

this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

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Section 19. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (Any assessment or installment thereof shall be considered to be delinquent on the fifteenth (15th) day following the due date unless otherwise determined by the Board of Directors); and

(g) an annual report consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited or reviewed basis, as determined by the Board, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer

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of any first Mortgage on a Unit, the Association shall provide an audited financial statement. During the Class "B" Control Period, the annual report shall include certified financial statements.

Section 20. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Area of Common Responsibility without the approval of the Voting Members of the Association. The Board shall also have the power to borrow money for other purposes; provided, the Board shall obtain Voting Member approval in the same manner provided in Article X, Section 4, of the Declaration for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these By-Laws, or the Articles of Incorporation, during the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Voting Members representing at least fifty-one (51%) percent of the Members other than the Declarant and the Declarant's nominees.

Section 21. Rights of the Association. With respect to the Area of Common Responsibility, and in accordance with the Articles of Incorporation and the Declaration, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, both within and without the Properties. Such agreements shall require the consent of two-thirds (2/3) of all directors of the Association.

The Association shall not be bound, either directly or indirectly, by any contract, lease, or other agreement (including any management contract) executed during the Class "B" Control Period unless such contract, lease or other agreement contains a right of termination exercisable by either party without penalty at any time, with or without cause, upon not more than ninety (90) days notice to the other party.

Section 22. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit. In the event that any occupant, guest or invitee of a Unit violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) **Notice.** Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice

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describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested within the allotted ten (10) day period, the hearing shall be held in executive session affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board of Directors or the Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

Article IV Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

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The Fairway of the Hawthorne Office and Vacancies as Hamilton Proper

Section 2. Election, Term of Office and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Voting Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

Article V Committees

Section 1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, the Board of Directors may appoint a Covenants Committee consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article III, Section 22 of these By-Laws.

Section 3. Neighborhood Committees. In addition to any other committees appointed as provided above, there shall be a Neighborhood Committee for each Neighborhood which has no formal organizational structure or association. Such Neighborhood Committees shall consist of three (3)

members provided, however, by vote of at least fifty-one (51%) percent of the Owners within the Neighborhood this number may be increased to 60. The Fairway at the Hawthorne - see same covenants as Hamilton Proper

The members of each Neighborhood Committee shall be elected by the vote of Owners of Units within that Neighborhood at an annual meeting of such Owners. The first annual meeting shall be called within sixty (60) days after conveyance of fifty-one (51%) percent of the Units in the Neighborhood to persons other than a builder or developer. The Owners of Units within the Neighborhood holding at least one-third (1/3) of the total votes of Units in the Neighborhood, represented in person or by proxy, shall constitute a quorum at any meeting of the Neighborhood. The Owners of Units within a Neighborhood shall have the number of votes assigned to their Units in the Declaration. Committee members shall be elected for a term of one (1) year or until their successors are elected. Any director elected to the Board of Directors from a Neighborhood shall be an ex officio member of the Committee. It shall be the responsibility of the Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue, but shall not have the authority to bind the Board of Directors.

In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the procedures and requirements applicable to the Board of Directors set forth in Article III, Sections 8, 9, 10, 11, 12, 13, 14, 15, and 16, of these By-Laws; provided, however, the term "Voting Member" shall refer to the Owners of Units within the Neighborhood. Each Neighborhood Committee shall elect a chairman from among its members who shall preside at its meetings and who shall be responsible for transmitting any and all communications to the Board of Directors and shall be the Voting Member from that Neighborhood.

Article VI Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Indiana law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts between the provisions of Indiana law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Indiana law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration, By-Laws, Articles of Incorporation, and any amendments to the foregoing, the rules and regulations of the Association, the membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made

available for inspection and copying by any holder, insurer, or guarantor of a unit, or by a Unit Member of the Association, or by the duly appointed representative of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in the Unit at the office of the Association or at such other place within the Properties as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment. Prior to the conveyance of the first Unit, Declarant may unilaterally amend these By-Laws. After such conveyance, the Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Declarant or its affiliates own property described in Exhibits "A" or "B" of the Declaration for development as part of the

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Properties, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

Thereafter and otherwise, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five (75%) percent of the total Class "A" votes in the Association, including seventy-five (75%) percent of the Class "A" votes held by Members other than the Declarant, and the consent of the Class "B" Member, so long as such membership exists. In addition, the approval requirements set forth in Article XIV of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Hamilton County, Indiana.

If an Owner consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

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CERTIFICATION

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I, the undersigned, do hereby certify.

That I am the duly elected and acting Secretary of Hamilton Proper Community Association, Inc., an Indiana corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 23rd day of September, 1991.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 23rd day of September, 1991.


Secretary Jay W. Alley [SEAL]

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STATE OF INDIANA

Cross Reference to Declaration:

COUNTY OF HAMILTON

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CONSENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR HAMILTON PROPER EAST

WHEREAS, Hamilton Proper Partners Land Partnership, L. P., an Indiana limited partnership, executed a Declaration of Covenants, Conditions and Restrictions for Hamilton Proper ~~East~~ on September 23, 1991, ("Declaration"), which Declaration is attached hereto and is to be recorded in the public records of Hamilton County, Indiana simultaneously with this instrument; and

WHEREAS, the Declaration purports to submit to the covenants, conditions, restrictions and easements contained therein all that property described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the undersigned is the owner of the Property and desires to authorize the Declarant to subject the Property to the terms of the Declaration;

NOW, THEREFORE, the owner does hereby consent, on behalf of himself, his successors, heirs, and assigns, to the submission of the Property to the Declaration and agrees that from and after the date of this Consent the Property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants, and restrictions contained in the Declaration, all of which shall run with the title to the Property and shall be binding upon all persons having any rights, title, or interest in the Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

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The Fairway at the Hawthorns uses same covenants as Hamilton Proper
this Consent on the day and year first above written.

OWNER: Hamilton Proper Partners
Commercial Partnership

By: [Signature] [SEAL]
Its: Harold D. Garrison, General Partner

Attest: [Signature] [SEAL]
Its: GENERAL PARTNER

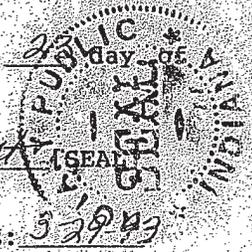
STATE OF INDIANA
COUNTY OF MARION

TO WIT:

Before me, ROBIN E. GREENWALT, a
notary public in and for the State and County aforesaid, on this
23 day of SEPTEMBER, 1991, appeared HAMILTON PROPER
PARTNERS COMMERCIAL PARTNERSHIP, by HAROLD D. GARRISON, its
GENERAL PARTNER, and acknowledged the execution of the foregoing
instrument on behalf of said PARTNERSHIP.

Given under my hand and official seal this 23 day of SEPTEMBER, 1991.

Robin E. Greenwalt [SEAL]
NOTARY PUBLIC
Marion Co
My Commission Expires: 5-29-93



Prepared By: Jo Anne P. Stubblefield, Hyatt & Rhoads, P. C.
1200 Peachtree Center South Tower
Atlanta, Georgia 30303

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STATE OF INDIANA
COUNTY OF HAMILTON

Cross Reference to Declaration:

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**CONSENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR HAMILTON PROPER EAST**

WHEREAS, Hamilton Proper Partners Land Partnership, L. P., an Indiana limited partnership, executed a Declaration of Covenants, Conditions and Restrictions for Hamilton Proper East on September 23, 1991, ("Declaration"), which Declaration is attached hereto and is to be recorded in the public records of Hamilton County, Indiana simultaneously with this instrument; and

WHEREAS, the Declaration purports to submit to the covenants, conditions, restrictions and easements contained therein all that property described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the undersigned is the owner of the Property and desires to authorize the Declarant to subject the Property to the terms of the Declaration;

NOW, THEREFORE, the owner does hereby consent, on behalf of himself, his successors, heirs, and assigns, to the submission of the Property to the Declaration and agrees that from and after the date of this Consent the Property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants, and restrictions contained in the Declaration, all of which shall run with the title to the Property and shall be binding upon all persons having any rights, title, or interest in the Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

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IN WITNESS WHEREOF, the undersigned Owner has executed this Consent on the day and year first above written.

OWNER: Hamilton Proper Partners I, L.P.

By: [Signature] [SEAL]

Its: Harold D. Garrison, General Partner

Attest: [Signature] [SEAL]

Its: GENERAL PARTNER

STATE OF INDIANA

COUNTY OF MARION

TO WIT:

Before me, ~~Harold D. Garrison~~ Robin E. Greenwalt, a notary public in and for the State and County aforesaid, on this 23 day of September, 1991, appeared ~~Harold D. Garrison~~ Hamilton Proper Partners I, LP, by Harold D. Garrison, its GENERAL PARTNER, and acknowledged the execution of the foregoing instrument on behalf of said PARTNERSHIP.

Given under my hand and official seal this 23 day of September, 1991.

Robin E. Greenwalt [SEAL]
NOTARY PUBLIC
Marion Co
My Commission Expires 2-29-92

Prepared By: Jo Anne P. Stubblefield, Hyatt & Rhoads, P. C.
1200 Peachtree Center South Tower
Atlanta, Georgia 30303

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The Fairway at the Hawthorne uses same covenants as Hamilton Proper

STATE OF INDIANA
COUNTY OF HAMILTON

Cross Reference to Declaration:

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Deed:

Cross Reference to Owner's

Deed Book _____
Page _____

CONSENT TO DECLARATION OF EASEMENTS AND COVENANT TO SHARE COSTS

WHEREAS, Hamilton Proper Partners Land Partnership, L. P., an Indiana limited partnership, executed a Declaration of Covenants, Conditions and Restrictions for Hamilton Proper on September 23, 1991, ("Declaration"), which Declaration was recorded in Deed Book _____, Page _____, of the public records of Hamilton County, Indiana; and

WHEREAS, Exhibit "C" to the Declaration is an instrument entitled Declaration of Easements and Covenant to Share Costs which purports to submit to the covenants, conditions, restrictions and easements contained therein all that property described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the undersigned is the owner of the Property and desires to authorize the Declarant to subject the Property to the terms of the Declaration:

NOW, THEREFORE, the owner does hereby consent, on behalf of himself, his successors, heirs, and assigns, to the submission of the Property to the Declaration and agrees that from and after the date of this Consent the Property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to all of the terms, provisions, covenants, and restrictions contained in the Declaration, all of which shall run with the title to the Property and shall be binding upon all persons having any rights, title, or interest in the Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns.

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INSTRUMENT NUMBER 9125217

DATE OF PLAT July 25th 1991

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RECORDING DATE September 23 1991

RECORDING FEE \$30.00

TIME 4:28 PM

GRANTOR (DEVELOPER/OWNER) Peter A. Cowin, General Electric
Capital Corporation, Hamilton Proper Partners I LP

GRANTEE (NAME OF PLAT) Chestnut Hill Section One
Secondary Plat

LEGAL DESCRIPTION pt N 1/2 10 - 17 - 5 15.937 Acres

BOOK & PAGE PC 1 Slide 191

NUMBER OF LOTS 22 Lots Numbered 1 - 22

TRANSFERRED: YES X NO

DATE OF TRANSFER SEPTEMBER 23 1991

This Instrument Recorded 9-23 1991
Sharon K. Chery, Recorder, Hamilton County, Indiana

INSTR. # 9125217

The Fairway at the Hawthorne uses same covenants as Hamilton Proper

INSTR.

#

9125218

Number of additional sheets attached: _____

Filing Office: _____

UNIFORM COMMERCIAL CODE DEBTOR

This Financing Statement covers the following: All Inventory, equipment, & fixtures, and hereafter acquired.

Products of Collateral are also covered. (See IC 26-1-9-315)

The above property is:

To become fixtures on (insert legal description of real estate below): _____

Real estate that is standing on (insert legal description of real estate below): _____

Minerals or the like (including oil and gas) or accounts that will be financed at the minehead of well or mine located on (insert legal description of real estate below): _____

If the Debtor does not have an interest of record in the above-described real estate, the full name of the record owner is: _____

Date: 9-23-91

Name and Address of Assignee of Secured Party: SHARON K. CHERRY

Filed for Recorder of Hamilton County 9125218 C

TERMINATION STATEMENT: This Statement of Termination of Financing is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code. This instrument releases the Secured Party to no longer claim a security interest under the financing statement bearing the file number shown above.

Date: 28 is 91 By: David J. [Signature]
Signature of Secured Party (Termination Only)

UNION STATE BANK

RECORDED
INDEXED
SEP 28 11 47 PM '91
HAMILTON CO. IN

(3) Filing Officer Copy-Acknowledgment

Filing Officer is requested to note file number, date and hour of filing on this copy and return to person filing as an acknowledgment.

The Instrument Recorded 9-23 1991
Sharon K. Cherry, Recorder, Hamilton County, Indiana

