

ALSO COVERS RIVER RIDGE

8918275

DECLARATION OF EASEMENTS,
COVENANTS AND RESTRICTIONS
FOR RIVER GLEN

River Ridge

This Declaration (hereinafter referred to as "the Declaration" or "this Declaration"), made this 22ND day of August, 1989, by P.K.T. DEVELOPMENT COMPANY, an Indiana general partnership (hereinafter referred to as "Declarant"),

W I T N E S S E T H:

WHEREAS, the following facts are, or are deemed for all purposes of this Declaration to be, true:

A. Declarant is in the process of developing, upon the real estate in Hamilton County, Indiana, which is more particularly described in Exhibit "A" attached hereto and hereby incorporated herein by reference (hereinafter referred to as the "River Ridge Parcel"), a platted residential subdivision known as "River Ridge", an addition in Fishers, Hamilton County, Indiana, the plat of which is recorded as Instrument No. 8900379, in Plat Book 16, pages 126 through 131, inclusive (Plat Cabinet 1, Slide 6), in the office of the Recorder of Hamilton County, Indiana.

This Instrument Recorded 8-24-1989
Entered in Chary, Recorder, Hamilton County, IN

B. Declarant is also in the process of developing, upon the real estate in Hamilton County, Indiana, which is more particularly described in Exhibit "B" attached hereto and hereby incorporated herein by reference (hereinafter referred to as the "Barrington Ridge Parcel"), a residential subdivision hereafter to be platted, known or to be known as "Barrington Ridge", an addition in Fishers, Hamilton County, Indiana.

C. Declarant is also in the process of developing, upon portions of the real estate in Hamilton County, Indiana, which is more particularly described in Exhibit "C" attached hereto and hereby incorporated herein by reference (hereinafter referred to as the "River Glen Parcel"), residential subdivisions hereafter to be platted, known or to be known as

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Sections I, II, III and IV of "River Glen", additions in Fishers, Hamilton County, Indiana.

D. For the benefit of the River Ridge Parcel, the Barrington Ridge Parcel and those portions of the River Glen Parcel which will be platted as residential subdivisions (hereinafter sometimes referred to, collectively, as the "Real Estate" or the "River Glen Area"), and in order to provide access thereto, as part of its development of the River Glen Area, Declarant has caused or will hereafter cause a public street known or to be known as "River Glen Drive" (hereinafter referred to as the "Boulevard") to be constructed along the eastern boundaries of the River Ridge Parcel and the Barrington Ridge Parcel and through the River Glen Parcel, extending in a northerly, northeasterly and easterly direction from the existing public street known as 116th Street (hereinafter referred to as the "Street") on the south to the existing public street known as Allisonville Road on the east, said Boulevard to be constructed substantially as shown on the Preliminary Site Plan of the River Glen Area attached hereto as Exhibit "D" and hereby incorporated herein by reference (hereinafter referred to as the "Site Plan"). The Boulevard is one and the same street as the street shown and identified on the recorded subdivision plat of the River Ridge Parcel as "Sunblest Boulevard West".

E. As part of its development of the River Glen Area and in order to enhance the same, Declarant has installed or hereafter will install various improvements and amenities in and along the north side of the right-of-way of the Street and in and along both sides of the right-of-way of the Boulevard, which installations will be located both within the rights-of-way of the Street and the Boulevard (including landscaped islands or medians located within the right-of-way of the

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Boulevard) and in various landscape easements established or to be established adjacent to the north side of the north right-of-way line of the Street and adjacent to the sides of both right-of-way lines of the Boulevard, which landscape easements shall be established substantially as shown on the Site Plan.

- F. The improvements and amenities to be so installed by Declarant shall consist of a variety of earthen mounds, plantings and other landscaping, walls, fences, entry ways, columns, landscape irrigation systems, accent lighting systems, street lights, subdivision identification signs and other items.
- G. Declarant desires to provide for the preservation and enhancement of the values and amenities in the River Glen Area and the Common Facilities (hereinafter defined) 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 part thereof. ®
- H. Declarant deems it desirable, for the efficient preservation of such values and amenities, and for the efficient management, operation, control, repair, replacement and maintenance of the Common Facilities, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering any Common Facilities 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.

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I. Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name "River Glen Homeowners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Real Estate is and shall 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 the Indiana Not-for-Profit Corporation Act of 1971, as amended;
- (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, By-Laws and this Declaration;
- (e) "By-Laws" shall mean and refer to the Code of By-Laws of the Corporation, as the same may be amended from time to time;
- (f) "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 Facilities, and all sums lawfully assessed

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against the Owners by the Corporation, and all sums, costs and expenses declared by this Declaration to be Common Expenses;

- (g) "Common Facilities" shall mean and refer to any improvements and amenities installed by Declarant in the Common Facilities Areas, as the same may be supplemented by the Corporation, including, without limitation, earthen mounds, plantings and other landscaping, walls, fences, entry ways, columns, landscape irrigation systems, accent lighting systems, street lights, subdivision identification signs, a concrete paving brick patio along the west side of the Boulevard in the vicinity of the north line of the Barrington Ridge Parcel and park benches located on said patio;
- (h) "Common Facilities Areas" shall mean and refer to the areas within or upon which the Common Facilities are installed and located, including (i) the right-of-way of the Boulevard, from the north line of the Street to the west line of Allisonville Road, (ii) that portion of the right-of-way of the Street located north of the north edge of the improved westbound traveled lane of the Street, from the west line of the River Ridge Parcel to the east line of the River Ridge Parcel, (iii) landscape easements now existing or hereafter established adjacent to the right-of-way lines of the Boulevard and adjacent to the north right-of-way line of the Street, whether such landscape easements are located within the Real Estate or outside the Real Estate, and (iv) any other real estate owned by the Corporation or in which the Corporation has an interest (such as easement or license rights);
- (i) "Corporation" shall mean and refer to River Glen Homeowners Association, Inc., an Indiana not-for-profit corporation which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns. The Corporation is, or will be, one and the same corporation as the corporation referred to in Paragraph 34 of the Plat Restrictions contained in the recorded subdivision plat of the River Ridge Parcel as "River's Edge Homeowners Association, Inc.", and defined and referred to in said subdivision plat as the "Homeowners Association", and the Corporation shall be and constitute such "Homeowners Association" and have all of the rights, powers, duties and obligations thereof arising under the recorded subdivision plat of the River Ridge Parcel;
- (j) "Declarant" shall mean and refer to P.K.F. Development Company, an Indiana general partnership, and any successors and assigns of it whom it designates 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;
- (k) "Dwelling Unit" shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) single family or housekeeping unit;
- (l) "Lot" shall mean and refer to any and each portion of the Real Estate designed and intended for use as a building site for, or developed and improved for use

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as, a Dwelling Unit (which shall be deemed to include any other buildings or improvements appurtenant to such Dwelling Unit). A Lot will not necessarily be the same as any individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Real Estate or any part thereof. For purposes of this Declaration, a "Lot" may be (i) any individually numbered parcel of land identified as a lot on such a subdivision plat, (ii) part of such a numbered parcel of land, (iii) such a numbered parcel of land combined with part or all of another such numbered parcel of land, or (iv) parts or all of two (2) or more of such numbered parcels of land combined. By way of example of the foregoing, if two (2) or more such numbered parcels of land shown on such a subdivision plat as lots are conveyed to the same Person as the building site for, or developed and improved for use as, a single Dwelling Unit, such lots shall constitute a single "Lot" for purposes of this Declaration;

- (m) "Mortgagee" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;
- (n) "Owner" shall mean and refer to (I) the Declarant, as to each Lot owned by it and as to each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Real Estate, or any part thereof, of which it is the owner (either as to the entire numbered parcel or any part thereof) which is not a Lot, and (II) the record owner, whether one or more Persons, of the fee simple title to any Lot, provided, however, that Owner shall not include or mean or refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Lot, but upon so acquiring title to any Lot a mortgagee or tenant shall be an Owner;
- (o) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;
- (p) "Real Estate" shall mean and refer to the parcels of real estate in Hamilton County, Indiana, described in Exhibit "A", Exhibit "B" and Exhibit "C" attached to and incorporated in this Declaration, as referred to in Recital Clause D. of this Declaration, and defined therein as the Real Estate; provided, however, that only those portions of the River Glen Parcel which have from time to time been developed as lots for Dwelling Units shall be deemed to constitute part of the Real Estate for purposes of this Declaration;
- (q) "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; and
- (r) "Site Plan" shall mean and refer to the preliminary plan reflecting Declarant's proposed development of the Real Estate, a copy of which is attached hereto as Exhibit "D" and hereby incorporated herein by reference.

Section 2. Other terms and words defined elsewhere in this Declaration (including the Recital Clauses hereof) shall have the meanings herein attributed to them.

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ARTICLE II

Property Subject To This Declaration

Declarant hereby expressly declares that the Real Estate shall be held, transferred, sold, conveyed, used and occupied subject to the Restrictions. The Owners of any Lot subject to these Restrictions, and all other Persons, (i) by 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, of the Board 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 Board, 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 agreement.

ARTICLE III

The Common Facilities

Section 1. Obligations of Declarant as to the Common Facilities. As part of its development of the Real Estate, Declarant has constructed, or will construct, the Common Facilities within the Common Facilities Areas, substantially in accordance with the approximate locations of the same as shown on the Site Plan. Declarant shall complete the installation and construction of the Common Facilities not later than the Applicable Date. Upon completion of the Common Facilities, or separately distinguishable portions thereof, Declarant covenants that it shall convey all of its right, title and interest in and

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to said Common Facilities to the Corporation 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 right) shall then be the property of the Corporation. As to any items of and constituting a part of the Common Facilities which are located entirely or partially on any one or more of the Lots (such as in landscape easements), the Owners of such Lots shall take and hold title thereto subject to an easement for the maintenance of such items as Common Facilities, and a right and easement in favor of Declarant and the Corporation for access thereto and thereon for purposes of maintaining such Common Facilities and performing all of the Corporation's duties, functions and obligations with respect to the same.

Section 2. Obligations of the Corporation as to the Common Facilities. Subject to the rights and obligations of the Owners and the Declarant set forth in this Declaration, the Corporation shall have and be responsible for the management and control of the Common Facilities upon completion of the initial installation and construction of the same, or separately distinguishable portions thereof, by Declarant, and the Corporation shall keep the same in good, clean, attractive and sanitary condition, order and repair. ®

Section 3. Damage, Injury or Destruction of the Common Facilities by Owner. In the event any portion of the Common Facilities is damaged, injured or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner shall be responsible for the repair of such injury or damage and such Owner does hereby authorize the Corporation to repair such injured or damaged items; the Corporation shall repair said injured or damaged items in a good and workmanlike manner in conformance with the original plans and specifications of the same, or as the same may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. The amount necessary for such repairs shall become a special assessment upon the Lot of said Owner.

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ARTICLE IV

Corporation; Membership; Voting; Functions

Section 1. Membership in Corporation. Declarant and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a member of the 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 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 be and 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, five (5) votes for each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of any part of the Real Estate of which it is the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined in this Declaration, and five (5) votes for each one-fifth (1/5th) acre of land contained within any portion of the Real Estate which has not been platted as a residential subdivision at any time, 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, (ii) the date Declarant no longer owns any Lots, nor any portion of any individually numbered parcel of land shown upon, and

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identified as a lot on, any recorded subdivision plat of any part of the Real Estate, nor any other portion of the Real Estate, or (iii) December 31, 1994 (the applicable date being herein referred to as the "Applicable Date"). After 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 and for each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of any part of the Real Estate of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "lot" as defined herein.

- (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 on 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].

Section 3. Functions. The Corporation has been (or will be) formed for the purposes of providing for the maintenance, upkeep, repair, replacement, administration, operation and ownership of the Common Facilities as and to the extent provided herein, to pay taxes assessed against and payable with respect to the Common Facilities, to pay any other necessary expenses and costs in connection with the Common Facilities, and to perform such other functions and duties as may be designated for it to perform under this Declaration or under any recorded subdivision plats of any portions of the Real Estate, whether heretofore or hereafter recorded.

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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, including a person appointed by Declarant as provided in Section 2 of this Article V.

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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: Kenneth E. Thompson, Corby D. Thompson and Gregory D. Thompson (herein referred to as the "Initial Board"), all of whom have been or shall be appointed or elected by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act (a) the Initial Board shall hold office until the first 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 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 Lot 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 determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which members of the Corporation are entitled to vote under the Declaration, the Articles, the By-Laws, 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

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a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a member of the Corporation).

Section 3. Additional Qualifications. Where 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 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. Subject to the provisions of Section 2 of this Article V, the entire membership of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first 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. Subject to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified.

Section 5. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at that meeting. A Director so elected shall serve until the next annual

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meeting of the Owners and until his successor is duly elected and qualified.

Section 6. 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, management, maintenance, repair, upkeep and replacement of the Common Facilities (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "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, which include, but are not limited to:

- (a) protection, surveillance, repair and replacement of the Common Facilities, 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 any utilities used in connection with the Common Facilities;
- (c) landscaping, furnishing and maintenance and upkeep of the Common Facilities and the Common Facilities Areas;
- (d) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;
- (e) procuring and maintaining for the benefit of the Corporation, the Owners, any Managing Agent and the Board any insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
- (f) paying taxes and assessments, if any, specifically levied and assessed against, and payable with respect to, the Common Facilities and the Common Facilities Areas, and paying any other necessary expenses and costs in connection with the Common Facilities and the Common Facilities Areas; and
- (g) performing and satisfying all duties and obligations imposed upon the Corporation or the Board under this Declaration, the Articles, the By-Laws, the Act, or any

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recorded subdivision plats of any portions of the Real Estate, whether heretofore or hereafter recorded.

Section 7. 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 employ a Managing Agent to assist the Board in performing its duties;
- (b) 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;
- (c) 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 and affairs of the Corporation;
- (d) 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 Facilities and the Common Facilities Areas and to perform all other maintenance, upkeep, repair and replacement duties of the Corporation and the Board;
- (e) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;
- (f) to open and maintain a bank account or accounts in the name of the Corporation;
- (g) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Common Facilities and the Common Facilities 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; and
- (h) to grant to such public or private companies, entities or bodies as the Board shall approve, such easements, licenses or other rights as may be necessary to provide the Lots, Dwelling Units, Common Facilities and Common Facilities Areas with facilities for utility and similar services; provided that such easements, licenses or other rights are located within or are co-extensive with any one or more utility easements or landscape easements shown upon, and identified as such on, or provided for in, any subdivision plats of any portions of the Real Estate, whether such plat is heretofore or hereafter recorded.

Section 8. Compensation. No member of the Board of Directors shall receive any compensation for his services as such, except to such extent as may be expressly authorized by a

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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 and Officers. The Directors and officers of the Corporation 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 and officers, 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 and officers 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 and officers shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 10. Additional Indemnity of Directors and Officers. The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director or officer of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director or officer is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director or officer the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director or officer was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any

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action, suit or proceeding against a Director or officer, no Director or officer shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director or officer relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any other officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a Director or officer be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 11. 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 insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

Section 12. 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 Common Facilities and Common Facilities Areas, and to perform all the functions of the Corporation, until the Applicable Date. Declarant may, at its option, engage the services of 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.

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ARTICLE VI

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 specifically levied and assessed against the Common Facilities shall be paid by the Corporation and treated as a Common Expense.

ARTICLE VII

Covenants for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants and agrees, and each Owner of any Lot by the fact of ownership thereof whether by acceptance of a deed thereto or otherwise, and whether or not it shall be so expressed in any such deed, shall be deemed to have covenanted and agreed, to pay to the Corporation such assessments and charges as are established herein and which are to be paid in the manner hereinafter provided.

All such assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of such property at the time when the assessment fell due. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several.

Section 2. Annual General Assessments.

(a) Purpose of Assessments. The annual general assessment levied by the Corporation shall be used for the payment or provision of the Common Expenses, including all expenses of administration of the Corporation, to promote

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the health, safety and welfare of the residents of the Real Estate, for the improvement, maintenance, replacement, repair, reconstruction and operation of the Common Facilities and Common Facilities Areas, and for the payment or provision of all other expenses incurred or to be incurred by the Corporation for or in connection with the performance of its duties, obligations and responsibilities hereunder, which Common Expenses may include, but shall not be limited to, the costs and expenses of hazard and liability insurance for the Common Facilities and Common Facilities Areas and any other property owned by the Corporation or in which it has an interest, utility charges, and for the creation of an adequate reserve fund for the periodic maintenance, repair, reconstruction and replacement of those improvements and elements which constitute a part of the Common Facilities which the Corporation is obligated to maintain and which must be maintained, repaired, replaced or reconstructed on a periodic basis.

(b) Basis for Assessments. The total annual general assessment to be assessed to the Owners shall be established by the Board in an amount sufficient, in the aggregate, to pay or make provision for all of the Common Expenses, to meet all of the anticipated financial obligations of the Corporation and to permit the Corporation to perform all of its duties, responsibilities and obligations imposed by or arising under this Declaration, the Articles, the By-Laws or the Act.

(c) Maximum Annual General Assessments. Until December 31, 1990, the maximum annual general assessment shall be One Hundred Twenty Dollars (\$120.00) per Lot.

(1) Effective from and after December 31, 1990, the maximum annual general assessments may be increased by the Board each year not more than 10% above the maximum annual general assessments permitted for the

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previous year, on a cumulative basis, without a vote of the membership of the Corporation.

(2) Effective from and after December 31, 1990, the maximum annual general assessments may be increased by the Board more than 10% over the maximum annual general assessments permitted for the previous year only upon an approving vote of two-thirds (2/3rds) of each Class of members who are voting in person or by proxy at a meeting of the membership of the Corporation called for such purpose.

(3) The Board may fix the annual general assessments for each year at any amount not in excess of the maximum permitted hereby.

Section 3. Special Assessments. In addition to the annual general assessments authorized above, the Corporation may levy in any assessment year a special assessment applicable to that year only and payable as determined by the Board of Directors for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon or constituting a part of the Common Facilities, and the cost of any unanticipated or extraordinary operating expenses, providing that any such special assessment shall have the assent of at least two-thirds (2/3rds) of the votes in the aggregate of the members who are voting in person or by proxy at a meeting of the members called for this purpose.

Section 4. Notice and Quorum. Written notice of any meeting of members called for the purpose of taking any action authorized under Section 2(c)(2) or Section 3 of this Article VII shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of members entitled to cast sixty percent (60%) of the total votes in the aggregate of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum

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at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5. Rate of Assessment. Both annual general assessments and special assessments shall be fixed at a uniform rate for all Lots; provided, however, that the provisions of this Section 5 are subject to the provisions of Section 11 of this Article VII as to all Lots and other portions of the Real Estate owned by Declarant.

Section 6. Commencement of Initial Annual Assessments. The annual general assessments provided for herein shall commence as to each Lot, and shall be prorated from, the later of (a) January 1, 1990, or (b) the first day of the month following the date upon which such Lot was first conveyed by Declarant to an Owner other than Declarant.

Section 7. Commencement of Annual Assessments. By December 1 of each year the Board shall fix the amount of annual general assessments against each Lot for the following calendar year and shall send written notice thereof to each Owner. The annual general assessments for each year shall be due and payable in full in advance, on or before January 1 of the year, unless the Board determines and notifies the Owners that the annual general assessments for a year may be payable in installments and the date or dates when such installments shall be due. At the time the Board fixes the amount of annual general assessments it shall adopt a budget for the following calendar year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

Section 8. Proof of Payment. Upon written request of an Owner or Mortgagee, at any time and for a reasonable charge, the Corporation shall furnish a written certificate signed by an officer of the Corporation setting forth whether there are any

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then unpaid annual general assessments or special assessments levied against such Owner's or Mortgagee's Lot. Such certificate shall be conclusive evidence of payment of any annual general assessments or special assessments not stated therein as unpaid.

Section 9. Nonpayment of Assessments. Any assessments, or installments thereof, which are not paid when due shall be deemed delinquent. If an assessment is not paid within thirty (30) days after the delinquency date, it shall bear interest from the delinquency date at the rate of twelve percent (12%) per annum. If the Corporation has provided for payment of any assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said assessment due and payable in full. The Corporation may, at its option, bring an action at law or in equity for a money judgment against the Owner personally obligated to pay the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action, and the Corporation may also enforce and foreclose any lien it has or which may exist for its benefit against the Lot of such Owner. Such lien shall be enforced by action in the same manner in which mortgages on real property may be foreclosed in Indiana. In any such foreclosure, the Owner personally obligated to pay the lien shall be required to pay all costs of foreclosure including reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner personally obligated to pay the lien shall also be required to pay to the Corporation any assessments against the Lot which shall become due during the period of foreclosure. The Corporation shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the foreclosed interest in the Lot as the owner thereof. No Owner may exempt himself from, or otherwise escape liability for,

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any assessments provided for herein by waiver, non-use or abandonment of his Lot, or otherwise.

Section 10. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage upon any Lot and to tax liens and liens for special assessments in favor of any taxing and assessing unit of government. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage, or pursuant to any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due and payable prior to such sale or transfer. No such sale or transfer shall relieve a Lot from liability for any assessments thereafter becoming due or payable or from the lien thereof or relieve or release any Person personally obligated to pay the same from personal liability for assessments payable prior to such sale or transfer or acquisition. Any delinquent assessments, the lien for which is extinguished by reason of this provision, may be reallocated and assessed to all Lots as a part of the Common Expense.

Section 11. Initial Budgets and Assessments, and Limitations on Assessments Owed by Declarant. Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, until the Applicable Date the annual budget and all assessments shall be established by the Initial Board without meeting 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 assessments until the Applicable Date. Further, until the Applicable Date and notwithstanding the foregoing or anything else contained herein, no 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,

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nor shall any such assessments or charges become a lien on any such Lot or other portion of the Real Estate owned by Declarant.

ARTICLE VIII

Mortgages

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

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

ARTICLE IX

Insurance

Section 1. Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Common Facilities in an amount consonant with the full replacement value of the improve-

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ments which, in whole or in part, comprise the Common Facilities. 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 Facilities 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 disbursed 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

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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 amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover all of the Common Facilities and the Common Facilities 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, 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 workmen's compensation and occupational disease insurance, and such 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

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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 his 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 of the Corporation.

Section 4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. Under no circumstances shall any distribution of insurance proceeds or condemnation awards relating to the Common Facilities 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 insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, 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 X

Casualty and Restoration

In the event of damage to or destruction of any of the Common Facilities due to fire or any other casualty or disaster,

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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 Facilities, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Facilities so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein. For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Facilities to as near as possible the same condition as they existed immediately prior to the damage or destruction. 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 place 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.

ARTICLE XI

Restrictions, Covenants and Regulations

Section 1. Restrictions on Use. The following covenants and restrictions on the use and enjoyment of the Lots and the Common Facility Areas shall be in addition to any other covenants or restrictions contained herein and in any subdivision plats of any part of the Real Estate heretofore or hereafter recorded, and all such covenants and restrictions are for the mutual benefit

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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 of 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) Nothing shall be done or kept by an Owner on any of the Common Facilities Areas which will cause an increase in the rate of insurance on any Common Facilities or Common Facilities Areas. No Owner shall permit anything to be done or kept on his lot which will result in a cancellation of insurance on any part of the Common Facilities Areas, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (b) No nuisance shall be permitted to exist on any lot and no waste shall be committed on any lot which shall or might cause injury or damage to any Common Facilities.
- (c) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Facilities Areas, except with express permission from the Board.

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 XI shall not apply to or be binding upon the Corporation in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Facilities and the Common Facilities 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 Facilities and the Common Facilities Areas.

ARTICLE XII

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:

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- (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 By-Laws.
- (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 or Dwelling Unit is 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.
- (e) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Article IX of this Declaration with respect to casualty insurance to be maintained by the Corporation, or (3) the provisions of Article X of this Declaration with respect to reconstruction or repair of the Common Facilities in the event of fire or any other casualty or disaster, 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 this 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 Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

Section 2. Amendments by Declarant Alone. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of any other 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 Government 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

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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 statutory 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, or (e) 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 attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment 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 XIII

Acceptance and Ratification

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, 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 By-Laws and the rules and regulations as adopted by the Board of Directors, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of

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occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Lot or Dwelling Unit 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 Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the By-Laws, and the rules and regulations applicable thereto, as each may be amended or supplemented from time to time.

ARTICLE XIV

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 or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the 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 XV

Benefit and Enforcement

This Declaration and the Restrictions 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 Hamilton County, Indiana and expiring December 31, 2013, after which time they shall be automatically extended for successive periods of

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ten (10) years each, unless by vote of a majority of the then Owners of the Lots it is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same. The failure or delay at any time of Declarant, the Corporation, the Owners, or any other Person 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 of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

ARTICLE XVI

Miscellaneous

Section 1. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 2. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of, non-use of, or by abandonment of, his Lot or Dwelling Unit.

Section 3. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the By-Laws 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

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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 provision hereof.

IN WITNESS WHEREOF, P.K.T. DEVELOPMENT COMPANY, Declarant herein, has executed this Declaration on the day and year first hereinabove set forth.

P.K.T. DEVELOPMENT COMPANY
an Indiana general partnership

By: K.E. Thompson, Inc.
an Indiana corporation,
Partner

By: *Kenneth E. Thompson*
Kenneth E. Thompson
President

This instrument was prepared by Dixon B. Dann, Attorney-at-law.

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State personally appeared Kenneth E. Thompson, President of K. E. Thompson, Inc., an Indiana corporation, a partner of P.K.T. DEVELOPMENT COMPANY, an Indiana general partnership, who acknowledged the execution of the above and foregoing instrument for and on behalf of said corporation in its capacity as a partner of said partnership, and for and on behalf of said partnership, for the uses and purposes therein set forth.

WITNESS my hand and Notarial Seal this 22nd day of August



P. Elaine Good
P. ELAINE GOOD, Notary Public

This instrument was prepared by Dixon B. Dann, Attorney-at-law.

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LEGAL DESCRIPTION OF RIVER RIDGE PARCEL

Part of the Southwest Quarter of Section 35, Township 18 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Southwest Quarter Section; thence along the South line thereof South 89 degrees 39 minutes 22 seconds West (assumed bearing) 609.82 feet to the Point of Beginning; thence North 00 degrees 20 minutes 38 seconds West 390.02 feet to a curve having a radius of 1595.00 feet, the radius point of which bears North 89 degrees 39 minutes 22 seconds East; thence Northerly along said curve 273.28 feet to a point which bears North 80 degrees 31 minutes 38 seconds West from said radius point; thence North 09 degrees 28 minutes 22 seconds East 109.96 feet to a curve having a radius of 700.00 feet, the radius point of which bears North 80 degrees 31 minutes 38 seconds West; thence Northerly along said curve 217.84 feet to a point which bears North 81 degrees 38 minutes 33 seconds East from said radius point; thence South 83 degrees 41 minutes 21 seconds West 325.05 feet; thence North 06 degrees 18 minutes 39 seconds West 50.00 feet; thence North 37 degrees 05 minutes 48 seconds West 269.96 feet; thence South 80 degrees 00 minutes 00 seconds West 164.80 feet; thence North 43 degrees 59 minutes 46 seconds West 438.65 feet; thence North 77 degrees 51 minutes 58 seconds West 247.68 feet; thence South 47 degrees 16 minutes 35 seconds West 299.22 feet; thence South 29 degrees 07 minutes 22 seconds West 589.53 feet; thence South 57 degrees 23 minutes 13 seconds West 144.02 feet; thence South 62 degrees 02 minutes 10 seconds West 284.97 feet to a point on the West line of said Southwest Quarter Section; thence along said West line South 00 degrees 30 minutes 51 seconds East 638.78 feet to the Southwest corner of said Southwest Quarter Section; thence along the South line thereof North 89 degrees 39 minutes 22 seconds East 2035.00 feet to the Point of Beginning, containing 54.301 acres, more or less.

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LEGAL DESCRIPTION OF BARRINGTON RIDGE PARCEL

Part of the Southwest Quarter of Section 35, Township 18 North,
Range 4 East in Hamilton County, Indiana, more particularly
described as follows:

Commencing at the Southeast corner of said Southwest Quarter Section;
thence along the South line thereof South 89 degrees 39 minutes 22
seconds West (assumed bearing) 609.82 feet; thence North 00 degrees
20 minutes 38 seconds West 390.02 feet to a curve having a radius of
1595.00 feet, the radius point of which bears North 89 degrees 39
minutes 22 seconds East; thence Northerly along said curve 273.28
feet to a point which bears North 80 degrees 31 minutes 38 seconds
West from said radius point; thence North 09 degrees 28 minutes 22
seconds East 109.96 feet to a curve having a radius of 700.00 feet,
the radius point of which bears North 80 degrees 31 minutes 38
seconds West; thence Northerly along said curve 217.84 feet to the
Point of Beginning which point bears North 81 degrees 38 minutes 33
seconds East from said radius point; thence South 83 degrees 41
minutes 21 seconds West 325.05 feet; thence North 06 degrees 18
minutes 39 seconds West 50.00 feet; thence North 37 degrees 05
minutes 48 seconds West 269.96 feet; thence South 80 degrees 00
minutes 00 seconds West 164.80 feet; thence North 43 degrees 59
minutes 46 seconds West 438.65 feet; thence North 77 degrees 51
minutes 58 seconds West 247.48 feet; thence North 24 degrees 22
minutes 05 seconds East 486.89 feet; thence North 12 degrees 00
minutes 00 seconds East 135.00 feet; thence North 52 degrees 00
minutes 00 seconds East 270.38 feet; thence South 45 degrees 31
minutes 42 seconds East 1016.97 feet; thence South 57 degrees 34
minutes 50 seconds East 70.00 feet to a point on a curve having a
radius of 475.00 feet, the radius point of which bears South 57
degrees 34 minutes 50 seconds East; thence southerly along said curve
to the left 355.08 feet to the point of tangency which point bears
South 79 degrees 35 minutes 22 seconds West from the radius point of
said curve; thence South 10 degrees 24 minutes 38 seconds East 198.38
feet to a curve having a radius of 700.00 feet, the radius point of
which bears South 79 degrees 35 minutes 22 seconds West; thence
southerly along said curve to the right 25.08 feet to the Point of
Beginning, containing 19.711 acres, more or less.

ALSO COVERS RIVER RIDGE

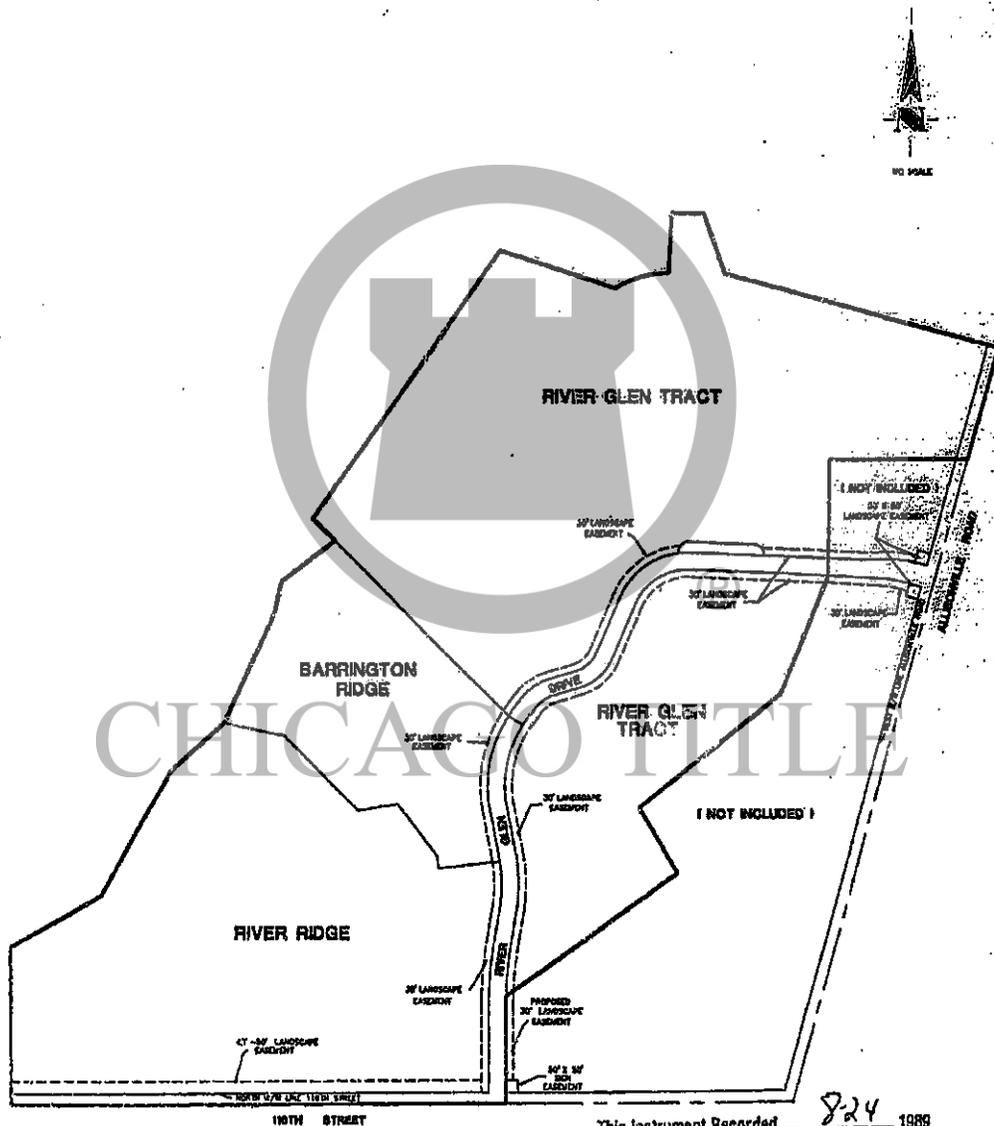
LEGAL DESCRIPTION OF RIVER GLEN PARCEL

Part of Section 35, Township 18 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of the Southwest Quarter of said Section 35; thence South 89 degrees 39 minutes 22 seconds West (assumed bearing) along the South line of the said Southwest Quarter Section a distance of 609.82 feet; thence North 00 degrees 20 minutes 38 seconds West a distance of 390.02 feet to a curve having a radius of 1595.00 feet, the radius point of which bears North 89 degrees 39 minutes 22 seconds East; thence Northerly along the arc of said curve a distance of 46.65 feet to the Beginning Point (said beginning point bears North 88 degrees 40 minutes 06 seconds West from said radius point); thence continuing Northerly along the arc of said curve a distance of 226.63 feet to a point which bears North 80 degrees 31 minutes 38 seconds West from said radius point; thence North 09 degrees 28 minutes 22 seconds East a distance of 109.96 feet to a curve having a radius of 700.00 feet, the radius point of which bears North 80 degrees 31 minutes 38 seconds West; thence Northerly along the arc of said curve a distance of 242.92 feet to a point which bears North 79 degrees 35 minutes 22 seconds East from said radius point; thence North 10 degrees 24 minutes 38 seconds West a distance of 198.38 feet to a curve having a radius of 475.00 feet, the radius point of which bears North 79 degrees 35 minutes 22 seconds East; thence Northerly along the arc of said curve a distance of 355.08 feet to a point which bears North 57 degrees 34 minutes 50 seconds West from said radius point; thence North 57 degrees 34 minutes 50 seconds West a distance of 70.00 feet; thence North 45 degrees 31 minutes 42 seconds West a distance of 1143.25 feet; thence North 35 degrees 05 minutes 25 seconds East a distance of 1341.16 feet; thence South 71 degrees 58 minutes 42 seconds East a distance of 497.88 feet; thence North 60 degrees 25 minutes 40 seconds East a distance of 64.01 feet to a curve having a radius of 423.60 feet, the radius point of which bears South 22 degrees 09 minutes 43 seconds East; thence Easterly along the arc of said curve a distance of 167.77 feet to a point which bears North 00 degrees 31 minutes 49 seconds East from said radius point; thence North 03 degrees 03 minutes 00 seconds East a distance of 247.63 feet; thence South 88 degrees 59 minutes 07 seconds East a distance of 130.00 feet; thence South 19 degrees 06 minutes 31 seconds East a distance of 261.10 feet; thence South 75 degrees 02 minutes 31 seconds East a distance of 1150.00 feet; thence South 14 degrees 57 minutes 29 seconds West a distance of 480.00 feet; thence South 89 degrees 46 minutes 39 seconds West a distance of 565.00 feet; thence South 00 degrees 19 minutes 00 seconds West a distance of 399.51 feet; thence South 87 degrees 06 minutes 15 seconds West a distance of 84.56 feet to a curve having a radius of 1563.80 feet, the radius point of which bears North 02 degrees 53 minutes 45 seconds East; thence Easterly along the arc of said curve a distance of 116.30 feet to a point which bears South 01 degrees 21 minutes 54 seconds East from said radius point; thence North 88 degrees 38 minutes 06 seconds East a distance of 49.62 to a curve having a radius of 400.18 feet, the radius point of which bears South 01 degrees 21 minutes 54 seconds East; thence Easterly along the arc of said curve a distance of 115.54 feet to a point which bears North 15 degrees 10 minutes 38 seconds East from said radius point; thence South 74 degrees 49 minutes 22 seconds East a distance of 87.47 feet; thence South 14 degrees 57 minutes 48 seconds West a distance of 90.00 feet; thence North 74 degrees 49 minutes 22 seconds West a distance of 114.17 feet to a curve having a radius of 540.71 feet, the radius point of which bears South 15 degrees 10 minutes 38 seconds West; thence Westerly along the arc of said curve a distance of 115.90 feet to a point which bears North 02 degrees 53 minutes 45 seconds East from said radius point; thence North 87 degrees 06 minutes 15 seconds West a distance of 202.01 feet; thence South 00 degrees 19 minutes 00 seconds West a distance of 7.53 feet; thence South 21 degrees 33 minutes 23 seconds West a distance of 515.00 feet; thence South 50 degrees 32 minutes 34 seconds West a distance of 740.00 feet; thence South 30 degrees 11 minutes 27 seconds East a distance of 309.68 feet; thence South 54 degrees 36 minutes 23 seconds West a distance of 858.70 feet to the Beginning Point containing 94.090 acres, more or less.

ALSO COVERS RIVER RIDGE

RIVER GLEN AREA PRELIMINARY SITE PLAN



This Instrument Recorded 824 1989
Sharon K. Cherry, Recorder, Hamilton County, IN

EXHIBIT "D"

8918275