

DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS,  
LIMITATIONS, EASEMENTS AND APPROVALS APPENDED TO  
AND MADE A PART OF THE DEDICATION AND PLAT OF  
ASPEN VILLAGE, SECTION V  
A SUBDIVISION IN ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA

1986 OCT 27 PM 2:39  
ALLEN COUNTY RECORDER  
M. J. ...

RUDOLF/SAMCZYK, INC., an Indiana corporation, by Rosemary A. Rudolf, its president, hereby declares that it is the Owner Plator and Developer of the real estate shown and described in this plat and does hereby lay off, plat and subdivide said real estate in accordance with the information shown on said plat, being the certified plat appended hereto and incorporated herein. The Subdivision shall be known and designated as ASPEN VILLAGE, SECTION V, a Subdivision in Aboite Township, Allen County, Indiana.

The lots are numbered from 148 through 163 inclusive, all dimensions are shown in feet and decimals of a foot on the plat. All street rights-of-way and walkway easements specifically shown or described are hereby expressly dedicated to public use for the usual and intended purposes.

PART 1 - ASPEN VILLAGE COMMUNITY CORPORATION  
PREFACE

In consideration of the necessity of providing for the efficient supervision of maintenance, activities, and use of the Parks and Storm Water Detention Area, the plator has prior to the closing of any sale of lots in Aspen Village caused to be incorporated a Not-for-Profit Corporation entitled "Aspen Village Community Corporation." Every owner of a lot, which is subject to assessment, shall be a member of Aspen Village Community Corporation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. Membership in Aspen Village Community Corporation, as provided in the Articles of Incorporation and By-Laws of the Corporation and amendments thereto, are transferable only by a sale of the lot to which it is appurtenant, and a lot owner may avoid his membership in Aspen Village Community Corporation only by selling his property. The Articles of Incorporation and the Corporation By-Laws and amendments thereto are deemed to constitute a contract between the individual lot owners and Aspen Village Community Corporation.

The Plator herewith covenants and agrees to organize and fund such corporation by the deposit of \$100.00 for each lot sold in Aspen Village at the time of closing of such sale and to remain as a full member for so long as the Plator may own any unsold lots, with full voting rights, but the payment of one hundred dollars as aforesaid shall constitute the full dues and assessments due from the plator to the corporation.

It is plator's intent that all of the By-Laws with respect to the use and maintenance of the various park and storm water detention areas be designated to accommodate the desires of the corporation members, to preserve property values, and to be flexible enough to meet specific needs, including the need to raise funds. Accordingly, this Preface and its statements shall be deemed a covenant of equal force and effect as all others herein set forth.

DEFINITIONS

Section 1. "Association" shall mean and refer to Aspen Village Community Corporation, its successors and assigns.

DULY ENTERED FOR TAXATION. "Corporation" shall mean and refer to Aspen Village Community Corporation, its successors and assigns.

OCT 27 1986

*Gloria J. Geoghegan*  
AUDITOR OF ALLEN COUNTY

INSTRUMENT U 10700

Section 3. "Member" shall mean the owner (or joint owners) of any lot or lots in said Subdivision who is a paid up dues member.

Section 4. "Parks and Storm Water Detention Area" shall be those areas as designated on the final plat as finally approved by the Allen County Plan Commission as Aspen Village.

Section 5. "Lot" shall mean either any of said lots as platted or any tract or tracts of land as conveyed originally or by subsequent owners, which may consist of one or more lots or parts of one or more lots as platted upon which a residence may be erected in accordance with the restrictions hereinabove set out or such ordinance, PROVIDED, HOWEVER, no trace of land consisting of part of "Lot" unless said tract of land has a frontage of 70 feet in width at the established building line as shown on this plat.

Section 6. "By-Laws" shall mean the By-Laws initially adopted by ASPEN VILLAGE COMMUNITY CORPORATION and all amendments and additions thereto.

#### SPECIFIC PROVISIONS

Section 1. Every owner shall have a right of membership in the Corporation, subject to the following provisions:

(a) the right of the Corporation to charge reasonable admission and other fees for the use of any recreational facility owned by the Corporation:

(b) the right of the Corporation to suspend the voting rights and right to use of the recreational facilities by a member owner for any period during which any membership dues remain unpaid; and for a period not to exceed 30 days from any infraction of its published rules and regulations after hearing by the Board of Directors of the Corporation;

(c) the right of the corporation to dedicate or transfer all or any part of the Parks and Storm Water Detention Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the members agreeing to such dedication or transfer has been recorded.

Section 2. Family Use. Any member owner may delegate, in accordance with the By-Laws, all rights of enjoyment to the recreation areas and facilities, to the members of his family, his tenants, his guests or invitees or contract purchasers who reside on the property.

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessments shall be a member of Aspen Village Community Corporation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. The Corporation shall have one class of voting membership.

Section 3. The plattor-developer of this subdivision, Rudolf/Samczyk, Inc., as the owner of unsold platted lots shall be a member of this Community Corporation from its inception until such time as said plattor-developer has divested itself of the record ownership of 16 lots in said Section V of subdivision. Said plattor-developer shall have voting rights based upon lot ownership of one vote per lot owned in the subdivision as shown on the Preliminary Plat as approved by the Allen County Plan Commission, and the consideration for this plattor-developer

membership with voting rights shall be the promise to pay (and the act of payment) into a special bank account the sum of one hundred dollars as provided for herein, as well as the deeding over to said Community Corporation the full right, title and interest in and to the Park Areas and Water Detention Area as they are shown on the Final Recorded Plats.

#### COVENANT FOR MAINTENANCE

Section 1. Creation of maintenance fund. The platlor-developer will fund the corporation by the payment of \$100.00 per lot sold (as stated hereinbefore in the Preface to this document) for maintenance purposes. Such payment shall be deposited to an account in the name of the Aspen Village Community Corporation at a bank or savings and loan association paying the maximum interest available; the interest earnings from such principal shall be used to pay costs of maintenance of the Corporation property. Additional costs for maintenance or capital improvements not otherwise provided for, shall pursuant to a majority vote of the Corporate members, be paid for from membership dues or special assessments as more particularly set out hereafter, from which Rudolf/Samczyk, Inc., shall be exempt. Such dues or assessments shall be the personal obligation of the owners, shall not pass to his successors in title unless expressly assumed by them, and shall at no time be a charge on the land of the owner.

Section 2. Purpose of Maintenance Fund. The dues and assessments levied by the Corporation shall be used exclusively to promote the recreation, health, and welfare of the resident members in Aspen Village the facilities situated thereon. In addition, assessments may be levied to provide for maintenance of the Parks and Storm Water Detention Areas.

Section 3. annual dues. Annual dues may be in any amount as may, from time to time, be determined by the Board of Directors of Aspen Village Community Corporation to accomplish the purposes for which this Corporation was formed.

Section 4. Special assessments for capital improvements. In addition to the annual dues authorized above, the Corporation may levy, in any corporate year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any new construction or repair or replacement thereof of a capital improvement, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of 75% of the members.

Section 5. Notice and Quorum for any action authorized under section 4. Any action authorized under Section 4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than 10 days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite 51% of the members, members who were present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Corporation not later than 30 days from the date of such meeting.

Section 5. Uniform Rate of Assessment. Both annual dues and special assessments must be fixed at a uniform rate for all members (except Rudolf/Samczyk, Inc.) and may be collected on a monthly or yearly basis, as the member shall elect.

Section 7. Effective Date of Annual Dues The Board of Directors shall fix the amount of the annual dues against each lot or lots of each member at least thirty (30) days in advance of each annual meeting of the Corporation. Written notice of the annual dues shall be mailed to every corporate member. The dues dates shall be established by the Board of Directors. The Corporation shall upon demand, and for a reasonable charge,

furnish a certificate signed by an officer of the Corporation setting forth whether the dues on a specified lot have been paid.

Section 8. Effect of Non-Payment of Dues or Assessments. Creation of lien and Personal Obligation of Assessments. Each owner, with the exception of the developer, Rudolf/Samczyk, Inc., hereby covenants, and each owner of any lot by acceptance of a Deed therefore, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to Aspen Village Community Corporation (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as herebefore provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person or persons who were the owners of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. Any assessment or dues not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The Corporation may bring an action against the owner or owners personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas or abandonment of his lot

Section 9. Rights and Privileges of Membership. The members of the Corporation shall have full and exclusive recreational use and enjoyment of the recreation area.

Section 10. Termination of Corporation. The life time of the Corporation is to be perpetual, and may be dissolved only upon a two-thirds (2/3) vote of the membership, the transfer to title and responsibility to a successor and approval by the Zoning Authority then having jurisdiction. Upon such termination, the Corporation shall cease to exist and all funds remaining in the Maintenance Fund shall be transferred to the said successor.

Section 11. Management of the Corporation. The business of the Corporation shall be run by not less than three (3) members or more than nine (9) Directors who must be members of the Corporation. They shall serve one year terms, upon election by a majority vote of the Corporation members. The Board of Directors shall have all powers herein or hereafter conferred in the By-Laws in the operation of Not-for-Profit Corporation, except that it may not without the special majority votes above said for special assessments or termination.

Section 12. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not effect assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall release such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 13. Enforcement. Aspen Village Community Corporation, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these covenants and restrictions and amendments thereto. Failure by the Corporation or by any owner to enforce any covenant or restriction herein contained, or any covenant, restriction or limitation which has, prior to this time, been

recorded in the Office of the Recorder of Allen County, Indiana, shall in no event be deemed a waiver of a right to do so thereafter. If any proceeding is brought by the Corporation to enforce these or any other restrictions, and same is successful, the Corporation shall be entitled to recover all court costs and attorneys' fees associated with same.

Section 14. Invalidation. Invalidation of any one of these covenants or restrictions, or any prior covenant or restriction which have been recorded in the Office of the Recorder of Allen County, Indiana, by judgment or Court order, shall in no way effect any other provision which shall remain in full force and effect.

Section 15. Term. The covenants and restrictions herein contained shall run with the land and be in effect for a term of twenty (20) years from the date these covenants and restrictions are recorded, after which time they shall automatically be extended for successive periods of ten (10) years, and they shall inure to the benefit of and be enforceable by said owners unless amended by the owners of Fifty-One Percent (51%) of the land platted.

## PART II

### PROTECTIVE RESTRICTIONS COVENANTS AND EASEMENTS ASPEN VILLAGE, SECTION V AN ADDITION TO ALLEN COUNTY, INDIANA

All the lots in said addition shall be subject to and impressed with restrictions, covenants and easements hereinafter set forth; and they shall run with the land and be considered a part of the conveyance of any lot in said addition without being written therein. The provisions herein contained shall be effective for twenty years for the mutual benefit and protection of the owners, present or future, or any and all lots in said addition; and they shall run with the land and shall inure to the benefit of and be enforceable by said owners unless amended by the owners of 51% of the land platted by action for injunctive relief against any violation or attempted violation of the provisions hereof and/or for damages for any injuries resulting from any violation thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

#### 1. EASEMENTS AND UTILITY SERVICES

The land platted as Aspen Village, Section V, and all lots in said Addition, shall be subject to general utility easements as indicated on the plat thereof. Said easements shall be for the following purposes and subject to the following limitations:

- (a) Said easements shall be for general utility services, including storm water, sanitary sewage, water, gas, electric light, telephone, and other utility services.
- (b) All utility easements, as dedicated on the face of the plat shall be kept free of all permanent structures and the removal of any obstruction by any utility company shall in no way obligate the utility company for damages or to restore the obstruction to its original form.
- (c) Any structures, shrubbery, trees or any installation, on any utility easement for sewers, shall be subject to the paramount right of the utility or sewage treatment works, to install, repair, maintain or replace its utility and sewer installation.

(d) No sanitary sewage shall, at any time, be discharged or permitted to flow into any open drain, natural water course, or storm water system. No storm water shall be discharged or permitted to flow into any sanitary sewage system.

(e) Surface drainage Easements (and Common Areas) used for drainage purposes as shown on the plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the land surface shall be constructed and maintained in an unobstructed condition and the County Surveyor or a proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstruction exists and to repair and maintain or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed.

(f) All parks and Water Detention Areas shall also be Utility Easements, but any installation of utilities in said area shall have the written consent of the Platlor/Developer or the Aspen Village Community Corporation if said Area has been deeded to the same.

## 2. BUILDING LINES

(a) No building shall be located in infringement of any of the building lines shown on the plat, nor shall any building be located closer than 7 feet to any side lot lines. The aggregate width of both side yards shall be at least 14 feet.

(b) No building shall be located nearer than 25 feet to the rear lot line.

## 3. GENERAL RESTRICTIONS

(a) Each lot shall be used and occupied solely for and by a single-family residency, together with necessary appurtenances, including a garden, garden house or storage shed. All garden houses or storage sheds erected subsequent to the recording date of this Plat Amendment shall be of wood construction, not to exceed 9'0" x 12'0" in size and not to exceed 6'8" in height at the eave and not to exceed 8'0" in height at the gable. All such sheds must be harmonious in external design with existing structures and shall be kept structurally sound and the exterior properly maintained at all times.

(b) No single story residence building shall be erected on any lot in this addition having less than 1,300 square feet of living area; no two-story residence building shall be erected on any lot in this addition having less than 780 feet on the first floor.

(c) Any garage must be attached to the residence and must be at least two-car in size.

(d) All driveways must be of concrete construction, and none shall open into Aboite Center Road.

(e) No fences shall be constructed to the rear of the building line in any lot in this addition to exceed 48 inches in height with the exception that patio fences of a wood construction only, not exceeding 72 inches in height, will be permitted provided they do not exceed 16 feet in length on either side from the exterior wall of the residence and not to exceed the width of 20 feet across and encompass no more than 320 square feet. No patio fence may be directed in such a manner as to exceed any building lines, side lines, or easement areas. No fences shall be built in the front of the building line.

on any lot. All fences erected in the Subdivision shall be kept structurally sound and properly maintained at all times.

(f) No parking or other storage of trailers, boat trailers, boats, and trucks shall be permitted on any lot in this addition

4. IMPROVEMENT LOCATION PERMIT

(a) Before any lot may be used, such user shall first obtain from the applicable Building Commissioner, or authority having jurisdiction, an Improvement Location Permit and before any lot may be occupied, such occupier shall first obtain an Occupancy Permit if and as required by the applicable Zoning Ordinance or authority. This covenant shall be enforceable by the applicable authority and/or lot owner

(b) All improvements shall be installed prior to occupancy of a residence.

5. SIDEWALKS

Plans and specifications for this subdivision, on file with the Allen County Plan Commission require the installation of concrete sidewalks within the street rights-of-way in front of lots 171-179 all inclusive, as shown on approved plans. Installation of said sidewalks shall be the obligation of the Owner of any such lot, exclusive of the developer, shall be completed in accordance with said plans and specifications and prior to the issuance of a Certificate of Occupancy for any such lot and the cost of said installation shall be a lien against any such lot enforceable by the Allen County Plan Commission or its successor agency. Should such Certificates of Occupancy be issued to the developer, said individual or corporation shall be considered an Owner for the purposes of the enforcement of this covenant.

6. FLOOD PROTECTION GRADE

In order to minimize potential damages from surface water, flood protection grades are established as set forth below. All dwellings shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum elevation of a first floor or the minimum sill elevation of any opening below the first floor. The following lots have minimum elevations of not less than the following respective feet above Mean Sea Level: Lots numbered 165-175 - 835.00 feet above Mean Sea Level.

7. SUBDIVISION

No lot or combination of lots within the subdivision may be further subdivided unless and until approval therefore has been obtained from the Allen County Plan Commission.

ALL PLATTED RESTRICTIONS NOT HEREIN MODIFIED, AMENDED, OR SUBSTITUTED, SHALL REMAIN IN FULL FORCE AND EFFECT.

RUDOLF/SAMCZYK, INC.

BY Rosemary A. Rudolf  
Rosemary A. Rudolf, President

Subscribed before me this date by Rosemary A. Rudolf, personally known to me to be the president of RUDOLF/SAMCZYK, Inc., an Indiana Corporation, who upon her oath verified her authority to execute this document in the corporate name.

1986 OCT 27 PM 2:39  
ALLEN COUNTY RECORDER  
Rosemary A. Rudolf

RUDOLF/SAMCZYK, INC.

BY Rosemary A. Rudolf  
Rosemary A. Rudolf,  
President

Subscribed before me this date by Rosemary A. Rudolf, personally known to me to be the president of RUDOLF/SAMCZYK, Inc., an Indiana Corporation, who upon her oath verified her authority to execute this document in the corporate name.

DATED: June 17, 1986 Carol C. Keffrey Notary Public  
Carol C. Keffrey Resident, Allen County

My Commission expires:  
February 2, 1989

THIS INSTRUMENT PREPARED BY STEVEN R. SHINE, 2810 BEAVER AVENUE, FORT WAYNE, INDIANA 46807 TELEPHONE: 219/745-1970



Allen County, Indiana Plan Commission

Lester C. Gerig - President

Edward L. Neuffer - Vice President

Arthur G. Spirou - Secretary

Allen County Board of Commissioners

Richard M. Regedanz  
Richard M. Regedanz

Richard M. Ellenwood  
Richard M. Ellenwood

Jack Wortchman  
Jack Wortchman

ATTEST:

Gloria J. Goeglein  
Allen County Auditor

Allen County Surveyor

William L. Sweet  
William L. Sweet

Allen County Health Commissioner

Dr. Jane M. Irmscher  
Dr. Jane M. Irmscher