

BY-LAWS

OF

AVIAN GLEN COMMUNITY ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION. The name of the corporation is Avian Glen Community Association, Inc., hereinafter referred to as the "Association". The principal office of the corporation shall be located at 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240 but meetings of members and directors may be held at such places within the State of Indiana, County of Marion or Hamilton, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Avian Glen Community Association, Inc., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 4. "Lot" shall mean and refer to any platted lot shown upon any recorded subdivision map of the Properties.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declarant" shall mean and refer to Avian Glen Associates, L.P., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties first recorded in the Office of the Recorder of

members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his lot.

#### ARTICLE IV

##### BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of three (3) directors, who need not be members of the Association.

Section 2. Term of Office. At the first annual meeting the members shall elect three directors for a term of one year; at each annual meeting thereafter the members shall elect three directors for a term of one year.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE V

##### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board

regarded as the act of the Board.

#### ARTICLE VII

##### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to: (a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and (e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

(b) supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment

of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of 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. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; and shall sign all leases, mortgages, deeds and other written material instruments.

Vice-President

(b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all

which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six percent (6%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. Interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

#### ARTICLE XII

##### CORPORATE SEAL

The Association shall, if necessary, have a seal in circular form having within its circumference the words: Avian Glen Community Association, Inc.

#### ARTICLE XIII

##### AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

#### ARTICLE XIV

##### MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**AMENDMENTS TO THE BY-LAWS OF  
AVIAN GLEN COMMUNITY ASSOCIATION, INC.**

These Amendments to the By-Laws of Avian Glen Community Association, Inc. were adopted the 12th day of September, 1999.

i: 199909962328  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 10-26-1999 At 08:52 a.m.  
AMENDMENT 12.00

**W I T N E S S E T H:**

WHEREAS, the original By-Laws of Avian Glen Community Association, Inc. ("Association") were approved and adopted by the Association's Board of Directors August 18, 1992; and

WHEREAS, Article XIII, Section 1 of the By-Laws states that the By-Laws may be amended by a vote of a majority of a quorum of Association members present in person or by proxy; and

WHEREAS, after written notice was duly given, the Annual Meeting of the Owners and the Association was held on September 12, 1999; and

WHEREAS, one of the purposes of said Annual Meeting as stated in the notice for the meeting was for the Association's members to vote upon the approval of the following Amendments to the By-Laws; and

WHEREAS, at said meeting, the Owners of 151 Lots voted in favor of amending the By-Laws pursuant to the terms below; and

WHEREAS, said Owners who voted in favor of amending the By-Laws constitute a majority of a quorum of Association members.

NOW, THEREFORE, the By-Laws which are applicable to the Association and to all Owners and residents within Avian Glen are hereby amended as follows:

1. **Article IV, Section 1** of the By-Laws is hereby deleted in its entirety and replaced with the following:

**The affairs of this Association shall be managed by a Board consisting of five (5) directors, who must be members of the Association.**

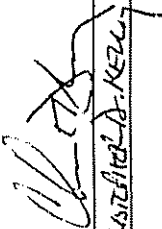
2. **Article IV, Section 2** of the By-Laws is hereby deleted in its entirety and replaced with the following:

**The term of office for directors elected in 1999 and years thereafter shall be elected for a two year term, and staggered the two-year terms of the Directors elected such that two Directors will be elected in even-numbered years and three Directors will be elected in odd-numbered years. For the year 1999, three directors will be elected for two years and two directors for one year to establish the rotation.**

3. Certification. The undersigned persons hereby represent and certify that all requirements for and conditions precedent to the Amendments of the By-Laws have been fulfilled and satisfied.

Executed this 12<sup>th</sup> day of October, 1999.

AVIAN GLEN COMMUNITY ASSOCIATION, INC., by:

  
CHARLES D. KELLY, President

Attest:  
  
PAT S. WILLIS, Secretary

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a notary public, in and for said County and State, personally appeared CHARLOTTE D. KELLY and PAT S. WILLIS, the President and Secretary, respectively, of Avian Glen Community Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the within and foregoing Amendments to the By-Laws of Avian Glen Community Association, Inc., for and on behalf of said corporation and its members and who, being duly sworn, stated that the Certifications and representations made therein are true. Witness my hand and notarial seal this 12 day of OCTOBER, 1999.

  
Notary Public - Signature

P. THOMAS MURRAY, JR.  
Printed

My Commission Expires: \_\_\_\_\_  
12-20-01  
Residence County: MARION

This instrument prepared by P. Thomas Murray, Jr., Eads & Murray, P.C., Attorneys at Law, 7321 Shadeland Station, Suite 250, Indianapolis, IN 46256. (317) 842-8550.

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**AMENDMENT TO DECLARATION COVENANTS,  
CONDITIONS AND RESTRICTIONS OF AVIAN GLEN**

This Amendment to the Declaration of Covenants, Conditions & Restrictions of Avian Glen was executed this 12<sup>th</sup> day of October, 1999.    If 199909962327

Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 10-26-1999 At 08:52 am.  
AMEND DECL 12.00

**W I T N E S S E T H:**

WHEREAS, the Avian Glen subdivision located in Hamilton County was established by a certain "Declaration of Covenants, Conditions and Restrictions of Avian Glen" which was recorded on September 22, 1992, as **Instrument No. 92-36482** in the Office of the Recorder of Hamilton County, Indiana, said Declaration together with all amendments and/or supplements thereto being hereafter referred to as the "Declaration"; and

WHEREAS, Plats filed with the Office of the Recorder of Hamilton County, Indiana established two hundred twenty-one (221) Lots and Common Areas comprising the Avian Glen subdivision; and

WHEREAS, the Declaration states that it may be amended by a vote of not less than sixty-seven percent (67%) in the aggregate of all owners; and

WHEREAS, after written notice was duly given, the Annual Meeting of the Owners and the Avian Glen Community Association, Inc. ("Association") was held on September 12, 1999; and

WHEREAS, one of the purposes of said Annual Meeting as stated in the notice for the meeting was for the Association's members to vote upon the approval of the following Amendment to the Declaration; and

WHEREAS, at said meeting, the Owners of one hundred fifty-one (151) Lots voted in favor of amending the Declaration pursuant to the terms below; and

WHEREAS, said Owners who voted in favor of amending the Declaration constitute more than sixty-seven percent (67%) in the aggregate of all owners; and

WHEREAS, the Owners of said Lots desire to amend the Declaration pursuant to the terms and conditions below upon the authority set forth in foregoing recitals.

NOW, THEREFORE, the Declaration of Covenants, Conditions & Restrictions of Avian Glen which is applicable to all Owners and residents within Avian Glen is hereby amended as follows:

1. There shall be a new Section 7.9 added to Article VII of the Declaration as follows:

**7.9 New Homeowners Initiation Fee to Establish Reserve Account Funding at Time of Resale. On the date a Lot is conveyed by any owner to a subsequent Owner, there shall be due and payable to the Association by such subsequent Owner of such Lot the sum equal to one year total association fees which shall be deposited in the Reserve Account for Capital Repair, Replacement and Additions. The foregoing shall not apply to any sale or transfer of a Lot to a mortgagee**




pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures.


2. Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of any one Lot shall constitute a ratification of this Amendment, together with the Declaration and Plat Covenants and Restrictions (including all amendments and supplements thereto), the By-Laws and all amendments thereto, and any rules or regulations adopted pursuant thereto, and all such provisions shall be covenants running with the land and shall bind any person having at any time having any interest or estate in a Lot or the Real Estate as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease.

3. Certification. The undersigned persons hereby represent and certify that all requirements for and conditions precedent to the Amendment of the Declaration have been fulfilled and satisfied.

Executed this 12<sup>th</sup> day of October, 1999.

AVIAN GLEN COMMUNITY ASSOCIATION, INC., by:

  
CHRISTINA D. KELLY, President

Attest:  
  
PAT S. WILLIS, Secretary

STATE OF INDIANA )  
                                  ) SS:  
COUNTY OF MARION )

Before me, a notary public, in and for said County and State, personally appeared CHRISTINA D. KELLY and PAT S. WILLIS, the President and Secretary, respectively, of Avian Glen Community Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the within and foregoing Amendment to the Declaration of Covenants, Conditions & Restrictions of Avian Glen, for and on behalf of said corporation and its members and who, being duly sworn, stated that the Certifications and representations made therein are true. Witness my hand and notarial seal this 12 day of OCTOBER, 1999.

  
Notary Public--Signature

P. THOMAS MURRAY, JR.  
Printed

Residence County: MARION

My Commission Expires:  
12-20-01

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., Eads & Murray, P.C., Attorneys at Law, 7321 Shadeland Station, Suite 250, Indianapolis, IN 46256. (317) 842-8550.

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