Side by Side Services
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DECLARATION OF COVENANTS, RESTRICTIONS AND CONDITIONS OF ON THE FAIRWAYS PHASE 2, A SUBDIVISION OF REAL ESTATE IN THE TOWN OF ALBANY, DELAWARE COUNTY, INDIANA

DELAWARE COUNTY, IN - NOT FOR RESALE

DECLARATION

CHART Inc., hereby declares that it is the Owner and Developer of the real estate located in Delaware County, Indiana, described in Exhibit A, which is attached hereto and made a part hereof (the "Development"). Said Development shall be platted and recorded as a Subdivision, to be known as On The Fairways, Phase 2, located in the Town of Albany, Delaware County, Indiana.

REASONS FOR THE DECLARATION

1. CHART, Inc. will develop, layout, plat, and subdivide said real estate in accordance with a plat to be certified and filed with the Recorder of Delaware County, Indiana.

2. The Development shall be known as On The Fairways Phase 2, a Subdivision, located in the Town of Albany, Delaware County, Indiana.

3. Each Lot shall be subject to and restricted by the covenants, restrictions and conditions as set forth herein (the "Restrictions"). Said Restrictions are for the mutual benefit and protection of the Owners present and future of any and all Lots in the Development, and the Restrictions shall run with and bind the land and shall inure to the benefit of the Owners of the land, their respective legal representatives, successors, grantees and assigns.

4. Each Lot in the Development shall be numbered in the plat to be filed. All streets and easements are hereby expressly dedicated to public use for their usual and intended purposes.

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MELANIE MARSHALL
DELAWARE COUNTY RECORDER
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10/12/2018 01:05 PM
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ARTICLE I
DEFINITIONS

Section 1. "Developer" means CHART, Inc., its successors and assigns.

Section 2. "Development" means the platted sections, as recorded, making up On The Fairways, Phase 2, a subdivision located in the Town of Albany, Delaware County, Indiana.

Section 3. "Dwelling Unit" means a structure used as a residential living unit located upon a Lot, including the garage and any appurtenances.

Section 4. "Lot" means any Lot 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 in the Platted Section upon which a Dwelling Unit may be erected in accordance with the Restrictions.

Section 5. "Owner" means the record Owner, whether one or more persons or entities, of a fee simple title to any Lot.

Section 6. "Restrictions" means this Declaration of Covenants, Restrictions, and Conditions of On the Fairways, Phase 2, a subdivision located in the Town of Albany, Delaware County, Indiana.

Section7. "Architectural Control Committee" means the Developer, or a person or group of people assigned by the Developer.

ARTICLE II

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LOTS

Section 1. Number of Lots. The Development shall be expandable to a maximum of thirty eight (38) one and two story Units. This Declaration consists of Section 1, consisting of twenty five (25) residential Units located on real estate identified as On The Fairways, Phase 2.

Section 2. Street Dedication. All streets shown on the plat are hereby dedicated to the public.

Section 3. Land Use. All Lots shall be used exclusively for residential purposes, except the Developer shall have the right to subdivide, dedicate or otherwise conveyor use a portion of anyone or more Lots which it owns for recreational uses for the benefit of all Owners. In the event any portion of any Lot or Lots is so used, reasonable rules and regulations shall be promulgated and enforced so that the use and enjoyment of the adjacent Lots by the Owners thereof shall not be unreasonably disturbed.

Section 4. Conveyance of Lots. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to these Restrictions.

DELAWARE COUNTY IN - NOT FOR RESALE

ARTICLE III
CONVEYANCE PROCEDURES

Section 1. Conveyance of Each Unit. At the time of the first conveyance of each Lot, every mortgage and other lien affecting the Lot shall be paid and satisfied of record or the Lot must be released from the mortgage or other lien by a Partial Release.

ARTICLE IV
ARCHITECTURAL CONTROL

NOTE: UNDER ARTICLE IV, SECTIONS 3, 4, 5, 16 AND 26 DO NOT APPLY TO LOTS # 1,2,7,8,21 AND 22 AS THEY WERE CONSTRUCTED UNDER DIFFERENT RESTRICTIONS. ALL OTHER RESTRICTIONS AND SECTIONS APPLY TO ALL LOTS.

Section 1. Dwelling Units. All Dwelling Units shall be built by the Developer or a reputable home builder approved by the Developer.

Section 2. Other Improvements. No building, improvements, construction, excavation, landscaping, fence, wall or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration to a Dwelling Unit be made without the approval of the Architectural Control Committee. All requests for any improvements or alterations shall be submitted to the Architectural Control Committee together with detailed plans and specifications of the improvements or alterations to be made. The Architectural Control Committee shall have sixty (60) days from the submission of such request to approve or disapprove such request. If such request is neither approved nor disapproved by the Architectural Control Committee within such sixty (60) day period, then such request shall be deemed approved.The Developer reserves the exclusive right to approve or disapprove all requests for any improvements or alterations until the last Lot in the Development is sold, but in no event later than twenty (20) years after the first Lot in the Development is sold. All approvals shall be requested by submitting plans and specifications in duplicate to the Architectural Control Committee showing the following:

(a) The dwelling unit and other improvements, access drives, and other improved areas and the locations thereof on the site;
(b) All landscaping, including proposed tree locations and planting areas;
(c) Plans for all floors; and front, rear and side elevations;
(d) Walls, fencing and screening;
(e) Patios, decks and porches;

Section 3. Building sizes: No dwelling unit shall be built on any lot having the living area of the main structure, exclusive of one-story open porches, breezeways or garages of less than the following number of square feet for the following types of dwellings.
Single story: 1,400 Sq. Ft.
Two Story: 1,800 Sq. Ft. with a minimum of 600 sq. Ft. on the first floor.

Section 4. Garages: All dwelling units must have an attached garage of at least 400 Sq. Ft. and not more than 1,152 Sq. Ft.

Section 5. Setbacks: No dwelling unit or any improvements or structures shall be located on any lot nearer to the front lot line or nearer to the side street line or the rear property line than the minimum building setback lines shown on the recorded plat. The front building line shall be parallel with the front property line at a setback distance of twenty-five (25) feet. In any event, no dwelling unit shall be located nearer than a distance of ten (10) feet to a side lot line, and no nearer than a distance of twenty (20) feet to a rear line if there is no rear setback line shown on the recorded plat.

Section 6. Maintenance of Lots and Dwelling Units: No lot and no dwelling unit shall be permitted to become overgrown, unsightly or to fall into disrepair. All dwelling units shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the Architectural Control Committee. Each owner, for himself and his successors and assigns, hereby grants to the Committee, jointly and severally, the right to make any necessary alterations, repairs or maintenance approved by the Architectural Control Committee to carry out the intent of this provision and further agree to reimburse the Committee for any expenses actually incurred in carrying out the forgoing.

Section 7. Landscaping: The lots shall be landscaped according to plans approved by the Architectural Control Committee. All shrubs, trees, grass and plantings of every kind shall be kept well maintained, properly cultivated and free of trash and other unsightly material. Landscaping as approved by the Architectural Control Committee shall be installed no later than one hundred eighty (180) days following occupancy of or completion of the dwelling unit, whichever shall occur first. Each lot owner shall be required to plant Two (2) trees. Said trees shall be planted on the front property line and spaced equidistant across the front of each lot and shall be subject to the Architectural Control Committee for size and species of trees.

Section 8. Nuisances: No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Without limiting any of the foregoing, no exterior lights, the principal beam of which shines upon portions of a Lot other than the Lot upon which they are located or otherwise cause unreasonable interference with the use and enjoyment of a Lot by the occupants thereof, and no speakers, horns, whistles, bells or other sound devices, shall be located, used or placed on the premises, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof. No clotheslines or other outside or drying facilities shall be permitted. No outdoor fires for the purpose of burning leaves, grass or other forms of trash shall be permitted on any street, roadway or Lot, and no outside incinerators or refuse disposal shall be permitted on any Lot.

Section 9. Storage and Temporary Structures: No structure of a temporary character, trailer, boat trailer, commercial vehicle (RV), camper shell, all-terrain vehicle (ATV) camper or camping trailer, tent, shack, garage, barn or other outbuilding shall be either used or located on any Lot, or adjacent to any Lot, public street or right-of-way within the subdivision at any time, or used as a temporary or permanent residence.

Section 10 Signs: Once a home dwelling unit is occupied, no sign of any kind shall be displayed to public view on any Lot except one sign of not more than six square feet advertising such lot or dwelling for sale. Rummage or other sale signs may be placed on lots for no more than seven days in a calendar year. The Developer reserves unto itself, during the development of the subdivision, the right to place larger signs and a greater number of signs within the subdivision than as provided above.

Section 11. Radio, Television Antennas and Solar Units: No radio or television antenna shall be attached to any Dwelling Unit. No free standing radio or television antenna shall be permitted on any Lot. No television receiving disk or dish greater than three (3) feet in diameter shall be permitted on any Dwelling Unit. No solar units or panels shall be placed on any Dwelling Unit or lot whether attached or detached.

Section 12. Drilling, Refining, Quarrying and Mining Operations: No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be upon or in any Lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 13. Hazardous Material. No Hazardous Material shall be used or stored on any Lot or Dwelling Unit or other improvement located thereon. "Hazardous Material" means any substance or material defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "extremely hazardous waste", "acutely hazardous waste", "restricted hazardous waste", "toxic substances" or "known to cause cancer or reproductive toxicity" (or words of similar import), petroleum or petroleum derivative products (including crude oil or any fraction thereof) or any other chemical, substance or material which is prohibited or limited under any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law or treaty regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment or natural resources. Each Owner shall indemnify and hold harmless all other Owners, the Association and the Developer from any and all liability, damages and costs resulting from the use or storage of such Hazardous Material on such Owner's Lot.

Section 14. Animals: No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot except that dogs, cats or other household pets may be kept, provided they are kept, bred or maintained for any commercial purpose. Animals shall be confined to the owner's property at all times.

Section 15. Building Materials: All Dwelling units and other permitted structures shall be constructed in a good and workmanlike manner and of new materials. Al Roofs shall have a main body roof pitch of not less that 6-12. No roll siding, asbestos-siding or siding containing asphalt shall be used in the exterior construction of any dwelling unit or other permitted structure on any Lots of said subdivision and no roll roofing of any description or character shall be used on the roof of any permitted structure. The front exterior of any permitted structure shall be finished with 100% masonry materials or masonry materials from the foundation up to the bottom of the windows. In any event, all exterior building materials must be approved by the Architectural Control Committee.

Section 16. Driveways: All driveways from the street to the garage shall be poured concrete or masonry and not less than seventeen (17) feet in width.

Section 17. Water and Sewage Systems: No individual water supply system or individual sewage disposal system shall be installed, maintained or used on any lots in said subdivision. The only exception shall be for wells used exclusively for geo-thermal HVAC systems. Any such system must be approved by the Architectural Control Committee.

Section 18. Storm and Sanitary Sewers: No storm water, surface water or discharge from a sump pump, shall at any time be discharged into, or permitted to flow into the sanitary sewage system, and no sanitary sewage shall at any time be discharged into or permitted to flow into any storm sewer or drainage system.

Section 19. Permits and Certificates: Before any Dwelling unit located on any Lot may be used or occupied, such user or occupier shall first obtain from the Town of Albany an Improvement Location Permit and a Certificate of Occupancy as required by the Delaware County Zoning Ordinance.

Section 20. Pools: No swimming pool of any kind will be permitted on any lot in said subdivision.

Section 21. Fencing: No fencing of any kind will be permitted on any lot in said subdivision. This includes dog runs.

Section 22. Service Screening Storage Areas: Garbage and refuge shall be placed in containers, which shall be concealed and contained within the dwelling unit, or shall be concealed by means of a screening wall or material similar to and compatible with that of the dwelling unit or shall be concealed by sufficient landscaping to provide a permanent screen at all times of the year.

Section 23. Mailboxes: The type, location, and installation of mailboxes shall be uniform and in accordance with design specifications established by the Architectural Control Committee.

Section 24. Subdivision of Lots: No Lot or combination of Lots may be further subdivided without the approval of the Developer.

Section 25. Exterior Building Surfaces: All exterior building surfaces, materials and colors shall be harmonious and compatible with colors of the natural surrounding and other Dwelling Units. The Architectural Control Committee shall have the right to approve or disapprove materials and colors so controlled.

Section 26. Yard Lights: An Electrical yard light (or gas light) of type and location approved by the Architectural Control Committee shall be installed by the builder or Lot Owner on each Lot in front of the front building line.

Section 27. Access to Albany Golf Club: Access to the grounds of Albany Golf Club shall only be permitted at such locations as may be agreed to between Albany Golf Club and the Developer.

Section 28. Easement Across Lots Adjacent to Golf Course: Until such time as a Dwelling Unit is constructed on a Lot which borders a fairway area of the Albany Golf Club, the operator of the Albany Golf Club shall have a license to permit and authorize their agents and registered golf course players or their cadies to enter upon a Lot to recover a ball or play a ball, subject to the official rules of the course, without such entering and playing being deemed a trespass.

Section 29. Time for Building Completion and Restoration: Every Dwelling Unit on any Lot in the Subdivision shall be completed within twelve (12) months after the beginning of such construction. No improvement which has been partially or totally destroyed by fire or otherwise, shall be permitted to remain in such state for more than three (3) months from the time of such destruction or damage.

Section 30. Single Owner Contiguous Lots: Whenever two (2) or more contiguous Lots in the subdivision shall be owned by the same person, and such owner such owner shall desire to use two or more of said Lots as a site for a single Dwelling Unit, he shall apply in writing to the Architectural Control Committee for permission to use said lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single lot for the purpose of applying these restrictions to said Lots, so long as the Lots remain with one single Dwelling Unit.

Section 31. Annexation: Additional real estate may be added to said subdivision and annexed by the Developer and made subject to this Declaration. Said additional real estate may be developed for condominiums, villas and single and two family residences. Said annexation may be perfected without the consent of the owners.

ARTICLE X
EASEMENTS

Section 1. Drainage. Utility and Sewer Easements. Easements for drainage, utilities and sewers are shown on the plat of the Development. The Developer further reserves unto itself an easement and the full right, title and authority to relocate, alter or otherwise change the location of any drainage, utility or sewer easement and to grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as the Developer may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots or any portion of the Development. The Developer further reserves the right to more specifically describe or to change the description of any such drainage, utility or sewer easement, driveway easement, or other easement, license or right-of-way by written instrument, amended Plat or amendment to the plat recorded in the office of the Recorder of
Delaware County, Indiana and any Owner of any Lot shall take title subject to the rights and easements reserved herein; provided, however, the rights reserved in this Section 1 shall not be exercised in a manner which unreasonably and adversely affects any improvement or portion thereof located upon any Lot or any Owner's use or ingress and egress to any Lot. The rights and easements reserved by the Developer in this Section 1 shall run with the land and the Developer's right to further alter or grant easements shall automatically terminate one (1) year after the Developer shall have conveyed the last Lot within the Development.

Section 2. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use, in the case of an emergency, by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the driveway easements, and any pedestrian walkways or sidewalks.

ARTICLE XI
GENERAL PROVISIONS

Section 1. Enforceability. The Developer 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 Restrictions. Failure by the Developer to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, and shall not operate to deprive an Owner from enforcing said covenant or restriction.

Section 2. Right of Entry. The Developer acting through his respective agents, shall have the right, during reasonable hours, to enter upon and inspect a Dwelling Unit, whether prior to, during, or after the completion of, any construction, for purposes of determining whether or not the provisions of these restrictions are being followed and exercising all rights and powers conferred upon the Developer with respect to the enforcement or correction or remedy of any failure of the Owner to observe these restrictions. The Developer, the Association and their agents shall not be deemed to have committed a trespass as a result of entry. Notwithstanding the foregoing, an occupied Dwelling Unit may not be entered hereunder unless written notice of such proposed entry shall have been given to the Owner at least five (5) days prior to such entry.

Section 3. Partial Invalidation. Invalidation of anyone or part of these Restrictions by Judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Restrictions and Extensions. The Restrictions herein contained shall run with the land, and be effective for a term of twenty (20) years from the date and automatically be extended for successive periods of ten (10) years; provided these Restrictions may be amended by an instrument signed

by not less than 51 % of the Lot Owners, and provided further, the Developer, its successors or assigns, shall have the exclusive right for a period of four (4) years from the date or recording of the plat to amend any of the Covenants and Restrictions.

Section 5. Costs and Attorney's Fees. In any proceeding arising because of the failure of an Owner to pay any assessments or amounts due pursuant to this Declaration, the By-laws, or any rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Developer shall be entitled to recover its costs, to include its reasonable attorney's fees.

Section 6. Specific Changes. Any specific change or alteration made by an Owner must be approved by the Architectural Control Committee prior to the change or alteration being made.

IN WITNESS WHEREOF, CHART, Inc., Owner of the real estate described in said plat, has set its hand and seal this 5th day of September , 2018

CHART, an Indiana Corporation

By: _____
Mark Thurston, Member

STATE OF INDIANA }
} SS:
DELAWARE COUNTY }

Before me, a Notary Public in and for said County and State, personally appeared the above-named Stan Richards, who acknowledged the execution of the foregoing document for and on behalf of said Corporation.

WITNESS my hand and Notarial Seal this 5 day of SEPTEMBER , 2018

_____
Notary Public
A resident of DELAWARE County, Indiana

My Commission Expires:

2.17.23

SUSAN J. DESMOND
NOTARY PUBLIC
SEAL
STATE OF INDIANA
My Commission Expires: 02.17.2023

This instrument prepared by:

Mark Thurston and to be returned to: Mark Thurston, **2224 N Cammack St, Muncie, IN 47304**

I affirm under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: Mark Thurston, 2224 N Cammack St, Muncie, IN 47304

05759

DEDICATION AND DECLARATION OF PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS APPENDED TO AS PART OF THE DEDICATION AND PLAT OF ON THE FAIRWAYS A SUBDIVISION OF REAL ESTATE IN THE TOWN OF ALBANY , DELAWARE COUNTY, INDIANA

DELAWARE COUNTY, IN. NOT FOR RESALE

Case-Rich, Inc., hereby declares that it is the Owner and Developer of the real estate described in Exhibit A which is attached hereto, which includes **On The Fairways** and any golf course developed hereinafter, and does hereby lay off, plat and subdivide said real estate in accordance with those platted sections which will be certified and filed at different times hereinafter. The Subdivision shall be known and designated as **On The Fairways**, a Subdivision of real estate in the Town of Albany, Delaware County, Indiana.

The Lots subsequently platted shall be subject to and impressed with the covenants, agreements, restrictions, easements and limitations hereinafter set forth, and they shall be considered a part of every conveyance of land in said Subdivision without being written therein. The provisions herein contained are for the mutual benefit and protection of the owners present and future of any and all land in the Subdivision, and they shall run with and bind the land and shall inure to the benefit of and be enforceable by the owners of land included therein, their respective legal representatives, successors, grantees and assigns.

The Lots shall be numbered in subsequent plats to be filed. All streets and easements specifically shown are described and are hereby expressly dedicated to public use for their usual and intended purposes.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to such Indiana Nonprofit Corporation as shall be formed for the mutual benefit of owners of lots within said subdivision, and such corporation's successors and assigns. The name of such corporation shall be The Fairway Owners Association, Inc., or such similar name as shall be approved by the Indiana Secretary of State.

Section 2. "By-Laws" shall mean the By-Laws initially adopted by the Indiana Nonprofit Corporation referred to above and all amendments and additions thereto.

Section 3. "Committee" shall mean the Architectural Control Committee, composed of three members initially appointed by **Case-Rich, Inc.**,. The members shall be subject to removal by the Association at any time with or without cause. Any vacancies from time to time shall be filled pursuant to the By-Laws of the Association. At least two of the members must be trained as a builder, designer, architect, or landscape architect.

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Recorder, Delaware County

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and shall include, but not be limited to the signage, entrance ways, and all real property dedicated as a public right-of-way.

Section 5. "Developer" shall mean and refer to **Case-Rich, Inc.**, its successors and assigns.

Section 6."Dwelling Unit" shall mean and refer to the structure used as a residential living unit located upon a Lot, including the garage and any appurtenances.

Section 7. "Lot" shall mean any type of Lot, 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 further restrictions as may be imposed by any applicable zoning ordinance, PROVIDED, HOWEVER, no tract of land consisting of part of any one Lot or parts of more than one Lot shall be considered a "LOT" unless said tract of land has a frontage of not less than 57 feet in width at the established building line as shown on this plat.

Section 8. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation.

Section 9. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be added to and brought within the jurisdiction of the Association.

Section 10."Restrictions" shall mean and refer to the Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals appended to as part of the Dedication and Plat of **On The Fairways**.

Section 11. "Subdivision," shall mean , a subdivision of real estate located in Town of Albany, Delaware County, Indiana.

Section 12. "**On The Fairways**" shall mean and refer collectively to each subdivision or section of the **On The Fairways Development**, the master plan of which is attached as **Exhibit B** and as it may change from time to time.

ARTICLE II
PROPERTY RIGHTS

Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be maintained and/or owned by the Association, and which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

DELAWARE COUNTY IN NOT FOR RESALE

(a) The right of the Association to suspend the voting rights of an Owner for any period during which any assessments against such Owner's Lot remains unpaid; and for a period not to exceed 30 days for any Infraction of its published rules and regulations after hearing by the Board of Directors of the Association;

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by two-thirds (2/3) vote of the members.

ARTICLE III
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting memberships:

Class A. Class A members shall be all Owners of Lots in the subdivision (except **Case-Rich, Inc.**) and such members shall be entitled to one vote for each Lot owned. When more than one persons holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

Class B. Class B member(s) shall be **Case-Rich, Inc.**, and such member(s) shall be entitled to six (6) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever shall first occur:

(a) when title to all Lots in all sections of **On The Fairways** have been conveyed by the Developer, or

(b) on December 31, 2008.

ARTICLE IV
COVENANT FOR MAINTENANCE AND OTHER ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of assessments. Each Owner of any Lot, excepting **Case-Rich, Inc.**, 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 the Association: (1) Annual Assessments, such assessment to be established and collected as hereinafter provided. Assessments or any installments thereof which are not paid when due shall bear interest at a fluctuating rate equal

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to the maximum rate of interest which may be charged under the laws of the State of Indiana for consumer loans, adjusted on the first day of each calendar year. If any Owner shall fail, refuse or neglect to make any payment of any Assessment, when due, the Board of Directors of the Association may, in its discretion, declare the entire balance of unpaid assessment to be due and payable, with interest as aforesaid, and file a written Notice of Lien against said Owner's Lot in the office of the Recorder of Delaware County, Indiana, which Notice of Lien shall perfect the lien of the Association and have the same force and effect as, and be enforced in the same manner as, a mortgage lien under Indiana law, and shall include attorney's fees, title expenses, interest and any costs of collection. If an owner's assessment account is not paid current, the owner may not vote.

Assessments The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents of **On The Fairways**, and in particular for the improvement and maintenance of the ponds, entrance ways and all other Common Areas, including. but not limited to, repair, maintenance, the cost of labor, equipment and materials, supervision, security, lighting, lawn care, snow removal, insurance, taxes, and other things necessary or desirable in the opinion of the Board of Directors of the Association in connection therewith.

Section 3. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance by the Developer of the first Lot to an Owner, the maximum annual assessment (Annual Assessments) shall be One Hundred Twenty Dollars ($120.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased each year not more than 15% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January I of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased above 15% by the vote or written assent of 51% of each class of members.

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

Section 4. Special Assessments for Capital Improvements. In addition to the Annual Assessments, authorized above, the Association may levy, in any assessment year, a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, ***provided however***, any such assessment shall require the affirmative vote or written assent of 51% of each class of association members.

Section 5. Notice and Quorum Requirements for Action Under Sections 3 and 4. Any action authorized under Sections 3 or 4 of this Article IV and requiring an affirmative vote or written assent of a certain Percentage of the Association membership 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 nor more than 20

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 each class of members, members who were not present in person or by their proxy may give assent in writing, Provided the same is obtained by the appropriate officers of the Association not later than 15 days from the date of such meeting.

Section 6. Dates. The Annual Assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area by the Developer to the Association or to a public agency. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 7. Effect of Nonpayment of Assessment: Remedies of the association. Any annual assessment not paid within thirty (30) days after the due date shall bear interest from the due date as provided in Section 1 of this Article IV. The Association may bring an action at law against the Owner personally obligated to pay the same; may foreclose the lien against the property in accordance with the provisions of Section 1 of this Article IV; or may do both. No owner may waive or otherwise escape personal liability for the assessments provided for in this Article IV by non-use of the Common Area or the Club facilities or by abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgages. The lien of any assessments provided for in this Article IV shall be subordinate to the lien of any first mortgage. The sale or transfer of any lot shall not affect such assessment lien. However, the sale or transfer of any Lot pursuant to a judgment and court order on a foreclosure of any first mortgage, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V
ARCHITECTURAL CONTROL

No building, improvement, construction, excavation, landscaping, fence, wall, swimming pool or spa or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until two sets of plans and specifications (one set will be returned) showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee in accordance with the **On The Fairways Design Standards**. All approvals shall be requested by submitting plans and specifications in duplicate to the Architectural Control Committee showing the following:

(a) The Dwelling Unit, and other improvements, access drives, and other improved areas, and

the locations thereof on the site;

(b) All landscaping, including existing and proposed tree locations and planting areas (and specie thereof).

(c) Plans for all floors; and front, rear and side elevations.

(d) Walls, fencing, and screening;

(e) Patios, decks, pools, and porches.

Neither the Developer, the Architectural Control Committee, nor any member thereof, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in Judgment, negligence, or nonfeasance arising out. of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or an~ drainage problems resulting therefrom. Every person and entity who submits plans to the Architectural Control Committee agrees, by submission of such plans, that he or it will not bring any action or suit against the Committee or the Developer to recover any damages or to require the Committee or the Developer to take, or refrain from taking, any action whatever in regard to such plans or in regard to any building or structure erected in accordance therewith. Neither the submission of any complete sets of plans to the Developer's office for review by the Architectural Control Committee, nor the approval thereof by that Committee, shall be deemed to guarantee or require the actual construction of the building of structure therein described, and no adjacent Lot Owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described therein.

ARTICLE VI
GENERAL PROVISIONS

Section 1. Residential. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two and one-half stories in height. Each Dwelling Unit shall include as a minimum a two car garage.

A "detached single family dwelling" may include a room or suite of rooms within a single family appearing dwelling for occupancy by relatives or domestic help of the owner. Occupancy of said room or suite of rooms is limited to relatives of the owner and/or domestic help of the owner.

Section 2. Home Occupations. No Lot shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows may be permitted: any use conducted entirely within the Dwelling Unit and participated in solely by a member of the immediate family residing in said Dwelling Unit, which use is clearly incidental and secondary to the use of the Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with which there is: (a) no sign or display that indicates from the exterior that the Dwelling Unit is

being utilized in whole or in part for any purpose other than that of a Dwelling Unity (b) no commodity is sold upon the Lot; (c) no person is employed in such home occupation other than a member of the immediate family residing in the Dwelling Unit; and (d) no noisesome mechanical or electrical equipment is used; provided that, in no event shall a barber shop, styling salon, beauty parlor, tea room, licensed child care center or other licensed or regulated baby sitting service, animal hospital, or any form of animal care or treatment such as dog trimming be construed as a home occupation.

Section 3. Building Sizes. No Dwelling Unit shall be built on any Lot having the living area of the main structure, exclusive of one-story open porches, breezeways or garages of less than the following number of square feet for the following types of dwellings. In specific given areas, minimum square footage will be the following:

Homes on Lots 58 through 61 and 72 through 114 shall be subject to the following:

Type of Home	Square Footage
one story	1,400 square feet
Two Story	1,800 square feet
1-1/2 story, Bi-Level, and Tri-Level	2,000 square feet (permitted only on specified terrain as designated by the developer)

Homes on Lots 1 through 7, Lots 14 through 36, Lots 52 through 57 and Lots 62 and 63 shall be subject to the following:

Type Of Homes	Square Footage
One Story	1,600 square feet
Two story	2,000 square feet
1-1/2 story, Bi-Level, and Tri-Level	2,200 square feet

Homes on Lots 8 through 13 and Lots 37 and 71 shall be subject to the following:

Type of Home	Square Footage
one story	1,800 square feet
Two Story	2,200 square feet
1-1/2 story, Bi-Level, and Tri-Level	2,400 square feet (permitted only on specified terrain as designated by the developer)

Homes on Lots 38 through 51 and 64 through 70 shall be subject to the following:

Type of Home	Square Footage
one story	2,000 square feet
Two Story	2,400 square feet
1-1/2 story, Bi-Level, and Tri-Level	2,600 square feet (permitted only on specified terrain as designated by the developer)

Section 4. Garages. All Dwelling Units must have an attached garage of at least 576 square feet and not more than 1152 square feet, except Lots 58 through 61 and Lots 72 through 114 which shall have an attached garage of at least 400 square feet.

Section 5. Setback. No Dwelling Unit or any improvements or structures shall be located on any Lot nearer to the front Lot line or nearer to the side street line or the rear property line than the minimum building setback lines shown on the recorded plat. The front building line shall be parallel with the front property line at a setback distance of twenty-five (25) feet. In any event, no Dwelling Unit shall be located nearer than a distance of ten (10) feet to a side Lot line, and no nearer than a distance of fifteen (15) feet to a rear property line if there is no rear setback line shown on the recorded plat.

Section 6. Minimum Building and Lot Size. No Dwelling Unit shall be erected or placed on any Lot having a width of less than 57 feet at the minimum building setback line, nor shall any Dwelling Unit be erected or placed on any Lot having an area of less than 9,023 square feet.

Section 7. Utility and Drainage Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No owner of any Lot shall erect or grant to any person, firm or corporation, the right, license or privilege to erect or use or permit the use of overhead wires, poles or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the subdivision). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any Dwelling Unit or other structure connecting the same to the electrical distribution system of any electric public utility shall be provided by the Owners of all Lots and shall carry not less than three (3) wires and have a capacity of not less than 200 amperes. Any electric public utility charged with the maintenance of any underground installation shall have access to all easements in which said underground installations are located for operation, maintenance and replacement of service connections. Any such electric public utility shall not be liable for damage to walks, driveways, lawn or landscaping which may result from installation, repair or maintenance of such service.

Section 8. Maintenance of Lots and Dwelling Units. No Lot and no Dwelling Unit shall be permitted to become overgrown, unsightly or to fall into disrepair. All Dwelling Units shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the Architectural Control Committee. Each Owner, for himself and his successors and assigns, hereby grants to the Association, jointly and severally, the right to make any necessary alterations, repairs or maintenance approved by the Architectural Control Committee to carry out the intent of this provision and they further agree to reimburse the Association for any expenses actually incurred in carrying out the foregoing. The Association may assess and collect such reimbursement in the same manner as it assesses and collects yearly assessments pursuant to Article IV, above, and such amounts shall become a lien upon the Lot as provided in Article IV.

Section 9. Landscaping. The Lots shall be landscaped according to plans approved by the Architectural Control Committee. All shrubs, trees, grass and plantings of every kind shall be kept well maintained, properly cultivated and free of trash and other unsightly material. Landscaping as approved by the Architectural Control Committee shall be installed no later than one hundred eighty (180) days following occupancy of or completion of the Dwelling Unit, whichever shall first occur. Each lot owner shall be required to plant three (3) trees. Said trees shall be planted on the front property line and spaced equidistant across the front of each lot, and shall be subject to Architectural Committee Guidelines for size and variety of trees.

Section 10. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Without limiting any of the foregoing, no exterior lights, the principal beam of which shines upon portions of a Lot other than the Lot upon which they are located, or which otherwise cause unreasonable interference with the use and enjoyment of a Lot by the occupants thereof, and no speakers, horns, whistles, bells or other sound devices, shall be located, used or placed on the premises, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof. All windows, porches, balconies and exteriors of all Dwelling Units shall at all times be maintained in a neat and orderly manner. No clotheslines or other outside drying or airing facilities shall be permitted. No outdoor fires for the purpose of burning leaves, grass or other forms of trash shall be permitted on any street, roadway or Lot, and no outside incinerators or refuse disposal shall be permitted on any Lot.

Section 11. Storage and Temporary Structures. No structure of a temporary character, trailer, boat trailer, truck, commercial vehicle, recreational vehicle (RV), camper shell, all terrain vehicle (ATV), camper or camping trailer, basement, tent, shack, garage, barn or other outbuilding shall be either used or located on any Lot, or adjacent to any Lot, public street or right-of-way within the Subdivision at anytime, or used as a residence either temporarily or permanently.

Section 12. Signs. Once a home dwelling unit is occupied, no sign of any kind shall be displayed to the public view on any Lot except one sign of not more than six square feet advertising such Lot for sale. Rummage or other sale signs may be placed on lots for no more than seven days in a calendar year.

The Developer reserves unto itself, during the development of the subdivision, the right to place larger signs and a greater number of signs within the subdivision than as provided above. Such reservation shall automatically terminate upon the sale by Developer of its last lot in the subdivision.

Section 13. Radio, Television Antennas and Solar Units. No radio or television antenna shall be attached to any Dwelling Unit. No free standing radio or television antenna shall be permitted on any Lot. No television receiving disk or dish greater than three (3) feet in diameter shall be permitted on any Lot or on any Dwelling Unit. No solar units or panels shall be placed on any Dwelling Unit or lot whether attached or detached.

Section 14. Drilling, Refining, Quarrying, and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 15. Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Animals shall be confined to the owners property at all times.

Section 16. Building Materials. All Dwelling units and other permitted structures shall be constructed in a substantial and good workmanlike manner and of new materials. All roofs shall have a pitch of not less than 6-12. No roll siding, asbestos-siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any Dwelling Unit or other permitted structure on any Lots of said Subdivision and no roll roofing of any description or character shall be used on the roof of any Dwelling Unit or other permitted structure on any of said Lots. The front exterior shall be finished with 100% masonry materials and the total exterior surface of the building shall be finished with not less than 50% masonry materials. In any event, all exterior building materials must be approved by the Architecture Control Committee.

Section 17. Driveways. All driveways from the street to the garage shall be poured concrete, masonry, or asphalt and not less than twelve (12) feet in width. Any culvert pipe under driveways shall be capped at both ends with tapered metal end sections.

Section 18. Water and Sewage Systems. No individual water supply system or individual sewage disposal system shall be installed, maintained, or used on any Lots in this Subdivision. The only exception shall be wells used exclusively for geo-thermal HVAC systems. Any such system must be approved by the Architectural Control Committee..

Section 19. Public Easements. In addition to the utility easements herein designated, easements in the streets, as shown on this plat, are hereby reserved and granted to the Developer, the Association and any public or quasi-public utility company engaged in supplying one or more of the utility services contemplated in Sections 7 and 8 or this Section 19 of Article VI, and their respective

successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove all and every type of gas main, water main and sewer main (sanitary and/or storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having Jurisdiction thereof as to maintenance and repair of said streets.

Section 20. Storm and Sanitary Sewers. No storm water, surface water or discharge from a sump pump, shall at any time be discharged into or permitted to flow into the sanitary sewage system, and no sanitary sewage shall at any time be discharged or permitted to flow into any storm sewer or drainage system.

Section 21. Improvements. Before any Dwelling Unit on any Lot in this Subdivision shall be used and occupied as a dwelling or otherwise, the Developer or any subsequent Owner of such Lot shall install improvements serving such Lot as provided in the plans and specifications for such improvements filed with the appropriate governmental authorities, together with any amendments or additions thereto which said governmental authorities any authorize or require. This covenant shall run with the land and be enforceable by any governmental authority having jurisdiction over the Subdivision, by the Association, or by any aggrieved Lot Owner in this Subdivision.

Section 22. Permits and Certificates. Before any Dwelling Unit located on any Lot maybe used or occupied, such user or occupier shall first obtain from the Town of Albany an Improvement Location Permit and a Certificate of Occupancy as required by the Delaware County Zoning Ordinance.

Section 23. Pools and Hot Tubs. No above ground pool which requires a filtration system or other above ground pool which is more than six (6) feet in diameter and 18 inches deep shall be placed or maintained on any Lot. No in ground pool will be permitted in front of a dwelling, and the pool must be entirely within the rear and side building lines. All pools must be enclosed by a fence of the approved styles. Tennis courts shall be permitted only with the prior written approval of the Architectural Control Committee.

Section 24. Fencing The only fencing permitted shall be a privacy fence of not more than six feet in height within the building lines of the rear yard. Dog Runs adjacent to the service area of the home but not visible from surrounding dwellings, streets, or the golf course, will also be permitted. No privacy fencing shall be located or erected in such a manner as would interfere with the general sight line of the golf course fairways from a residence located on an adjoining lot. In any event, all proposed fencing must be approved in writing by the Architectural Control Committee. Existing farm fencing at the rear of any Lot shall not be disturbed or removed.

Section 25. Service Screening, Storage Areas. Garbage and refuse shall be placed in containers, which shall be concealed and contained within the Dwelling Unit, or shall be concealed by means of a screening wall or material similar to and compatible with that of the Dwelling Unit or shall be concealed by sufficient landscaping to provide a permanent screen at all times of the year. These elements shall be integrated with the Dwelling Unit plan, be designed so as not to attract

attention, and shall be located in as reasonably inconspicuous manner as is possible. Unless specifically approved by the Architectural Control Committee in writing, no materials, supplies or equipment shall be stored on a Lot except inside a closed Dwelling Unit, or behind a visual barrier screening such areas so that they are not visible from neighboring streets or Lots.

Section 26. Mailboxes. The type, location, and installation of mailboxes shall be uniform and in accordance with design specifications established by the Architectural Control Committee.

Section 27. Time for Building Completion and Restoration. Every Dwelling Unit on any Lot in the Subdivision shall be completed within twelve (12) months after the beginning of such construction. No improvement which has been partially or totally destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

Section 28. Single Owner contiguous Lots. Whenever two (2) or more contiguous Lots in the Subdivision shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single Dwelling Unit, he shall apply in writing to the Architectural Control Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as the Lots remain improved with one single Dwelling Unit.

Section 29. Enforceability. The Association or the Developer, 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 Restrictions. Failure by the Association or the Developer to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, and shall not operate to deprive an Owner from enforcing said covenant or restriction.

Section 30. Right of Entry. The Developer and the Association, acting through their respective representatives, shall have the right, during reasonable hours, to enter upon and inspect the Lot and Dwelling Unit, whether prior to, during, or after the completion of, any construction, for purposes of determining whether or not the provisions of these restrictions are being complied with and exercising all rights and powers conferred upon the Developer, the Architectural Control Committee and the Association with respect to the enforcement or correction or remedy of any failure of the Owner to observe these restrictions, and the Developer, the Architectural Control Committee and the Association and such representatives shall not be deemed to have committed a trespass as a result thereof. Notwithstanding the foregoing, an occupied Dwelling Unit may not be entered hereunder unless written notice of such proposed entry shall have been given to the Owner at least five days prior to such entry.

Section 31. Partial Invalidation. Invalidation of any one or part of these Restrictions by Judgment or court order shall in no way affect any other provisions which shall remain in full force

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and effect.

Section 32. Restrictions, and Extensions. The covenants and restrictions herein contained shall run with the land, and be effective for a term of twenty (20) years from the date and automatically be extended for successive periods of ten (10) years; provided these Restrictions may be amended by an instrument signed by not less than 75% of the Lot Owners, and provided further, the Developer, its successors or assigns shall, have the exclusive right for a period of two (2) years from the date or recording of the plat to amend any of the Covenants and Restrictions.

Section 33. Chimneys. All exterior fireplace chimneys shall be of masonry construction.

Section 34. Subdivision of Lots. No Lot or combination of Lots may be further subdivided without the approval of the Developer.

Section 35. Exterior Building Surfaces. All exterior building surfaces, materials and colors shall be harmonious and compatible with colors of the natural surrounding and other Dwelling Units. The Architectural Control Committee shall have the right to approve or disapprove materials and colors so controlled.

Section 36. Yard Lights. An electrical yard light (or gas light) of type and location approved by the Architectural Control Committee shall be installed by the builder or Lot Owner on each Lot in front of the front building line.

Section 37. Access to Albany Golf Club. Access to the grounds of the Albany Golf Club shall only be permitted at such locations as may be agreed to between the Albany Golf Club, the Association and the Developer.

Section 38. Easement Across Lots Adjacent to Golf Course. Until such time as a Dwelling Unit is constructed on a Lot which borders a fairway area of the Albany Golf Club, the operator of the Albany Golf Club shall have a license to permit and authorize their agents and registered golf course players and their caddies to enter upon a Lot to recover a ball or play a ball, subject to the official rules of the course, without such entering and playing being deemed a trespass.

Section 39. Interference with Play on Golf Course. Owners of Lots bordering on fairways of the Albany Golf Course shall be obligated to refrain from any actions which would detract from the playing qualities of the course. During any golf tournament held at the Albany Golf Course which is sanctioned by any professional golfers association or international, national or state .amateur golf organization, Owners of Lots bordering fairways shall suspend all construction activity, lawn maintenance and all other abnormally noisy activities which may cause disturbance to the play on the golf course.

Section 40. Costs and Attorney's Fees. In any proceeding arising because of the failure of an Owner to pay any assessments or amounts due pursuant to this Declaration, the By-laws, or any rules

and regulations adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its costs, to include its reasonable attorney's fees.

Section 41. Annexation. Additional real estate may be added to said subdivision and annexed by the Developer and made subject to this Declaration. Said additional real estate may be developed for condominiums, villas and single and two family residences. Said annexation may be perfected without the consent of the Owners.

IN WITNESS WHEREOF, **Case-Rich, Inc.**, Owner of the real estate described in said plat, has set its hand and seal this 20 day of December, 1996.

CASE-RICH, INC.

BY: Philip H. Case

Philip H. Case, President

ATTEST:

Tammi J. Richards

Tammi J. Richards, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF DELAWARE)

Before me, a Notary Public in and for said County and State, personally appeared the above-named **Case-Rich, Inc.**, by **Philip H. Case**, its President, and **Tammi J. Richards**, its Secretary, who acknowledged the execution of the foregoing document for and on behalf of said corporation, and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this 20 day of December, 1996.

Scott E. Richards

Notary Public
Resident of Delaware County, Indiana

My Commission Expires:

Jan 13, 1998

This instrument prepared by Fredrick W. Wenger, Attorney at Law.

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~~MIS1997 1254~~

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DEDICATION AND DECLARATION OF PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS APPENDED TO AS PART OF THE DEDICATION AND PLAT OF ON THE FAIRWAYS A SUBDIVISION OF REAL ESTATE IN THE TOWN OF ALBANY , DELAWARE COUNTY, INDIANA

DELAWARE COUNTY, IN - NOT OFFICIAL!

Case-Rich, Inc., hereby declares that it is the Owner and Developer of the real estate described in Exhibit A which is attached hereto, which includes **On The Fairways** and any golf course developed hereinafter, and does hereby lay off, plat and subdivide said real estate in accordance with those platted sections which will be certified and filed at different times hereinafter. The Subdivision shall be known and designated as **On The Fairways**, a Subdivision of real estate in the Town of Albany, Delaware County, Indiana.

The Lots subsequently platted shall be subject to and impressed with the covenants, agreements, restrictions, easements and limitations hereinafter set forth, and they shall be considered a part of every conveyance of land in said Subdivision without being written therein. The provisions herein contained are for the mutual benefit and protection of the owners present and future of any and all land in the Subdivision, and they shall run with and bind the land and shall inure to the benefit of and be enforceable by the owners of land included therein, their respective legal representatives, successors, grantees and assigns.

The Lots shall be numbered in subsequent plats to be filed. All streets and easements specifically shown are described and are hereby expressly dedicated to public use for their usual and intended purposes.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to such Indiana Nonprofit Corporation as shall be formed for the mutual benefit of owners of lots within said subdivision, and such corporation's successors and assigns. The name of such corporation shall be The Fairway Owners Association, Inc., or such similar name as shall be approved by the Indiana Secretary of State.

Section 2. "By-Laws" shall mean the By-Laws initially adopted by the Indiana Nonprofit Corporation referred to above and all amendments and additions thereto.

Section 3. "Committee" shall mean the Architectural Control Committee, composed of three members initially appointed by **Case-Rich, Inc.**,. The members shall be subject to removal by the Association at any time with or without cause. Any vacancies from time to time shall be filled pursuant to the By-Laws of the Association. At least two of the members must be trained as a builder, designer, architect or landscape architect.

FILED FOR RECORD
10:00 o'clock A M.
Record 2002 Page 3844-3857
SEP 24 2002
Recorder, Delaware County

FILED FOR RECORD
9:45 o'clock A M.
Record 1997 Page 1254-67
APR 11 1997
Recorder, Delaware County

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and shall include, but not be limited to the signage, entrance ways, and all real property dedicated as a public right-of-way.

Section 5. "Developer" shall mean and refer to **Case-Rich, Inc.**, its successors and assigns.

Section 6. "Dwelling Unit" shall mean and refer to the structure used as a residential living unit located upon a Lot, including the garage and any appurtenances.

Section 7. "Lot" shall mean any type of Lot 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 further restrictions as may be imposed by any applicable zoning ordinance, PROVIDED, HOWEVER, no tract of land consisting of part of any one Lot or parts of more than one Lot shall be considered a "LOT" unless said tract of land has a frontage of not less than 57 feet in width at the established building line as shown on this plat.

Section 8. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation.

Section 9. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be added to and brought within the jurisdiction of the Association.

Section 10. "Restrictions" shall mean and refer to the Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals appended to as part of the Dedication and Plat of **On The Fairways**.

Section 11. "Subdivision," shall mean , a subdivision of real estate located in Town of Albany, Delaware County, Indiana.

Section 12. **"On The Fairways"** shall mean and refer collectively to each subdivision or section of the **On The Fairways Development**, the master plan of which is attached as **Exhibit B** and as it may change from time to time.

ARTICLE II
PROPERTY RIGHTS

Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be maintained and/or owned by the Association, and which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

DELAWARE COUNTY, IN - NOT FOR RESALE

(a) The right of the Association to suspend the voting rights of an Owner for any period during which any assessments against such Owner's Lot remains unpaid; and for a period not to exceed 30 days for any Infraction of its published rules and regulations after hearing by the Board of Directors of the Association;

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by two-thirds (2/3) vote of the members.

ARTICLE III
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting memberships:

Class A. Class A members shall be all Owners of Lots in the subdivision (except **Case-Rich, Inc.**) and such members shall be entitled to one vote for each Lot owned. When more than one persons holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

Class B. Class B member(s) shall be **Case-Rich, Inc.**, and such member(s) shall be entitled to six (6) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever shall first occur:

(a) when title to all Lots in all sections of **On The Fairways** have been conveyed by the Developer, or

(b) on December 31, 2008.

ARTICLE IV
COVENANT FOR MAINTENANCE AND OTHER ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of assessments. Each Owner of any Lot, excepting **Case-Rich, Inc.**, 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 the Association: (1) Annual Assessments, such assessment to be established and collected as hereinafter provided. Assessments or any installments thereof which are not paid when due shall bear interest at a fluctuating rate equal

to the maximum rate of interest which may be charged under the laws of the State of Indiana for consumer loans, adjusted on the first day of each calendar year. If any Owner shall fail, refuse or neglect to make any payment of any Assessment, when due, the Board of Directors of the Association may, in its discretion, declare the entire balance of unpaid assessment to be due and payable, with interest as aforesaid, and file a written Notice of Lien against said Owner's Lot in the office of the Recorder of Delaware County, Indiana, which Notice of Lien shall perfect the lien of the Association and have the same force and effect as, and be enforced in the same manner as, a mortgage lien under Indiana law, and shall include attorney's fees, title expenses, interest and any costs of collection. If an owner's assessment account is not paid current, the owner may not vote.

Assessments The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents of **On The Fairways**, and in particular for the improvement and maintenance of the ponds, entrance ways and all other Common Areas, including. but not limited to, repair, maintenance, the cost of labor, equipment and materials, supervision, security, lighting, lawn care, snow removal, insurance, taxes, and other things necessary or desirable in the opinion of the Board of Directors of the Association in connection therewith.

Section 3. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance by the Developer of the first Lot to an Owner, the maximum annual assessment (Annual Assessments) shall be One Hundred Twenty Dollars ($120.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased each year not more than 15% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January I of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased above 15% by the vote or written assent of 51% of each class of members.

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

Section 4. Special Assessments for Capital Improvements. In addition to the Annual Assessments, authorized above, the Association may levy, in any assessment year, a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, ***provided however***, any such assessment shall require the affirmative vote or written assent of 51% of each class of association members.

Section 5. Notice and Quorum Requirements for Action Under Sections 3 and 4. Any action authorized under Sections 3 or 4 of this Article IV and requiring an affirmative vote or written assent of a certain Percentage of the Association membership 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 nor more than 20

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 each class of members, members who were not present in person or by their proxy may give assent in writing, Provided the same is obtained by the appropriate officers of the Association not later than 15 days from the date of such meeting.

Section 6. Dates. The Annual Assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area by the Developer to the Association or to a public agency. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 7. Effect of Nonpayment of Assessment: Remedies of the association. Any annual assessment not paid within thirty (30) days after the due date shall bear interest from the due date as provided in Section 1 of this Article IV. The Association may bring an action at law against the Owner personally obligated to pay the same; may foreclose the lien against the property in accordance with the provisions of Section 1 of this Article IV; or may do both. No owner may waive or otherwise escape personal liability for the assessments provided for in this Article IV by non-use of the Common Area or the Club facilities or by abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgages. The lien of any assessments provided for in this Article IV shall be subordinate to the lien of any first mortgage. The sale or transfer of any lot shall not affect such assessment lien. However, the sale or transfer of any Lot pursuant to a judgment and court order on a foreclosure of any first mortgage, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V
ARCHITECTURAL CONTROL

No building, improvement, construction, excavation, landscaping, fence, wall, swimming pool or spa or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until two sets of plans and specifications (one set will be returned) showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee in accordance with the **On The Fairways Design Standards**. All approvals shall be requested by submitting plans and specifications in duplicate to the Architectural Control Committee showing the following:

(a) The Dwelling Unit, and other improvements, access drives, and other improved areas, and

the locations thereof on the site;

(b) All landscaping, including existing and proposed tree locations and planting areas (and specie thereof).

(c) Plans for all floors; and front, rear and side elevations.

(d) Walls, fencing, and screening;

(e) Patios, decks, pools, and porches.

Neither the Developer, the Architectural Control Committee, nor any member thereof, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in Judgment, negligence, or nonfeasance arising out. of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or an~ drainage problems resulting therefrom. Every person and entity who submits plans to the Architectural Control Committee agrees, by submission of such plans, that he or it will not bring any action or suit against the Committee or the Developer to recover any damages or to require the Committee or the Developer to take, or refrain from taking, any action whatever in regard to such plans or in regard to any building or structure erected in accordance therewith. Neither the submission of any complete sets of plans to the Developer's office for review by the Architectural Control Committee, nor the approval thereof by that Committee, shall be deemed to guarantee or require the actual construction of the building of structure therein described, and no adjacent Lot Owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described therein.

ARTICLE VI
GENERAL PROVISIONS

Section 1. Residential. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two and one-half stories in height. Each Dwelling Unit shall include as a minimum a two car garage.

A "detached single family dwelling" may include a room or suite of rooms within a single family appearing dwelling for occupancy by relatives or domestic help of the owner. Occupancy of said room or suite of rooms is limited to relatives of the owner and/or domestic help of the owner.

Section 2. Home Occupations. No Lot shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows may be permitted: any use conducted entirely within the Dwelling Unit and participated in solely by a member of the immediate family residing in said Dwelling Unit, which use is clearly incidental and secondary to the use of the Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with which there is: (a) no sign or display that indicates from the exterior that the Dwelling Unit is

being utilized in whole or in part for any purpose other than that of a Dwelling Unity (b) no commodity is sold upon the Lot; (c) no person is employed in such home occupation other than a member of the immediate family residing in the Dwelling Unit; and (d) no noisesome mechanical or electrical equipment is used; provided that, in no event shall a barber shop, styling salon, beauty parlor, tea room, licensed child care center or other licensed or regulated baby sitting service, animal hospital, or any form of animal care or treatment such as dog trimming be construed as a home occupation.

Section 3. Building Sizes. No Dwelling Unit shall be built on any Lot having the living area of the main structure, exclusive of one-story open porches, breezeways or garages of less than the following number of square feet for the following types of dwellings. In specific given areas, minimum square footage will be the following:

Homes on Lots 58 through 61 and 72 through 114 shall be subject to the following:

Type of Home	**Square Footage**
one story	1,400 square feet
Two Story	1,800 square feet
1-1/2 story, Bi-Level, and Tri-Level	2,000 square feet (permitted only on specified terrain as designated by the developer)

Homes on Lots 1 through 7, Lots 14 through 36, Lots 52 through 57 and Lots 62 and 63 shall be subject to the following:

Type Of Homes	**Square Footage**
One Story	1,600 square feet
Two story	2,000 square feet
1-1/2 story, Bi-Level, and Tri-Level	2,200 square feet

Homes on Lots 8 through 13 and Lots 37 and 71 shall be subject to the following:

Type of Home	**Square Footage**
one story	1,800 square feet
Two Story	2,200 square feet
1-1/2 story, Bi-Level, and Tri-Level	2,400 square feet (permitted only on specified terrain as designated by the developer)

Homes on Lots 38 through 51 and 64 through 70 shall be subject to the following:

Type of Home	Square Footage
one story	2,000 square feet
Two Story	2,400 square feet
1-1/2 story, Bi-Level, and Tri-Level	2,600 square feet (permitted only on specified terrain as designated by the developer)

Section 4. Garages. All Dwelling Units must have an attached garage of at least 576 square feet and not more than 1152 square feet, except Lots 58 through 61 and Lots 72 through 114 which shall have an attached garage of at least 400 square feet.

Section 5. Setback. No Dwelling Unit or any improvements or structures shall be located on any Lot nearer to the front Lot line or nearer to the side street line or the rear property line than the minimum building setback lines shown on the recorded plat. The front building line shall be parallel with the front property line at a setback distance of THIRTY (30) feet. In any event, no Dwelling Unit shall be located nearer than a distance of ten (10) feet to a side Lot line, and no nearer than a distance of fifteen (15) feet to a rear property line if there is no rear setback line shown on the recorded plat.

Section 6. Minimum Building and Lot Size. No Dwelling Unit shall be erected or placed on any Lot having a width of less than 57 feet at the minimum building setback line, nor shall any Dwelling Unit be erected or placed on any Lot having an area of less than 9,023 square feet.

Section 7. Utility and Drainage Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No owner of any Lot shall erect or grant to any person, firm or corporation, the right, license or privilege to erect or use or permit the use of overhead wires, poles or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the subdivision). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any Dwelling Unit or other structure connecting the same to the electrical distribution system of any electric public utility shall be provided by the Owners of all Lots and shall carry not less than three (3) wires and have a capacity of not less than 200 amperes. Any electric public utility charged with the maintenance of any underground installation shall have access to all easements in which said underground installations are located for operation, maintenance and replacement of service connections. Any such electric public utility shall not be liable for damage to walks, driveways, lawn or landscaping which may result from installation, repair or maintenance of such service.

Section 8. Maintenance of Lots and Dwelling Units. No Lot and no Dwelling Unit shall be permitted to become overgrown, unsightly or to fall into disrepair. All Dwelling Units shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the Architectural Control Committee. Each Owner, for himself and his successors and assigns, hereby grants to the Association, jointly and severally, the right to make any necessary alterations, repairs or maintenance approved by the Architectural Control Committee to carry out the intent of this provision and they further agree to reimburse the Association for any expenses actually incurred in carrying out the foregoing. The Association may assess and collect such reimbursement in the same manner as it assesses and collects yearly assessments pursuant to Article IV, above, and such amounts shall become a lien upon the Lot as provided in Article IV.

Section 9. Landscaping. The Lots shall be landscaped according to plans approved by the Architectural Control Committee. All shrubs, trees, grass and plantings of every kind shall be kept well maintained, properly cultivated and free of trash and other unsightly material. Landscaping as approved by the Architectural Control Committee shall be installed no later than one hundred eighty (180) days following occupancy of or completion of the Dwelling Unit, whichever shall first occur. Each lot owner shall be required to plant three (3) trees. Said trees shall be planted on the front property line and spaced equidistant across the front of each lot, and shall be subject to Architectural Committee Guidelines for size and variety of trees.

Section 10. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Without limiting any of the foregoing, no exterior lights, the principal beam of which shines upon portions of a Lot other than the Lot upon which they are located, or which otherwise cause unreasonable interference with the use and enjoyment of a Lot by the occupants thereof, and no speakers, horns, whistles, bells or other sound devices, shall be located, used or placed on the premises, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof. All windows, porches, balconies and exteriors of all Dwelling Units shall at all times be maintained in a neat and orderly manner. No clotheslines or other outside drying or airing facilities shall be permitted. No outdoor fires for the purpose of burning leaves, grass or other forms of trash shall be permitted on any street, roadway or Lot, and no outside incinerators or refuse disposal shall be permitted on any Lot.

Section 11. Storage and Temporary Structures. No structure of a temporary character, trailer, boat trailer, truck, commercial vehicle, recreational vehicle (RV), camper shell, all terrain vehicle (ATV), camper or camping trailer, basement, tent, shack, garage, barn or other outbuilding shall be either used or located on any Lot, or adjacent to any Lot, public street or right-of-way within the Subdivision at anytime, or used as a residence either temporarily or permanently.

Section 12. Signs. Once a home dwelling unit is occupied, no sign of any kind shall be displayed to the public view on any Lot except one sign of not more than six square feet advertising such Lot for sale. Rummage or other sale signs may be placed on lots for no more than seven days in a calendar year.

The Developer reserves unto itself, during the development of the subdivision, the right to place larger signs and a greater number of signs within the subdivision than as provided above. Such reservation shall automatically terminate upon the sale by Developer of its last lot in the subdivision.

Section 13. Radio, Television Antennas and Solar Units. No radio or television antenna shall be attached to any Dwelling Unit. No free standing radio or television antenna shall be permitted on any Lot. No television receiving disk or dish greater than three (3) feet in diameter shall be permitted on any Lot or on any Dwelling Unit. No solar units or panels shall be placed on any Dwelling Unit or lot whether attached or detached.

Section 14. Drilling, Refining, Quarrying, and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 15. Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Animals shall be confined to the owners property at all times.

Section 16. Building Materials. All Dwelling units and other permitted structures shall be constructed in a substantial and good workmanlike manner and of new materials. All roofs shall have a pitch of not less than 6-12. No roll siding, asbestos-siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any Dwelling Unit or other permitted structure on any Lots of said Subdivision and no roll roofing of any description or character shall be used on the roof of any Dwelling Unit or other permitted structure on any of said Lots. The front exterior shall be finished with 100% masonry materials and the total exterior surface of the building shall be finished with not less than 50% masonry materials. In any event, all exterior building materials must be approved by the Architecture Control Committee.

Section 17. Driveways. All driveways from the street to the garage shall be poured concrete, masonry, or asphalt and not less than twelve (12) feet in width. Any culvert pipe under driveways shall be capped at both ends with tapered metal end sections.

Section 18. Water and Sewage Systems. No individual water supply system or individual sewage disposal system shall be installed, maintained, or used on any Lots in this Subdivision. The only exception shall be wells used exclusively for geo-thermal HVAC systems. Any such system must be approved by the Architectural Control Committee..

Section 19. Public Easements. In addition to the utility easements herein designated, easements in the streets, as shown on this plat, are hereby reserved and granted to the Developer, the Association and any public or quasi-public utility company engaged in supplying one or more of the utility services contemplated in Sections 7 and 8 or this Section 19 of Article VI, and their respective

successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove all and every type of gas main, water main and sewer main (sanitary and/or storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having Jurisdiction thereof as to maintenance and repair of said streets.

Section 20. Storm and Sanitary Sewers. No storm water, surface water or discharge from a sump pump, shall at any time be discharged into or permitted to flow into the sanitary sewage system, and no sanitary sewage shall at any time be discharged or permitted to flow into any storm sewer or drainage system.

Section 21. Improvements. Before any Dwelling Unit on any Lot in this Subdivision shall be used and occupied as a dwelling or otherwise, the Developer or any subsequent Owner of such Lot shall install improvements serving such Lot as provided in the plans and specifications for such improvements filed with the appropriate governmental authorities, together with any amendments or additions thereto which said governmental authorities any authorize or require. This covenant shall run with the land and be enforceable by any governmental authority having jurisdiction over the Subdivision, by the Association, or by any aggrieved Lot Owner in this Subdivision.

Section 22. Permits and Certificates. Before any Dwelling Unit located on any Lot maybe used or occupied, such user or occupier shall first obtain from the Town of Albany an Improvement Location Permit and a Certificate of Occupancy as required by the Delaware County Zoning Ordinance.

Section 23. Pools and Hot Tubs. No above ground pool which requires a filtration system or other above ground pool which is more than six (6) feet in diameter and 18 inches deep shall be placed or maintained on any Lot. No in ground pool will be permitted in front of a dwelling, and the pool must be entirely within the rear and side building lines. All pools must be enclosed by a fence of the approved styles. Tennis courts shall be permitted only with the prior written approval of the Architectural Control Committee.

Section 24. Fencing The only fencing permitted shall be a privacy fence of not more than six feet in height within the building lines of the rear yard. Dog Runs adjacent to the service area of the home but not visible from surrounding dwellings, streets, or the golf course, will also be permitted. No privacy fencing shall be located or erected in such a manner as would interfere with the general sight line of the golf course fairways from a residence located on an adjoining lot. In any event, all proposed fencing must be approved in writing by the Architectural Control Committee. Existing farm fencing at the rear of any Lot shall not be disturbed or removed.

Section 25. Service Screening, Storage Areas. Garbage and refuse shall be placed in containers, which shall be concealed and contained within the Dwelling Unit, or shall be concealed by means of a screening wall or material similar to and compatible with that of the Dwelling Unit or shall be concealed by sufficient landscaping to provide a permanent screen at all times of the year. These elements shall be integrated with the Dwelling Unit plan, be designed so as not to attract

attention, and shall be located in as reasonably inconspicuous manner as is possible. Unless specifically approved by the Architectural Control Committee in writing, no materials, supplies or equipment shall be stored on a Lot except inside a closed Dwelling Unit, or behind a visual barrier screening such areas so that they are not visible from neighboring streets or Lots.

Section 26. Mailboxes. The type, location, and installation of mailboxes shall be uniform and in accordance with design specifications established by the Architectural Control Committee.

Section 27. Time for Building Completion and Restoration. Every Dwelling Unit on any Lot in the Subdivision shall be completed within twelve (12) months after the beginning of such construction. No improvement which has been partially or totally destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

Section 28. Single Owner contiguous Lots. Whenever two (2) or more contiguous Lots in the Subdivision shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single Dwelling Unit, he shall apply in writing to the Architectural Control Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as the Lots remain improved with one single Dwelling Unit.

Section 29. Enforceability. The Association or the Developer, 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 Restrictions. Failure by the Association or the Developer to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, and shall not operate to deprive an Owner from enforcing said covenant or restriction.

Section 30. Right of Entry. The Developer and the Association, acting through their respective representatives, shall have the right, during reasonable hours, to enter upon and inspect the Lot and Dwelling Unit, whether prior to, during, or after the completion of, any construction, for purposes of determining whether or not the provisions of these restrictions are being complied with and exercising all rights and powers conferred upon the Developer, the Architectural Control Committee and the Association with respect to the enforcement or correction or remedy of any failure of the Owner to observe these restrictions, and the Developer, the Architectural Control Committee and the Association and such representatives shall not be deemed to have committed a trespass as a result thereof. Notwithstanding the foregoing, an occupied Dwelling Unit may not be entered hereunder unless written notice of such proposed entry shall have been given to the Owner at least five days prior to such entry.

Section 31. Partial Invalidation. Invalidation of any one or part of these Restrictions by Judgment or court order shall in no way affect any other provisions which shall remain in full force

and effect.

Section 32. Restrictions, and Extensions. The covenants and restrictions herein contained shall run with the land, and be effective for a term of twenty (20) years from the date and automatically be extended for successive periods of ten (10) years; provided these Restrictions may be amended by an instrument signed by not less than 75% of the Lot Owners, and provided further, the Developer, its successors or assigns shall, have the exclusive right for a period of two (2) years from the date or recording of the plat to amend any of the Covenants and Restrictions.

Section 33. Chimneys. All exterior fireplace chimneys shall be of masonry construction.

Section 34. Subdivision of Lots. No Lot or combination of Lots may be further subdivided without the approval of the Developer.

Section 35. Exterior Building Surfaces. All exterior building surfaces, materials and colors shall be harmonious and compatible with colors of the natural surrounding and other Dwelling Units. The Architectural Control Committee shall have the right to approve or disapprove materials and colors so controlled.

Section 36. Yard Lights. An electrical yard light (or gas light) of type and location approved by the Architectural Control Committee shall be installed by the builder or Lot Owner on each Lot in front of the front building line.

Section 37. Access to Albany Golf Club. Access to the grounds of the Albany Golf Club shall only be permitted at such locations as may be agreed to between the Albany Golf Club, the Association and the Developer.

Section 38. Easement Across Lots Adjacent to Golf Course. Until such time as a Dwelling Unit is constructed on a Lot which borders a fairway area of the Albany Golf Club, the operator of the Albany Golf Club shall have a license to permit and authorize their agents and registered golf course players and their caddies to enter upon a Lot to recover a ball or play a ball, subject to the official rules of the course, without such entering and playing being deemed a trespass.

Section 39. Interference with Play on Golf Course. Owners of Lots bordering on fairways of the Albany Golf Course shall be obligated to refrain from any actions which would detract from the playing qualities of the course. During any golf tournament held at the Albany Golf Course which is sanctioned by any professional golfers association or international, national or state amateur golf organization, Owners of Lots bordering fairways shall suspend all construction activity, lawn maintenance and all other abnormally noisy activities which may cause disturbance to the play on the golf course.

Section 40. Costs and Attorney's Fees. In any proceeding arising because of the failure of an Owner to pay any assessments or amounts due pursuant to this Declaration, the By-laws, or any rules

and regulations adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its costs, to include its reasonable attorney's fees.

Section 41. Annexation. Additional real estate may be added to said subdivision and annexed by the Developer and made subject to this Declaration. Said additional real estate may be developed for condominiums, villas and single and two family residences. Said annexation may be perfected without the consent of the Owners.

IN WITNESS WHEREOF, **Case-Rich, Inc.**, Owner of the real estate described in said plat, has set its hand and seal this 20 day of December, 1996.

CASE-RICH, INC.

BY: Philip H. Case

Philip H. Case, President

ATTEST:

Tammi J. Richards

Tammi J. Richards, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF DELAWARE)

Before me, a Notary Public in and for said County and State, personally appeared the above-named **Case-Rich, Inc.**, by **Philip H. Case**, its President, and **Tammi J. Richards**, its Secretary, who acknowledged the execution of the foregoing document for and on behalf of said corporation, and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this 20 day of December, 1996.

Scott E. Richards

Notary Public
Resident of Delaware County, Indiana

My Commission Expires:

Jan 13, 1998

This instrument prepared by Fredrick W. Wenger, Attorney at Law.

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