

CROSS REFERENCE

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AMENDMENTS TO THE DECLARATION OF COVENANTS AND RESTRICTIONS FOR CASTLETON ESTATES DEVELOPMENT AND CASTLEBROOK DEVELOPMENT

The Declaration of Covenants and Restrictions for Castleton Estates Development and Castlebrook Development was executed November 5, 1973, and recorded in the office of the Recorder of Marion County, Indiana, on November 7, 1973, as Instrument No. 73-71728. It is now necessary that such Declaration be amended in accordance with the provisions of this Amended Declaration.

Amendments to Declaration

Pursuant to and in accordance with the provisions of paragraph 17 of the Declaration, such Declaration is amended and now reads as follows:

- 1. Paragraph 1(c) is amended as follows:

"Declarant" means American Fletcher Mortgage Company, Inc. (AFMC) and the Moffett Corporation (Moffett), their successors and assigns in the development and sale of any of the Real Estate. Any successor or assigns of either Declarant shall have all the rights, duties and obligations of such Declarant.

- 2. Paragraph 1(d) is amended as follows:

"Development" means Castleton Estates Development and Castlebrook Development or any development of any part of the Real Estate.

- 3. Paragraph 1(e) is amended as follows:

"Common Area" means the property described in Exhibit "a" attached hereto on which the recreational facilities will be constructed. Such property is now owned by Declarant, et al.

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4. Paragraph 2(a) (i) is amended as follows:

Class A members shall be anyone who owns one or more Dwelling Units, including, but not limited to, Owners. Only those Class A members who own Dwelling Units shall be entitled to vote. Class A members shall be entitled to one vote for each Dwelling Unit owned on all matters which the members of the Corporation are entitled to vote; provided, however, each Dwelling Unit represented shall have only one vote as the Owners of such Dwelling Unit may determine in accordance with the Code of By-Laws of the Corporation. Declarant, AFMC, and Declarant, Moffett, and their successors and assigns in the development of any part of the Real Estate (as long as such entity or entities own any part of the Real Estate) shall be considered Class A members.

5. Paragraph 3 is amended as follows:

Common Area. The Common Area shall consist of a clubhouse, a swimming pool and sufficient land for two tennis courts. Declarant, Moffett, hereby covenants and declares that upon completion of the clubhouse and swimming pool on the Common Area, Declarant, Moffett, shall convey such Common Area to the Corporation. The Corporation shall not be required to make any payment to Moffett for such conveyance.

6. Paragraph 4 is amended as follows:

Additional Property. Additional real estate may become subject to this Declaration of Covenants and Restrictions providing such addition is approved by the members of the Corporation in accordance with the Articles of Incorporation, and upon such approval, the owner of the Additional Property to be added to the jurisdiction of the Corporation may file in the Recorder's Office of Marion County, Indiana, a supplemental declaration to this Declaration of Covenants and Restrictions which shall extend this Declaration of Covenants and Restrictions to such Additional Property.

Such supplemental declaration may contain such additions and modifications of the covenants and restrictions contained in this Declaration of Covenants and Restrictions as may be necessary to reflect the different character, if any, of the Additional Property and as are not inconsistent with the scheme of this Declaration of Covenants and Restrictions. In any event, however, such supplemental declaration shall not modify or add to the restrictions within the Real Estate.

7. Paragraph 6 is amended as follows:

Assessments. The assessments and payment of assessments to cover the costs and expenses of operating, maintaining and replacing the Common Area shall be in accordance with the following procedures:

- (a) Proposed Annual Budget. The Board of Directors, acting in accordance with the Articles and By-Laws of the Corporation, shall cause to be prepared an annual budget for the ensuing calendar year estimating the total amount of expenses for the ensuing year, which budget shall be the basis for the regular assessments (hereinafter defined) for the ensuing year.
- (b) Regular Assessments. The annual budget as adopted shall designate the assessment against each Dwelling Unit which shall be the same for each Dwelling Unit. Immediately following the adoption of the annual budget each Owner shall be given written notice of such assessment against his Dwelling Unit or Units (hereinafter called the "Regular Assessment"). The Regular Assessment against each Dwelling Unit shall be paid in accordance with the method of payment determined by the Board of Directors as necessary to satisfy the financial requirements and obligations of the Corporation. Payment of such Regular Assessment shall be made to the Board of Directors or as otherwise directed by the Board of Directors. The first annual budget and the Regular Assessment to be charged against each Dwelling Unit pursuant thereto shall be determined by the Board of Directors elected at the first annual meeting of the Corporation to be held in April, 1977.
- (c) Special Assessments. From time to time expenses of an unusual or extraordinary nature or not otherwise anticipated may be deemed necessary by the Board of Directors. In such event the Board of Directors shall be authorized to adopt a resolution to make such expenditures and shall have the full right, power and authority to make a special assessment of equal amount upon each Dwelling Unit upon approval of such resolution by two-

thirds of the votes of Class A members at a special meeting of the members duly called in accordance with the By-Laws for purposes of approving or rejecting such resolution (hereinafter called "Special Assessment").

(d) Commencement of Assessments and Initial Assessment.

- (i) Commencement of Assessments. The first Regular Assessment shall be due on or before May 1, 1977 which shall be the annual assessment for the year 1977. Thereafter the annual Regular Assessment shall be due at such time and paid in such manner as is determined by the Board of Directors, provided, however, in no event shall any part of such annual Regular Assessment be allowed to be paid after May 1st of any year. In the event the first occupation and use of a Dwelling Unit for residential purposes occurs after May 1st, the Owner, on the first day of the month following the first occupation and use of such Owner's Dwelling Unit for residential purposes, shall be required to pay to the Board of Directors the amount of the annual Regular Assessment multiplied by a fraction, the denominator of which is six and the numerator of which is the number of months remaining in the year exclusive of the months of May and June. Any Owner who first occupies a Dwelling Unit prior to June 30 of any year shall be required to pay the full annual Regular Assessment applicable to that year.
- (ii) Initial Assessment. Except as otherwise provided in this paragraph 6, the Owners of all Dwelling Units located within the Real Estate shall be obligated to pay to the Corporation in addition to any Regular or Special Assessment that might be levied, a one time initiation fee or initial assessment of \$100.00. Such amount shall be referred to as an Initial Assessment and shall become a lien on each Dwelling Unit, the Owner of which is obligated to pay such assessment on the first day of the month following the first occupation and use of the Dwelling Unit for

residential purposes, and shall be enforced and collected in the same manner as a Regular or Special Assessment. ~~Such amount must be paid at a rate of no less than \$10.00 per month and must be fully paid within 10 months after the first day of the month following~~ the first occupation and use of the Dwelling Unit for residential purposes. The Owners of the lots described in Exhibit "B" attached hereto and made a part hereof have at the time of the filing of this Amended Declaration already paid to the Corporation an Initial Assessment of \$100.00 per lot which was used to aid in the construction costs of the recreational facilities and to help defray capital expenditures and other costs. As a result, any future Owner of a Dwelling Unit on any of the lots described in Exhibit "B" (whether or not such Dwelling Unit now exists) shall not be obligated to pay an Initial Assessment.

(iii) Limitation on Assessments.

Notwithstanding any other provision contained herein, in the Articles of Incorporation, the By-Laws, or elsewhere, any assessments (Regular, Special, Initial or otherwise), restrictions, obligations, charges or rights under this Amended Declaration, the Articles of Incorporation and By-Laws shall be applicable only to a Dwelling Unit that has at some time been occupied for residential purposes.

Notwithstanding any other provision contained herein, in the Articles of Incorporation, the By-Laws, or elsewhere, in no event shall any assessments (Regular, Special, Initial or otherwise) ever be levied against the Owner of any vacant land or vacant lot comprising a part of the Real Estate, nor against the Owner of an unoccupied Dwelling Unit unless such Dwelling Unit has at one time been occupied for residential purposes.

(a) Failure of Owner to Pay Assessment. Any Regular, Special or Initial Assessment levied or assessed against any Owner, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that Owner's Dwelling Unit or Units until paid in full. Each Owner shall be personally liable for the payment of all Regular, Special or Initial Assessments. Where the Owner constitutes more than one person the liability of such persons shall be joint and several. The Board may, on behalf of the Corporation, 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 Dwelling Unit or Units subject to the charge shall, in addition to the amount of the charges at the time legal action is instituted, be obligated to pay any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting the same. In addition, such charge or assessment shall bear interest at the rate of nine percent (9%) per annum from the date due until paid in full. No such charge or lien shall exist at the time of the first conveyance of a Dwelling Unit by Declarant or the first conveyance of a Dwelling Unit by any other person unless such Dwelling Unit has previously been occupied for residential purposes. Every Owner of a Dwelling Unit in the Development and any person who may acquire an interest in such Dwelling Unit, whether as an Owner or otherwise, is hereby notified and by the acquisition of such interest agrees that any such lien which may exist upon the Dwelling Unit at the time of the acquisition of such interest are valid liens and shall be paid unless otherwise provided by law. Every person who shall become an Owner of a Dwelling Unit in the Development is hereby notified that by the act of acquiring or making such purchase or acquiring title, such person, unless relieved of such obligation by laws, shall be conclusively held to have covenanted to pay the Corporation all charges that the Corporation shall make, which charges shall be made pursuant to this paragraph 7 of this Amended Declaration of Covenants and Restrictions.

Any Regular, Special, Initial or other Assessment or charge levied or assessed against any Owner and becoming a lien on such Owner's Dwelling Unit shall be prior to all other liens except (a) tax liens on the Dwelling Unit in favor of any assessing unit or special district,

and (b) all sums unpaid on a first mortgage of record on such Dwelling Unit provided that when such mortgage is recorded no amount of any assessment was due.

Notwithstanding anything contained in this paragraph 7 or elsewhere, any sale or transfer of a Dwelling Unit pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve the Dwelling Unit from liability for any assessments thereafter becoming due or from the lien thereof. No charges shall ever be levied by the Corporation against the Declarant unless the Dwelling Unit or Units owned by the Declarant are occupied or have at one time been occupied for residential purposes.

8. Paragraph 7 is amended as follows:

Right of Declarant to Use Real Estate During Construction. Notwithstanding any provisions to the contrary contained herein or in any other instrument, covenants or agreements affecting the Real Estate or any part thereof, the Declarant, its successors, assigns and nominees during the period in which the Real Estate is being developed or, if applicable, being conveyed, may maintain upon such portion of the Real Estate (excluding the Common Area) as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the development and sale of any part or parts of the Real Estate, including but not limited to a business office, storage area, construction yard, signs, model units and sales office.

9. The fourth sentence in Paragraph 8 is amended as follows:

Declarants' obligations toward the development of the Common Area shall be limited to the performance of Declarants' obligations under a certain Agreement between American Fletcher Mortgage Company, Inc., Crest Communities, Inc., Castleton Estates and Castlebrook Homeowners, Northeast Development Co., Inc., Marvin Taylor Development Co., Inc., Moffett Corporation, First Federal Savings & Loan Association of Indianapolis, P. C. Tucker Company, Inc., Shumaker Bros. Industries, Inc., Marvin Taylor, and Jack A. Parliament and Patricia R. Parliament, dated May 6, 1977.

10. Paragraph 11 is amended as follows:

Right of Board of Directors to Adopt Rules and Regulations. The Board of Directors, in accordance with the provisions of the Articles and By-Laws of the Corporation, may promulgate such additional rules and regulations regarding the operation and use of the Common Area as it may deem necessary from time to time, provided such rules and regulations shall not be inconsistent with the terms and provisions of this Amended Declaration. The Board shall cause copies of such rules to be delivered or mailed promptly to all Owners. Such rules as are adopted may be amended by a vote of a majority of the Board and the Board shall cause such amendment to be delivered or mailed to all Owners.

11. Paragraph 17 is amended as follows:

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

- (a) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors of the Corporation or by the Owners of at least a majority of the Dwelling Units.
- (b) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy five percent (75%) of the Owners of the Dwelling Units entitled to vote.
- (c) Special Amendments. No amendment to this Declaration shall be adopted which would change the uniform voting rights or uniform assessment of all Owners. No amendment to this Declaration shall be adopted which would change the provisions of paragraph 6, Assessments, without the written approval of Declarants and all owners of vacant land or lots comprising a part of the Real Estate. No amendment to this Declaration shall be adopted which would change the provisions of Paragraph 18, Limitation on Mortgage of the Common Area, without the written approval of Declarant, AFMC. No amendment to this Declaration shall be adopted which would change the provisions of Paragraph 19, Limitation on Sale or Lease, without the written approval of Declarants.

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

12. The following is added as Paragraph 18:

Limitation on Mortgage of the Common Area. Notwithstanding any other provision contained herein, the Articles of Incorporation, By-Laws or elsewhere, the Corporation shall not be permitted to place or cause to be placed, a mortgage upon the Common Area in an amount greater than \$25,000.00 as long as AFMC owns six or more lots within the Development.

13. The following is added as Paragraph 19:

Limitation on Sale or Lease. Notwithstanding any other provision contained herein, the Articles of Incorporation, By-Laws or elsewhere, the Corporation shall not be permitted to sell or lease the Common Area without the consent and approval of Declarants as long as Declarants own ten or more lots within the Development.

14. The following is added as Paragraph 20:

Conflict. In the event of any conflict between this Amended Declaration and the original Declaration, this Amended Declaration shall govern and be considered in lieu of the original Declaration.

In the event of any conflict between this Amended Declaration, the Articles of Incorporation, and By-Laws, this Amended Declaration shall govern.

IN WITNESS WHEREOF, the undersigned has caused this Amendments to the Declaration of Covenants and Restrictions for Castleton Estates Development and Castlebrook Development to be executed this 27 day of April _____, 1977.

CASTLETON ESTATES, INC.

By [Signature]
President

ATTEST,

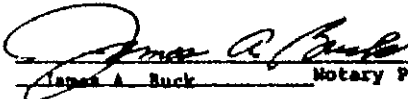
[Signature]
Secretary

g. 27 APR 1977

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared John M. Hagerrom and Robert W. Burns, by me known and by me known to be the President and Secretary, respectively, of CASTLETON ESTATES, INC., who acknowledged the execution of the foregoing "Amendments to the Declaration of Covenants and Restrictions for Castleton Estates Development and Castlebrook Development," on behalf of said Castleton Estates, Inc.

WITNESS my hand and Notarial Seal this 27 day of April, 1977.


James A. Buck Notary Public

My commission expires
December 6, 1978.

THIS INSTRUMENT PREPARED BY PHILIP A. NICELY, ATTORNEY-AT-LAW.

Legal Description
for Proposed Recreation and Pool Area in Castleton Estates

Part of the Northeast Quarter of Section 24, Township 17 North, Range 4 East in Marion County, Indiana, more particularly described as follows:

Beginning at a point on the West line of the East Half of the Northeast Quarter of Section 24, Township 17 North, Range 4 East 1505.00 feet North 00 degrees 50 minutes 48 seconds East (assumed bearing) from the Southwest corner of said East Half, said point being a Northeast corner of Lot #89 in Castleton Estates, Third Section, a subdivision in Marion County, Indiana, as per plat thereof, recorded as Instrument #74-40988 in the Office of the Recorder of Marion County; thence North 90 degrees 00 minutes 00 seconds East parallel with the South line of said East Half 240.00 feet; thence North 00 degrees 00 minutes 00 seconds 148.18 feet; thence North 28 degrees 23 minutes 39 seconds West 72.23 feet; thence South 61 degrees 36 minutes 21 seconds West 222.06 feet to the West line of the East Half of said Northeast Quarter; thence South 00 degrees 50 minutes 48 seconds West 102.39 feet to the place of beginning, containing 0.823 acre, more or less.

Subject to a strip of ground 18 feet by parallel lines off the South side of said real estate hereby reserved for drainage and utility easement purposes. Subject further to all other legal easements and rights-of-way.

Dated March 8, 1877

EXHIBIT "A"

77 28230

WEINER ENGINEERS INC

Castleton Estates, Section I:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35, 36 and 37 in Castleton Estates, Section I, a Subdivision in Marion County, Indiana, as per plat thereof, recorded August 17, 1973, as Instrument #73-53022, in the Office of the Recorder of Marion County, Indiana.

Castleton Estates, Section II:

Lots 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 55, 56, 60, 61 and 62 in Castleton Estates, Section II, a Subdivision in Marion County, Indiana, as per plat thereof, recorded September 28, 1973, at Instrument #73-62957, in the Office of the Recorder of Marion County, Indiana.

Castleton Estates, Section III:

Lots 63, 64, 65, 67, 69, 72, 74, 75, 78, 81, 82, 86, 88, 89, 90, 91, and 94 in Castleton Estates, Section III, a Subdivision in Marion County, Indiana, as per plat thereof, recorded July 3, 1974 as Instrument #74-10988, in the Office of the Recorder of Marion County, Indiana.

Castlebrook:

Lots 7, 8, 10, 11, 13, 22, 24, 31, 33, 35, 36, 40 and 42 in Castlebrook, a Subdivision in Marion County, Indiana, as per plat thereof, recorded March 20, 1974, as Instrument No. 74-15959, in the Office of the Recorder of Marion County, Indiana.

Castleton Estates, Section 8-A:

Lots 260, 261, 265 and 266 in Castleton Estates, Section 8-A, a Subdivision in Marion County, Indiana, as per plat thereof, recorded October 31, 1975, as Instrument No. 75-60946, in the Office of the Recorder of Marion County, Indiana.

EXHIBIT "B"

77 29200

American Fletcher Mortgage Company, Inc. ("AFMC"), pursuant to an agreement between AFMC, Crest Communities, Inc. ("Crest"), Castleton Estates and Castlebrook Homeowners ("Homeowners"), Northeast Development Co., Inc. ("Northeast"), Marvin Taylor Development Co., Inc. ("Taylor Development"), Moffett Corporation ("Moffett"), First Federal Savings & Loan Association of Indianapolis ("First Federal"), P. C. Tucker Company, Inc. ("Tucker"), Shumaker Bros. Industries, Inc. ("Shumaker"), Marvin Taylor ("Taylor"), and Jack A. Parliament and Patricia R. Parliament (collectively referred to as "Parliament"), dated April 27, 1977 ("Agreement"), is the owner of the following described lots located in Castleton Estates I, II and III, the plats of which are recorded in the office of the Recorder of Marion County, Indiana, as Instrument Nos. 73-53022, 73-62957, and 74-40988, respectively:

Castleton Estates, Section I:

Lots 11, 28 and 29

Castleton Estates, Section II:

Lots 50, 54, 57, 58 and 59

Castleton Estates, Section III:

Lots 68, 69, 70, 71, 73, 76, 77, 79, 80, 81, 84, 85, 87, 91, 93, 95, and 96.

(hereinafter referred to collectively and singularly as the "Lots").

In accordance with such Agreement, Crest has the obligation to purchase a minimum of 10 Lots and has the option to purchase the remaining Lots. The cost of any Dwelling Unit located on any of the first 14 Lots purchased by Crest shall

EXHIBIT "B"

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not be obligated to pay an Initial Assessment. This exemption shall be applicable only to Lots purchased by Crest. Any Lots not purchased by Crest shall be subject to the Initial Assessment. ~~This exemption shall be applicable only to Lots purchased by Crest. Any Lots not purchased by Crest shall be subject to the Initial Assessment.~~ Crest shall certify to Castleton Estates, Inc. the legal description of the first 14 Lots purchased.