

APR 24, 1991

DECLARATION OF RESTRICTIONS

SUTTON PLACE

THE UNDERSIGNED, E.F.S. partnership, an Indiana partnership ("E. F. S .") .are the owners of the ,Real Estate described in exhibit attached hereto and made a part hereof, ("The Real Estate"), "The Real Estate" shall be developed by "Sutton Place Joint Venture", (hereafter called the "Developer") comprised of E.F.S. and Land Innovators Co., (an Indiana Limited Partnership) as joint ventures. The owner certifies that it has laid off, platted and subdivided and hereby lays off, plats and subdivides "The Real Estate" in accordance with the plat of the "Sutton Place" as an addition in Hamilton County, Indiana. In order to provide adequate protection to all present and future owners of lots in this subdivision, the following covenants, restrictions, and limitations are hereby imposed upon and shall run with the land included in this subdivision and shall be binding upon the Development and anyone at anytime owning any part or portion of such land. All streets shown and not heretofore dedicated, are hereby dedicated to the public for it's use.

1. There shall be, and there is hereby created and established the "Development Control Committee" (hereinafter referred to as the "Committee" to perform the functions provided to be performed by it hereunder or under the provisions of the within plat. Robert N. Thompson, John W. Whitlock and James M. Franco, or their duly authorized successors, shall constitute the Committee. In the event of the death or resignation of any member of said committee, the remaining member or members shall have full authority to approve or disapprove the building plans, specifications, and plot plans and designate a successor with like authority. In the event the remaining members are unable to designate a representative with like authority then a new member of the committee shall be elected by a majority vote of the owners of the lots located in Sutton Place with the owners entitled to one vote for each lot owned by them. When more than one person holds an interest in a lot, the vote for such lot shall be exercised as they among themselves agree, but in no event shall such vote be split into fractional shares nor shall more than one vote be cast with respect to any lot. The committee shall consist of not more than three people.

The duties and the responsibilities of the Committee are as follows:

- a. The Committee shall regulate the external appearance, use, location, and maintenance of lands subject to these restrictions, and improvements thereon in such a manner as to preserve and enhance values as a single family residential. subdivision, to maintain a harmonious relationship among structures and the natural vegetation and topography and to determine compliance with these restrictions. The developer shall maintain area designated Block "A" until land and responsibility for maintenance is turned over to the association.

- b. The Committee may establish forms and checklists for the presentation of information, review, and approval of building plans, specifications, plot plans, drainage plans, landscape plans, or other pertinent information as it affects the Committee's responsibilities.
- c. The Committee shall approve or disapprove proposed improvements within 30 days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, the Committee shall specify the reason or reasons therefor.
- d. Neither the Committee nor any of its members shall be entitled to any compensation for services performed pursuant to this covenant or in performing any of its duties or obligations set forth in this declaration.
- e. Neither the Committee, nor any member thereof, nor any agent thereof, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

2. No construction shall be commenced nor any building or fence be erected, placed, or altered on any lot in this subdivision until the building plans, specifications, plot plan, drainage plan, and landscaping plan, showing the location of all the construction, structures, drives, walks, landscaping, and drainage have been approved as to the compatibility with existing structures and compliance with these restrictions in accordance with the procedures for such adopted by the Committee. If the Committee fails to act upon complete plans within thirty (30) days from the submission date of the same, the owner may then proceed with the building or construction activity according to the plans as submitted.

3. No wall, fence, hedge, or shrub planting which obstructs sight line at elevation above 2 feet shall be placed or permitted to remain between the front property line and the front building set-back line except where such shrub planting is approved by the committee. No fences shall be allowed except where required by law and/or approved by the committee.

4. A front yard, dawn-to-dusk low intensity light of less than 100 watts directed downward and away from adjacent lots shall be installed by builder and maintained on each lot in subdivision by the respective owners thereof. Prior to the installation of said front yard light, drawings, diagrams, and any other documents requested by the Committee

shall be submitted to the said Committee for its approval. Such approval shall include design, color, location, and height of any such light. The Committee reserves the right to standardize all the lights in the subdivision.

5. All lots in this subdivision shall be used solely for single family residential purposes unless alternative uses, such as permitted homes occupations, according to existing zoning laws.

6. No metal outbuilding shall be permitted on any lot. All outbuildings must be of the same design and materials as the primary structure. The approval of the Committee must be obtained before any outbuilding is erected, placed, or altered on any lot. It is the intent of this restriction to prohibit outbuildings such as storage sheds, storage barns, and similar such structures.

7. No dwelling house constructed on any of the lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The house shall be substantially completed when an occupancy permit has been issued by the appropriate governmental agency granting such permits.

8. Building set-back lines are hereby established as shown on the plat of Sutton Place. Between such lines and the property lines of the streets no building, structure, or accessory building shall be erected or maintained. In addition, no building, structure, or accessory building shall be erected closer to any side lot line of 10 feet with an aggregate of 30 feet. No habital building shall be erected closer to any rear lot line than 20 feet. Where buildings are erected on more than one single lot, this restriction shall apply to the combined lots as if they were one single lot.

9. The ground floor of each dwelling constructed on a lot, exclusive of one-story open porches, garages, and basements, shall not be less than 2,000 square feet in the case of a one-story structure, nor less than 1,400 square feet in the case of a multiple story structure, provided no structure of more than one-story shall have less than an aggregate of 2,400 square feet of finished and liveable floor area. Except lots 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 90, 91, 92, 93, 94, 95, 96, 97 and 98 adjacent the east property line which shall not be less than 2500 square feet in the case of a one-story structure nor less than an aggregate of 2500 square feet of finished and liveable floor area.

10. Every building whose construction or placement on any lot is begun shall be completed within twelve (12) months after the beginning of such construction or placement. No improvements which have partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage. If any improvements have been destroyed by fire or otherwise, a written intent or repair and/or demolition shall be submitted to the Committee within thirty (30) days.

11. All structures constructed or placed on any lot shall be constructed with substantially all new material and no used structure shall be relocated or placed on any such lot.

12. Every house in this subdivision shall have at least a two-car garage, attached, of the same architectural design and materials as the house.

13. The finished exterior of every building constructed or placed on any lot shall be of material other than aluminum siding, rollbrick siding, or any other similar artificial material.

14. All driveways must be paved from their point of connection with the abutting street or road to a point of connection with the garage entry.

15. No temporary house, trailer, garage, or other outbuilding shall be placed, erected, or kept on any lot.

16. Utility services shall, to the greatest extent possible, be installed underground and in or adjacent to public right-of-ways.

17. No owner of a lot shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out-of-doors of such refuse on his lot except at the times when refuse collections are being made.

18. Every outdoor receptacle of ashes, trash, rubbish, or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the real estate at any time, except at the times when refuse collections are being made.

19. The size, location, height, and composition of any mailbox must be approved by the Committee. The Committee reserves the right to design and cluster mailboxes and/or standardize the design for mailboxes.

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

21. The owner of any lot shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lots or improvements situated thereon from becoming unsightly and, specifically, such owner shall:

- a. Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- b. Remove all debris or rubbish;

- c. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the real estate;
- d. Cut down and remove unsightly dead trees;
- e. Where applicable, prevent debris and foreign material from entering drainage areas;
- f. Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly; and,
- g. Within sixty (60) days following completion of a house on a lot, the owner shall landscape the lot, weather permitting.

22. It shall be the duty of every owner of every lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof, as may be situated upon his lot continuously unobstructed and in good repair.

23. Each lot owner and/or builder shall be responsible to prevent erosion and protect the natural environment. This shall be accomplished by designating areas on the landscape plan which are to remain undisturbed and to provide an erosion control plan for any areas which will be disturbed during construction.

24. The disposal of water from sump pumps, geothermal water systems, swimming pools, or other forced water discharges shall not be allowed unless approved by the Committee. Under no circumstances shall the above mentioned water sources be allowed to discharge into the street of adjacent lots except through established drainage easements. Approval by the Committee shall be granted only when adequate measures are submitted to protect the drainage way from erosion or other damaging effects.

25. The drainage plan required to be submitted to the Committee shall show the topography of the lot and the proposed method of drainage to ensure that drainage from the lot will not in any way adversely affect adjacent property owners, rights-of-way easements, streets, or common property.

26. There will be no parking on the dedicated streets except when a lot owner has a social function where the invited guests will not be able to park on the owners lot and then on only the north or east side of the street. The provision to allow parking for social functions only applies to automobiles and not to any other form of vehicle. Overnight parking is not allowed on any dedicated street.

27. Lots are subject to drainage easements, sewer easements, utility easements, and landscape easements either separately or in combination of the three, as shown on the plat, which are reserved for the use of the

lot owners, public utility companies, the Sutton Place Property Owners' Association and governmental agencies as follows:

- a. Drainage easements (D.E.) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve tile needs of the subdivision and adjoining ground and/or public drainage system and it shall be the individual responsibility of the lot owner to maintain tile drainage across his own lot. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvement including fences, nor shall any grading restrict water flowing in any manner. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or be the developer of the subdivision.
- b. Sewer easements (S.E.) are created for the use of the local governmental agency having jurisdiction over the storm acid/or sanitary waste disposal system of said city and/or county designated to serve the addition for the purposes of installation and maintenance of sewers that are a part of said system. Each owner of a lot must connect to the public sanitary sewer.
- b. Utility easements (U.E.) are created for the use of public utility and cable television companies, not including transportation companies, for the installation of pipes, mains, ducts, and cables as well as for the uses specified in the case of sewer easements.
- d. Landscape easements (L.E.) are created for the use of The Sutton Place Property Owners' Association, Inc., for the purpose of maintaining and replacing landscaping located within said easement areas.
- e. The owners of all lots in this addition shall take title subject to the rights of public utilities, governmental agencies, and the rights of the other lot owners in this addition to said easement herein granted for ingress and egress in, along, and through the strips of ground for the purposes herein stated.

28. No construction vehicles, shacks, or outhouses shall be erected or situated on any lot herein, except for use by a builder during the, construction of a proper structure, which builder's temporary construction structure shall be promptly removed upon completion of the proper structure.

29. During the construction period, the lot shall be maintained in a clean and orderly manner. Loose shingles, lumber, bricks, block, drywall, insulation, or other building materials shall not be scattered about or around the building. Materials which can blow into adjacent lots shall not be left lying around. Construction trash shall be removed from the lot once per week by either removing the trash from the

lot or disposing the trash into a dumpster provided by a trash disposal service.

30. The lot owner shall be responsible, for removal of dirt, mud, or debris or other foreign material of any kind which may be deposited upon the street from construction on the lot. If such deposits occur, then the lot owner shall make provisions to remove such deposits within one (1) day or the Committee may remove such deposits and charge the lot owner.

31. All motor vehicles belonging to members of a household shall have permanent off-street parking spaces in garages or on driveways and no disabled vehicle shall be openly stored on any residential lot. Also, no boat, trailer camper, all terrain vehicle, motorcycle, snowmobile, or motor home of any kind (including, but not in limitation thereof, house trailers, camper trailers, or boat trailers) shall be kept or parked upon said lot unless kept from view of neighboring residences and streets in a garage.

32. No advertising signs (except one per lot of not more than four (4) square feet advertising the lot or home thereon for sale), billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on any lot, except lots used as a model by an owner which then owns three or more lots. This restriction shall not preclude the developer from constructing informational signs at the entrance to the subdivision regarding the sale of lots and homes therein.

33. All clothes lines, equipment, garbage cans, or storage piles shall be kept from view of neighboring residences and streets. All rubbish, trash, or garbage stored outside any residence shall be regularly removed from the premises and shall not be allowed to accumulate therein. Firewood piles shall be kept neat and unobtrusive.

34. No outside toilets shall be permitted on any lot (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to be exposed.

35. No farm animals, fowls, or domestic animals for commercial purposes shall be kept or permitted on any lot or lots in this subdivision and in no case shall there be allowed more than four (4) ordinary household pets.

36. No noxious, unlawful, or otherwise offensive activity shall be carried out on any lot in this subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

37. No high intensity lighting, outside television, radio, or other antennas or satellite dishes or any visually obtrusive object may be erected by any lot owner on the exterior of a dwelling or anywhere on a lot unless approved by the Committee.

38. If the parties hereto, or any owner, or their heirs or assigns shall violate or attempt to violate any of these covenants, restrictions, provisions, or conditions herein, it shall be lawful for the Committee

(as to matters for which it has responsibility) or any other person owning any real property situated in this subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, restriction, provision or condition, either to prevent him from doing so, or to recover damages or other dues for such violation, or to require the removal of structures erected in violation hereof. The prevailing parties shall have the right to recover legal expenses, including reasonable attorney's fees.

39. The Sutton Place Property Owners' Association, Inc.

a. In General.

- (i) There will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "Sutton Place Property Owners' Association, Inc." which is referred to as the "Association". Every owner of a residential lot in the subdivision shall be a member of the Association. All owners of lots within the subdivision shall be subject to all the requirements and limitations imposed in these restrictions.

b. Purposes of the Association.

- (i) The general purpose of the Association is to provide a means for the promulgation and enforcement of regulations necessary to govern the use and enjoyment of such commons and landscape easements or other amenities and such other facilities, recreational or otherwise, within the subdivision as may be conveyed to the Association.

c. Power of Association to Levy and collect charges and Impose Liens.

- (i) The Association shall have all of the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law, including the power to levy a uniform annual charge or assessment against the lots within the subdivision. Such charge shall be at least \$25 per year for each residential lot in the subdivision. However, if the Board of Directors of the Association, acting in accordance with the By-Laws of the Association, shall so determine after consideration of the financial requirements of the Association, the annual charge may be greater than \$25. No charge shall ever be levied by the Association against the Developer.
- (ii) Every such charge shall be paid by the members of the Association before the first day of March of the year which the charge is made. The Board of Directors of the Association shall fix the amount of the annual charge by the first day of February of each year, and written

notice of the charge so fixed shall be sent to each member.

(iii) Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full, and shall also be a personal obligation of the Owner or Owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of ten percent (10%) per annual until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The Owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expenses or costs, including attorneys' fees, incurred by the Association in collecting the same. Every Owner of a lot in the subdivision and any person who may acquire any interest in such lot, whether as an Owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an Owner of a lot in the subdivision is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to this sub paragraph of the Restrictions.

(iv) The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specified lot have been paid or that certain assessments against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

d. Purpose of the Assessments. The charges or assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the members of the Association, and for, the improvement and maintenance of any properties owned, operated, or maintained by the Association.

e. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting

rights, if any, and the right to use the facilities of the Association of any member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions, or any other authority, owed by the member remains unpaid; (ii) during the period of any continuing violation of these restrictive covenants commencing with declaration of the existence of the violation by the Board of Directors for the Association; and/or (iii) during the period of any violation of the Articles of Incorporation, By-Laws, or regulations of the Association.

40. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until December 31, 2011, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless by a vote of a majority of the then owners of the lots it is agreed to amend said covenants in whole or in part; provided, however, that no change or termination of said covenants shall affect any easement hereby created or granted unless all persons entitled to the beneficial use of such easement shall consent thereto.

41. Invalidation of any of the foregoing covenants, provisions, restrictions, or conditions by judgement or court order shall in no way affect any of the other provisions, which shall remain full force and effect.

42. The provisions of the Agreement are the only covenants and restrictions for the benefit of the Real Estate, all past restrictions either recorded or unrecorded are hereby waived, released, null, void, and of no force or effect whatsoever.

43. Owners and Association shall not object to annexation if requested by the City of Carmel.

IN WITNESS WHEREOF, the parties hereto have subscribed their names on the day and year first above written.

E. F. S. PARTNERSHIP

By:

James M. Franco,  
General Partner

By:

Thomas J. Spahn,  
General Partner

By:

C. Layton Elliott,  
General Partner