

## ORCHARD ESTATES

## SECTION THREE

DECLARATION OF COVENANT,  
CONDITIONS AND RESTRICTIONS

COPY

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132 J. J. Deere 727.41  
HENDRICKS COUNTY RECORDER

DECEMBER 15, 1993

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DECLARATION OF COVENANT, CONDITIONS, AND RESTRICTIONS  
OF  
ORCHARD ESTATES SECTION THREE.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ORCHARD ESTATES SECTION THREE (THE "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 1993, by National Property Development Corporation (hereinafter referred to as the "Developer").

WITNESSETH:

WHEREAS, Orchard Estates, Section Three contains the following real estate more particularly described and contained in Exhibit A attached hereto and made a part hereof;

WHEREAS, the Developer will cause the real estate described in Exhibit A to be subdivided and developed for residential use under the name "Orchard Estates Section Three" (the Development), and will be more particularly described on the plats of Section Three thereof, or by other legal description, recorded and to be recorded in the Office of the Recorder of Hendricks County, Indiana; and

WHEREAS, the Developer intends to sell and convey the residential Lots situated within the platted areas of the Development and before doing so desires to provide for the preservation and enhancement of property values, amenities and appurtenances in the Development contributing to the personal and general health, safety and welfare of the residents thereof, and for the maintenance of the real estate and improvement thereon, and to this end, desires to subject to and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions, easements, liens, and charges (the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the Lots and lands in the Development and future Owners thereof.

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

**I. Definitions:**

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

**A. Association:**

"Association" shall mean and refer to the Orchard Estates Section Three Property Owners Association, Inc., more particularly described in Section II hereof. This corporation shall be a different corporation and distinct from the Orchard Estates Section Two Property Owners Association, Inc., and also this corporation shall be a different corporation and distinct from the Orchard Estates Property Association, Inc., which was created in the formation of Orchard Estates Subdivision, Section One.

**B. Committee:**

"Committee" shall mean and refer to the Orchard Estates Development Review Committee for Section Three referred to in Section IV hereof, which Committee shall be composed of four (4) members appointed by the Association who shall be subject to removal by the Association at any time with or without cause. And Vacancies from time to time existing shall be filled by appointment made by the Association. Approvals, determinations, permissions or consents herein shall be deemed given if they are given in writing signed by three (3) members of the Committee.

**C. Common Area:**

"Common Area" shall mean and refer to those areas, including property and improvements, set aside on any recorded subdivision plat of the Development, whether such plat is heretofore or hereafter recorded, which are not Lots (or other real estate to be divided into Lots) to which the Lot Owners have the right to use and enjoy, or over which the Association has an easement or right of duty for maintenance for the use and enjoyment of the Lot Owners, and for the use, maintenance, repair, and /or replacement of which the Association may apply assessment monies as further provided herein.

**D. Developer:**

"Developer" shall mean and refer to National Property Development Incorporated, its assigns, transferees, personal representatives, and any future partners, corporations or legal entity who receive any transferred interest in the Development.

**E. Development:**

"Development" shall mean and refer to the subdivision of the real estate described in Exhibit A.

**F. Lot:**

"Lot" shall mean and refer to any parcel of real estate, whether residential or otherwise, described by plat of the Development which is recorded or to be recorded in the Office of the Recorder of Hendricks County, Indiana.

G. Owner:

"Owner" shall mean and refer to a person who has or is acquiring any fee title or interest in and to a Lot.

H. Animals - Household Pets:

One or two domestic dogs and cats that have been trained to reside with people in a residential structure, which pets shall always be controlled from uttering unreasonable noise and shall not be allowed to roam from the owner of the pets residential lot.

I. Restrictions:

"Restrictions" shall mean and refer to the agreements, covenants, conditions, restrictions, easements, assessments, changes, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time.

II. Orchard Estates Property Owners Association, Inc., Section Three:

A. In General:

There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as "Orchard Estates Property Owners Association, Inc., Section Three" which is referred to herein as the "Association". Every Owner of a Lot in the Development shall become a member of this Association in accordance with the terms and conditions of this Declaration, and the Articles of Incorporation and By-Laws of the Association and shall be subject to all the requirements and limitations imposed in these Restrictions on other Owners of Lots within the Development and on members of the Association, including those provisions with respect to the payment of an annual charge.

B. Classes of membership:

The Association shall have two (2) classes of membership with the following voting rights:

Class A:

Class A members shall consist of all fee owners of Lots in the Development with the exception of the Developer. When more than one (1) person holds a fee interest in any Lot, all such persons shall be members. However, Class A members shall be entitled to only one (1) vote for each Lot owned, and the vote for any Lot shall be exercised as the Owners thereof may agree among themselves. Class A membership shall automatically terminate when such member ceases to be a fee owner of Lots, and any person acquiring a fee ownership in any Lot shall automatically become a Class A member. Any person who holds an interest in a Lot merely as security for the performance of an obligation shall not be a member of the Association until such person realizes upon the security and takes a fee interest in and to such Lot.

Class B:

The Class B member(s) shall be the Developer and all his successors and assigns designated by him in written notice mailed or delivered to the registered agent of the Association. Each Class B member shall be entitled to three (3) votes for each Lot in the Development in which it has a fee ownership. Class B membership shall cease and be automatically converted to Class A membership upon the happening of either of the following events, whichever occurs first:

- (a) when the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership; or
- (b) on August 1, 2001.
- (c) upon written voluntary transfer of the Class B membership to become Class A membership by the Developer

**C. Board of Directors:**

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

**D. Professional Management:**

No contract or agreement for professional management of the Association nor any other contract with Developer shall be for a term in excess of three (3) years. And such agreement or contract shall provide for termination by either party with or without cause without termination fee by written notice of thirty (30) days or less.

**E. Responsibilities and Purposes of the Association:**

Unless otherwise limited in this Declaration, or in the Articles of Incorporation and By-Laws of the Association, the Association shall have the power to exercise all of the statutory powers specified in Section 4 of the Indiana Not-For-Profit Corporation Act, as it may be amended from time to time. Consistent with the foregoing, and not by way of limitation, the Association is created and formed for the following specific purposes:

**1. On-going Legal Entity:**

To create an on-going legal entity responsible for the continuous and adequate maintenance of the Development, and to provide any other services that the Board of Directors of the Association may deem appropriate for the health, safety and welfare of the members and the protection and enhancement of property values within the Development.

**2. Operation of Common Areas:**

To provide a means whereby the Common Areas and such other areas and recreational facilities within the Development or in the proximity thereto as may be conveyed to the Association, established by it, or used by it, may be operated, maintained, repaired or replaced.

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**3. Enforcement of Regulations:**

To provide a means for the promulgation and enforcement of the regulations necessary to govern the use and enjoyment of such Common Areas and other areas and recreational facilities within the Development as may be conveyed to or used by the Association.

**4. Regulation of Design and Construction:**

Subject to the provisions of Section II hereof, to regulate the design and construction throughout the Common Areas and the development during the initial development stages and afterwards, in order to promote a high quality, aesthetically pleasing, architecturally sound environment and to generally maintain and enhance property values throughout the Development.

**5. Regulation of Offensive Activities:**

To regulate noxious or offensive activities throughout the Common Area and Properties which may become unreasonable annoyances or nuisances to members of the Association.

**III. Delegation of Enforcement to the Association:**

The Developer hereby delegates and assigns to the Association, its successors, and assigns, the responsibility of preserving and enhancing the values of properties subject to the Restrictions set forth in this Declaration. The Association shall cause a Development Review Committee to be formed in accordance with this Declaration and the Association's By-Laws to perform the duties and to exercise the powers enumerated below.

**IV. The Orchard Estates Development Review Committee:**

The Committee has the right to promulgate and enforce reasonable rules to regulate the external design, appearance, use, location and maintenance of Lots, land and improvements subject to the Restrictions in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

**A. Powers of the Committee:**

In order to execute the responsibility provided for in this Section IV, the Committee shall have the powers to:

1. Approve or disapprove plans and specifications for all proposed new construction on land subject to the Restrictions.
2. Approve or disapprove plans and specifications for all improvements of property on land subject to the Restrictions. The Committee shall determine that residential dwelling structures and grounds subject to the Restrictions are maintained in a satisfactory manner consistent with the Restrictions.

NO RESIDENTIAL DWELLING STRUCTURE, NEW CONSTRUCTION, IMPROVEMENTS, CHANGES NOR ALTERATIONS OF ANY TYPE OR KIND SHALL BE CONSTRUCTED OR PLACED ON ANY LOT IN THE DEVELOPMENT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE COMMITTEE. SUCH APPROVAL SHALL BE OBTAINED ONLY AFTER WRITTEN APPLICATION HAS BEEN MADE TO THE COMMITTEE BY THE LOT OWNER REQUESTING AUTHORIZATION FROM THE COMMITTEE. SUCH WRITTEN APPLICATION SHALL BE IN A MANNER AND FORM PRESCRIBED FROM TIME TO TIME BY THE COMMITTEE AND SHALL BE ACCCOMPANIED BY THREE (3) COMPLETE SETS OF PLANS AND SPECIFICATIONS FOR ANY SUCH PROPOSED STRUCTURE, CONSTRUCTION, IMPROVEMENT, CHANGE OR ALTERATION.

**B. Duties of the Committee:**

The Committee shall have up to thirty (30) days in which to approve or reject any plans submitted pursuant to this Section II or any other provisions in this Declaration.

**C. Submission of Plans and Specifications to the Committee:**

All plans and specifications must be submitted to the Committee for approval, with three (3) duplicate copies, and conform to the following minimum specifications:

1. All plans, drawings and blueprints of proposed residential dwelling structures shall be of professional quality and drawn to a scale of not less than  $1/4" = 1'$ . All plot plans shall be drawn to a scale of not less than  $1" = 30'$ .
2. Plans shall be submitted for each of the following elements of new construction; plot plan; front elevation; rear elevation; side elevation; floor plan of each floor; and foundation plan.
3. All plans shall specify primary building material proposed to be used, i.e. brick, stone, wood, etc.
4. All plot plans shall provide and identify the following items: proposed location of residential dwelling structure, and driveway on Lot; location of any easements and undisturbed areas; location of proposed fences, screening, walkways, and walls; existing and proposed grades; location of all trees outside of the building and parking areas which are of a twelve (12) inch caliper diameter; and the type of trees designated on the plot plan.

**D. Liability of the Committee:**

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

E. Inspection by the Committee:

The Committee may inspect any and all such work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

V. Architectural Guidelines:

The construction of any new project, structure, or improvement of any addition to an existing structure or any exterior alteration or change to an existing structure must have written approval of the Committee prior to the commencement of such construction project, addition, alteration or change. And residential dwelling structure, addition, alteration or change to an existing residential dwelling structure shall be compatible with the design character of the original structure.

Any and all construction projects, structures, improvements, additions, alterations or changes to existing structures shall, in all respects, conform to the Restrictions and other limitations set forth in this Declaration.

VI. Character of the Development:

A. In General:

Every numbered Lot in the Development, unless it is otherwise designated by the Developer, is a residential Lot and shall be used exclusively for single-family residential purposes. No structure shall be erected, placed or permitted to remain upon any of the Lots except a single-family residential dwelling structure. All homes shall have attached garages as part of the original plan. No detached garages shall be permitted. No pole buildings or mini-barns shall be permitted.

B. Occupancy or Residential Use of Partially Completed Dwellings House Prohibited:

No residential dwelling structure on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been completed for occupancy in accordance with the approved building plan. The determination of whether the residential dwelling structure shall have been completed in accordance with the approved building plan shall be made by the Committee and such decision shall be binding on all parties.

C. Other Restrictions:

All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Development.

VII. Restrictions Concerning Size, Placement and Maintenance of Residential Dwelling Structures:

A. Minimum Living Space Areas:

The minimum square footage of living space of all residential dwelling structures constructed on various Lots in the Development shall be One Thousand Eight Hundred (1,800) square feet.

**B. Masonry:**

Fireplaces and/or chimneys shall consist of brick or stone masonry. Metal flues shall be covered with masonry or stone veneer. All residential dwelling structures shall have a minimum of fifty percent (50%) area of brick or stone veneer to the elevation facing the street..

**C. Tree Preservation:**

No tree of more than twelve (12) inches caliper diameter outside of any building and parking area of a Lot, shall be removed without the prior written approval of the Committee and such approval shall be granted only upon proof of unusual hardship in the practical utilization of the Lot. Accordingly, all plot plans submitted to the Committee for approval shall designate thereon all trees more than twelve (12) inches caliper diameter outside of the building and parking area and removal or destruction of such trees without the consent of the Committee shall result in liability to the Owner to replace said trees.

**D. Color and Material of Homes:**

Colors of residential dwelling structures, improvements, additions, changes or alterations shall generally consist of subdued, earthen tones or white and be compatible with other structures in the immediate area.

**E. Fences, Walls and Screening:**

All walls, screens and similar such improvements shall be subject to the restrictions and terms of this Subsection E. There shall be no fences of any kind allowed. No screen shall obstruct sight lines for vehicular traffic.

**1. Height Restriction:** The specific screen height restrictions are as follow:

- (a) Unless the rear line of the particular Lot abuts a major arterial roadway or offers some circumstances unique to the particular property, screens and walls above the grade shall not exceed four (4) feet above grade.
- (b) Patio screens shall not exceed six (6) feet in height.

**2. Material and Finish:**

- (a) Screening shall conform with the architectural design of the community.
- (b) Chain link or other galvanized metal fencing shall not be permitted.
- (c) All screening shall have finished material on both sides.
- (d) Walls above grade shall be constructed of natural stone masonry, or attractive timber.

F. Landscaping and Plantings:

Landscape improvements may include, subject to the Committee's discretion and regulations, improvements such as terraces, retaining walls, unusual vegetation coverings, walks, bank treatment and detached patios with respect to such proposed improvements, the applicant or Lot Owner shall submit to the Committee.

1. Three (3) copies of a plot plan showing proposed location of the property improvements on the Lot and existing grades at the nearest property line with proposed grades applicable to the improvement.
2. Three (3) copies of additional plans as required in order to evaluate the appearance of the improvement and type of construction including the type of material used, the color of the finished improvement and the type of vegetation, if any.

Landscaping and planting in general shall not require approval of the Committee. However, trees, hedges, and shrubs which restrict site lines for vehicular traffic shall be cut back or removed. Shrubs shall not unduly restrict the view of the amenities from other properties. Special landscaping beyond that normally associated with a single-family residential dwelling structure is required to be approved by the Committee prior to installation. Satisfactory lawns, by seeding or sodding the Lot, shall be required within sixty (60) days, or as soon as possible following completion of a residential dwelling structure, weather conditions permitting.

G. Exterior Antennas:

No television or radio antennas may be erected by any Lot Owner on the exterior of a residential dwelling structure or similar such building in the Development. However, inside attic antennas are technically sufficient and acceptable.

H. Swimming Pools:

Construction of permanent backyard swimming pools must be approved by the Committee prior to commencement of any construction work related thereto. No above ground swimming pools. An application for the construction of a permanent type backyard swimming pool shall be accompanied by an application for an acceptable screen design. The design shall conform to the county and municipal regulations for such screening.

I. Tennis Courts, Racquetball Courts, Paddle Ball Courts, etc.:

Construction of tennis courts, racquetball courts, paddle ball courts, squash courts, etc. are required to be approved by the Committee prior to commencement of any construction work related thereto. Lighted courts are not permitted. An application to the Committee for the construction of a racquet sport court shall be accompanied by an application for an acceptable screen design.

**J. Driveways and Sidewalks:**

Purchasers of all Lots shall construct and install both driveways and sidewalks with concrete material no later than the completion of their residential structure. The concrete sidewalk shall be constructed in accordance with the specifications of the Town of Danville's Indiana Building code. Approval of the Orchard Estates Architectural Review Committee shall be required prior to construction of any extension, widening or rerouting of existing driveways.

**K. Retaining Walls:**

Approval of the Committee shall be required prior to installation of any retaining wall. Retaining walls which divert ground water into adjoining properties or which otherwise substantially change the existing drainage pattern are not permitted.

**L. Play Equipment:**

Children's play equipment, including but not limited to, temporary swimming pools having a depth of less than twenty-four (24) inches, swing and slide sets, playhouses and tents shall be permitted without prior approval of the Committee, provided, however, that such equipment shall not be more than six (6) feet high, shall be in good repair (including paint) and every reasonable effort shall have been made to screen or shield such equipment from view. With respect to equipment higher than six (6) feet, prior approval by the Committee of the design, location, color, material and use shall be required.

**M. Mailboxes:**

Size, location, height and composition of every mailbox shall be approved by the Committee prior to installation and shall conform to specifications set forth by the United States Postal Service and/or Postmaster General. All mailboxes shall be constructed of brick or stone masonry to compliment the house.

**N. Diligence in Construction:**

Each and every residential dwelling structure erected on any and all Lot(s) shall be completed within twelve (12) months immediately following the commencement date of such construction. No improvement which has been partially or totally destroyed by fire or otherwise, shall be allowed to remain in such state of disrepair or damage for more than three (3) months from the time of such destruction or damage.

**O. Maintenance of Lots and Improvements:**

The Owner of any Lot in the Development shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly; and, specifically, such Owner shall:

1. Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and obnoxious weeds.

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2. Remove all debris or rubbish.
3. Prevent the existence of any other conditions that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
4. Cut down and remove dead trees.
5. Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
6. Within sixty (60) days following completion of a house on a Lot, the Owner shall landscape the Lot, weather permitting.

**P. Association's Right to Perform Certain Maintenance:**

In the event that any Owner of a Lot in the Development shall fail to maintain his Lot and any improvements situated thereon in accordance with the provision of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions.

The cost of such maintenance incurred by the Association shall be collected in a reasonable manner from the Owner. Failure to reimburse "The Association" for such expense shall empower "The Association" to record a lien on the Lot Owners real estate. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from maintenance work performed hereunder. Powers of enforcement of such lien shall be under the same terms and conditions of enforcement of lien as set forth in Section X "Remedies" hereof.

**Q. Miscellaneous:**

1. Exterior lighting shall not be directed in such a manner as to create unreasonable annoyance to adjacent properties.
2. Trash and garbage containers shall not be permitted to remain conspicuous, except on days of trash collection.
3. Lot Owners shall make a reasonable effort to keep garage doors closed except during times of actual use of the garage facility.
4. Collapsible and removable clothes lines will be permitted but permanent clothes lines will not be approved by the Committee.

DEPENDING UPON THE ELEVATION OF THE FIRST FLOOR LEVEL AND OTHER LOWER LEVELS OF ANY RESIDENTIAL DWELLING STRUCTURE CONSTRUCTED IN THE DEVELOPMENT, THE OWNER THEREOF IS ADVISED THAT THE GRADE BETWEEN SAID FLOOR LEVELS AND THE GRAVITY SEWER CONNECTION AT THE STREET SHOULD BE DESIGNED TO INSURE ADEQUATE FALL AND THEREBY AVOID POSSIBLE BACK UP OF SANITARY SEWAGE DURING PEAK FLOW PERIODS. MARGINAL GRADE DIFFERENCES BETWEEN THE FLOOR LEVELS AND THE GRAVITY SEWER CONNECTION AT THE STREET SHOULD BE CORRECTED WITH APPROPRIATE CHECK VALVING..

**VIII. General Prohibitions:**

**A. In General:**

No noxious or offensive activities shall be carried on any Lot in the Development, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another Lot in the Development.

**B. Signs:**

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

**C. Animals:**

No animals shall be kept or maintained on any Lot in the Development except the usual household pet, and, in such case, such household pets shall be kept reasonably confined so as not to become an unreasonable annoyance or nuisance. No structures for the purpose of housing animals shall be permitted.

**D. Garbage, Trash and Other Refuse:**

No Owner of a Lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any Owner accumulate or permit the accumulation on the out of doors of such refuse on his Lot, except as may be permitted in Subparagraph E, below. All residential dwelling structures built in the Development shall be equipped with a garbage disposal unit.

**E. Fuel Storage Tanks and Trash Receptacles:**

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

**F. Model Homes:**

No Owner of any Lot in the Development shall build or permit the construction of any residential dwelling structure or other building upon said Lot, which structure or building is to be used as a model home or exhibit, without the prior written approval of the Developer.

**G. Temporary Structures:**

No temporary trailers, mobile homes or any temporary structure shall be placed or erected on any Lot.

**H. Ditches and Swales:**

It shall be the duty of every Owner of every Lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said Lot as may reasonably necessary to accomplish the purposes of this subsection.

**I. Utility Services:**

Utility services shall be installed underground in such a manner as to minimize removal of trees.

**J. Wells and Septic Tanks:**

No water wells shall be drilled, nor any septic tanks to be installed, on any of the Lots in the Development.

**IX. Rules Governing Building on Several Contiguous Lots Having One Owner:**

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

**X. Remedies:**

**A. In General:**

Any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but the Developer shall not be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions. In the event it is necessary for the Developer or the Association to institute a lawsuit to enforce these covenants then the Lot Owners, who are found in violation of these covenants shall be liable for all cost of litigation, including reasonable attorney fees. All cost of litigation shall be a lien on the offending Lot Owners real estate.

**B. Delay or Failure to Enforce:**

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

**XI. Covenant for Maintenance Assessments:**

**A. Creation of the Lien and Personal Obligations of Assessments:**

Each Owner of any Lot in the Development, except the Developer, by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) monthly assessments or charges; and (2) special assessments for capital improvements and operating deficits: such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable 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 assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

**B. Purpose of Assessments:**

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

**C. Special Assessments for Capital Improvements and Operating Deficits:**

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

D. Notice and Quorum for Any Action Authorized Under Subsection C and D:

Written notice of any meeting of the Association called for the purpose of taking any action authorized under Section B and C shall be sent to all members of such Association not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of the aggregate votes of the membership of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held later than sixty (60) days following the preceding meeting.

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

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

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

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

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

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

**G. Subordination of the Lien to Mortgages:**

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

**H. Suspension of Privileges and Membership:**

Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member or associate members:

- (1) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member or associate member remains unpaid;
- (2) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Association; and,
- (3) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

**XII. Effect of Becoming a Lot Owner:**

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

**XIII. Real Estate Taxes:**

Real estate taxes on each Lot, and on any residential dwelling structure or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Areas shall be paid by the Association.

**XIV. Utilities:**

Each Owner shall pay his or her own utilities which shall be separately metered to each Lot and/or residential dwelling structure and related improvements.

(16)

**BOOK 139 PAGE 743**

**XV. Titles:**

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

**XVI. Duration:**

The foregoing covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under such parties until February 28, 2041, at which time these restrictive covenants shall automatically be renewed for ten (10) additional years and upon each successive ten (10) year period, thereafter these restrictive covenants shall be extended for (10 ) additional years unless, at that time, a majority of the Owners in the subdivision elects, in writing, to terminate, cancel, or amend these restrictive covenants in whole or in part.

**XVII. Severability:**

Each and every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every one of the Restrictions, and every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

**XVIII. Amendments or Revocation:**

This Declaration may be amended, or revoked in whole or in part, by an instrument signed by the Association. Any amendment or revocation must be recorded in the Office of the recorder of Hendricks County, Indiana. No such amendments or revocation shall be effective unless written notice of the proposed amendment or revocation is sent to every Owner of a Lot at least thirty (30) days in advance of recordation thereof, and no such amendment or revocation shall be effective with respect to any permanent easements or other permanent rights or interest relating to the Common Areas created herein.

IN TESTIMONY WHEREOF, witness the signature of Developer this 20<sup>th</sup> day, of

December 1993

By: David E. Alderson, President  
David E. Alderson, President

David E. Alderson, President

Attested by: Eddie Phelps Secretary  
Eddie Phelps, Secretary

STATE OF INDIANA )  
 )  
 )SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared National Property Development Inc., David E. Alderson, President and Eddie Phelps, Secretary, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for and on behalf of said Corporation, and who, having been duly sworn, stated that any representation therein contained are true:

Witness my hand and Notarial Seal this 20<sup>th</sup> day of December 1993

NOTARY PUBLIC Daniela Crowder

PRINTED: Daniel A. Crowder

MY COMMISSION EXPIRES: 7/8/97

COUNTY OF RESIDENCE: HENDRICKS

BOOK 139 PAGE 745

**ORCHARD ESTATES  
DANVILLE, INDIANA  
SECTION THREE**

BOOK 135.716

J. W. ABESTRITO

**TOTAL AREA: 14.03 ACRES**

EXHIBIT 4.

EXHIBIT 'A'

LAND DESCRIPTION  
ORCHARD ESTATES SECTION III

A part of the South Half of the Northeast Quarter of Section 4, Township 15 North, Range 1 West, Hendricks County, Indiana, described as follows:

Beginning at the southeast corner of Lot #27 in Orchard Estates Section Two, as recorded in Book PC1, page 1, Office of Recorder, Hendricks County, Indiana; thence North 19 degrees 13 minutes 32 seconds East along the easterly line of said Orchard Estates Section Two, a distance of 260.19 feet to the northeasterly corner of Lot #18; thence North 00 degrees 36 minutes 45 seconds East 32.04 feet; thence South 89 degrees 23 minutes 15 seconds East 119.60 feet; thence North 00 degrees 36 minutes 45 seconds East 22.62 feet; thence South 89 degrees 23 minutes 15 seconds East 300.00 feet; thence North 00 degrees 36 minutes 45 seconds East 25.00 feet; thence South 89 degrees 23 minutes 15 seconds East 180.00 feet; thence North 00 degrees 36 minutes 45 seconds East 110.00 feet; thence South 89 degrees 23 minutes 15 seconds East 311.04 feet; thence South 00 degrees 37 minutes 47 seconds West 136.61 feet; thence North 74 degrees 04 minutes 50 seconds West 181.09 feet; thence South 05 degrees 59 minutes 17 seconds East 191.09 feet; thence South 58 degrees 23 minutes 47 seconds East 178.04 feet to a point on the west line of Shelton Terrace Subdivision as recorded in Plat Book 5 pages 46 and 47, Office of Recorder; thence South 00 degrees 37 minutes 47 seconds West along said west line 410.70 feet to the southwest corner of said Shelton Terrace and the south line of the Southeast Quarter of the Northeast Quarter of said Section 4; thence North 89 degrees 02 minutes 03 seconds West along said south line 328.34 feet to southeast corner of the Southwest Quarter of the Northeast Quarter of said Section 4; thence North 89 degrees 23 minutes 15 seconds West along the south line of the Southwest Quarter of the Northeast Quarter of said Section 4 a distance of 589.74 feet to the southeast corner of Lot #16 in Orchard Estates Phase One, as recorded in Plat Book 13 page 12 and amended in Plat Book 14, page 6, Office of Recorder; thence North 00 degrees 09 minutes 29 seconds East along the east line of said Lot #16 and the northerly extension thereof 173.99 feet to a point on the centerline of Peachtree Lane; thence North 89 degrees 23 minutes 15 seconds West along said centerline 3.68 feet to the southerly extension of the east line of Lot #15 of said Phase One; thence North 00 degrees 09 minutes 29 seconds East along said east line and the southerly extension thereof 168.61 feet to the northeast corner of said Phase One; thence North 89 degrees 15 minutes 51 seconds West along the north line of Lot #15 of said Phase One 68.97 feet to the point of beginning, containing 14.030 acres, more or less. The basis of bearings for this description is the south line of the S.E. 1/4 of the N.E. 1/4 of Sec. 4, Township 15 North, Range 1 East.

139 747  
BOOK PAGE



## AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ORCHARD ESTATES SECTION THREE

---

The Declaration of Covenants, Conditions and Restrictions for Orchard Estates Section Three dated December 15, 1993, and recorded on February 1, 1994, in Book 139 Page 727 in the office of the Recorder of Hendricks County, Indiana (hereinafter the "Covenants"), are hereby amended as follows:

Article XVIII, titled Amendments or Revocation, shall be deleted in its entirety and replaced with the following:

### **XVIII. Amendments**

1. **Amendment by Association.** Except as otherwise provided in this Declaration or by applicable statute, 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 or Owners by a petition having in the aggregate at least two-thirds (2/3) of the total voting power of the Association.
  - b. **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
  - c. **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the members of the Association duly called and held in accordance with the provisions of the by-laws of the Association.
  - d. **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than two-thirds (2/3) of the Owners.
2. **Recording.** Each Amendment to the Declaration made pursuant to Section 1 above shall be executed by the President or Vice President and Secretary of the Association. All amendments shall be recorded in the Office of the Recorder of Hendricks County, Indiana, and no amendment shall become effective until so recorded.

**UNANIMOUS WRITTEN CONSENT TO RESOLUTIONS  
BY THE BOARD OF DIRECTORS  
OF  
ORCHARD ESTATES SECTION THREE HOMEOWNERS ASSOCIATION INC.**

---

WHEREAS, the members of the Orchard Estates Section Three Homeowners Association Inc. (the “Association”) desire to amend the Declaration of Covenants, Conditions, and Restrictions for Orchard Estates Section Three (the “Covenants”); and

WHEREAS, the Board of Directors of the Association provided notice of the proposed amendment to every Owner of a Lot at least thirty (30) days prior to approving said amendment; and

WHEREAS, a majority of the Owners of the Association voted their approval; therefore it is:

**RESOLVED**, that the Covenants are hereby amended as follows:

Article XVIII, titled Amendments or Revocation, shall be deleted in its entirety and replaced with the following:

**XVIII. Amendments**

1. **Amendment by Association.** Except as otherwise provided in this Declaration or by applicable statute, amendments to this Declaration shall be proposed and adopted in the following manner:
  - e. **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board or Owners by a petition having in the aggregate at least two-thirds (2/3) of the total voting power of the Association.
  - f. **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
  - g. **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the members of the Association duly called and held in accordance with the provisions of the by-laws of the Association.
  - h. **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than two-thirds (2/3) of the Owners.

2. **Recording.** Each Amendment to the Declaration made pursuant to Section 1 above shall be executed by the President or Vice President and Secretary of the Association. All amendments shall be recorded in the Office of the Recorder of Hendricks County, Indiana, and no amendment shall become effective until so recorded.

ADOPTED THIS 4<sup>th</sup> DAY OF March, 2023

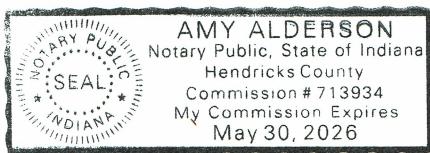
BOARD OF DIRECTORS  
ORCHARD ESTATES SECTION THREE HOMEOWNERS ASSOCIATION INC.

<u>Name</u>	<u>Signature</u>	<u>Date</u>
<b>Carol Hubbard</b> President	<u>Carol Hubbard</u>	<u>3/4/2023</u>
<b>Tom Roeder</b> Vice President	<u>Tom Roeder</u>	<u>3/4/2023</u>
<b>Jeanna Overbey</b> Secretary/ Treasurer	<u>Jeanna Overbey</u>	<u>3/4/2023</u>

STATE OF INDIANA )  
 )SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, on this 1 day of March, 2023 personally appeared Carol Hubbard, Jeanna Overbey, and Tom Roeder, the Board of Directors of Orchard Estates Section Three Homeowners Association Inc., who acknowledged the execution of the above and foregoing as their free and voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.



Amy Alderson

Printed: Amy Alderson  
Notary Public

County of Residence: Hendricks

My Commission Expires: May 30, 2026

This instrument was prepared by Gregory C. Irby of Irby Law LLC, 47 West Marion Street, Danville, Indiana 46122; Telephone: (317) 745-3301.

"I AFFIRM, UNDER THE PENALTIES FOR PERJURY,  
THAT I HAVE TAKEN REASONABLE CARE TO REDACT  
EACH SOCIAL SECURITY NUMBER IN THIS  
DOCUMENT, UNLESS REQUIRED BY LAW."

NAME Carol Hubbard  
Carol Hubbard



**AMENDMENT TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
ORCHARD ESTATES SECTION THREE**

---

The Declaration of Covenants, Conditions and Restrictions for Orchard Estates Section Three dated December 15, 1993, and recorded on February 1, 1994, in Book 139 Page 727 in the office of the Recorder of Hendricks County, Indiana (hereinafter the "Covenants"), are hereby amended as follows:

The following Article XIX, titled Rentals, shall be added to the Covenants:

**XIX. Rentals**

Except as set forth in this paragraph, residents of a Lot can only consist of the Lot Owner and those who live with the Lot Owner. If the Lot Owner does not reside on the property, residents of a Lot must be members of the Lot Owners immediate family (i.e., parents, children, spouse, significant other/life partner). Any Lot owned by a corporate entity (including, but not limited to, a partnership, corporation, limited liability company, etc.) shall submit to the Association a certificate of designated representative indicating who is authorized to vote on behalf of the corporate entity and who is authorized to reside in the structure, which must be the same person. For a period of three (3) years after an Owner's acquisition of a Lot (the "Waiting Period"), the Owner cannot lease or rent the building. Upon written request and the showing of an undue hardship (e.g., a temporary employment relocation, disability, death, etc.), the Waiting Period may be waived by the Association at its sole discretion, which decision shall be final and binding. Such waiver shall last no more than one (1) year and may be renewed by the Association upon further request without limitation. All leases shall be in writing, be for the entire Lot, identify the tenant and lease term, and be made expressly subject and subordinate to the restrictive covenants of Association, with a copy of the lease provided to the Association prior to occupancy. Notwithstanding any lease language, the Lot Owner shall remain responsible for full compliance of the restrictive covenants of Association. These residency and lease restrictions shall not apply to any residency or lease situations in effect as of the date of recording. These restrictions may be enforced by the Association at law or equity.

**UNANIMOUS WRITTEN CONSENT TO RESOLUTIONS  
BY THE BOARD OF DIRECTORS  
OF  
ORCHARD ESTATES SECTION THREE HOMEOWNERS ASSOCIATION INC.**

---

WHEREAS, the members of the Orchard Estates Section Three Homeowners Association Inc. (the “Association”) desire to amend the Declaration of Covenants, Conditions, and Restrictions for Orchard Estates Section Three (the “Covenants”); and

WHEREAS, the Board of Directors of the Association provided notice of the proposed amendment to every Owner of a Lot at least thirty (30) days prior to approving said amendment; and

WHEREAS, a 2/3 majority of the Owners of the Association voted their approval; therefore it is:

RESOLVED, that the Covenants are hereby amended as follows:

The following Article XIX, titled Rentals, shall be added to the Covenants:

**XIX. Rentals**

Except as set forth in this paragraph, residents of a Lot can only consist of the Lot Owner and those who live with the Lot Owner. If the Lot Owner does not reside on the property, residents of a Lot must be members of the Lot Owners immediate family (i.e., parents, children, spouse, significant other/life partner). Any Lot owned by a corporate entity (including, but not limited to, a partnership, corporation, limited liability company, etc.) shall submit to the Association a certificate of designated representative indicating who is authorized to vote on behalf of the corporate entity and who is authorized to reside in the structure, which must be the same person. For a period of three (3) years after an Owner’s acquisition of a Lot (the “Waiting Period”), the Owner cannot lease or rent the building. Upon written request and the showing of an undue hardship (e.g., a temporary employment relocation, disability, death, etc.), the Waiting Period may be waived by the Association at its sole discretion, which decision shall be final and binding. Such waiver shall last no more than one (1) year and may be renewed by the Association upon further request without limitation. All leases shall be in writing, be for the entire Lot, identify the tenant and lease term, and be made expressly subject and subordinate to the restrictive covenants of Association, with a copy of the lease provided to the Association prior to occupancy. Notwithstanding any lease language, the Lot Owner shall remain responsible for full compliance of the restrictive covenants of Association. These

residency and lease restrictions shall not apply to any residency or lease situations in effect as of the date of recording. These restrictions may be enforced by the Association at law or equity.

ADOPTED THIS 29<sup>th</sup> DAY OF April, 2023

BOARD OF DIRECTORS  
ORCHARD ESTATES SECTION THREE HOMEOWNERS ASSOCIATION INC.

<u>Name</u>	<u>Signature</u>	<u>Date</u>
<b>Carol Hubbard</b> President	<u>Carol Hubbard</u>	<u>4/29/2023</u>
<b>Tom Roeder</b> Vice President	<u>Tom Roeder</u>	<u>4/29/23</u>
<b>Jeanna Overbey</b> Secretary/ Treasurer	<u>Jeanna Overbey</u>	<u>4/29/2023</u>

"I AFFIRM, UNDER THE PENALTIES FOR PERJURY,  
THAT I HAVE TAKEN REASONABLE CARE TO REDACT  
EACH SOCIAL SECURITY NUMBER IN THIS  
DOCUMENT, UNLESS REQUIRED BY LAW."

NAME Carol Hubbard  
Carol Hubbard

STATE OF INDIANA )  
 )SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, on this 29<sup>th</sup> day of April, 2023 personally appeared Carol Hubbard, Jeanna Overbey, and Tom Roeder, the Board of Directors of Orchard Estates Section Three Homeowners Association Inc., who acknowledged the execution of the above and foregoing as their free and voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Sharon L. Rumpf

Printed: _____		SHARON L. RUMPLE
Notary Public		My Commission Expires
County of Residence: _____		December 21, 2030
My Commission Expires: _____	Commission Number NP0661745	
	Hendricks County	

This instrument was prepared by Gregory C. Irby of Irby Law LLC, 47 West Marion Street, Danville, Indiana 46122; Telephone: (317) 745-3301.