DECLARATION OF COVENANTS AND RESTRICTIONS
OF
FAIRWAY LAKES

This Declaration of Covenants and Restrictions of Fairway Lakes ("Declaration"), made this 4th day of September, 1991, by Fairway Lakes Development, an Indiana general partnership (the "Declarant").

WITNESSETH THAT:

WHEREAS, Declarant is the owner of real estate in Johnson County, State of Indiana, which is more particularly described in Exhibit "A," attached hereto and hereby incorporated herein by reference (hereinafter referred to as the "Real Estate"); and

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community with public streets, lakes, landscaped areas, and other common areas and amenities for the benefit of such residential community, and two (2) Business Lots, all to be known as "FAIRWAY LAKES"; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common areas therein contained, and, to this end, Declarant desires to subject the Real Estate to certain rights, privileges, covenants, restrictions, easements, assessments, charges, and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each owner of all or any part thereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of supervising, maintaining, and administering any common areas located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety, and welfare of the owners of the Real Estate, and all parts thereof; and

WHEREAS, Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a nonprofit corporation under the name "Fairway Lakes Homeowners Association, Inc." as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Real Estate is and shall henceforth be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved, and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges, and liens hereinafter set forth, all of which are
declared to be in furtherance of a plan for preservation and enhancement of the Real Estate and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Real Estate as a whole and of each of the Lots situated therein.

ARTICLE I
Definitions

Section 1. The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

(a) "Act" shall mean and refer to Title 17 of Article 23 of the Indiana Code, as amended from time to time;

(b) "Applicable Date" shall mean and refer to the date determined pursuant to Article IV, Section 2(b) of this Declaration;

(c) "Articles" shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time;

(d) "Board" or "Board of Directors" shall mean and refer to the governing body of the Corporation elected, selected, or appointed as provided for in the Articles, Bylaws, and this Declaration;

(e) "Business Lots" shall mean and refer to Lots 1 and 2 of Fairway Lakes, as shown on the Plat.

(f) "Bylaws" shall mean and refer to the Code of Bylaws of the Corporation, as the same may be amended from time to time;

(g) "Committee" shall mean and refer to the "Fairway Lakes Architectural Control Committee," the same being the committee or entity established pursuant to Article VIII, Section 1, of this Declaration for the purposes herein stated;

(h) "Common Areas" shall mean and refer to (i) all portions of the Real Estate shown on the Plat of the Real Estate as "Common Area" and which are not dedicated to the public or identified as Lots on the Plat; (ii) rights of ingress and egress over and across, and rights to maintain, repair, and replace landscaping and other facilities located on, land adjacent to or near the Real Estate, including easement rights of record for drainage, signs, landscaping, and mounding, even though
not platted as a part of Fairway Lakes; and, (iii) such improvements, landscaping, mounding, drains, signs, bridges, and other facilities located, installed, or established in, on, under, across through the Common Areas described hereinabove, whether located, installed, or established entirely or partially on portions of the Real Estate which are not Lots, or within easements appurtenant to the Real Estate;

(i) "Common Expenses" shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, repair, and replacement of the Common Areas, and all sums, costs, and expenses declared by this Declaration to be Common Expenses;

(j) "Corporation" shall mean and refer to Fairway Lakes Homeowners Association, Inc., an Indiana nonprofit corporation, which Declarant has caused, or will cause, to be incorporated under said name, and its successors and assigns;

(k) "Declarant" shall mean and refer to Fairway Lakes Development, an Indiana general partnership, and any successors and assigns of it who shall be designated by Declarant in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant;

(l) " Dwelling Unit" shall mean and refer to any building, structure, or portion thereof situated on the Real Estate designed and intended for use as a building site and designated as a Lot on the Plat. Notwithstanding the foregoing, if after the initial conveyance of a portion of the Real Estate by Declarant to another person it is agreed between Declarant and such Person to enlarge or reduce or otherwise change the portion of the Real Estate so originally conveyed to such Person as a "Lot", then the determination of what portion of the Real Estate constitutes such "Lot" for purposes of this Declaration shall be made by reference to, and shall mean, such "Lot" initially so conveyed by Declarant, as the same has been adjusted or changed at any time by conveyances by and between Declarant and such Person. Any deed or other instrument of
conveyance so adjusting or changing the description of a "Lot" shall state on its face that it is made for such purpose. Any part of a "Lot" reconveyed to Declarant shall, upon such re-conveyance, lose its character as part of such "Lot" and may thereafter be conveyed by Declarant as part of another "Lot." The foregoing procedures may be used to correct errors in descriptions, to adjust boundary lines of "Lots", or for any other reason; provided, however, that in no event may any such procedure be used to increase or decrease the number of Lots in Fairway Lakes;

(n) "Mortgagee" shall mean and refer to the holder of a recorded first mortgage lien on a Lot;

(o) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot, but in any event shall not include or mean or refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired fee simple title to any Lot, but upon so acquiring title to any Lot a mortgagee or tenant shall be an Owner; when used in connection with the Corporation, the terms "Owner" and "Member" shall be interchangeable;

(p) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;

(q) "Real Estate" shall mean and refer to the parcel of real estate in Johnson County, Indiana described in Exhibit "A" attached to this Declaration, as referred to in the first recital clause of this Declaration, and defined therein as the Real Estate;

(r) "Residential Lot" shall mean and refer to all Lots in the Plat except Lots 1 and 2, which shall be "Business Lots."

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

(t) "Site Plan" or "Plat" shall mean and refer to the Secondary Plat of Fairway Lakes, Section 1, reflecting Declarant’s proposed development of the Real Estate, a copy of which is attached hereto as Exhibit "B" and hereby incorporated herein by reference.
Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

ARTICLE II

Declaration; Common Areas and Rights Therein

Section 1. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, transferred, and occupied subject to the Restrictions. The Owners of any Lot subject to these Restrictions, and all other Persons, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract, and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of Declarant, the Committee, and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors, and assigns, covenant, agree, and consent to and with Declarant, the Committee, the Corporation, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with, and perform such Restrictions and to be a Member of the Corporation.

Section 2. Easement to Owner. Declarant hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment, and benefit of the Common Areas subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot.

ARTICLE III

Obligations of Declarant as to Common Areas

Section 1. Agreement to Construct and Convey Other Common Areas. Declarant has constructed or provided for, or will prior to the Applicable Date construct or provide for, Common Areas consisting of the following items:

(a) a storm drainage system for the Real Estate, which may include lakes, inlet pipes, open ditches, swales, pipes, and other structures and drainage courses;

(b) the installation of landscaping and other screening materials;
(c) the installation of mounds and fences with landscaping in Common Areas and within easements;

(d) the installation, within the street rights-of-way and easements, of street lighting, street directories, and signs.

Upon final construction or provision of the Common Areas described in this Section 1, Declarant covenants to convey by quitclaim deed to the Corporation all of its rights, title, and interest in and to said Common Areas and all such right, title, and interest in and to said items (whether owned in fee, by leasehold, by contract, or in the nature of an easement or license) shall then be the property of the Corporation, whether or not the same may be located entirely or partially on any one or more of the Lots. As to any of such items of and constituting the Common Areas located entirely or partially on any one or more of the Lots, the Owners of such Lots shall have only non-exclusive easement rights therein as described in Article II, Section 2, of this Declaration.

Section 2. Additional Common Areas at Declarant’s Option. Declarant may, at its sole option but without obligation to do so, convey portions of the Real Estate to the Corporation for, or construct, install, or provide for other items for or on, or services to serve, the Real Estate as amenities for the mutual benefit, use, or enjoyment of the Owners. Included as examples of the foregoing, but not limited therein, might be a community television antenna or receiving device to serve all of the Dwelling Units, storage buildings for storage of articles by Owners, or provisions of portions of the Real Estate for recreational or other common uses or purposes for the Owners. Any such portions of the Real Estate, or other items, or services, which Declarant, at its sole option, shall elect to convey, construct, install, or provide as Common Areas shall become a part of the Common Areas only when so designated by Declarant in a written instrument executed by Declarant and delivered to the Corporation. Upon any such designation by Declarant, Declarant shall convey by quitclaim deed to the Corporation all of its right, title, and interest in and to the Common Areas so designated and all such right, title, and interest in and to the Common Areas so designated and conveyed shall then and thereupon be and become the property of the Corporation, whether or not the same constitutes, or may be located entirely or partially on, any one or more of the Lots or any Lot shown upon any recorded subdivision plat of the Real Estate, or parts thereof. As to any of such Common Areas so designated and conveyed pursuant to the foregoing provisions of this Section 3 which are located entirely or partially on any one or more of the Lots, the Owners of such Lots shall have only non-exclusive easement rights therein or thereto, as described in Article II, Section 2, of this Declaration.
ARTICLE IV
Corporation: Membership: Voting: Functions

Section 1. Membership in Corporation. Declarant and each Owner of a Lot shall, automatically upon becoming an Owner, become a Member of Corporation and shall remain a member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be automatically transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically become an Owner and a Member of the Corporation.

Section 2. Voting Rights. The Corporation shall have the following classes of membership, with the following voting rights:

(a) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be Members of the Corporation, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(b) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the Registered Agent of the Corporation. Each Class B Member shall be entitled to five (5) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the first to occur of (i) the date upon which the written resignation of the Class B Members as such is delivered to the Registered Agent of the Corporation, or (ii) December 31, 1998 (the applicable date being herein referred to as the "Applicable Date"). As of the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B Member shall be entitled to one (1) Class A membership for each Lot owned.

(c) Special. Until the Applicable Date, there shall be three (3) additional "Special Members" of the
Corporation, being the persons from time to time appointed by Declarant to serve as the "Initial Board" pursuant to Section 2 of Article V hereof. Persons who are Special Members shall not be deemed or considered members of the Corporation nor Owners of Lots for any purpose other than to qualify to act as members of the Initial Board. Special Members shall have no voting rights on any matters submitted to a vote of the Members unless such Special Member is also a Class A Member, in which event his voting rights shall be governed by subsection (a) of this Section 2.

Membership of each Special Member shall terminate upon the earlier of (1) the Applicable Date, or (2) the date such Person is no longer a member of the Initial Board.

Section 3. Functions. The Corporation has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration, operation, and ownership of the Common Areas as and to the extent provided herein, to pay taxes assessed against and payable with respect to the Common Areas, to pay any other necessary expenses and costs in connection with the Common Areas, and to perform such other functions as may be designated for it to perform under this Declaration.

ARTICLE V
Board of Directors

Section 1. Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, or a Person appointed by Declarant as provided in Section 2 of this Article V.

Section 2. Initial Board of Directors. The initial Board of Directors shall be composed of the persons designated or to be designated, in the Articles, to-wit: Michael J. Flaherty, Robert H. Weaver, and D. Eugene Davis (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provision of, this Declaration, the Articles, the Bylaws, or the Act, (a) the Initial Board shall hold office until removal by Declarant or the first annual meeting of the Members of the Corporation occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first annual meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a Person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by
acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact, and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as the Declaration, the Articles, the Bylaws, the Act, or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact, and proxy shall not be affected by incompetence of the Owner granting the same. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Special Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

Section 1. Additional Qualifications. When an Owner consists of more than one Person or is a partnership, corporation, trust, or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or a trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

Section 4. Term of Office and Vacancy. The entire membership of the Board of Directors shall be elected at each annual meeting of the Corporation following the Applicable Date. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first annual meeting of the Members occurring on or after the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified.

Section 5. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep, and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), the collection of Assessments and disbursement of the Common Expenses. After the Applicable
Date, the Board may employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties. The duties of the Board of Directors include, but are not limited to:

(a) protection, surveillance, and replacement of the Common Areas, unless the same are otherwise the responsibility or duty of owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board, or any Managing Agent must provide any on-site or roving guards, security service, or security system for protection or surveillance, and the same need not be furnished;

(b) procuring of utilities used in connection with the Lots, Dwelling Units, and Common Areas (to the extent the same are not provided and billed directly to owners of Lots and Dwelling Units by utility companies);

(c) landscaping, painting, decorating, furnishing, and maintenance and upkeep of, the Common Areas;

(d) assessment and collection from the owners of the Owner’s respective shares of the Common Expenses;

(e) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;

(f) preparing and delivering annually to the owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each owner simultaneously with delivery of the proposed annual budget for the current year; otherwise, such accounting shall be delivered not later than at the next annual meeting following the end of the fiscal year in question;

(g) keeping a current, accurate, and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an owner at any time during normal business hours;

(h) procuring and maintaining for the benefit of the Corporation, the owners, any Managing Agent, and the Board the insurance coverages required under this
Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

(i) paying taxes and assessments assessed against and payable with respect to the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas; and

(j) all duties and obligations imposed upon the Corporation or the Board under this Declaration, the Articles, the Bylaws, or the Act.

Section 6. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

(a) to call special meetings of the Members whenever it deems necessary and it shall call a meeting at any time upon written request of one-fourth (1/4) of the Class A Members.

(b) to appoint and remove, at the Board’s pleasure, all officers, agents, and employees of the Corporation, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any Member, officer, or Director of the Corporation in any capacity whatsoever.

(c) to employ a Managing Agent to assist the Board in performing its duties;

(d) to purchase, lease, or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;

(e) to employ legal counsel, architects, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business affairs of the Corporation;

(f) to employ, designate, discharge, and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair, and replacement of the Common Areas, and to perform all other maintenance, upkeep, repair, and replacement
duties of the Corporation and the Board;

(g) to include the costs of performing all of its functions, duties, and obligations as Common Expenses and to pay all of such costs therefrom;

(h) to open and maintain a bank account or accounts in the name of the Corporation;

(i) to promulgate, adopt, revise, amend, enforce, and alter from time to time such rules and regulations with respect to use, occupancy, operation, and enjoyment of the Real Estate and Common Areas (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners;

(j) to grant to such public or private companies, entities, or bodies as the Board may approve, such easements as may be necessary to provide the Lots, Dwelling Units, improvements, and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and service; provided that such easements are located within or are co-extensive with any one or more utility easements, maintenance or access easements, landscape maintenance easements, or Common Areas shown upon, and identified as such on, or provided for, in the Plat;

(k) to exercise for the Corporation all powers, duties, and authority vested in or delegated to this Corporation.

(l) to enforce any and all Plat restrictions, Restrictive Covenants, and the Restrictions set forth herein in the name of the Corporation for and on behalf of the Members for their mutual benefit.

Section 7. Limitation on Board Action. After the Applicable Date, the authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than $2,500.00 without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the
(b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

(c) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

Section 8. Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 9. Non-Liability of Directors. The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith, or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any Person, firm, or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 10. Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the Treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors, and any such bond shall specifically include protection for any assurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

Section 11. Initial Management. Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have, and Declarant hereby reserves to itself, the exclusive right to manage, or designate a Managing Agent for, the Real Estate and Common Areas, and to perform all the functions of the Corporation, until the Applicable Date. Declarant may, at its option, engage a Managing Agent affiliated with it to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its
services.

**Section 12. Excessive Absenteeism.** In the event that any member of the Board of Directors of this Corporation shall be absent from two (2) consecutive regular meetings of the Board of Directors, the Board may by action taken at the meeting during which said second absence occurs, declare the office of said absent Directors to be vacant.

**ARTICLE VI**

**Real Estate Taxes; Utilities**

**Section 1. Real Estate Taxes.** Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Areas shall be paid by the Corporation and treated as a Common Expense.

**Section 2. Utilities.** Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot. Utilities which are not separately metered to an Owner’s Lot and which serve only the Common Areas shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation.

**ARTICLE VII**

**Maintenance and Repair**

**Section 1. By the Owner.** Each Owner shall be responsible for, if the need therefor arises, all maintenance, repairs, decoration, and replacement of the improvements to its Lot, both interior and exterior. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot, except for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Areas for purposes of maintenance only. All fixtures and equipment installed within or as a part of the improvements, commencing at the points where the utility lines, pipes, wires, conduits, or systems enter the Lot upon which said improvements are located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and improvements which, if neglected, might adversely affect any other Lot or improvements or any part of the Common Areas. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, and other fixtures, equipment, and accessories belonging to the Owner and a part of or appurtenant to his improvements or Lot.
Section 2. By the Corporation. Maintenance, repairs, replacements, and upkeep of the Common Areas (including, but not limited to, the storm water drainage system for the Real Estate) shall (except to the extent provided herein as the obligation of Owners) be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

In addition to the maintenance of the Common Areas, the Corporation, as part of its duties, and as a part of the Common Expenses, shall provide for maintenance for the following items, which shall be considered part of the Common Areas for purposes of maintenance only:

(a) those portions of the Real Estate, whether or not said portions are part of any of the Lots, which are located outside any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the Real Estate, but only to the extent that the same are not maintained by or the responsibility of a public authority; provided, however, that the Corporation shall have no obligation to maintain any public street, road, or highway located within any public right-of-way on or abutting the Real Estate. For purposes of this subparagraph (a), "outside perimeter fencing" means the areas between such fencing and the nearest property line of the Real Estate;

(b) any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the Real Estate; and

(c) any equipment, such as water wells or fountains, installed by Declarant to serve the entire project to be developed on the Real Estate, whether or not located on Lots.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use, and enjoyment of the Common Areas as it deems necessary, provided that the same are not inconsistent with the express provisions of this Declaration.

Notwithstanding any obligation or duty of the Corporation to repair or maintain any of the Common Areas (or items deemed Common Areas for purposes of maintenance), if, due to the willful, intentional, or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee, or other occupant or visitor of such Owner, damage shall be caused to the Common Areas (or items deemed as such for purposes of maintenance), or if maintenance, repairs, or replacements shall
be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs, and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

The authorized representatives of the Corporation, the Board, and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs, or replacements of or to the Common Areas and items deemed as Common Areas for purposes of maintenance, including, but not limited to, access to any easements reserved, granted, or created by the Plat.

ARTICLE VIII
Fairway Lakes Architectural Control Committee

Section 1. Creation. There shall be, and hereby is, created and established the "Fairway Lakes Architectural Control Committee" (the "Committee") to perform the functions provided to be performed by it hereunder or under the Plat. Until the Applicable Date, the Declarant, or not more than five (5) or less than three (3) Persons designated by it, shall constitute the Committee. After the Applicable Date, the Committee shall be a standing committee of the corporation consisting of not more than five (5) nor less than three (3) Persons as may, from time to time, be provided in the Bylaws. If the Bylaws do not, at any time, provide for the Committee, then the Board shall be and constitute the Committee.

Section 2. Character of the Real Estate.

A. In General. Every Residential Lot in the Real Estate, shall be used exclusively for single family residential purposes. Each Business Lot may be used for any business, office, retail, or other use for which it is or shall be zoned. No structure shall be erected, placed, or permitted to remain upon any of said Residential Lots except a single family dwelling house and other improvements, appurtenances, and facilities as are usual and customary accessory uses to a single family dwelling house; provided, however, that all improvements shall have been approved by the Committee in accordance with this Declaration.

In addition to individual site plan restrictions administered by the Committee, platted building lines, minimum distances between buildings, and minimum front, side, and rear building lines shall be as established on the Plat of the Real Estate (except as varied by the Committee to the extent permitted
hereunder. All construction upon the Real Estate shall be done in compliance with the requirements of all applicable zoning, building, and other governmental laws, ordinances, codes, and other regulations.

B. Occupancy and Residential Use of Partially Completed Dwelling House Prohibited. No Dwelling Unit constructed on any of the Residential Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the Dwelling Unit shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties.

Section 3. Restrictions and Obligations Concerning Size, Placement, and Maintenance of Dwelling Units and Other Structures.

A. Minimum Living Space Areas. The minimum square footage of living space of Dwelling Units constructed on the Residential Lots shall be as specified in the Plat, plat restrictions, or Restrictive Covenants governing the Real Estate.

B. Set-Back Requirements. Set-back and yard size requirements for Lots shall be as set forth on the Plat; provided, however, that the Committee may, in its discretion, consent to a reduction in any such side yard and rear yard requirements as set forth on the Plat as to a particular Lot or Lots, but in no event shall any such yard requirements be reduced below those required by applicable zoning laws, ordinances, and regulations. No such consent shall reduce the rights of adjoining Lots to object to the proposed reduction.

C. Mailboxes. In order to aid in the preservation of aesthetic appearances within the Real Estate, any mailbox installed on a Residential Lot must be approved by the Committee as to size, location, height, and composition before it is installed. A standard mailbox design will be prepared by the Declarant, and such design shall be the standard for all mailboxes installed on the Residential Lots.

D. Exterior Construction. All materials used on the exterior of any Dwelling Unit and any other building improvements on a Residential Lot shall be subject to the approval of the Committee. All driveways must be surfaced in accordance with the requirements as set forth on the Plat from their point of connection with the abutting street or road to their point of connection with the garage apron.

E. Heating Plants and Garages. Every Dwelling Unit located on the Real Estate must contain a heating plant installed in compliance with the required codes and capable of providing...
adequate heat for year-round human habitation of the Dwelling
Unit. Every Dwelling Unit located on the Real Estate must have
at least a two-car attached garage of the same architectural
design and materials as the Dwelling Unit.

F. Diligence in Construction. Every Dwelling Unit whose
construction on any Lot is begun shall be completed within one
(1) year after the beginning of such construction unless
circumstances beyond the reasonable control of the builder and/or
owner prevent such completion. No improvement which has
partially or totally been destroyed by fire or otherwise, shall
be allowed to remain in such state for more than three (3) months
from the time of such destruction or damage.

G. Prohibition of Use Structures. All structures
constructed or placed on any Lot shall be constructed with
substantially all new materials, and no used structures shall be
relocated or placed on any such Lot.

H. Landscaping. All landscaping shall conform to the
requirements for Residential Lots as set forth on the Plat of the
Real Estate, subject to review and approval of the Committee.

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

(i) Keep the Lot at such times as may be reasonably
required in order to prevent the unsightly growth
of vegetation and noxious weeds;

(ii) Remove all debris or rubbish;

(iii) Prevent the existence of any other condition that
reasonably tends to detract from or diminish the
aesthetic appearance of the Real Estate (this
paragraph applies only to Residential Lots);

(iv) Cut down and remove dead trees;

(v) Where applicable, prevent debris and foreign
material from entering drainage areas; and

(vi) Keep the exterior of all improvements in such a
state of repair or maintenance as to avoid their
becoming unsightly.

J. Corporation's Right to Perform Certain Maintenance. In
the event that any Owner of a Lot shall fail to maintain his Lot
and any improvements situated thereon in accordance with the
provisions of these Restrictions and the provisions of the Plat, the Corporation through its agents and employees or contractors shall have, after reasonable notice and opportunity to cure, the right to enter upon said Lot and repair, mow, clean, or perform such other acts as may be reasonably necessary to make such Lot and improvements situated therein, if any, conform to the requirements of these Restrictions and the Plat. The cost therefor to the Corporation shall be subject to approval by the Board and, if deemed reasonable, shall be assessed to the Owner and shall be collected as a Special Assessment against such Owner and his Lot in the manner provided for herein for the collection of Common Expenses. Neither the Corporation nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.


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

B. Construction of Sanitary Sewage Lines. All sanitary sewage lines on the Lots shall be designed, constructed, and installed in accordance with the provisions and requirements of Johnson County and these Restrictions.

Section 5. General Prohibitions. In addition to any restrictions or limitations contained elsewhere in this Declaration and in the Plat, the following prohibitions and restrictions shall govern the development, use, and occupancy of the Real Estate:

A. Signs. Except as otherwise permitted by the Plat, the Restrictive Covenants, or the Committee, no signs or advertisements shall be displayed or placed on any Residential Lot or residential structure without the prior written approval of the Committee.

B. Garbage, Trash, and Other Refuse. No Owner of a Lot shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his Lot except as may be permitted in subparagraph C below.

C. Fuel Storage Tanks and Trash Receptacles. No tanks for the storage of petroleum products shall be installed or placed on any Lot except during development of the Fairway Lakes Subdivision, which tank(s) shall be removed prior to the sale of any Lot by Declarant. Except during the period of construction of a building on a Lot, every outdoor receptacle for ashes,
trash, rubbish, or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Real Estate at any time. Such receptacle may be visible at the times when refuse collections are being made.

D. Model Homes. No Owner of any Lot shall build or permit any Dwelling Unit on its Lot to be used as a model home or exhibit house without prior written permission to do so from the Committee.

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

F. Utility Services. Utility services shall, to the greatest extent possible, be installed underground.

G. Wells and Septic Tanks. No water wells shall be drilled on any of the Lots, nor shall any septic tanks or other sewage disposal systems be installed on any of the Lots, without the approval of the Committee and of the governing public health agency or other civil authority.

Section 6. Committee’s Functions.

A. Statement of Purposes and Powers. The Committee shall regulate the exterior design, appearance, use, locations, and maintenance of lands subject to these Restrictions, and improvements thereon, in such a manner as to preserve and enhance values to maintain a harmonious relationship among structures and the natural vegetation and topography, and to provide for the proper functioning of the storm drainage system for the Real Estate. For these purposes, the Committee may, from time to time and at any time, make, amend, and modify such rules, regulations, and guidelines as it may deem necessary or desirable to guide Owners as to the terms, conditions, procedures, and requirements of the Committee for the submission and approval of items to it. Such rules, regulations, and guidelines may, in addition, set forth additional specifications to those set forth herein or in the Plat, so long as the same are not inconsistent with this Declaration or any such subdivision Plat. This statement of purposes and powers shall not be deemed to grant to the Committee any greater powers than are held by the Corporation nor to impose architectural or use control over the Business Lots.

B. Approval Process. No dwelling, building, structure, or improvement of any type or kind shall be constructed or placed on any Residential Lot without the prior approval of the Committee.
Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Residential Lot requesting authorization from the Committee. Such written application shall be made in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Residential Lot and the location of the improvement proposed to be constructed or placed upon the Residential Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed (and existing) landscaping, together with any other material or information which the Committee may require. All Dwelling Unit building plans and drawings required to be submitted to the Committee shall be drawn to a scale of \( \frac{1}{4}'' = 1' \) and all plot plans shall be drawn to a scale of \( 1'' = 30' \), or to such other scale as the Committee shall require. There shall also be submitted, where applicable, such other permits or reports as may be required under this Declaration. The following drawings shall be considered minimum for approval study:

(a) Site plan which includes complete topographic study, location of all trees, existing and proposed structures, drives, proposed (or existing) sanitary sewage disposal system location, utility service, terraces, and landscape design; and

(b) Foundation plan, floor plans, cross-sections, exterior elevations, and complete specifications for all materials to be used on the exterior (including roof) of the Dwelling Unit or other improvement.

C. **Power of Disapproval.** The Committee may refuse to grant permission to construct, place, or make the requested improvement, when:

(a) the plans, specifications, drawings, or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions, the Restrictive Covenants, the Plat, or any rules regulations, or guidelines adopted by the Committee;

(b) the design or color scheme of a proposed improvement is not, in the sole discretion of the Committee, in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or

(c) the proposed improvement, or any part thereof, would, in the sole opinion of the Committee, be contrary to
the interest, welfare, or rights of all or part of other Owners.

D. Change, Modification, or Amendment of Rules, Regulations, and Guidelines. Any rules, regulations, and guidelines at any time made by the Committee may be changed, modified, and amended by the Committee at any time, and from time to time, on a prospective basis; provided, however, that no such change, modification, or amendment shall be applied by the Committee retroactively as to any construction theretofore commenced in good faith and without notice of the change. No such change, modification, or amendment shall be deemed to enlarge the power or authority of the Committee but shall be used only to clarify the exercise of such powers. Any rules, regulations, or guidelines adopted and made by the Committee, and any changes, modifications, or amendment of any such rules, regulations, and guidelines at any time made by the Committee, shall be set forth in a written instrument and recorded in the office of the Recorder of Johnson County, Indiana, and shall be effective upon such recording; provided, however, that the making, adoption, change, modification, and amendment of any such rules, regulations, or guidelines by the Committee shall not be considered or deemed to be amendments of this Declaration requiring the consent of approval of any Owners, Mortgagees, or other Persons.

E. Duties of Committee. The Committee shall approve or disapprove proposed residential improvements on Residential Lots within twenty-one (21) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons thereof.

F. Non-Liability of Committee. The Committee shall not be responsible in any way for any defect in any plans, specifications, or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used or as to the compliance of any plans submitted for approval with these Restrictions, any recorded Plat governing the Real Estate, or any applicable code, regulation, or law.

G. Inspection. The Committee and the Declarant may inspect work being performed to assure compliance with these Restrictions, the Plat, the Restrictive Covenants, and applicable regulations. However, neither the Committee, nor any member
thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Committee or the Declarant, shall be liable or responsible for defects, conformity, or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Committee or the Declarant shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

Section 7. Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Residential Lots shall be owned by the same Person, and such Owner shall desire to use two or more of said Lots as a site for a single Dwelling Unit, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as, and only so long as, the Lots remain improved with one single Dwelling Unit. The two Business Lots may, without approval by the Committee or the Corporation, be combined and improved and used as a single Business Lot or be altered in shape and size by relocation of the common property line and front and rear Lot lines.

ARTICLE IX
Assessments and Liens

Section 1. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and shall furnish the Owners with a financial statement of operations by the Corporation, which statement shall show all receipts and expenses received, incurred, and paid during the preceding fiscal year.

Section 2. Proposed Annual Budget. Annually, on or before the date of the annual or special meeting of the Corporation at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for such fiscal year. The Board shall then furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual or special meeting of the Corporation for adoption and, if so adopted, the budget shall be the basis for the Regular Assessments (hereinafter defined) for the fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners attending such meeting; provided, however, that in no event shall
such annual or special meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting. The annual budget, the Regular Assessments, and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and repair and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Johnson County or Marion County, Indiana, as selected from time to time by the Board. The failure or delay of the Board to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Regular Assessments as herein provided, whenever determined, nor a release of the duty of the Members to adopt a budget at the annual meeting. Whenever, whether before or after the annual or special meeting of the Corporation at which the budget is to be acted upon, there is no annual budget approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 3. (a) Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the fiscal year covered thereby as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, each Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in full in advance by a date specified by the Board, which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. However, at the option of the Board, the Regular Assessment against each Lot may
be paid in advance in equal quarterly installments commencing on
the first day of the first month of a fiscal year and quarterly
thereafter through and including the first day of the last
quarter of such fiscal year. Payment of the Regular Assessment,
whether in one payment or in quarterly installments, shall be
made to the Board of Directors or the Managing Agent, as directed
by the Board of Directors. In the event the Regular Assessment
for a particular fiscal year of the Corporation was initially
based upon a temporary budget,

(i) if the Regular Assessment based upon the final annual
budget adopted by the Owners exceeds the amount of the
Regular Assessment based upon the temporary budget,
that portion of such excess applicable to the period
from the first day of the current fiscal year to the
date of the next payment of the Regular Assessment
which is due shall be paid with such next payment and
such next payment, and all payments thereafter during
such fiscal year, whether annual or quarterly, shall be
increased so that the Regular Assessment as finally
determined shall be paid in full by the remaining
payments due in such fiscal year, or

(ii) if the Regular Assessment based upon the temporary
budget exceeds the Regular Assessment based upon the
final annual budget adopted by the Owners, such excess
shall be credited against the next payment or payments
of the Regular Assessment coming due, whether annual or
quarterly, until the entire amount of such excess has
been so credited;

provided, however, that if an Owner shall have paid its Regular
Assessment in full in advance, then the adjustments set forth
under (i) or (ii) above shall be made by a cash payment by, or
refund to, the Owner on the first day of the second month
following the determination of the Regular Assessment based upon
the annual budget finally adopted by the Owners.

(b) Liens for Assessments. There is hereby imposed on each
Lot, excluding until the Applicable Date Lots owned by the
Declarant, a lien to secure the collection of all Regular and
Special Assessments. The Regular Assessment for each fiscal year
of the Corporation shall become a lien on each separate Lot as of
the first day of each fiscal year of the Corporation, even though
the final determination of the amount of such Regular Assessment
may not have been made by that date. The fact that an Owner may
have paid his Regular Assessment for the current fiscal year in
whole or in part based upon a temporary budget and thereafter,
before the annual budget and Regular Assessment are finally
determined, approved, and adjusted as herein provided, shall have
sold, conveyed, or transferred his Lot or any interest therein,
shall not relieve or release such Owner or his successor as owner
of such Lot from payment of the Regular Assessment for the Lot as finally determined, and such Owner and his successor as owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 2 of Article X hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year with respect to which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same. Special Assessments shall become a lien upon each Lot of an Owner, excluding until the Applicable Date Lots owned by Declarant, as of the date of imposition by the Board of Directors, without notice.

Section 4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the Bylaws, or the Act, the Board of Directors shall have the full right, power, and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage which might be caused by fire or other casualty or disaster to the extent insurance proceeds may be insufficient therefor under the circumstances described in this Declaration. At the time of adoption the Board of Directors shall determine the date(s) by which all or parts of the Special Assessments shall be paid. No Special Assessments shall be imposed prior to the Applicable Date unless at least fifty-one percent (51%) of the Owners shall have consented to such Special Assessment.

Section 5. Failure of Owner to Pay Assessments.

(a) Rights of Corporation. No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and items deemed Common Areas for purposes of maintenance, or from any other
expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. Regular and Special Assessments should constitute a lien against the Lots and improvements thereon. If any Owner shall fail, refuse, or neglect to make any payment of any Regular Assessments or Special Assessments against his Lot when due, the lien or such Assessment on the Owner’s Lot and Dwelling Unit may be foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or as otherwise provided or permitted by law. Upon the failure of an Owner to make timely payments of any such Regular Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot which is the subject of such action shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and the improvements thereon, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and improvements and to collect the rentals and other profits therefrom for the benefit of the Corporation for application to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby waiving) the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, or other charges due the Corporation, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover from the Owner of the respective Lot all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys’ fees) and interest from the date such Assessments or charges were due, until paid, at a rate equal to the “prime interest rate” then in effect as publicly announced or published by INB National Bank or its successors (or if said Bank is no longer in existence, then such rate charged by another national bank in Marion County, Indiana, as selected by the Board from time to time).

(b) Rights of First Mortgagees. Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles, or the Bylaws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment or other charges
as to such installments which became due prior to such sale, transfer, or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer, or conveyance shall relieve the Lot or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assesments or Special Assessments or other charges thereafter becoming due or from the lien therefor. Such unpaid share of the Regular Assessments or Special Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the party personally liable therefor, be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which it arose). Notwithstanding the above, at the time such lien shall be extinguished, the transferee shall become liable for payment of a prorata amount of Regular and Special Assessments for the remainder of the fiscal year, calculated on a calendar day basis from and including the date of transfer of the Lot, and a new lien shall be created on the Lot to secure payment of such Regular and Special Assessments.

Section 6. (a) Initial Budgets and Assessments.
Notwithstanding anything to the contrary contained herein, in the Articles, in the Bylaws, in the Act, or otherwise, until the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney, and proxy granted to the Declarant by each Owner pursuant to Section 2 of Article V hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date.

Further, until the applicable Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessments, Special Assessments, or other charges shall be owed or payable by Declarant with respect to any Lot or other portion of the Real Estate owned by Declarant while the same is owned by Declarant, nor shall any such Assessments or charges become a lien on any Lot or other portion of the Real Estate owned by Declarant. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by Declarant to another Person, and a prorated portion of the Regular Assessment for the balance of the fiscal year of the Corporation against each Lot so conveyed by Declarant shall be paid by each purchaser upon such conveyance.

(b) Liability of Declarant to Corporation. To the extent that the total of Regular and Special Assessments collected by the Corporation shall not be sufficient to pay all of the Common
Expenses, the Declarant shall be obligated to pay such difference from time to time to the Corporation.

(c) Liability of Owner to Corporation. Prior to the Applicable Date the "Interim Assessment" shall be the same as the Regular Assessment and Special Assessment, except that the amount thereof shall be determined in accordance with this subsection. At or prior to the date of the first conveyance of any Lot to an Owner, the Corporation shall prepare and deliver to such proposed Owner an interim budget for the Common Expenses, which interim budget shall be the basis upon which the Interim Assessment shall be made against each Lot. The interim budget and Interim Assessment shall include the period commencing on the date of the first conveyance of a Lot to an Owner, as estimated by the Corporation, and ending on December 31, 1992. Thereafter, annual budgets and Initial Assessments shall be based upon calendar years.

Payments of Interim Assessment with respect to each Lot shall commence on the date of conveyance by Declarant to such new Owner. The first payment shall be paid on the date of conveyance, prorated on a calendar day basis through the end of the current calendar year. Thereafter, payment of Interim Assessments shall be made in the same manner as Regular Assessments, described herein above.

Within sixty (60) days following the end of each calendar year, commencing with the calendar year ending December 31, 1992, the Corporation shall cause to be prepared and shall provide to each Owner an accounting of the total amount of Interim Assessments collected, the total amount of Common Expenses paid or payable at the end of the preceding calendar year, and the amount of payment, if any, received from Declarant during such calendar year to pay Common Expenses and replacement reserve. At the same time, the Corporation shall provide each Owner with an adjusted budget for the ensuing year and if, in the opinion of the Corporation, an increase in the Interim Assessment is necessary, each Owner shall be notified as to the change in the Interim Assessment with respect to its Lot at such time; provided, however, that in no event shall the Interim Assessment for any calendar year prior to the Applicable Date be increased by an amount in excess of ten percent (10%) of the Interim Assessment for the previous year. The amount of the Interim Assessment with respect to each Lot as so determined shall be deemed to be a lien on such Lot retroactive to the first day of January of the current year.

That portion of the Interim Assessment which shall be collected by the Corporation applicable to the replacement reserve, if any, shall be held by the Corporation and, if required, applied to the replacement of facilities within the Common Areas. To the extent that such replacement reserve shall
not be so applied, the balance thereof shall remain in the Corporation and shall revert to the control of the Board of Directors which shall be elected by the Owners at the first annual meeting of the Corporation following the Applicable Date.

The determination of whether or not a proposed or actual expenditure by the Corporation is an appropriate Common Expense or matter of replacement of Common Area shall be made initially by the Board of Directors, but shall be subject to review by the independent public accountants of the Corporation, which determination shall be conclusive and binding upon the Corporation, Declarant, and all Owners. Such determination shall be made in accordance with general accepted accounting principles consistently applied.

Prior to the Applicable Date, the amount of Interim Assessment may be increased by the amount of any and all Special Assessments adopted in accordance with Section 4 of this Article IX.

Simultaneously with the conveyance of a Lot by Declarant to a new Owner prior to the Applicable Date, Declarant shall have the right to require such new Owner and the Corporation to enter into an agreement specifically setting forth the rights and duties of the parties with respect to the maintenance and upkeep of the Common Areas and payment of Interim Assessments prior to the Applicable Date, which agreement shall be consistent with the provisions of this Declaration.

Section 7. Initial Working Capital and Start-Up Fund. Upon the closing of the initial conveyance of each Lot by Declarant to another Person, the purchaser of such Lot shall pay to the Corporation, in addition to any other amount then owed or due to the Corporation, as a contribution to its working capital and start-up fund, an amount equal to one-sixth (1/6th) of the then current Interim or Regular Assessment against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any Assessment or other charge owed the Corporation with respect to such Lot. Such working capital and start-up fund shall be held and used by the Corporation for payment of, or reimbursement to Declarant for advances made to pay, Common Expenses of the Corporation incurred during its early period of operation of the Real Estate, to enable the Corporation to have cash available to meet unforeseen expenditures, to acquire additional equipment or services deemed necessary by the Board, or to be added to the replacement reserves if otherwise not needed to fund uses described herein.
ARTICLE X
Mortgages

Section 1. Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagor, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagor. A record of each such first mortgage, and name and address of the Mortgagor, shall be maintained by the Secretary and any notice required to be given to the Mortgagor pursuant to the terms of this Declaration, the Bylaws, or otherwise shall be deemed effectively given if mailed to such Mortgagor at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of such Mortgagor shall be furnished to the Secretary, either by the Owner or the Mortgagor, no notice to any Mortgagor as may be otherwise required by this Declaration, the Bylaws, or otherwise shall be required and no Mortgagor shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagor in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagor who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagor with written notice of any default in the performance by its Mortgagor/Owner of any obligations of such Mortgagor/Owner under this Declaration or the Bylaws which is not cured within sixty (60) days.

Section 2. Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagor, a proposed mortgagor, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagor or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagor or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid Assessments or charges in excess of the amounts set forth in such statement except as such Assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article IX hereof.

ARTICLE XI
Insurance

Section 1. Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Common Areas in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the
Common Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Corporation as the insured, for the benefit of each Owner (to the extent, if any, that individual Owners have an independent interest in the property covered thereby).

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or distributed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

Section 2. Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amounts as the Board of Directors shall
deem appropriate from time to time, but in any event with a minimum combined limit of $1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Areas and shall insure the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, the Declarant, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots, and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

Section 3. Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to worker's compensation and occupational disease insurance, and other insurance as the Board of Directors may from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and Directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors, and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors its right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors, the proceeds of which are payable to the Board or the Corporation.

Section 4. General Provisions. The premiums for all insurance hereinafter described shall be paid by the Corporation as part of the Common Expenses. Upon request of the Owner or Mortgagee whose interest may be affected thereby, the Corporation shall provide such Owner or Mortgagee with a description of the insurance coverage maintained by the Corporation.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a
distribution of earnings, profits, or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

Section 5. Insurance by Owners. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his improvements, the contents of his improvements, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation.

ARTICLE XII
Casualty and Restoration

In the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be included by the Corporation as Common Expenses. The Board of Directors may fund the repairs from replacement reserves and add such amount to replenish the reserves to the next ensuing Regular Assessment or, when the amount is greater than fifty percent (50%) of the replacement reserve fund balance, the Board of Directors may impose a Special Assessment to pay all or part of the restoration cost.

For purposes of this Article, repair, reconstruction, and restoration shall mean constructing or rebuilding the Common Areas to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same architecture and materials.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Corporation has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates
of the cost to replace the damaged property in a condition as
good as that before the casualty. Such costs may include
professional fees and premiums for such bonds as the Board of
Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result
of such reconstruction or repair of any of the Common Areas shall
not constitute a claim or basis of a proceeding or action by the
Owner upon whose Lot such encroachment exists, provided that such
reconstruction was either substantially in accordance with the
plans and specifications or as the Common Areas were originally
constructed.

ARTICLE XIII
Restraints, Covenants, and Regulations

Section 1. Restrictions on Use. The following covenants
and restrictions on the use and enjoyment of the Lots, Dwelling
Units, improvements, and Common Areas shall be in addition to any
other covenants or restrictions contained herein and in any Plat
of any part of the Real estate heretofore or hereafter recorded,
and all such covenants and restrictions are for the mutual
benefit and protection of the present and future Owners and shall
run with the land and inure to the benefit of and be enforceable
by any Owner or by the Corporation. Present or future Owners or
the Corporation shall be entitled to injunctive relief against
any violation or attempted violation of any such covenants and
restrictions, and shall, in addition, be entitled to damages for
any injuries or losses resulting from any violations thereof, but
there shall be no right of reversion or forfeiture resulting from
such violation. These covenants and restrictions are as follows:

(a) All Residential Lots and Dwelling Units shall be used
exclusively for residential purposes and for occupancy
by a single family; provided, however, that the
foregoing restriction of "used exclusively for
residential purposes" shall not apply to any
Residential Lot or part thereof or any other part of
the Real Estate at any time owned by the Corporation
which constitutes a part of the Common Areas, and upon
which no Dwelling Unit is located.

(b) Nothing shall be done or kept by an Owner in any
Dwelling Unit, or on any Lot, or on any of the Common
Areas, which will cause an increase in the rate of
insurance on any Common Areas. No Owner shall permit
anything to be done or kept in his Dwelling Unit or on
his Lot which will result in a cancellation of
insurance on any part of the Common Areas, or which
would be in violation of any law or ordinance or the

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requirements of any insurance underwriting or rating bureau.

(c) No waste shall be committed in any Dwelling Unit or on any Lot.

(d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or walls of his Dwelling Unit or other residential improvements, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Committee, unless otherwise expressly authorized herein, or in any recorded Plat, or by the rules, regulations, and guidelines of the Committee.

(e) No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might be a nuisance, annoyance, inconvenience, or damage to other Owners and occupants of Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers, or other equipment, or loud persons.

(f) No clothes, sheets, blankets, rugs, laundry, or other things shall be hung out or exposed on, or so as to be visible, from any part of the Common Areas. The Common Areas shall be kept free and clean of rubbish, debris, and other unsightly materials.

(g) No industry, trade, or other commercial or religious activity, educational or otherwise, designated for profit, altruism, or otherwise, shall be conducted, practiced, or permitted on any Residential Lot.

(h) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use, and enjoyment of the Common Areas.

(i) No Owner shall be allowed to plant trees, landscape, or do any gardening in any of the Common Areas, except with express permission from the Board.

(j) Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended and
shall be used subject to the rules and regulations from
time to time adopted by the Board. Without limiting
the generality of the foregoing, the lakes to be
installed as part of the Common Areas as shown on the
Site plan are and will be an integral part of the storm
water drainage system serving the Real Estate and are
intended to be used for such purposes and primarily as
visual and aesthetic amenities. Recreational use of
such lakes is forbidden and may not be permitted by the
Committee or the Corporation without an appropriate
amendment of this Declaration. Accordingly, no use
shall be made of any of the lakes which in any way
interferes with their proper functioning as part of
such storm water drainage system and, no boating,
swimming, diving, skiing, or ice skating shall
be permitted in or on said lakes. No sewage, garbage,
refuse, or other solid, liquid, gaseous, or other
materials or items (other than storm and surface water
drainage) shall be put into said lakes, except the
Corporation may take steps to clear and purify the
waters thereof by the addition of chemicals or other
substances commonly used for such purposes or by
providing therein structures and equipment to aerate
the same.

Notwithstanding anything to the contrary contained herein or
in the Articles or Bylaws, including but not limited to any
covenants and restrictions set forth herein or otherwise,
Declarant shall have, until the Applicable Date, the right to use
and maintain any Lots and Dwelling Units owned by Declarant and
other portions of the Real Estate (other than individual Dwelling
Units and Lots owned by Persons other than Declarant), all of
such number and size and at such locations as Declarant in its
sole discretion may determine, as Declarant may deem advisable or
necessary in its sole discretion to aid in the sale of Lots and
construction of Dwelling Units, or for the conducting of any
business or activity attendant thereto, or for the construction and
maintenance of Common Areas, including, but not limited to,
model Dwelling Units, storage areas, construction yards, signs,
construction offices, sales offices, management offices, and
business offices. Declarant shall have the right to relocate any
or all of the same from time to time as it desires. At no time
shall any of such facilities so used or maintained by Declarant
be or become part of the Common Areas, unless so designated by
Declarant, and Declarant shall have the right to remove the same
from the Real Estate at any time.

Section 2. Non-applicability to Corporation.
Notwithstanding anything to the contrary contained herein, the
covenants and restrictions set forth in Section 1 of this Article
XIII shall not apply to or be binding upon the Corporation in its
ownership, management, administration, operation, maintenance,
repair, replacement, and upkeep of the Common Areas to the extent
the application thereof could or might hinder, delay, or
otherwise adversely affect the Corporation in the performance of
its duties, obligations, and responsibilities as to the Common
Areas.

ARTICLE XIV
Additional Lots and Common Area

Declarant is the owner of approximately twelve (12) acres of
real estate (sometimes referred to herein as "Section 2")
adjacent to the east side of the Real Estate and proposes to
construct additional single-family residential lots thereon.

At any time prior to December 31, 1998, whether or not the
Applicable Date shall have occurred, Declarant may, but is not
obligated to, cause all or part of such Section 2 to be
incorporated into and become subject to the provisions of this
Declaration and the Articles and Bylaws, and thereby become a
part of Fairway Lakes subdivision. Such incorporation will not
occur unless such additional real estate is zoned to permit
single-family residential use and the Declarant shall have
committed such real estate to such use by recording a plat
thereof causing such incorporation.

In furtherance thereof, in addition to the right of
Declarant to modify this Declaration prior to the Applicable Date
and prior to December 31, 1998, Declarant shall have the
following additional powers and rights:

(a) to redefine "Real Estate" to include such additional
real estate as shall be incorporated into this
Declaration;

(b) to redefine "Lot(s)" to include any and all single-
family residential building plots which shall be
defined as such within Section 2;

(c) to redefine "Common Area(s)" to include any and all
parts of Section 2 intended to be owned and operated by
the Corporation following completion of development
thereof and which shall be defined as "Common Area" on
a recorded Plat of such Section 2;

(d) to subject such additional real estate to all of the
terms, conditions, covenants, provisions, rights,
duties, and restrictions described in this Declaration,
the Plat of Section 1 of Fairway Lakes, and the
Articles and Bylaws;
(e) to redefine "Common Expenses" to include expenses which may be incurred with respect to additional Common Areas;

(f) to redefine "Site Plan" and "Plat" to include such other Plats and plans of Section 2 as Declarant may deem necessary or appropriate under the circumstances.

Following such actions by Declarant, the Members shall include owners of Lots in Section 2 and such owners shall be in classes as described in the Articles and shall have all voting rights and all obligations for payment of Assessments described therein and herein.

Declarant reserves the right to not incorporate any additional real estate into Fairway Lakes subdivision. No Owner shall have any rights whatsoever in the additional real estate other than as set forth in recorded easements unless and until Declarant shall have recorded an Amendment to this Declaration affirmatively incorporating additional real estate herein.

At such time as Section 2 shall be incorporated into the Real Estate and the lots set forth in Section 2 shall become Lots for purposes of this Declaration, Declarant shall have the right to modify and adjust the then existing annual budget to account for the additional expenses of the enlarged Common Area, additional replacement reserves, and the additional revenues to be paid by Lot owners in Section 2. Such adjustment to the annual budget shall not, however, result in an adjustment to the Regular Assessments of Lot owners of Section 1 who shall have purchased their Lots and paid their Regular Assessments prior to such adjustment of the annual budget. Only those Persons who shall purchase a Lot in Section 1 or Section 2 following the adjustment of the annual budget shall be liable for payment of adjusted Regular Assessments based upon such adjusted annual budget. After Section 2 shall have been added to Section 1, annual budgets for ensuing calendar years shall reflect such addition.

As of the date of addition of Section 2 to the Real Estate, the Corporation membership shall be deemed to be enlarged to a number equal to the number of Lots in Sections 1 and 2 of Fairway Lakes.

Each Owner, by acceptance of a deed to a Lot, acknowledges, consents, and agrees that the following rights and conditions shall be applicable upon the recording of an Amendment of Declaration adding Section 2 to the Real Estate:

(i) Section 2 shall be governed in all applicable respects by the provisions of the Declaration.
(ii) Each deed, mortgage, or other instrument affecting a Lot shall be deemed to have been given subject to the limitation that the voting rights of the Owner thereof and the liability of the Owner for payment of Assessments shall, upon the recording of such Amendment to this Declaration, be altered in accordance with such Amendment and the provisions hereof;

(iii) The Owners of each Lot in Section 2 shall automatically become Owners for all purposes set forth in this Declaration, the Articles, the Bylaws, and the Restrictive Covenants, including, but not limited to, the right to vote, serve on the Board of Directors, serve as an Officer of the Corporation, and serve on the Committee.

(iv) The recording of such Amendment of Declaration shall not alter the amount of the Regular Assessments or Special Assessments then applicable to the Lots in Section 1, which shall remain due and payable without adjustment through the end of the then current calendar year. The Initial Board of Directors or the Board of Directors following the Applicable Date, as appropriate, shall have the right to adjust the annual budget for the ensuing year or years to reflect unnecessary cash excesses which may be caused by payments from purchasers of Lots within the additional real estate;

(v) Each Owner agrees on behalf of such Owner and all those claiming under such Owner, including Mortgagees, that this Declaration and each Amendment to Declaration is and shall be deemed to be in accordance with the Act and, for the purpose of this Declaration and the Act, any changes in membership, lots, and Real Estate, as set forth in any Amendment of Declaration, shall be deemed to be made by agreement of all Owners.

(vi) Each Owner agrees to execute and deliver such documents as shall be necessary or desirable to accomplish the addition of Section 2 to the Real Estate and Fairway Lakes subdivision in accordance with provisions and intent of this Declaration.

(vii) Each Owner, by acceptance of a deed to a Lot, shall thereby appoint Declarant or its nominee as such Owner's attorney-in-fact for the purpose of amending the Declaration in accordance with the provisions and intent hereof and, to the extent required by law, on behalf of such Owner to consent to or vote in favor of the Amendment of Declaration. The appointment of Declarant or its nominee as such attorney-in-fact and
the granting of such special power to Declarant or its nominees shall be deemed to be coupled with an interest, shall be irrevocable and binding upon the heirs, successors, and assigns of such Owner, and shall expire upon the earlier of the annexation of all of Section 2 to Fairway Lakes subdivision or 11:59 o'clock P.M., E.S.T., December 31, 1995.

In the event Declarant shall elect to not annex Section 2 or any other real estate to Fairway Lakes subdivision, as permitted in this Declaration, Declarant shall file a Supplemental Declaration which shall permanently remove the right of Declarant to amend this Declaration to add Section 2. Upon such filing of the Supplemental Declaration, the right of Declarant or any successor or assign thereof to add Section 2 or any other real estate to the Real Estate described herein shall automatically be terminated and all rights in the additional real estate, if any, of any Owners or Mortgagees shall also thereby be terminated.

ARTICLE XV
Amendment of Declaration

Section 1. Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the Bylaws.

(d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot is then subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof. Prior to the Applicable Date, no amendments of any kind shall be
adopted unless the Declarant shall join in such adoption.

(e) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner’s liability for the Assessments, or the method of determining the same, or (2) the provisions of Article XI of this Declaration with respect to casualty insurance to be maintained by the Corporation, or (3) the provisions of Article XII of this Declaration with respect to reconstruction or repair of the Common Areas in the event of fire or any other casualty or disaster, or (4) the provisions of this Declaration establishing the Committee and providing for its functions, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the Declaration.

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

**Section 2. Amendments by Declarant Only.** Notwithstanding the foregoing or anything else contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees, or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Governmental National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any governmental requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus, or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, (e) to subject additional property to these restrictions and include Section 2 within the provisions of this Declaration, the Articles, and the Bylaws, or (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In
Furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the Declarant to vote in favor of, make, or consent to any amendments described in this Section 2 on behalf of each Owner as proxy or in fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligations, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute, and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

ARTICLE XV
Acceptance and Ratification

All present and future Owners, Mortgagess, tenants, and occupants of the Lots and improvements thereon, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the Bylaws, and the rules, regulations, and guidelines as adopted by the Committee, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot or any improvements thereon shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws, and rules, regulations, and guidelines, as each may be amended or supplemented from time to time, are accepted and ratified by each Owner, tenant, or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any times any interest or estate in a Lot or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage, or lease thereof. All persons who may own, occupy, use, enjoy, or control a Lot or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the Bylaws, and the rules, regulations, and guidelines applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XVI
Negligence

Each Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his negligence or by that of any member of his family, his or their guests, employees, agents, invitees, or lessees, to the extent that such expenses is not covered by the proceeds of insurance.
carried by the Corporation. An Owner shall pay to the Corporation the full amount of any increase in insurance premiums occasioned by his violation of any of the restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees, or tenants.

ARTICLE XVII
Benefit and Enforcement

This Declaration and the Covenants and Restrictions hereof shall run with and bind the Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Johnson County, Indiana and expiring December 31, 2015, at 11:59 o'clock P.M., E.S.T., at which time they shall be automatically extended for successive periods of ten (10) years each, unless by vote of seventy-five percent (75%) of the then Owners of the Lots it is agreed to change this Declaration in whole or in part, or to terminate the same. The then President and Secretary of the Corporation shall, as soon as reasonably possible after December 31, 2015, and after the expiration of each such ten (10)-year period, prepare and record in the office of the Recorder of Johnson County, Indiana, certificates stating the actions, if any, taken by the Corporation, the Board of Directors, or the members, to modify, change, extend, or terminate this Declaration in whole or in part, and to take such other action as might be required to prevent the extinguishment of the rights, duties, covenants, easement, or restrictions set forth herein by operation of the Indiana Marketable Title Act of 1963, as amended from time to time, unless it shall be the will of the Members that such extinguishment shall occur. The failure or delay at any time of Declarant, the Corporation, the Owners, the Committee, or any other Persons entitled to enforce this Declaration and the restrictions to enforce any of the same shall in no event be deemed a waiver of the same, or a waiver of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

ARTICLE XVIII
Impact Fee

In the event that the Corporation shall, at any time and for whatever reason, be assessed an "impact fee" or similar charge by a local government, the impact fee shall be deemed to be a Common Expense and shall be reimbursed to the Corporation as follows:

(a) If assessed before the Applicable Date, then Declarant shall provide such funds as shall be required to pay such fee in the form of a loan to the Corporation, repayment of which shall commence with the first calendar year following the Applicable Date. The terms
of such repayment shall be as follows: annual installments of one-third \((1/3)\) of the principal amount of the loan plus interest at the rate of two percent \((2.0\%)\) in excess of the "prime rate" announced from time to time by INB National Bank or a successor thereof shall be made on the first three \((3)\) anniversaries of the Applicable date, with the interest rate to be fixed and determined as of the date of payment of the "impact fee" by the Declarant. The Corporation shall execute an installment promissory note to the order of Declarant in form substantially similar to that published by the Indianapolis Bar Association at the time.

(b) If assessed on or after the Applicable Date, then the Board of Directors shall include the impact fee in the next available budget or, if necessary, shall adopt a Special Assessment to pay such fees before penalties shall accrue.

(c) If the impact fees shall actually relate to Lots, or shall relate partly to Lots, the fee shall be separated so that the Corporation shall be liable for such amount as shall not relate directly to Lots, and the Owners, including Declarant with respect to any Lots then owned by Declarant, shall be deemed primarily liable for such portion of the fee as relates to their respective Lots and shall indemnify and hold harmless the Corporation for any failure to pay their respective portions of the fee.

ARTICLE XX
Miscellaneous

Section 1. Costs and Attorney's Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles, or the Bylaws, or to comply with any provision of this Declaration, the Articles, the Bylaws, the Plat, the Restrictive Covenants, the valid decisions of the Committee, or the rules, regulations, and guidelines adopted by the Corporation, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorney's fees incurred in connection with such default or failure.

Section 2. Waiver. No Owner may exempt himself from liability for payment of Assessments by waiver of the use of enjoyment of any of the Common Areas or by abandonment of his Lot or Dwelling Unit.
Section 1. Reversibility Clause. The invalidity of any covenant, restriction, condition, limitation, or other provision of this Declaration, the Articles, or the Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration, the Articles, or the Bylaws, and each shall be enforceable to the greatest extent permitted by law.

Section 4. Pronouns. Any reference to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 5. Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs, and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provisions hereof.

IN WITNESS WHEREOF, FAIRWAY LAKES DEVELOPMENT, Declarant herein, has executed this Declaration on the day and year first hereinafore set forth.

FAIRWAY LAKES DEVELOPMENT, an Indiana general partnership

By: M.J. FLAHERTY DEVELOPERS, INC., an Indiana corporation, general partner

By: [Signature]
Michael J. Flaherty, President
STATE OF INDIANA  
COUNTY OF JOHNSON  

Before me, a Notary Public in and for said County and State, personally appeared Michael J. Flaherty, known to me to be the President of M.J. Flaherty Developers, Inc., an Indiana corporation and general partner of Fairway Lakes Development, an Indiana general partnership, who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions of Fairway Lakes for and on behalf of said partnership.

Witness my hand and Notarial Seal this 11th day of September, 1991.

Signature:  
Notary Public

Printed: Philip C. Thrasher

My commission expires: 7-17-94  
My county of residence is:

Exhibits:  
A: Legal Description of Real Estate, being Section 1 of Fairway Lakes Subdivision  
B: Secondary Plat of Fairway Lakes Section 1

This Instrument prepared by:

Philip C. Thrasher, Attorney-at-Law  
Suite 2300, One Indiana Square  
Indianapolis, IN 46204-2012  
(317) 269-6262
EXHIBIT A

Legal Description of Fairway Lakes

Section 1

Part of the East Half of the Northwest Quarter and part of the East Half of the Southwest Quarter of Section 18, Township 12 North, Range 5 East of the Second Principal Meridian, described as follows:

Commencing at the Southeast corner of the Northwest Quarter of the said Section; thence North 00 degrees 38 minutes 39 seconds West on and along the East line thereof 777.63 feet; thence South 89 degrees 17 minutes 31 seconds West 798.55 feet to the Point of Beginning of this described tract; thence South 09 degrees 35 minutes 53 seconds East 165.00 feet; thence South 24 degrees 09 minutes 41 seconds West 84.48 feet; thence North 76 degrees 28 minutes 31 seconds East 18.66 feet; thence South 44 degrees 25 minutes 01 seconds East 177.33 feet; thence North 89 degrees 17 minutes 31 seconds East 105.00 feet; thence North 50 degrees 04 minutes 11 seconds East 61.14 feet; thence North 89 degrees 17 minutes 31 seconds East 172.00 feet; thence South 45 degrees 39 minutes 25 seconds East 11.30 feet; thence South 00 degrees 36 minutes 21 seconds East 92.00 feet; thence South 64 degrees 54 minutes 45 seconds East 27.60 feet; thence South 00 degrees 42 minutes 29 seconds East 122.99 feet; thence South 00 degrees 38 minutes 39 seconds East 50.00 feet; thence South 00 degrees 42 minutes 29 seconds East 140.00 feet; thence North 89 degrees 17 minutes 31 seconds East 110.41 feet; thence Southwesterly on a curve to the left having a radius of 125.00 feet a curved distance of 105.30 feet, said arc being subtended by a chord bearing South 30 degrees 14 minutes 53 seconds East 102.22 feet; thence South 35 degrees 37 minutes 06 seconds West 1.00 feet; thence South 88 degrees 59 minutes 30 seconds West 337.46 feet; thence South 76 degrees 33 minutes 35 seconds West 54.44 feet; thence South 63 degrees 48 minutes 04 seconds West 54.44 feet; thence South 51 degrees 02 minutes 32 seconds West 54.44 feet; thence South 38 degrees 17 minutes 01 seconds West 45.16 feet; thence South 89 degrees 31 minutes 02 seconds West 252.25 feet; thence Southwesterly on a curve to the left which has a radius of 474.00 feet, a curved distance of 140.52 feet, said arc being subtended by a chord bearing South 08 degrees 00 minutes 36 seconds West 140.01 feet; thence South 00 degrees 28 minutes 56 seconds East 772.48 feet; thence South 87 degrees 16 minutes 14 seconds West 1.00 feet; thence South 00 degrees 28 minutes 58 seconds East 50.04 feet to the North right-of-way line of State Road 44; thence South 87 degrees 16 minutes 14 seconds West on and along the said right-of-way line 204.06 feet to the Southeast corner of Flaherty's Professional Park as recorded in Plat Cabinet "C", slide 490 in the Recorder's Office of Johnson County, Indiana; thence North 00 degrees 09 minutes 23 seconds East on and along the East line of the said subdivision and the East line of Golfview Villas as recorded in Plat Cabinet "C", Slide 401A and 401B, 349.50 feet to the Northeast corner of Golfview Villas; thence North 00 degrees 28 minutes 58 seconds West 1563.43 feet; thence North 89 degrees 17 minutes 31 seconds East 333.00 feet to the Point of Beginning containing 18.241 acres more or less.
EXHIBIT A
Fairway Lakes
Page 2

Also: Tract 3 in Flaherty's Professional Park as recorded in Plat Cabinet "C", Slide 490 in the Recorder's Office of Johnson County, Indiana.