

permanent structures shall be erected or maintained upon said strip of land except as noted in this Declaration. No changes shall be made in the grading of any lot areas used as drainage swales as initially provided which would alter the flow of overland storm drainage runoff, but owners of Homesites in this Property shall take their titles subject to the rights of the public utilities. Furthermore, any utility company, in setting utility poles, shall have the right to set anchor poles at any change of direction of their lines. Such anchor poles may be set on any lot line outside the easement and not more than ten (10) feet from the rear line of any Homesite. All utility pedestals and transformers shall be erected on or within five (5) feet of the nearest corner Homesite.

26. PROTECTIVE SCREENING. Protective screening areas may be established as shown on the recorded Plat and noted as "non-access easements". Except as otherwise provided herein regarding street intersection under "Sight Distance at Intersections", plantings shall be retained and maintained throughout the entire length of such areas by the Owner or Owners of the Homesites at their own expense to form an effective screen for the protection of the residential area. No building or structure, except a screen fence or landscaping or wall or utilities or drainage facilities, shall be placed or permitted to remain in such areas. No vehicular access over the area shall be permitted except for the purpose of installation and maintenance of screening, utilities and drainage facilities. In addition, no screen planting over thirty-six (36) inches high shall be

8410352

permitted between the building setback line and front lot line on all Homesites, nor within thirty (30) feet of the rear lot line on Homesites abutting the golf course.

27. NUISANCES. No noxious or offensive activity shall be carried on upon any Homesite, nor shall anything be done thereon which may become an annoyance or nuisance in the neighborhood.

28. TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, tool shed, storage shed, or other outbuilding of any type or nature shall be used on any Homesite at any time, either temporarily or permanently. No awnings shall be permitted without the Architectural Review Committee approval and no hanging of laundry, rugs, or other items outside the Dwelling Unit is permitted.

29. TENNIS COURTS AND POOLS. No tennis courts or above ground pools shall be permitted. Other swimming pools may be constructed only after prior written approval from the Architectural Review Committee.

30. DRIVEWAYS AND CHIMNEYS. No stone or cinder driveways shall be permitted. All driveways are to be a minimum of twelve (12) feet wide and must be constructed of asphalt or concrete. If constructed of asphalt, the depth of the asphalt shall be at least three (3) inches thick. If constructed of concrete, the driveway shall be at least four (4) inches thick. Circular drives in front of Dwelling Units (if any) may

8410352

be a minimum of eight (8) feet wide. All fireplace chimneys shall be of masonry construction.

31. SIGNS. No sign of any kind shall be displayed to the public view on any Homesite except one sign of not more than five (5) square feet advertising the property for sale or rent, or a sign of any dimension used by builder to advertise during the construction and sales period. There is reserved to the Declarant, its successors and assigns, the right to construct signs as they desire in order to foster the promotion and effect sales of lots or structures in said development.

32. LIVESTOCK AND POULTRY. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Homesite except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes and are not permitted to become a neighborhood nuisance or hazard in any manner.

33. GARBAGE AND REFUSE DISPOSAL. No Homesite shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

34. COMPLETION DATE. Any Dwelling Unit begun must be completed within a period of one (1) year from the date of beginning, or thereafter completely removed. The side, front and rear yards of each Homesite shall be planted with grass seed, sod or ground cover, unless otherwise approved by the Commit-

8410352

tee, within one hundred and twenty (120) days after the Dwelling Unit is completed, or the Dwelling Unit is occupied as a home, whichever is earlier.

35. FUEL STORAGE TANKS. All oil or fuel storage tanks must be installed underground or concealed within the main structure of the Dwelling Unit, basement or attached garage.

36. LOT DIVISION. There shall be no subdivision or sale of any Homesite by an Owner for any purpose whatsoever.

37. LIGHTING. A dusk-to-dawn electric or gas light of the type approved by the Committee shall be installed by the builder on each Homesite in front of the front building setback line. If electric, such lights shall be equipped with automatic operators (electric eye) to provide light from sundown to dawn.

38. UTILITIES AND TELEVISION ANTENNAS. All public utility services, either in the streets or on any lots, including but not limited to electric, gas and telephone service, and cable television, shall be located underground, and shall not be visible. No outside above-ground television, A.M., F.M., or short wave radio antennas of any type shall be erected or maintained on any Homesites or structures in this Property. All street or lot lighting shall be situated on posts with no lines visible. To assure the enforcement of this restriction, the Declarant, for itself, its successors, and assigns, does hereby agree:

(a) To prohibit the erection and use of overhead wires, poles, and other facilities of any kind, including but not

8410352

limited to those associated with electrical, television, cable and overhead wires around the perimeter of the Property. Nothing herein should be construed to prohibit street lighting or ornamental yard light if serviced by underground wire or cable.

(b) To require that the owner of any Dwelling Unit erected on the property install an electric service entrance of sufficient capacity to meet present and future requirements of the occupants in accordance with the engineering standards of the electric utility company.

(c) To require Owners to assume all landscaping responsibility and restoration of paved or planted areas made necessary by maintenance, replacement, or expansion of the underground service facilities.

(d) To require accessibility to all strips in which underground service is located for operation, maintenance, or replacement of facilities.

(e) To require that the Owner of any Dwelling Unit erected on the Property must pay any cost differential for underground service laterals.

39. SEPTIC SYSTEMS. A sanitary septic system shall be installed at the Owner's expense for each Dwelling Unit. Such septic system shall be of a type and construction and so located on the Homesite as to be approved in writing by the appropriate regulatory agency having jurisdiction over the same as required in St. Joseph County, Indiana. No other sanitary provision or device for sewage disposal shall be installed or

8410352

permitted to remain in this Property except as may be approved by the St. Joseph County Department of Health.

40. FIRES. No fire shall be permitted to burn upon any street or roadway in this Property.

41. AMENDMENT OF COVENANTS. It is expressly provided that the Declarant, its successors, or assigns, shall have the exclusive right until the Turnover Date to amend any or all of the restrictions or covenants herein contained subject to paragraph 46 herein. Such amendment shall be evidenced by the recording of a written amendment signed by Declarant and duly acknowledged before a Notary Public and recorded in the Office of the Recorder of St. Joseph County, Indiana, and shall become effective upon such recording. After the Turnover Date this Declaration may be amended at any time by the recording of such amendment executed by the Owners of not less than seventy-five percent (75%) of the Homesites in the Property.

42. DURATION OF COVENANTS. These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until June 1, 2000, at which time said covenants or restrictions shall be automatically extended for successive periods of ten (10) years, unless by a vote of the then Owners of the fee title of not less than seventy-five percent (75%) of the Homesites covered by these covenants or restrictions, it is agreed to change such covenants or restrictions in whole or in part.

43. SEPARABILITY OF COVENANTS. Invalidation of any one of the covenants or restrictions by judgment of a Court of compe-

8410352

tent jurisdiction shall in no way affect any of the other covenants or restrictions and all other provisions of these restrictions shall remain in full force and effect.

44. ENFORCEMENT OF COVENANTS. The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law of any Dwelling Unit, is hereby vested in each Owner of a Homesite in the Property in the Association, its successors and assigns. These covenants and restrictions may all be enforced by a civil action for damages and by any other appropriate remedy at law or in equity. If any person or persons shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons vested with the title to any of the Homesites hereinbefore described, Association, its successors and assigns, or the Declarant, to proceed either in law or in equity, against such person or persons violating or attempting to violate any such covenants, and to enjoin them from so doing, to recover damages for such violation and to seek all other appropriate relief. In the event that the Association, or the Declarant should employ counsel to enforce any of the foregoing covenants and restrictions, all costs incurred in such enforcement, including but not limited to reasonable attorneys' fees, expense of removing or altering any Homesite which violates this Declaration and any other related expense shall be paid by the Owner of such Homesite against whom such enforcement action is brought, and any such expense shall become a Special Assess-

8410352

ment against that Homesite and be enforceable in the same manner as is provided in this Declaration for other assessments.

45. Notice. Any notice required to be sent to any Member, Owner or the Declarant under the provisions of this Declaration, the Articles of Incorporation or the By-Laws shall be deemed to have been properly sent and given when mailed by United States Mail, postage prepaid, by certified mail, return receipt requested, postage prepaid, to Declarant at: 51013 Gumwood Road, Granger, Indiana 46530, or the address of Declarant's Resident Agent, and to any Owner at the address of the Homesite.

46. Protection Provisions for the Benefit of Institutional Lenders. Anything to the contrary in this Declaration or the Articles of Incorporation, By-Laws or Rules and Regulations of the Association notwithstanding, the following shall apply with respect to each Institutional Lender who holds a first mortgage on any Lot.

(a) The prior written approval of each such Institutional Lender is required for the following events:

(i) Any material amendment to the Declaration or to the Articles of Incorporation or By-laws of the Association, which materially and adversely affects the priority of the lien or value of the security encumbered by its mortgage; and

8410352

- (ii) The effectuation of any decision by the Association to terminate professional management and assume self-management of the Subdivision.
- (b) No portion of any Homesite in the Property may be partitioned, subdivided or dedicated without the prior written approval of each such Institutional Lender.
- (c) Any lien the Association may have on any Homesite for the payment of any Assessments attributable to such Homesite shall be subordinate to any lien for past due and unpaid taxes and the lien or equivalent security interest of any first mortgage on any Homesite recorded prior to the date any such Assessment became due.
- (d) Any such Institutional Lender shall upon request, be entitled to: (i) inspect the books and records of the Association during normal business hours; (ii) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of Association; (iii) receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings; and (iv) receive written notice of default in the payment of any installment of Assessments on a Homesite subject to its mortgage.

8410352

- (e) Any Institutional Lender who obtains title to any Homesite as a result of foreclosure of a first mortgage on any Homesite recorded prior to the date any assessment became due, or by deed or assignment in lieu of foreclosure, or any purchaser in such a foreclosure sale (pursuant to such mortgage), or their respective successors and assigns, is not liable for the share of Assessments or other assessments by the Association pertaining to such Homesite or chargeable to the former Owner which became due prior to such acquisition of title. Such unpaid share of Assessments shall be deemed to be collectible from all of the remaining Owners including such acquirer, his successors and assigns.
- (f) In the event of substantial damage to or destruction of any Dwelling Unit or any part of the Common Area, any Institutional Lender which may be affected shall be entitled to timely written notice from the Association of any such damage or destruction. No Owner or other party shall have priority over such Institutional Lender with respect to the distribution of any insurance proceeds allocable to such Homesite.
- (g) If any Dwelling Unit or portion thereof, or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent

8410352

domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Institutional Lender(s) holding a first mortgage on a Homesite so affected is entitled to timely written notice from the Association of any such proceeding or proposed acquisition and no Owner or other party shall have priority over such Institutional Lender with respect to the distribution allocable to such Homesite of the proceeds of any award or settlement.

- (h) Any management agreement for the Subdivision will be terminable by the Association with or without cause upon ninety (90) days prior written notice thereof, and the term of any such agreement shall not exceed three (3) years.
- (i) Notwithstanding the absence of any express provision to such effect in the mortgage instrument, in the event that there is any default in the payment of any installment of any Assessment with respect to any Homesite, either regular or special, any Institutional Lender holding a mortgage which encumbers such Homesite shall be entitled to declare such mortgage in default in the same manner that is permitted by such mortgage with respect to any default in the payment of real estate taxes.

8410352

47. Representations of Declarant as to Construction of Streets. Declarant represents, by execution of this Declaration, that it shall construct private streets serving each Homesite and providing access for each Homesite to public streets, and that such private streets shall be built to standards applicable to streets and highways maintained by the St. Joseph County Highway Department and which are acceptable to that department.

ADAMS ROAD DEVELOPMENT CORP.

BY

David A. Eckrich
David A. Eckrich, President

ATTEST:

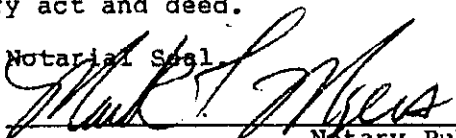
Betty J. Babcock
Betty J. Babcock, Secretary

8410352

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public in and for said County and State, this 15th day of JUNE, 1984, personally appeared Adams Road Development Corp., by David A. Eckrich, its President, and Betty J. Babcock, its Secretary, and acknowledged the execution of the above and foregoing instrument to be their voluntary act and deed.

WITNESS my hand and Notarial Seal



Notary Public
and a resident of St. Joseph
County, Indiana

MARK T. MYERS

My commission expires:

APRIL 15th, 1985



This instrument was prepared by Bruce R. Bancroft, Attorney at Law.

8410352

EXHIBIT "A"
DECLARATION OF COVENANTS AND RESTRICTIONS
OF KNOLLWOOD PARK VILLAS

A part of the Northeast Quarter of Section 16, Township 38 North, Range 3 East of the Second Principal Meridian, Clay Township, St. Joseph County, Indiana and described as follows:

Commencing from a Harrison monument at the East Quarter corner of said Section 16; thence N. 00°18'00" W. (bearing assumed) along the East line of said Quarter Section (being also along the centerline of Gumwood Road), 1705.10 feet to the point of beginning; thence N. 89°58'52" W., 490.00 feet; thence S. 00°18'00" E., 392.00 feet; thence N. 89°58'52" W., 765.95 feet; thence N. 00°01'08" E., 244.60 feet; thence Southwesterly 23.89 feet along a segment of a curve to the left having a radius of 760.00 feet subtended by a chord having a bearing of S. 84°12'28" W. and a chord length of 23.89 feet; thence N. 08°25'27" W., 164.60 feet; thence N. 89°58'52" W., 120.08 feet; thence N. 38°18'52" W., 257.99 feet; thence N. 18°41'00" W., 157.60 feet; thence N. 22°08'38" E., 282.61 feet; thence S. 89°48'00" E., 760.00 feet; thence S. 37°18'00" E., 730.00 feet; thence N. 88°42'00" E., 350.00 feet; thence S. 79°18'00" E., 170.00 feet; thence N. 88°12'00" E., 60.00 feet; thence N. 52°12'00" E., 103.00 feet; thence N. 58°12'00" E., 142.00 feet; thence N. 68°42'00" E., 155.00 feet; thence N. 89°42'00" E., 240.00 feet to a point on the East line of the Northeast Quarter of said Section 16; thence S. 00°18'00" E., along said East line (being along the centerline of Gumwood Road), 551.09 feet to the point of beginning and containing 23.3864 acres more or less. The tract described above also contains 46 lots numbered 1 through 15, 56 through 86, all inclusive.

8410352

EXHIBIT "B"
DECLARATION OF COVENANTS AND RESTRICTIONS
OF KNOLLWOOD PARK VILLAS

A part of the North Half of the Northeast Quarter of Section 16, Township 38 North, Range 3 East of the Second Principal Meridian, Clay Township, St. Joseph County, Indiana described as follows:

Commencing from the Harrison Monument at the North Quarter corner of said Section 16, said point being at the intersection of the centerlines of Grape and Adams Roads; thence North 90°00'00" East (bearings assumed) along the North line of the said Quarter Section (being also the centerline of Adams Road), 2639.05 feet to the Harrison Monument at the Northeast corner of said Section 16 (being at the intersection of the centerline of Adams and Gumwood Roads); thence South 00°18'00" East along the East line of said Quarter Section (being also the centerline of Gumwood Road) 390.00 feet to the point of beginning; thence continuing S. 00°18'00" East along the said East line (being also the centerline of Gumwood Road) 551.09 feet; thence N. 89°58'52" West, 480.00 feet; thence S. 00°18'00" East, 382.00 feet; thence N. 89°58'52" West, 1802.85 feet; thence N. 00°08'08" West, 250.00 feet; thence N. 34°21'52" East, 455.00 feet; thence N. 29°21'52" East, 120.00 feet; thence N. 03°21'52" East, 100.00 feet; thence N. 31°08'08" West, 122.00 feet; thence N. 15°08'08" West, 170.00 feet; thence N. 07°04'39" West, 134.81 feet; thence N. 90°00'00" East, 150.00 feet; thence N. 00°00'00" East, 50.00 feet; thence N. 90°00'00" East, 30.00 feet; thence S. 00°00'00" West, 85.00 feet; thence Southerly 21.92 feet along a segment of a curve to the left having a radius of 193.26 feet, subtended by a chord having a bearing of S. 03°14'42" East and a length of 21.91 feet; thence N. 90°00'00" East, 209.87 feet; thence S. 49°48'00" East, 235.00 feet; thence S. 69°48'00" East, 260.00 feet; thence S. 37°18'00" East, 230.00 feet; thence N. 88°42'00" East, 350.00 feet; thence S. 79°18'00" East, 130.00 feet; thence N. 88°12'00" East, 63.00 feet; thence N. 52°12'00" East, 103.00 feet; thence N. 58°12'00" East, 142.00 feet; thence N. 68°42'00" East, 155.00 feet; thence N. 89°42'00" East, 240.00 feet to the point of beginning subject to 40 feet half right of way along Gumwood Road. The tract described above contains 41.44 acres more or less.