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ALLEN COUNTY RECORDER  
DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
WOODMARK SUBDIVISION PHASE II

HALLCO, INC., an Indiana corporation, by Charles N. Hall, its President, does hereby declare that it is the owner of the real estate situated in Allen County, Indiana, and described in Exhibit A attached hereto and made a part hereof, and hereafter to be known as Woodmark Subdivision Phase II, the original plat of which was recorded September 10, 1974, as Document No. H6668, and consisting of Lots 3 through 11B-E as well as certain streets, pedestrian rights-of-way, common areas, and easements, and does hereby cause said real estate to be impressed with the covenants, agreements, restrictions, easements and limitations hereinafter set forth, and they shall be considered a part of every conveyance of land in said Addition without being written therein. The provisions herein contained are for the mutual benefit and protection of the owners present and further of any and all land in said Addition, and they shall run with and bind the land and shall inure to the benefit of and be enforceful by the owners of any land included therein, their respective legal representatives, successors, grantees and assigns. The owner or owners, present or future, of any land included in said Addition shall be entitled to injunctive relief against any violation or attempted violation of the provisions hereof and also damages for any injury resulting from any violations thereof, but there shall be no right of revision, re-entry or forfeiture of title resulting from any violation.

6'  
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PROTECTIVE COVENANTS, RESTRICTIONS AND LIMITATIONS

ARTICLE I: DEFINITIONS

Definitions. The terms hereinafter set forth shall have the following meanings:

1. "Architectural Control Committee" shall mean the body designated herein to review plans and to grant or withhold certain other approvals in connection with improvements and developments.
2. "Association" shall mean and refer to the Woodmark Subdivision Phase II Association, its successors and assigns. The "Board of Directors" or "Board of Managers" means the governing body of the Association elected by the owners in accordance with the by-laws.
3. "Developer" or "Declarant" shall mean Hallco, Inc., its successor or successors in interest, or any person, firm or corporation designated by it or its said successor or successors.
4. "Common Area" shall mean and refer to those areas of land shown on any recorded subdivision plat of Woodmark Subdivision Phase II which are not designated as part of any "Lot" and have not otherwise been deeded to a person, public body or entity other than the Association.
5. "Lessee" shall mean and refer to a person leasing from an owner, whether one or more persons or entities, of any "Living Unit" situated in the Addition.
6. "Living Unit" shall mean any portion of a building designated and intended for use and occupancy as a residence by a single family. The term "Home" shall be synonymous with the term "Living Unit" in this Declaration.
7. "Lot" shall mean either any of said lots as platted or any tract or tracts of land as conveyed originally or by subsequent owners, which may consist of one or more lots or parts of one or more lots as platted upon which a dwelling or other structure may be erected in accordance with the restrictions hereinafter set forth.

8. "Member" shall mean any person who may be entitled and obligated to hold one or more memberships in the WOODMARK SUBDIVISION PHASE II ASSOCIATION

9. "Membership" shall mean any membership in the WOODMARK SUBDIVISION PHASE II ASSOCIATION entitled to one vote and obligated for Association assessments as hereinafter set forth. A member may hold one or more memberships

10. "Multi-family Unit" shall mean a building containing two or more living units.

11. "Owner" shall mean and refer to the holder, whether one or more persons or entities, of the fee simple title to any lot situated in the Addition. The term "Owners" or "Co-owners" shall refer to all the Owners of lots situated in the Addition.

12. "Pedestrian Right of Way" shall mean any area which is shown on the recorded plat of said Addition for the purpose of a pedestrian traffic system and intended to be devoted to the common use and enjoyment of the Owners and Lessees in the Addition, subject to utility rights as hereinafter provided.

13. "Premises" or "Property" shall mean all lands and improvements comprising any portion of the subdivision known as WOODMARK SUBDIVISION PHASE II whether such lands are now a portion of the Subdivision or are incorporated by amendment at a later date. "Project" or "Subdivision" shall mean the total development known as WOODMARK SUBDIVISION PHASE II.

14. "Street" shall mean any street, avenue, roadway, cul de sac or boulevard of whatever name which is shown on the recorded plat of said addition, and which has been heretofore and is hereby, dedicated to the public for the purpose of a public street or for park or boulevard purposes.

15. "Structure" shall mean anything erected or constructed, the use of which requires more or less permanent location on or in the ground, or attached to something having a permanent location on or in the ground.

ARTICLE II: PROPERTY RIGHTS

1. All portions of the premises not comprising a lot or a portion thereof, and not transferred by deed to any person, institution, corporate or political entity other than the Association shall be deemed to be "Common Area." The same will be deeded or transferred to the Woodmark Subdivision Phase II Association, and each owner and lessee shall have a right and easement of enjoyment in and to said Common Areas which shall be appurtenant to and shall pass with the title to every lot. The Developer may retain legal title to the Common Areas until such time as it has completed improvements thereon, after which time it shall convey the same to the Association and the Association shall accept said conveyance and thereafter be responsible for the maintenance thereof. The rights and easements of enjoyment in the Common Areas shall be subject to the following:

A. The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment of any member for any period during which any assessment remains unpaid.

B. The right of the Association 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 to by the Board of Directors of the Association, and subject to acceptance of such assignee.

C. All other terms and conditions of this Declaration, the Articles of Incorporation and By-laws of the Association and any rules and regulations promulgated by such Association.

ARTICLE III: PROPERTY RESTRICTIONS

1. Building Lines. There shall be no minimum building lines, and a dwelling or structure may be placed, located or erected at any location upon a lot.

2. All lots shall be used exclusively for residential purposes.

3. No buildings or structures shall be moved from other locations onto the premises, and no structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding, shall be used on any portion of the lots or premises at any time as a residence either temporarily or permanently.

4. Nothing shall be done or kept in any Living Unit or in the Common Areas which will cause an increase in the rate of insurance on any structure or the contents thereof. No owner shall permit anything to be done or kept in his Living Unit or in the Common Areas which will result in a cancellation of insurance on any structure or contents thereof, or which would be in violation of any law or ordinance.

5. No waste shall be committed in any Common Areas.

6. No owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside of a Living Unit or structure, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roof or any other parts of any Living Unit or structure without the prior consent of the Board and the Architectural Committee; nor shall any billboards, unsightly objects, or nuisances be erected, placed or permitted to remain on any lot or on any portion of the premises.

*Ditch -  
publish & record  
develop in common area?*

*can US flag  
fly from any  
structure*

7. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Living Unit, or on the premises, except that pets such as dogs, cats or customary household pets may be kept in a Living Unit. Said pets shall not be allowed to run loose over the premises; and all pets must be on leashes and in the company of their master or owner when they are in the aforesaid area. Provided, however, that the Board may dispense with this requirement as to any particular pet where they find such pet does not create a nuisance, disturbance, inconvenience or irritation to other owners of Living Units within the subdivision, and does not cause damage or detriment to the premises or improvements thereon. Where, however, any pet shall be found to create a nuisance, disturbance, inconvenience or irritation to other Owners within the subdivision or to cause damage or detriment to the premises or improvements of the subdivision in being allowed to remain unleashed and unaccompanied upon the premises, then this requirement shall be strictly enforced by the Board and such pet shall not be allowed outside any Home without a leash or without the presence of its master or owner. Where any pet is the source of repeated complaints to the Board as a result of allegedly causing or creating a nuisance, unreasonable disturbance, noise, or irritation to Owners, or damage to property, and the Board finds such complaints to be justified, the Board may in addition to requiring that such pet be permitted outside only on a leash and in the company of its master or owner, further impose such additional conditions or restraints upon the continued possession of such animal by its owner and/or any party residing within the subdivision as the Board shall deem necessary and appropriate to prevent such complaints and to protect the interests of the Owners generally. Where the imposition of conditions or restraints upon the possession of the pet in question appear

to the Board to be incapable of resolving the problems caused by such pet, or where such restraints are imposed and found to be ineffective, the Board may, in its discretion, order any pet permanently removed from the subdivision upon five (5) days' written notice from the Board to the respective owner of such pet or notice to any party within the subdivision harboring or responsible for such pet.

8. No industry, trade, or any commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the lots or within the subdivision. No "for sale," "for rent" or "for lease" signs or other window or advertising display shall be maintained or permitted on any part of the lots or any Living Unit without the prior consent of the Board. No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any Living Unit or any resident thereof.

9. Nothing shall be done or permitted in any Living Unit which will impair the structural integrity of any structure or building or which would structurally change any such improvement, except as otherwise provided or permitted herein.

10. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the premises. The premises shall be kept free and clear of rubbish, debris and other unsightly materials. All equipment, garbage cans, wood piles, service yards or storage piles shall be prohibited unless the same shall in the judgment of the Board be adequately screened by planting, fencing or otherwise so as to conceal them from the view of neighboring Homes and streets.

consent to  
commence  
immediately but  
undelayed

11. No planting or gardening shall be done and no fences, hedges or walls shall be erected or maintained upon said premises, except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Managers or their designated representative. The owners are hereby prohibited and restricted from using any land or air space outside the exterior building lines of their Living Units, except as may be allowed by the Association's Board of Managers or as provided herein. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners as is necessary for the protection of said owners.

12. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the premises and all exteriors and roofs of the structures, including but not limited to, recreation and parking areas and walks, shall be taken by the Association.

13. No exterior additions or alterations to any Living Unit nor changes in fences, hedges, walls and other structures shall be commenced, erected or maintained until the plans and specifications or an appropriate statement showing the nature, kind, shape, height, materials, location and approximate cost of same shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the premises by an Architectural Committee.

14. The Association's Board of Directors shall have the right and power to provide for the construction of additional recreational and other common facilities, from time to time, as in their discretion appears to be in the best interests of the Association and the subdivision. Any such



construction, improvements, or additions shall be authorized by an affirmative vote of not less than a majority vote of the members of the Association.

15. No boats, campers, trailers of any kind, buses, mobile homes, trucks, or any other unconventional vehicles of any description, shall be permitted, parked, or stored anywhere within the subdivision; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage.

16. All Owners and members of their families, their guests, or invitees, and all occupants of any Living Unit or other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof, shall observe and be governed by such rules and regulations as may, from time to time be promulgated and issued by the Board governing the operation, use, and enjoyment of the exterior grounds of the respective Lots and the Common Areas of the premises.

17. The Board of Directors shall have the power, authority and obligation to determine all matters affecting or relating to the interpretation, application and enforcement of the Restrictive Covenants set forth in this Article. Any decision or determination made by such Board pursuant to its powers and obligations as set forth in this Paragraph shall be deemed binding upon all parties and all Owners unless it shall be shown that said determination was made in bad faith with an intent to unfairly discriminate between Owners or was made in contravention of the express terms and conditions set forth herein.

#### ARTICLE IV: ARCHITECTURAL CONTROL COMMITTEE

In order to maintain harmonious structural design and lot grades, no dwelling building or improvements shall be erected, permitted or altered on any lot (and construction shall not be commenced) until the construction plans and specifications, and a site plan showing the location of the structure on said lot and the grade elevations have been approved by the Architectural Control Committee. The Architectural Control Committee shall be comprised of three (3) members, with these members to be designated by the Developer initially. The Developer shall have the right, at such time as it may elect, to relinquish its right to designate the members of the Architectural Control Committee to the Association; provided, however, that at the Developer's election he shall further have the right to maintain control of the Architectural Control Committee and to nominate and appoint all of its members so long as said Developer shall retain any right in and to any homes or lots within the Subdivision and/or maintain any right or interest in any homes or lots which are within Tract I, and may at any time become a part of the Subdivision. Notwithstanding anything hereinafter provided with respect to amendments to these Articles and the By-Laws of the Association or otherwise, this right in the Developer shall be irrevocable, and no change in the Articles or By-Laws shall be permitted to contravene such rights. Two sets of plans of each improvement, with detailed front, side and rear elevations and floor plans showing square footage and grade elevations, shall be submitted to the Architectural Control Committee at the Developer's office or such other place as may be designated. The Committee's approval or disapproval of said plans shall be in writing; in the event the Committee, or its designated representative, shall fail to approve or disapprove said plans

within thirty (30) days after all necessary instruments, documents and other information have been given, then approval to the request as submitted shall be deemed to have been given. The improvements as shown upon said plans shall be substantially completed before said building shall be used or occupied as a dwelling. All improvements shall be constructed in accordance with the plans and specifications as approved by the Architectural Control Committee and any improvements not so constructed shall be subject to immediate removal at owner's expense. The provisions hereinbefore provided for violation or attempted violation of any of these covenants and restrictions shall be applicable hereto. In addition, before any lot or tract within the Addition may be used or occupied, said user or occupier shall first obtain the Improvement Location Permit and Certificate of Occupancy required by the Allen County Zoning Ordinance. Further, before any living unit within the Addition shall be used and occupied, the Developer shall have installed all improvements serving the lot whereon said living unit is situated, as set forth in Developer's plans filed with the Allen County Plan Commission.

ARTICLE V: PARTY WALLS

1. Every wall which is built as a part of the original constructions within Woodmark Subdivision Phase II, and placed on the dividing line between separate lots in the subdivision, and is shared by more than one dwelling unit shall constitute a party wall. Owners of all lots sharing such walls shall have the obligations and be entitled to the rights and privileges contained in these Covenants, and to the extent not inconsistent herewith, the general rules of law regarding party walls.

2. If any party wall is damaged or destroyed through the act or acts of any adjoining owner, his agents, servants, guests, or members of his family, whether such act is willful, negligent, or accidental, such owner shall forthwith proceed to repair or rebuild said party wall to as good a condition as previously existed, without cost to the adjoining owner.

3. Any party wall damaged or destroyed by some act or event other than that produced by one of the adjacent owners, his agents, servants, guests or family, shall be rebuilt or repaired by both adjoining owners to as good a condition as previously existed, at their joint and equal expense and as promptly as reasonably possible.

4. No structure which shares a party wall with an adjoining lot will be remodeled or repaired in such a way as to change the exterior appearance from the original appearance, without the consent of the adjoining owner and the Architectural Control Committee as herein provided.

5. All disagreements between owners of adjoining lots with respect to repair, reconstruction or maintenance of party walls, or with respect to the cost thereof, shall be resolved by the Architectural Control Committee, and the decision of that Committee shall be final and binding upon all owners involved.

ARTICLE VI: LIVING UNITS AND  
STRUCTURES LOCATED UPON LOT LINES

1. In order to maintain harmonious structural design, once a Living Unit or other structure has been constructed upon or adjacent to a boundary line between two lots the same may not be relocated without the permission of the adjacent lot owners and the Architectural Control Committee, as herein provided.

2. The owner of any lot which adjoins a lot containing a structure located upon the common lot line between said lots shall have the right to make reasonable attachments to said structure, including but not limited to, fences allowed by these Covenants. However, before any such attachment is made, the owner must obtain the approval of the Architectural Control Committee, as herein provided.

ARTICLE VII: PRIVATE EASEMENTS

1. Any owner of a lot upon which there is a Living Unit or structure located on, or within four (4) feet of a common lot line, shall have a permanent easement in the adjoining servient lot to permit the construction, maintenance and repair of such living unit or structure. In addition, said owner shall also have a permanent easement permitting roof structures which overhang and encroach upon the adjoining servient lot, provided that the construction of such roof structure is permitted and approved as elsewhere herein provided.

2. The easements hereby created shall extend for a distance of five (5) feet from the common lot line. Said easements do not include the right to enter onto or into any structure on the servient lot without prior permission from the owner.

3. If, by reasons of the location, construction settling, or shifting of a Building, any Living Unit now encroaches or shall hereafter encroach upon any Lot belonging to another owner or to the Association, then in such event, an easement shall be deemed to exist and run to the residents of the encroaching Unit for the maintenance, use and enjoyment of such portion of the Living Unit which shall encroach upon the abutting Lot or lands.

4. Each owner shall have an easement in common with each other owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Living Units and serving his Living Unit

ARTICLE VIII: EASEMENTS GENERALLY

1. All public and quasi-public vehicles, including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, shall have the right to enter upon the streets and Common Areas of Woodmark Subdivisor Phase II in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including but not limited to water, sewers, gas, telephones and electricity on the property; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines, or other utilities, except as initially designed and approved by Declarant or as thereafter may be approved by the Board of Directors. By virtue of this easement the electric and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the premises and to affix and maintain electric and telephone wires, circuits, and conduits on, above, across, and under the roofs and exterior walls of all structures.

2. Any utility company and Developer, their successors and assigns, will have the right to enter upon said easements for any lawful purpose. All easements shall be kept free at all times of permanent structures except improvements installed by Developer or an authorized utility and removal of any obstruction by a utility company shall in no way obligate the company to restore the obstruction to its original form. The utility will restore any improvement installed by Developer or other authorized utility.

3. No buildings or structures located in the subdivision shall be connected with distribution facilities provided by electrical, television or telephone services, except by means of wires, cables or conduits situated beneath the surface of the ground (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Addition, and except for such housings, pedestals or facilities as may be appropriate for connection of utility services for individual lot owners). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting services by underground wires or cables.

4. The utility operating the sewer lines and sewage disposal plant for said subdivision shall have jurisdiction over the installation of all sewer connections and the same shall be installed to the property lines of each lot by the developers. No individual water supply system, or individual sewage disposal system, shall be installed, maintained or used in the Addition. No rain or storm water run-off from roofs, street pavements or otherwise, or any other surface water, shall at any time be discharged into, or permitted to flow into, the sanitary sewer system, which shall be a separate sewer system from the storm water and surface water run-off system. No sanitary sewage shall at any time be discharged or permitted to flow into the storm water and surface water run-off sewer system.



ARTICLE IX    WOODMARK SUBDIVISION  
                  PHASE II ASSOCIATION

There will be organized by the Developer forthwith an association, only one such association to be recognized and approved by the Developer, with the same to be known as the Woodmark Subdivision Phase II Association. The purpose of the association shall be to provide to the maintenance, repair, replacement, administration and operation of the premises as more fully set forth in this Declaration, the Articles of Incorporation and the By-Laws of the Association.

a. Membership. One membership shall be created for each lot planned in Woodmark Subdivision Phase II Association. Memberships will transfer from the Developer to the grantee upon delivery of the deed. One membership shall carry with it one vote which may be cast in all matters upon which the members of the Association are entitled to vote. Voting rights shall be inseparable from membership and no person who does not possess membership in the Association or who is not acting as the assignee of a party having such membership shall be entitled to any voting rights in the Association. The Developer's plans presently provide for platted plots in Woodmark Subdivision Phase II, which will be voted by the Developer until transferred as hereinafter provided.

b. Continuing Membership. The purchaser of any lot in Woodmark Subdivision Phase II shall be a member of said Association and shall continue to be a member of said Association so long as he continues to be the owner of a lot in Woodmark Subdivision Phase II for the purposes herein mentioned. Membership shall pass with the ownership of the land.

c. Transfer of Membership Rights and Privileges. Each owner, or in lieu thereof (and with the written consent of such owner to the Association) each Lessee of a living unit, shall be a member of the Association and have the right to the owner's vote and privileges. Membership, where assigned to a Lessee will pass with the lease except if the owner withdraws his consent in writing to the Association. The owner may withdraw his membership assignment to the Lessee at his discretion by a sixty (60) day notice in writing to the Association.

d. The Association shall elect a Board of Managers annually in accordance with and as prescribed by the By-Laws of the Association. The Owners shall be entitled to cast their respective Votes for the election of the Board of Managers, and the Board of Managers shall be the governing body of the Association representing all of the Owners in providing for the management, maintenance, replacement, and upkeep of the Property.

#### ARTICLE X COVENANT FOR MAINTENANCE

Each Owner shall, at his expense, be responsible for all the maintenance repairs, decoration and replacement within his own Living Unit. Each Owner shall repair any defect occurring within his Living Unit which, if not repaired, might adversely affect any other Living Unit. Each Owner shall further be responsible to keep all structural portions of his Living Unit in good repair and thoroughly sound. In the event any Owner shall fail to so maintain the structural portions of his Living Unit, the Board shall cause the same to be accomplished and shall assess the Owner of said Unit for the full cost of such repair and maintenance.

ARTICLE XI COVENANT FOR MAINTENANCE ASSESSMENTS

1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot 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) annual assessments or charges, and (2) special assessments for capital improvement, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's 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 attorney's 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.

2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Premises and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements; and such structural maintenance, interior or exterior, as the Board shall determine. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

3. Maximum Annual Assessment. Until January 1 of the year immediate following the conveyance of the first lot to an Owner, the maximum annual assessment shall be FORTY DOLLARS. (\$40.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 8%, or the annual rate of inflation, whichever is higher, above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the said rate by a vote of two-thirds (2/3) of the members who are voting in person or by proxy.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

5. The Association shall have the duty of determining by estimate or otherwise and collecting the amount of all assessments, and said duties of the Association shall be more fully set out in the By-Laws thereof consistent with the following general statement of the obligations of said Association. Annually on or before the date of the regular annual meeting of the Association, it shall notify that Owner of each Lot or Living Unit of the amount of the estimated annual assessment and shall collect the fractional interest of one-twelfth (1/12) of the amount thereof from each Owner each month. The estimated Common Expenses shall be on a calendar year basis. The Association shall maintain and establish

a reserve fund for deferred maintenance, repairs, administration costs, payment of a manager, if necessary, payment of insurance premiums and other matters deemed appropriate.

Common Expenses shall be deemed to include but shall not be limited to the Insurance Premium for all insurable improvements; administration and management expenses; the cost of maintenance of the recreation area known as Woodmark Recreational Area, insofar as the residents of Woodmark Subdivision Phase II are members thereof and chargeable with their pro rata share of the expenses thereof, and including the maintenance and replacement of hot water heaters, furnaces and other utilities and equipment used in connection therewith. It shall also include all other maintenance, repair, and upkeep of the Common Area and exterior maintenance of the premises. All Owners shall be responsible and liable for a pro rata share of the Common Expenses upon the following basis: The Association may establish uniform reserves with respect to each Building or Lot as it deems fit. It shall be understood, however, that any damage caused by an Owner, tenant of an Owner, or guest or invitee of an Owner through said party's negligence, wear or tear, or by his willful acts, shall be the responsibility of the Owner and a lien hereinafter provided shall exist with respect to any such damage.

\* All residents of Woodmark Subdivision Phase II shall be members of a not-for-profit recreational corporation known as Woodmark Recreational Area, Inc., and shall share all rights and obligations of members therein as further set forth in the Articles of Incorporation and By-Laws thereof. Said corporation shall be formed and placed of record not later than January 1, 1976. The facilities thereof shall include a swimming pool and cabana and such other facilities as the Developer may elect, and the members thereof shall include the occupants of Woodmark Subdivision Phase II, Woodmark Condominium, and such other residents of Tract I described herein,

and the residents of the lands described in Tract I and Tract II of that Declaration of Woodmark Condominium, all as provided in the respective documents governing the development of said lands and as further may be set forth and provided for in the Articles and By-Laws of the said not-for-profit corporation.

6. The Board of Managers or their designated agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required), to enter into each individual Home for the purposes of inspection of the Home, the Building in which the Home is located, Common Areas, and Limited Areas appurtenant thereto and for the further purpose of replacement, repair, and maintenance of the same.

7. The Board of Managers shall have the sole and exclusive power, authority and obligation to determine all matters affecting assessments, except as may otherwise be provided for in this Declaration and/or the By-Laws. Such power, authority and obligation shall expressly include but shall not be limited to the allocation of all assessments between Lots and Living Units, the determination of whether property making up any portion of the project constitutes Common Areas, Lots or Living Units for in the Declaration and By-Laws, and the determination of whether expenditures with respect to any such property or affecting the same is assessable against all or fewer than all the Owners. Such determinations by the Board shall be binding upon all parties and all Owners unless it shall be shown that said determinations were made in bad faith with an intent to prefer certain Homes or Owners over others, or were made in contravention of the express terms and conditions of the Subdivision Declaration, the Association Articles of Incorporation, or the Association By-Laws.

ARTICLE XII ANNEXATION OF THE ADDITIONAL TRACT I.

The Declarant contemplates the development of the Additional Tract I in a manner compatible with the Tract. The Additional Tract I bears the following legal description.

See Exhibit B attached hereto and made a part hereof.

The Declarant reserves the right from time to time, within eight (8) years of the date of the recording of this Declaration, to annex and add to the lands encompassed within Woodmark Subdivision Phase II created by this Declaration, all or any portion of the real property described in Tract I. Providing, however, that under no circumstances shall any property annexed to the prior lands have a density when fully developed in excess of sixteen (16) Homes per acre. Said annexation, if it occurs, may take place in one or more phases. No rights of any character whatever within the said initial lands attach to any Owner except as to that portion described in any recorded Amended Declaration annexing and adding such portion to this Declaration as part of the subdivision created by this Declaration, and each Owner of a Lot or Living Unit by acceptance of a deed thereto, further acknowledges, consents and agrees, as to each such Amended Declaration that is recorded.

\* In the event Declarant does not annex to Woodmark Subdivision Phase II the Additional Tract I or any particular portion thereof, as permitted by this Article XII, Declarant shall file a Supplemental Declaration which shall permanently remove that part of the Additional Tract that has not been annexed from any right to be made part of Woodmark Subdivision Phase II; provided, however, any portion of the said Additional Tract I for which a Supplemental Declaration has not been filed by October 1, 1980, shall be automatically removed from the possibility of becoming a part of Woodmark Subdivision Phase II.

In the event all or any part of the Additional Tract I is not annexed to Woodmark Subdivision Phase II, the owners of that part of the Additional Tract I not annexed, their guests, invitees, lessees, and agents, and all public and quasi-public vehicles, including but not limited to police, fire, and emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, shall have the right and easement to enter upon the streets and Common Areas of Woodmark Subdivision Phase II, to provide ingress and egress to the Additional Tract I as is necessary.



### ARTICLE XIII     INSURANCE

Each Owner shall obtain through the Association or otherwise fire and extended coverage insurance insuring the improvements upon his lot or lots in an amount equal to the full replacement cost thereof as determined by a qualified appraiser, the amount determined and the insurance renewed annually. Such insurance shall (1) provide that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owner does not elect to restore pursuant to Owner's right, (2) contain a "Replacement Cost Endorsement," and (3) provide full coverage for replacement of any Home regardless of what damage, if any, is sustained by any other Home. Such insurance coverage shall be for the benefit of each Owner in accordance with the replacement costs established for each respective Home, and if applicable, the Owner's Mortgagee. Each Owner shall be liable for the premiums to cover the insurance on those lots and improvements owned by him as hereinabove provided for.

The Association shall also have the right to obtain comprehensive public liability insurance in such limits as the Board of Managers shall deem appropriate, together with Workmen's Compensation insurance and other liability insurance, if deemed necessary or appropriate by the Board of Managers. Such insurance shall inure to the benefit of each individual Owner, the Association, the Board of Managers, and any managing agent or company acting on behalf of the Association. Such insurance coverage shall also cover cross liability claims on one insured against the other. The premiums for all such insurance shall be paid by the Association as part of the Common Expenses. Provided, however, that notwithstanding anything hereinabove or hereinafter set forth, it shall be understood that if there shall

appear any appreciable differences in the insurance premiums attributable to the separate Homes, the Board shall charge the insurance premiums to the respective Homes to which they apply individually, and the same shall constitute obligations exclusive to that Home. By acceptance of the deed to any such Home, each and every Owner of such a Home consents to being charged for such insurance premium individually and agrees to pay the same. It shall be further understood agreed by all parties accepting deeds as title to such Homes that such assessments for additional insurance premiums shall in all respects be enforceable against the Homes to which they apply and the Owner thereof in the same manner as Common Expenses shall be enforceable against all Homes and Owners.

Each Owner shall have the right to purchase any additional insurance he may deem necessary, and each Owner shall be solely responsible for insurance on the contents of his own Home, including all floor and wall coverings, and fixtures and betterments installed by the Owner, and his personal property stored elsewhere on the Property.

#### ARTICLE XIV CASUALTY AND RESTORATION

In the event of damage or destruction of the Property by fire or other casualty, the following provisions shall be applicable:

(a) Partial Destruction. In the event that less than two-thirds ( $2/3$ ) of a structure containing one or more Living Units is destroyed by the occurrence of fire or other casualty, then the Association shall cause the structure to be promptly repaired and restored. The proceeds of the insurance carried by the Association shall be applied to the cost of such restoration. If the insurance proceeds are not adequate to cover the cost of reconstruction of any Home suffering casualty damage, or in the event there are no proceeds, the costs of restoring the damage suffered by any given Home shall be borne by the respective Owner or Owners of such Home to the full extent of the additional costs and expenses of such restoration or reconstruction over and above the insurance proceeds allocated to said Home. If any Owner refuses or fails to make the required repairs necessary to restore any casualty damages, and shall leave his Home in a state of disrepair, the other Owners shall (or the Association, if such other Owners fail) complete the restoration and pay the cost thereof, and the costs attributable to the Owner or Owners who refuse or fail to make such repairs or restoration at the time required by the Board of Managers shall become a lien on such defaulting Owners' Homes and may be foreclosed in the same manner as provided for the lien for Common Expenses. For purposes of this Article XIV, the Architectural Control Committee shall determine the extent of any damages governed hereby.

(b) Restoration in the Event of Two-Thirds Destruction. In the event that more than two-thirds ( $2/3$ ) of a structure containing Homes is destroyed by fire or other casualty, then the Owners of the Homes in the structure may decide whether or not to restore the structure.

If within one hundred twenty days (120) days from the date of the damage the parties cannot determine whether to restore the structure, and cannot arrive at a resolution of their respective interests acceptable to both parties, and if at least one of the owners of a Home occupying a portion of the damaged structure desires to restore the structure, then the same shall be restored, the insurance proceeds shall be applied toward the same, and any additional expense assessed as provided above.

If within the said one hundred twenty (120) days, the parties shall determine not to restore the premises, they may omit doing so, but the damaged structure may not be left standing in a state of disrepair. If the respective owners of Homes therein shall determine not to restore the damaged structure, they shall cause the same to be raised, and the ground cleared and seeded, all remaining structures shall be removed from the premises and the lot or lots shall be left cleared and vacant. If at some future time the parties or their successors in interest shall be desirous of placing new structures upon the lot in question, they may do so consistent with the conditions and restrictions of this Declaration and any amendments hereto then in existence. In the event the parties in question are desirous of not restoring a damaged structure and in the alternative choose to clear the land, the cost of such clearing shall be borne equally by the affected parties.

ARTICLE XV SALE OR LEASE OF HOME BY OWNER

For the purpose of maintaining the congenial and residential character of Woodmark Subdivision Phase II and for the protection of the Owners with regard to financially responsible residents, sale or lease of a Home by an Owner other than Developer shall be subject to the following conditions and restrictions:

(a) Lease. It is in the best interest of all the Owners that those persons residing in Woodmark Subdivision Phase II have similar proprietary interests in their Homes and by Owners. Accordingly, no Owner shall lease his Home or enter into any other rental or letting arrangement for his Home without the prior written consent of the Board of Managers. Such consent shall not be unreasonably withheld. No lease for a term longer than one year, however, shall be approved. Any Owner desiring to enter into a lease for his Home shall make written application to the Board of Managers which application shall state the reasons why the applicant wishes to lease the Home, the name of the proposed tenant, and financial references of the proposed tenant. Within ten (10) days following the receipt of the application, the Board of Managers shall issue its written approval or disapproval to the Owner. In the event the Board fails to issue written approval or disapproval within such period, the application shall for all purposes be deemed approved.

(b) Sale. The Association shall have the right of first refusal to purchase any Home which an Owner wishes to sell. Any Owner wishing to sell who receives a bona fide offer to purchase shall promptly give written notice to the Board of Managers of his desire to sell, together with the name and address of the intended purchaser, and the terms and conditions of such offer. Within seven (7) days after the receipt of such notice, the Board of Managers shall determine if it should recommend exercise of the right to purchase. In the event the Board of Managers elects to waive the right to purchase, a certificate

in recordable form, executed by the President or Secretary of the Association, certifying that the Association, through its Board of Managers, has waived its right to purchase, shall be delivered to the Owner, who may then proceed to sell and convey his Home to that person and upon the same terms and conditions as set forth in the Owner's notice to the Board of Managers. In the event the sale is not completed within ninety (90) days following the date of such certificate, then the Home shall again become subject to the Association's right of first refusal as herein provided.

In the event the Board of Managers deems it advisable to exercise the Association's right to purchase the Home, then it shall give written notice thereto to the Owner and shall, within fourteen (14) days following the receipt of such notice from the Owner wishing to sell, call a meeting of all the Co-owners for the purpose of voting upon the proposed purchase. If the recommendation of the Board of Managers to purchase such Home is approved by not less than seventy-five percent (75%) in the aggregate of the total vote of the members, then the Association shall proceed to purchase the offered Home from the offering Owner on the same terms and conditions contained in the offer. The purchase price for the Home shall be considered to be a Common Expense and borne by the remaining Co-owners provided, however, that the Owner who has made the offer to sell his Home shall be assessed for or required to pay his pro rata share of the expense incurred in purchase of the Home.

Legal title to the Home shall be conveyed to the Association as an entity or to those persons then serving as Board of Managers, as Trustees for the benefit of the Co-owners, whichever the Board of Managers, in their sole discretion, deem appropriate.

In the event that the proposed purchase is not approved by the required percentage of the Co-owners as set out above, then the Board of Managers, through

the President or Secretary of the Association, shall promptly deliver a certificate in recordable form to the offering Owner who may proceed to sell his Home under the same terms and conditions as if the Board of Managers had not elected to recommend the exercise of the right of the Association to purchase.

If, for any reason, either the Board of Managers or the Co-owners shall fail to act on the Association's right of first refusal within the time periods herein provided, then the Association's right of first refusal shall be deemed to have been effectively waived.

If the Association shall purchase a Home in accordance with this Article, the Board of Managers shall have the authority at any time thereafter to sell or lease the Home upon the terms and conditions as the Board of Managers shall, in their sole discretion, deem desirable, without application to or approval of the Co-owners. The proceeds of any such sale shall be returned to the Co-owners in the same percentage as they had contributed to the purchase. In the event the Board of Managers select to lease such Home, then the lease rental payments shall be applied against the Common Expenses.

Any sale or attempted sale, or any lease or attempted lease by an Owner of his Home, except in accordance with the provisions of this Article, shall be void, provided, however, that any certificate waiving the Association's right to purchase executed by this paragraph may be relied upon by any Purchaser or Mortgagee and shall, with respect to such Purchaser or Mortgagee, be

absolutely binding upon the Association and the Co-owners unless such Purchaser or Mortgagee has actual knowledge that the certificate was procured fraudulently or by reason of misrepresentation of a material fact.

(c) Limitations of Mortgagee. With respect to a Mortgagee that is a bank, life insurance company or savings and loan association, the provisions of subparagraphs (a) and (b) of this Article shall be limited in their application as follows:

- (i) The provisions of subparagraph (b) shall not be applicable to a conveyance of a Home to such Mortgagee as a result of a foreclosure of its mortgage or a conveyance in lieu thereof or to the conveyance of a Home to any person at a public sale in the manner provided by law with respect to mortgage foreclosures. The provisions of subparagraph (b) shall be applicable to and binding upon such Mortgagee or other person so obtaining title to a Home with respect to any subsequent transfer or conveyance of the Home.
- (ii) The provisions of subparagraph (a) shall not be applicable to such Mortgagee if such Mortgagee acquires possession of a Home during the period while a foreclosure proceeding is pending or to such Mortgagee who obtains title to a Home as a result of foreclosure of its mortgage or a conveyance in lieu thereof. The provisions of subparagraph (a) shall be binding upon any other person obtaining title to the Home from such Mortgagee or at any foreclosure or other judicial sale.

The provisions of this subparagraph (c) may not be amended without the consent of all of such Mortgagees.



## ARTICLE XVI

Amendment of Declaration. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or the owners of at least a majority of the outstanding votes.

(c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly held in accordance with the provisions of the By-Laws.

(d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than two-thirds (66-2/3rds%) of the total outstanding votes entitled to vote at a meeting of members of the Association. In the event any Home is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its same mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws.

(e) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Allen County, Indiana, and such amendment shall not become effective until so recorded.

ARTICLE XVII  
Acceptance and Ratification

All present and future Owners, Mortgages, tenants and occupants of the Homes shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation of the Association, the By-Laws, and the rules and regulations as adopted by the Board of Managers as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Home shall constitute an agreement that the provisions of this Declaration, any Amended Declaration, the Articles of Incorporation, the By-Laws and any rules and regulations adopted pursuant thereto, as each may be amended from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Home or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Home or Homes or any part of the Property in any manner shall be subject to the Declaration, the Act, the By-Laws, and the rules and regulations applicable thereto as each may be amended from time to time.

ARTICLE XVIII  
Negligence

Each Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his negligence, wrongful acts, misuse of property or neglect, or by that of any member of his family or his or their guests, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Home or its appurtenances or of the Common Areas or Limited Areas.

ARTICLE XIX  
Costs and Attorneys' Fees

In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

ARTICLE XV  
Waiver

No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or the Recreational Area or by Abandonment of his Home.

ARTICLE XXI  
Severability Clause

The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration or the By-Laws of the Association.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

HALLCO, INC.

By Charles N. Hall  
Charles N. Hall, President

STATE OF INDIANA     )  
                              ) SS:  
COUNTY OF ALLEN     )

Before me, a Notary Public in and for said County and State, personally appeared Charles N. Hall, by me known, and by me known to be a partner of HALLCO, INC., who acknowledged the execution of the above and foregoing Declaration of Horizontal Property Ownership for and on behalf of said partnership.

Witness my hand and Notarial Seal this 21st day of October,  
1974.

Anita L. Baker  
Anita L. Baker                      Notary Public

My Commission Expires:

October 1, 1975

This instrument prepared by Thomas M. Shoaff, Attorney at Law.