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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS 21ST TOWNSHIP
ASSESSOR

OF
BALLINSHIRE

THIS DECLARATION is made this 9th day of December, 1987, by BALLINSHIRE ASSOCIATES, an Indiana limited partnership (the "Developer").

Recitals

1. Developer is the owner of certain real estate more particularly described in Exhibit A attached hereto and made a part hereof (the "Initial Real Estate").
2. Developer intends to subdivide the Initial Real Estate into residential lots as generally shown on the "Final Plat for Ballinshire Section I," as hereafter recorded in the office of the Recorder of Marion County, Indiana.
3. Before so subdividing the Initial Real Estate, Developer desires to subject the Initial Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens for the purpose of preserving and protecting the value and desirability of the Initial Real Estate for the benefit of each owner of all or any part thereof.
4. Developer further desires to create an organization to which shall be delegated and assigned the powers of maintaining and administering the Common Areas (hereinafter defined) and certain other areas of the Initial Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration and the subdivision plat of the Initial Real Estate as hereafter recorded in the office of the Recorder of Marion County, Indiana, and collecting and disbursing the assessments and charges as herein provided.
5. Developer may from time to time subject additional real estate located within the tract adjacent to the Initial Real Estate, as more particularly described in Exhibit B attached hereto and made a part hereof, to the provisions of this Declaration (the Initial Real Estate, together with any such addition, as and when the same becomes subject to the provisions of this Declaration as herein provided, is hereinafter referred to as the "Real Estate").

NOW, THEREFORE, Developer hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and

CHICAGO TITLE
DEC 10 1987

occupied subject to the following provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens, which shall run with the land and shall be binding upon, and inure to the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in the Real Estate, or any part thereof.

Declaration

ARTICLE I

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NAME

The name by which the Real Estate shall be known is "Ballinshire."

ARTICLE II

DEFINITIONS

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

2.1 "Association" means the Ballinshire Homeowners Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will cause to be incorporated, its successors and assigns.

2.2 "Committee" means the Ballinshire Architectural Control Committee" established pursuant to Article VIII, paragraph 8.1, of this Declaration for the purposes herein stated.

2.3 "Common Areas" means (i) all portions of the Real Estate (including improvements thereto) shown on any Plat of all or any part of the Real Estate which are not Lots and which are not dedicated to the public; (ii) any landscape islands located in any public right-of-way within and upon the Real Estate and (iii) all facilities and personal property owned or leased by the Association from time to time. Unless expressly stated to the contrary, the term Common Areas as used herein shall include all Lake Common Areas.

2.4 "Common Expenses" means (i) expenses of administration of the Association; (ii) expenses of and in connection with the improvement, maintenance, repair or replacement of the Common Areas and the performance of the responsibilities and duties of the Association including, without limitation, expenses for the improvement, maintenance or repair of the Landscape Easements and the drainage system located within and upon the Drainage Easements, (iii) all sums lawfully assessed

against the Owners by the Association and (iv) all sums declared by this Declaration to be Common Expenses.

2.5 "Developer" means Ballinshire Associates, an Indiana limited partnership, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer hereunder, including, without limitation, 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 Developer.

2.6 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the later of the following: (i) the date Developer no longer owns any Lot within or upon the Real Estate or (ii) the date which is three (3) years after the date on which all improvements and installations required by Chapter 4 of the Subdivision Control Ordinance of Marion County, Indiana, 58-A0-3, as amended, have been completed and, if applicable, accepted for public maintenance by any appropriate governmental unit or agency thereof.

2.7 "Drainage Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Drainage Easements, either separately or in combination with any other easement designated on such Plat.

2.8 "Landscape Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Landscape Easements, either separately or in combination with any other easement designated on such Plat.

2.9 "Landscape Preservation Easement" means those areas designated on any Plat of all or any part of the Real Estate as a Landscape Preservation Easements, either separately or in combination with any other easement designated on such Plat.

2.10 "Lake Common Areas" means those portions of the Real Estate (including improvements thereto) designated on any Plat of all or any part of the Real Estate as Lake Common Area, which are set aside for conveyance to the Association but are restricted in use to the Lot or Lots adjacent thereto.

2.11 "Lot" means any numbered parcel of land shown and identified as a lot on any Plat of all or any part of the Real Estate.

2.12 "Mortgagee" means the holder of a recorded first mortgage lien on any Lot.

870140946

2.13 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner as used herein shall include Developer so long as Developer shall own any Lot.

2.14 "Plat" means the subdivision plat of the Initial Real Estate identified as the "Final Plat for Ballinshire Section I," as hereafter recorded in the office of the Recorder of Marion County, Indiana (as the same may be amended or supplemented from time to time), and any subdivision plat(s) for additional section(s) of Ballinshire which are hereafter recorded in the office of the Recorder of Marion County, Indiana (as the same may be amended or supplemented from time to time).

2.15 "Utility Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Utility Easements, either separately or in combination with any other easement designated on such Plat.

ARTICLE III

APPLICATION

All Owners, their tenants, guests, invitees and mortgagees, or any other person using or occupying a Lot or any part of the Real Estate shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

The Owner of any Lot 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 Developer or a subsequent Owner of such Lot, or (ii) by the act of occupancy of such Lot, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions, restrictions, terms and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking of such occupancy, each Owner and all other persons acknowledge the rights and powers of Developer and the Association provided for by this Declaration, and also for himself, his heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Developer and the Owners from time to time of the Lots, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

ARTICLE IV

PROPERTY RIGHTS

4.1 Owners' Easement of Enjoyment of Common Areas.
Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas (excluding for this purpose the Lake Common Areas)

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which shall run with and be appurtenant to each Lot, subject to the following:

(i) The right of the Association (after conveyance of the Common Areas to the Association) to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon approval of two thirds (2/3) of the membership of each class of members of the Association;

(ii) The rights of Developer as provided in this Declaration and in any Plat of all or any part of the Real Estate;

(iii) The terms and provisions of this Declaration; and

(iv) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Real Estate.

4.2 Owners' Easement of Enjoyment of Lake Common Areas.

Developer hereby declares, creates and grants to each Owner of a Lot that is immediately adjacent to a Lake Common Area a non-exclusive easement for the recreational use and enjoyment of the retention and detention pond or lake located in and upon such adjacent Lake Common Area, which easement shall run with and be appurtenant to such Lot, subject to the following:

(i) The right of the Association (after conveyance of the Lake Common Area to the Association) to dedicate or transfer all or any part of the Lake Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon approval of two thirds (2/3) of the membership of each class of members of the Association;

(ii) The rights of Developer as provided in this Declaration and in any Plat of all or any part of the Real Estate;

(iii) The terms and provisions of this Declaration; and

(iv) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Real Estate;

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Except as installed by Developer, installed by the Association, or installed by an Owner of a Lot immediately adjacent to the Lake Common Area with the prior written approval of the Committee, no permanent structure or improvement shall be erected or maintained in, on, over, under or through said Lake Common Areas. Any such permanent structure or improvement erected or maintained as permitted by the foregoing sentence shall be erected and maintained in compliance with all applicable laws, ordinances, rules and regulations of any governmental authority or agency thereof relating to drainage. No swimming shall be permitted in the ponds or lakes located in and upon the Lake Common Areas. The Association may promulgate reasonable rules and regulations (not inconsistent with the provisions of this Declaration) (i) restricting or otherwise governing the use and enjoyment of the Lake Common Areas and (ii) as the Association deems necessary and appropriate for the maintenance, management and control of the Lake Common Areas and the retention and detention ponds and lakes and any improvements therein or thereon in a good, clean, attractive, safe and sanitary condition.

4.3 Delegation of Use. Any Owner may delegate, in accordance with the By-Laws of the Association and any reasonable rules and regulations promulgated from time to time by the Association, his right of enjoyment of the Common Areas to his family members, his tenants or contract purchasers who reside on the Lot.

4.4 Conveyance of Common Areas. Upon final construction of or provision for the Common Areas, Developer shall convey all of its right, title and interest in and to the Common Areas to the Association by quitclaim deed, and such Common Areas shall then be the property of the Association.

4.5 Utility Easements. Developer hereby declares, creates and reserves the Utility Easements for the use of all public utility companies (not including transportation companies), governmental agencies and the Association, for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. No permanent structures shall be erected or maintained upon said Utility Easements.

4.6 Drainage Easements. Developer hereby declares, creates and reserves the Drainage Easements (i) for the use of Developer during the Development Period for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) for the use of the Association and the Department of Public Works of the City of Indianapolis for access to and maintenance, repair or replacement

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of such drainage system; provided, however, that each Owner of a Lot subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his Lot free from obstructions so that the surface water drainage will be unimpeded. No permanent structures shall be erected or maintained upon said Drainage Easements.

4.7 Landscape Easements. Developer hereby declares, creates and reserves the Landscape Easements (i) for the use of Developer during the Development Period for access to and the installation and replacement of walls, earth mounds, trees, foliage, landscaping, screening materials and other improvements and (ii) for the use of the Association for access to and the installation, maintenance, repair and replacement of walls, earth mounds, trees, foliage, landscaping, screening materials and other improvements. Except as installed by Developer or installed and maintained by the Association, no improvements or permanent structure, including without limitation fences, shall be erected or maintained in or upon said Landscape Easements.

4.8 Access Rights. Developer hereby declares, creates and reserves an access easement over and across the entirety of the Real Estate (subject to the limitations hereinafter provided in this paragraph 4.8): (i) for the use of all public utility companies (not including transportation companies) and governmental agencies for access to the Utility Easements created and reserved herein; (ii) for the use of Developer during the Development Period and for the use of the Association and the Department of Public Works of the City of Indianapolis for access to the Drainage Easements created and reserved herein, (iii) for the use of Developer during the Development Period and for the use of the Association for access to the Landscape Easements created and reserved herein, and (iv) for the use of Developer during the Development Period and for the use of the Association for access to the Lake Common Areas. Notwithstanding the foregoing, the area of the access easement created by this paragraph 4.8 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of a building or other improvement located on the Real Estate. The parties for whose benefit this access easement is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

4.9 Landscape Preservation Easement. Developer hereby declares, creates and reserves the Landscape Preservation Easement for the preservation of an existing earth mound and drainage swale located along the property line between Rutherglen (the plat of which is recorded as Instrument No. 78-57203, in the office of the Recorder of Marion County, Indiana) and Ballinshire Section I (the plat of which is to be hereafter recorded in the

870140946

office of the Recorder of Marion County, Indiana). Such earth mound and drainage swale, as it presently exists and functions for aesthetic purposes and for the confinement and flow of storm water drainage, shall, as a minimum requirement, be maintained in its present location and condition (including width and height). Each Owner of a Lot subject to the Landscape Preservation Easement shall maintain, repair and, if necessary, restore the portion of such earth mound or drainage swale located within the Landscape Preservation Easement on his Lot in the event of damage to or deterioration of such earth mound or drainage swale. In the event any such Owner fails to do so in such manner as the Association deems necessary or appropriate to conform to the minimum requirements of this paragraph 4.9, the Association shall have the right (but not the obligation) through its agents, employees and contractors, to enter upon said Lot and to repair, maintain and restore such earth mound or drainage swale. The cost of such repair, maintenance or restoration shall be and constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any work performed pursuant to this paragraph 4.9.

Except as installed by Developer or public utility companies, no permanent structure shall be installed or maintained in or upon the Landscape Preservation Easement. Fences and additional landscaping trees and foliage may be installed in and upon the Landscape Preservation Easement by an Owner of a Lot subject to the prior written approval of the Committee. Such approval, if granted, shall be subject to conformance with the requirements of this paragraph, the restrictions set forth in any Plat of all or any part of the Real Estate, and any rules and regulations of the Committee.

ARTICLE V

USE RESTRICTIONS

5.1 Lot Use and Size of Buildings. Every Lot is a residential lot and shall be used exclusively for single-family residential purposes. No business buildings shall be erected on any Lot, and no business may be conducted on any part thereof, other than the home occupations permitted in the Dwelling Districts Zoning Ordinance of Marion County, Indiana. No structure shall be erected, altered, placed or permitted to remain on any Lot, other than one detached single-family dwelling not to exceed two and one-half stories in height and permanently attached residential accessory buildings. Any attached garage,

870140946

attached tool shed, attached storage building or any other attached accessory building erected or used as an accessory to a residence shall be of a permanent type of construction and shall conform to the general architecture and appearance of such residence.

The ground floor area of the main structure, exclusive of one-story open porches and garages and other attached residential accessory buildings, shall not be less than 1,800 square feet in the case of a one-story structure, nor less than 1,200 square feet in the case of a multiple story structure, provided, however, no structure of more than one story shall have less than aggregate of 1,800 square feet of finished and liveable floor area.

5.2 Setback Lines. Building setback lines are established on the Plat(s) of the Real Estate. No building shall be erected or maintained between the established setback lines and the Lot lines of said Lot.

No residence or attached accessory building shall be erected closer than twenty-five (25) feet to the rear Lot line (unless a greater setback line is established on any Plat of all or any part of the Real Estate). No residence or attached accessory building shall be erected closer to the side of any Lot than ten (10) feet (unless a greater setback line is established on any Plat of all or any part of the Real Estate), with each Lot having an aggregate side yard requirement of twenty (20) feet. In the event a building is erected on more than one single Lot, this restriction shall apply to the side lines of the extreme boundary of the multiple Lots.

5.3 Garages and Storage Area. No garage shall be erected which is not permanently attached to the main building, and no unenclosed storage area shall be erected. No enclosed storage area shall be erected which is not permanently attached to the main building. All residences are required to have a garage which will accommodate at least two (2) automobiles.

5.4 Accessory and Temporary Buildings. No trailers, shacks, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any Lot herein, except that used by the builder during the construction of a residential building on the Lot.

5.5 Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent. Nor may any structure of a temporary character be used as a residence.

870140946

5.6 Nuisances. No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any Lot. No noxious, unlawful, or otherwise offensive activity shall be carried out on any Lot; nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

5.7 Fences. No fence shall be erected on or along any Lot line or on any Lot, the purposes or result of which will be to obstruct reasonable vision, light, or air. All fences shall be kept in good repair and erected so as to enclose the Lot and decorate the same without hinderance or obstruction to any other property. All mental fencing must have a factory finish of either brown or black vinyl. No fence shall be higher than six (6) feet. No fencing shall extend forward of the furthest back front corner of the residence. Fencing style and color shall be consistent with the subdivision.

5.8 Site Obstructions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street and property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

5.9 Driveways. All driveways shall be paved simultaneously with construction of the residence, and the type of construction and materials must be first approved by the Committee.

5.10 Vehicle Parking. No camper, motor home, truck, trailer, boat, or recreational vehicle of any kind may be stored on any Lot in open public view.

5.11 Mailboxes. All mailboxes shall conform to the standards set forth by the Committee and shall be installed by the builder simultaneously with the construction of the residence.

5.12 Signs. No sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than six (6) square feet may be displayed at any time for the purposes

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of advertising the property for sale or rent, or may be displayed by a builder to advertise the property during construction and sale.

5.13 Vegetation. Each Owner shall keep his Lot reasonably clear from unsightly weeds and growth at all times; provided, that the foregoing provision shall not prevent the Owner, with the prior written approval of the Committee, from maintaining portions of his Lot in its natural unimproved state as long as such natural areas are part of an integrated landscape plan. Failure to comply shall entitle (but not obligate) Developer, the Association, or the Department of Metropolitan Development of Marion County, Indiana, to cut weeds and clear the Lot of such growth at the expense of the Owner, and any cost therefore incurred by the Association shall be and constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the enforcement of assessments generally.

5.14 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall at all times be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view.

5.15 Storage Tanks. Any gas or oil storage tanks used in connection with a Lot shall be either buried or located in a garage or house such that they are completely concealed from public view.

5.16 Tree Preservation. No trees may be removed from any Lot without the approval of the Committee, and such requests shall be made to the Committee in writing. In the event the Committee does not indicate in writing its approval or disapproval of a request for tree removal within thirty (30) days after submission, the Committee is deemed to have approved such request.

5.17 Water Supply and Sewage Systems. No private or semi-private water supply and/or sewage disposal system may be located upon any Lot which is not in compliance with regulations or procedures as provided by the Indiana State Board of Health, or other civil authority having jurisdiction. No septic tank, absorption field, or other method of sewage disposal shall be located or constructed on any Lot.

5.18 Antenna. No antenna on any Lot shall exceed five (5) feet above a roof peak.

870140916

5.19 Satellite Dishes. No satellite dishes shall be installed or permitted on any Lot.

5.20 Awnings. No metal, fiberglass or similar type material awnings or patio covers shall be permitted on any Lot.

5.21 Swimming Pools. No above-ground swimming pools shall be permitted on any Lot.

5.22 Solar Panels. No solar heat panels shall be permitted on roofs of any structures on any Lot. All such panels shall be enclosed within a fenced area and shall be concealed from the view of neighboring Lots and the streets.

5.23 Modular Homes. Modular-type construction shall not be permitted on any Lot.

5.24 Lot Access. All Lots shall be accessed from the interior streets of the subdivision. No Lot access is permitted from Dandy Trail.

ARTICLE VI

ASSOCIATION

6.1 Membershi. Each Owner shall, automatically upon becoming an Owner, be and become a member of the Association and shall remain a member of the Association until such time as his ownership of a Lot ceases, at which time his membership will terminate and the new Owner of his Lot shall be and become a member of the Association.

6.2 Classes of Membership. The Association shall have two (2) classes of membership, as follows:

(i) Class A Members. Class A members shall be all owners other than Developer (unless the Class B membership has been converted to Class A membership as provided in the following subparagraph (ii), in which event Developer shall then be a Class A member).

(ii) Class B Members. The Class B member shall be the Developer. The Class B membership shall cease and terminate and be converted to Class A membership upon the "Applicable Date" (as such term is hereinafter defined in paragraph 6.3).

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6.3 Voting Rights. Each class of membership of the Association shall have the respective voting rights set forth in this paragraph 6.3.

(i) As used herein, the term "Applicable Date" shall mean the date which is the earlier of (a) the date on which the written resignation of Developer as a Class B member is delivered to the Secretary of the Association or (b) the date Developer no longer owns any Lot within or upon the Real Estate.

(ii) Until the Applicable Date, the Class B membership shall exercise all voting rights with respect to any matter submitted to a vote of the members of the Association and shall have one (1) vote for each Lot of which Developer is the Owner.

(iii) From and after the Applicable Date, each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner. Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to such Lot. Until the Applicable Date, the Class A membership shall have no votes with respect to any matter submitted to a vote of the members of the Association. ®

6.4 Board of Directors. The Board of Directors of the Association shall manage the affairs of the Association.

6.5 Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Developer and the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause, without any termination fee, on written notice of ninety (90) days or less.

6.6 Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to:

(1) Installation and replacement of such fences, walls, foliage, landscaping, signs and other improvements in and upon the Common Areas as

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the Association deems necessary or appropriate, and maintenance of the Common Areas and any installation thereon in a clean and attractive condition and in good repair.

(ii) Replacement of such fences, walls, earth mounds, trees, foliage, landscaping, screening materials and other improvements in and upon the Landscape Easements as the Association deems necessary or appropriate and maintenance of said Landscape Easements and any installation thereon installed by Developer or the Association in a clean and attractive condition and in good repair.

(iii) Management and control of detention and retention ponds or lakes in and upon the Lake Common Areas and maintenance of the same in a clean, attractive and sanitary condition. Installation and replacement of such improvements in and upon said Lake Common Areas as the Association deems necessary or appropriate and maintenance of any such improvements installed by Developer or the Association in good condition and repair. Without limiting the generality of the foregoing, such maintenance obligations shall include overflow maintenance to protect the ponds or lakes from erosion, algae control and maintenance of minimum water levels. It is intended that such actions shall be taken in accordance with recommendations regarding the same from applicable governmental agencies having jurisdiction, but nothing herein shall constitute an undertaking or duty to exceed the requirements of applicable law and prudent pond and lake operation.

(iv) Replacement of the drainage system in and upon the Drainage Easements as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon said Drainage Easements by Developer or the Association in good condition and repair, subject, however, to the obligation of the owner of a Lot subject to a Drainage Easement to keep the portion of the Drainage Easement on his Lot free from obstructions so that the surface water drainage will be unimpeded.

(v) Procuring and maintaining for the benefit of the Association, its Board of Directors and the

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Owns the insurance coverages required under this Declaration and such other insurance as the Association deems necessary or advisable.

(vi) Payment of taxes, if any, assessed against and payable with respect to the Common Areas.

(vii) Assessment and collection from the Owners of the Common Expenses.

(viii) Contracting for such services as management, snow removal, security control, trash removal or other services as the Association deems necessary or advisable.

(ix) From time to time, adopting, amending or rescinding such reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and the management and administration of the Association, as the Association deems necessary or advisable, and enforcement of the same. As part of such rules and regulations, the Association may provide for reasonable interest and late charges on past due installments of any Assessments or other charges against any Lot. Copies of such rules and regulations shall be furnished by the Association to the Owners prior to the time when the same shall become effective.

6.7 Compensation. No director of the Association shall receive compensation for his services as such director, except to the extent expressly authorized by a majority vote of the Owners.

6.8 Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each person, his heirs, assigns or legal representatives, who is or was a director or officer of the Association against any and all liability to any person, firm or corporation arising out of contracts made by or at the direction of the Board of Directors (or the managing agent, if any) of the Association, unless any such contract shall have been made in bad faith. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

6.9 Additional Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives (collectively, the "Indemnitee"), made or threatened to be 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 Association, against all costs and expenses, including attorneys' fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except (unless otherwise specifically provided herein) in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is liable for gross negligence or willful misconduct in the performance of his duties. The Association shall also reimburse any such Indemnitee for 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 willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by the managing agent of the Association (if any) or any officer or employee of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for gross negligence or willful misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by any indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification as provided in this paragraph 6.9.

6.10 Bond. The Board of Directors of the Association may provide surety bonds and may require the managing agent of the Association (if any), the treasurer of the Association, and such other officers as the Board of Directors deems necessary, to provide surety bonds, indemnifying the Association 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

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-15-

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-16-

CHICAGO TITLE

specifically include protection for any insurance proceeds received by any reason by the Board of Directors. The expense of any such bonds shall be a Common Expense.

ARTICLE VII

BOARD OF DIRECTORS

7.1 Qualifications. Except as otherwise provided in the following paragraphs 7.2 and 7.3, no person shall be eligible to serve as a member of the Board of Directors of the Association unless he is a member of the Association.

7.2 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, officer or trustee, as the case may be, of a partnership, corporate, trust or other entity Owner shall be eligible to serve on the Board of Directors of the Association, except that no Lot may be represented on the Board of Directors by more than one person at a time.

7.3 Initial Board of Directors. The initial Board of Directors of the Association shall be composed of the persons designated or to be designated in the Articles of Incorporation of the Association (the "Initial Board"), all of whom have been or shall be appointed by Developer. Notwithstanding anything to the contrary contained in this Declaration or in the Articles of Incorporation or By-Laws of the Association, the Initial Board shall hold office until the Applicable Date and until their successors have been duly elected and qualified. In the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by a person appointed by Developer, who shall thereafter be deemed a member of the Initial Board. Each person serving on the Initial Board, whether as an original member thereof or as a member appointed by Developer to fill a vacancy, shall be deemed a member of the Association solely for purposes of qualifying to act as a member of the Board of Directors of the Association, and for no other purpose (unless he is actually an Owner of a Lot and therefore a member of the Association).

ARTICLE VIII

BALLINSHIRE ARCHITECTURAL CONTROL COMMITTEE

8.1 Creation. There shall be, and hereby is, created and established the Ballinshire Architectural Control Committee

to perform the functions provided for herein. Until the Applicable Date, the Committee shall consist of three (3) members appointed, from time to time, by the Developer and who shall be subject to removal by the Developer at any time with or without cause. After the Applicable Date, the Committee shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association.

8.2 Purposes and Powers of Committee. The Committee shall regulate the external design, appearance and location of residences, buildings, structures or other improvements placed on any Lot, and the installation and removal of landscaping on any Lot, in such a manner as to preserve and enhance the value and desirability of the Real Estate for the benefit of each Owner and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) In General. No residence, building, structure, antenna, fence, wall, patio, swimming pool or improvement of any type or kind shall be erected, constructed, placed or altered on any Lot and no change shall be made in the exterior color of any residence or accessory building located on a Lot without the prior written approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings submitted to the Committee shall be drawn to a scale of 1" equals 10', or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or plot plans which shall be prepared by either a registered land surveyor, engineer or architect.

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Plot plans submitted for the Improvement Location Permit shall bear the stamp or signature of the Committee acknowledging the approval thereof.

(ii) Power of Disapproval. The Committee may refuse to grant permission to repaint, construct, place or make the requested improvement, when:

(a) The plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the proposed improvement to be in violation of any restrictions in this Declaration or any Plat of all or any part of the Real Estate;

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

(c) The proposed repainting or improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of any other Owner.

(iii) Rules and Regulations. The Committee may, from time to time, make, amend and modify such additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or any Plat of all or any part of the Real Estate, as long as the same are not inconsistent with this Declaration or such Plat(s).

8.3 Duties of Committee. The Committee shall approve or disapprove proposed repainting, construction or improvements within fifteen (15) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

8.4 Liability of Committee. Neither the Committee, Developer, the Association nor any agent of any of the foregoing shall be responsible in any way for any defects in any plans,

specifications or other materials submitted to it, nor for any defects in any work done according thereto.

8.5 Inspection. The Committee may inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VIII.

8.6 Nonapplication to Developer. Notwithstanding the provisions of this Article VIII or any other provisions of this Declaration requiring the approval of the Committee, the Developer, or any entity related to Developer, shall not be required to apply for or secure the approval of the Committee in connection with any construction, installation, painting or repainting by the Developer, or any entity related to Developer, of any residence, building, structure, or other improvement on the Real Estate or the installation or removal of any trees, shrubs or other landscaping on the Real Estate.

ARTICLE IX

ASSESSMENTS

9.1 Creation of Lien and Personal Obligation. Developer, for each Lot now or hereafter owned by it, hereby covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association (i) regular assessments for Common Expenses, other than "Lake Maintenance Expenses" (as such term is hereinafter defined in paragraph 9.3) ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs, other than Lake Maintenance Expenses ("Special Assessments"). Furthermore, Developer, for each Lot now or hereafter owned by it and located adjacent to a Lake Common Area, hereby covenants, and each Owner of a Lot located adjacent to a Lake Common Area, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association assessments for Lake Maintenance Expenses ("Lake Assessments"). All such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. Such assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time such assessment became due and payable. Where the Owner

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constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association shall, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid assessments or other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

9.2 Purpose of Regular or Special Assessments. The Regular or Special Assessments levied by the Association shall be used exclusively (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas (excluding for this purpose the Lake Common Areas generally, but specifically including all improvements, equipment and facilities constituting a part of, or necessary for the operation, maintenance or repair of, the waterfall located adjacent to Lots 36 and 23 within and upon the Lake Common Area referred to as Lake 2 on the Plat of the Initial Real Estate), the Landscape Easements and the drainage system located within and upon the Drainage Easements, (iii) for the performance of the responsibilities and duties of the Association and (iv) for such other purposes as are specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain.

9.3 Purpose of Lake Assessments. The Lake Assessments levied by the Association shall be used exclusively for the purpose of defraying costs and expenses of: (i) maintaining the retention and detention ponds or lakes in and upon the Lake Common Areas in a clean, attractive and sanitary condition, (ii) installing, maintaining, repairing, replacing and insuring improvements in and upon the Lake Common Areas for or relating to the recreational use and enjoyment of the retention and detention ponds or lakes in and upon the Lake Common Areas, but specifically excluding all improvements, equipment and facilities constituting a part of, or necessary for the operation, maintenance, or repair of, the waterfall located adjacent to Lots 36 and 23 within and upon the Lake Common Area referred to as Lake 2 on the Plat of the Initial Real Estate, (iii) taxes, if any, assessed against and payable with respect to the Lake Common Areas and (iv) for such other purposes relating to the recreational use and enjoyment of the retention and detention ponds or lakes in and upon the Lake Common Areas as are specifically provided herein ("Lake Maintenance Expenses"). A

870140946

portion of the Lake Assessment may be set aside or otherwise allocated in a reserve fund for the purpose of providing for the repair and replacement of any such improvements.

9.4 Regular Assessments. The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix, from time to time, the Regular Assessment against each Lot at any amount not in excess of the maximum Regular Assessment hereinafter provided:

(i) Until January 1, 1989, the maximum Regular Assessment for a calendar year on any Lot conveyed by Developer shall not exceed Six hundred Dollars (\$ 600.00).

(ii) From and after January 1, 1989, the maximum Regular Assessment on a Lot for any calendar year may be increased by not more than fifteen percent (15%) above the Regular Assessment for the previous calendar year, except as provided in the following subparagraph (iii).

(iii) From and after the Applicable Date, the Board of Directors of the Association may fix the Regular Assessment at an amount in excess of the maximum amount specified in subparagraph (ii) above with the approval of a majority of the members of the Association who are voting in person or by proxy at a meeting of the members of the Association duly called for such purpose.

9.5 Special Assessments. The Board of Directors of the Association may make Special Assessments against each Lot for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any operating deficits which the Association may from time to time incur only with the assent of a majority of the members of the Association who are voting in person or by proxy at a meeting of the members of the Association duly called for such purpose.

9.6 Lake Assessments. Lake Assessments shall be determined and levied separately with respect to each Lake Common Area designated on any Plat of all or any part of the Real Estate, and the Board of Directors of the Association may make Lake Assessments only with the assent of a majority of the Owners of all Lots located adjacent to the Lake Common Area to which such Lake Assessment relates. The Lake Assessments shall be determined by allocating the total amount budgeted (with the approval of a majority of the affected Owners) for Lake

870140946

Maintenance Expenses of the Lake Common Area with respect to which the Lake Assessment is being determined among all Lots located adjacent to such Lake Common Area in proportion to each such Lot's total frontage along such Lake Common Area (to the nearest foot) as shown on any Plat of all or any part of the Real Estate.

9.7 Uniform Rate of Assessment. The Regular Assessments and Special Assessments levied by the Association shall be uniform for all Lots.

9.8 Date of Commencement of Regular Assessments; Due Dates. The Regular Assessment shall commence for each Lot on the first day of the first calendar month following the conveyance of such Lot by Developer. Until the Applicable Date, and notwithstanding anything else contained herein, no Regular Assessments, Special Assessments or Lake Assessments shall be owed or payable by Developer with respect to any Lot or shall become a lien on any Lot while such Lot is owned by Developer. The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of the annual assessment period. Written notice of the Regular Assessment, any Special Assessments, any Lake Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors of the Association. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

9.9 Failure of Owner to Pay Assessments.

(4) No Owner may exempt himself from paying Regular Assessments, Special Assessments or Lake Assessments, or from contributing toward the Common Expenses and toward any other expense lawfully agreed upon, by nonuse of the Common Areas or abandonment of the Lot belonging to him. If any Owner shall fail, refuse or neglect to make any payment of any assessment (or periodic installment of an assessment; if applicable) when due, the lien for such assessment on the Owner's Lot may be filed and foreclosed by the Board of Directors of the Association for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any assessment (or a periodic installment of an assessment, if applicable) when due, the Board of Directors of the Association may in its discretion accelerate the entire balance of any unpaid assessments and

870140946

declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board of Directors of the Association shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors of the Association may, at its option, bring a suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such assessments were due, until paid.

(ii) Notwithstanding anything contained in this paragraph 9.9 or elsewhere in this Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien therefor. Such unpaid share of any assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot from which it arose).

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ARTICLE X

INSURANCE

10.1 Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full replacement cost of all improvements, if any, owned by the Association or which the Association is required to maintain hereunder. If the Association can obtain such coverage for a reasonable amount, it shall also obtain "all risk coverage." Such insurance policy shall name the Association as the insured. Such insurance policy or policies shall contain provisions that (i) the insurer waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, and all Owners and their respective agents and guests and (ii) waives any defense based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for repair or replacement of the property for which the insurance was carried.

10.2 Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of One Million Dollars (\$1,000,000) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Areas and Landscape Easement areas and shall insure the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, 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 and all other persons entitled to occupy any Lot. Such public liability insurance policy shall include a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners.

10.3 Other Insurance. The Association shall also purchase and maintain 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 shall from time to time deem necessary, advisable or appropriate, including but not limited to officers' and directors' liability insurance.

10.4 Miscellaneous. The premiums for the insurance described above shall be paid by the Association as part of the Common Expenses.

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ARTICLE XI

MAINTENANCE

11.1 Maintenance of Lots and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot to keep the grass on the Lot properly cut and keep the Lot free of unsightly weeds and trash and otherwise neat and attractive in appearance, including, without limitation, the proper maintenance of the exterior of any structures on such Lot. In the event the Owner of any Lot fails to do so in a manner satisfactory to the Association, the Association shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the improvements erected thereon. The cost of such exterior maintenance shall be and constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

11.2 Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment to cover the additional cost of repair or replacement not covered by the insurance proceeds. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas or any Landscape Easement area or the drainage system located within and upon the Drainage Easements, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas (or such Easement areas) or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and constitute a special assessment against such Owner and his Lot to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

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ARTICLE XII

MORTGAGES

12.1 Notice to Association. Any Mortgagee who places a first mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of such Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association 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, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

12.2 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration or any other applicable documents, which defaults have not been cured within sixty (60) days.

ARTICLE XIII

AMENDMENT

13.1 By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) 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.

(ii) 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.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the

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designated vote at a meeting of the members of the Association duly called and held in accordance with the provisions of the By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than two-thirds (2/3) in the aggregate of the votes of all Owners; provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer owns any Lots within and upon the Real Estate. In the event any Lot 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 of the Association in accordance with the provisions of the foregoing paragraph 12.1.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 402.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, without the approval of all Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 12.1.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if said Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee). In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed and if such notice advises the Mortgagees of the time limitation contained in this sentence.

13.2 By Developer. Developer hereby reserves the right so long as Developer, or any entity related to Developer, owns

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any Lot within and upon the Real Estate to make such amendments to this Declaration as may be deemed necessary or appropriate by Developer, without the approval of any other person or entity, in order to bring Developer into compliance with the requirements of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof, or to comply with the 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 Federal Housing Administration, the Veterans Administration or any other governmental agency to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages, or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided that Developer shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

13.3 Recording. Each amendment to the Declaration shall be executed by Developer only in any case where Developer has the right to amend this Declaration without any further consent or approval, and otherwise by the President or Vice President and Secretary of the Association; provided, that any amendment requiring the consent of Developer shall contain Developer's signed consent. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

CHICAGO TITLE

ARTICLE XIV

GENERAL PROVISIONS

14.1 Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in any Plat of all or any part of the Real Estate shall be grounds for an action by Developer, the Association, any Owner, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants and restrictions; provided, however, that neither Developer nor the Association shall be liable for damages of any kind to any person for failing to enforce or carry out any such covenants, conditions or restrictions.

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14.2 Government Enforcement. The Metropolitan Development Commission of Marion County, Indiana, its successors and assigns, shall have no right, power, or authority to enforce any covenants, commitments, restrictions or other limitations contained herein other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance of Marion County, Indiana, 58-AO-3, as amended, or any conditions attached to approval of any Plat of all or any part of the Real Estate by the Plat Committee.

14.3 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in any Plat of all or any part of the Real Estate shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuance of such violation or violations of such covenants, conditions or restrictions.

14.4 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons claiming under them, until January 1, 2008, and thereafter shall be automatically extended for successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by a vote of a majority of the then Owners of Lots within and upon the Real Estate, it is agreed that this Declaration shall terminate in its entirety; provided, however, that no termination of the Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

14.5 Severability. Invalidation of any of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

14.6 Titles. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and

the masculine form shall be taken to mean or apply to the feminine or to the neuter.

14.7 Applicable Law. This Declaration shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

14.8 Annexation. Additional land within the tract described in the attached Exhibit B may be annexed by Developer to the Real Estate (and from and after such annexation shall be deemed a part thereof for all purposes of this Declaration) by execution and recordation in the office of the Recorder of Marion County, Indiana, of a supplemental declaration by Developer; and such action shall require no approvals or action of the Owners.

14.9 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or any Plat of all or any part of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, Developer, any entity related to Developer and any other person or entity with the prior written consent of Developer shall, during the Development Period, be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer or such person or entity as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate and the sale of Lots and the construction of residences thereon. Such facilities may include, without limitation, storage areas, parking areas, signs, model residences, construction offices and sales offices.

IN WITNESS WHEREOF, this Declaration has been executed by Developer as of the date first above written.

BALLINSHIRE ASSOCIATES, an
Indiana limited partnership

By: Davis Development - Ballinshire,
Inc., an Indiana Corporation, its
general partner

By: 
Charles R. Davis, President

STATE OF INDIANA)
COUNTY OF MARION) SS:

Before me, a Notary Public in and for the State of Indiana, personally appeared Charles R. Davis, the President of

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Davis Development - Ballinshire, Inc., an Indiana corporation,
the general partner of BALLINSHIRE ASSOCIATES, an Indiana limited
partnership, who acknowledged the execution of the foregoing
Declaration of Covenants, Conditions and Restrictions of
Ballinshire for and on behalf of said corporation as the general
partner of BALLINSHIRE ASSOCIATES.

WITNESS my hand and Notarial seal this 9th day of
December, 1987.

Kimberly J. Hutchinson
Notary Public

Kimberly J. Hutchinson
Printed Name

My Commission Expires:
2-1-91

I am a resident of
Hendricks
County, Indiana.

This instrument was prepared by Mary K. Lisher, Baker & Daniels,
810 Fletcher Trust Building, Indianapolis, IN 46204.

CHICAGO TITLE

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MSE 287-057
7990R
B. Hagen
12-7-87

LAND DESCRIPTION

A part of the Southwest Quarter of Section 10, Township 16 North, Range 2 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Commencing at the northeast corner of said Southeast Quarter; thence North 89°44'01" West along the north line of said Southeast Quarter 1380.00 feet to the northwest corner of Eagle Creek Woods Section II; the plat of which is recorded as Instrument No. 94-81759 in the Office of the Recorder of Marion County, Indiana, said corner being the Point of Beginning; thence South 00°15'59" West along the west line of said Eagle Creek Woods Section II and southward extension thereof 770.14 feet; thence North 89°44'01" West 200.00 feet; thence Southerly and Southwesterly along said curve an arc distance of 151.35 feet (said arc being subtended by a chord having a bearing of South 21°56'44" West and a length of 147.76 feet); thence North 46°22'28" West 100.00 feet; thence North 90°00'00" West 154.14 feet; thence North 66°49'18" West 210.30 feet; thence North 90°00'00" West 160.00 feet; thence South 32°55'16" West to a point on a curve concave Southerly having a central angle of 52°58'36" and a radius of 110.00 feet; thence Westerly along said curve an arc distance of 101.71 feet (said arc being subtended by a chord having a bearing of North 79°49'47" West and a length of 98.12 feet; thence South 73°40'55" West 49.40 feet; thence South 33°56'36" West 38.36 feet; thence South 84°50'20" West 9.96 feet to the east right-of-way line of Dandy Trail as described by a Grant of Right-of-Way recorded as Instrument No. 68-45153 in the Office of said Recorder; thence the following three courses along said east right-of-way line: (1) North 05°09'40" West 464.68 feet to the point of curvature of a curve concave Easterly having a central angle of 29°51'23" and a radius of 442.40 feet; (2) Northerly along said curve an arc distance of 230.53 feet (said arc being subtended by a chord having a bearing of North 09°47'02" East and a length of 227.93 feet) to the point of tangency of said curve; (3) North 24°42'43" East 240.33 feet to the southwest corner of Rutherglen, the plat of which is recorded as Instrument No. 78-57203 in the Office of said Recorder; thence South 89°44'01" East along the south line of said Rutherglen which is also the north line of said Southeast Quarter 944.59 feet to the Point of Beginning, containing 20.70 acres, more or less; subject to highways, rights-of-way and easements.

EXHIBIT "A"

870140916

MSE 287-057
6377R-1
B. Ottinger, 4-30-87
Revised 5-11-87
B. Hagen
Rev. 12-7-87

LAND DESCRIPTION

A part of the Southeast Quarter of Section 10, Township 16 North, Range 2 East in Marion County, Indiana, more particularly described as follows:

Commencing at the northeast corner of said Southeast Quarter; thence North 89°44'01" West along the north line of said Southeast Quarter 1380.00 feet, said point also being the northwest corner of Eagle Creek Woods Section IX, the plat of which is recorded as Instrument No. 84-81759 in the Office of the Recorder of Marion County, Indiana; thence South 00°15'59" West along the west line of said Eagle Creek Woods Section II a distance of 770.14 feet to the Point of Beginning; thence continuing South 00°15'59" West 379.86 feet; thence North 89°44'01" West parallel with the North line of said Southeast Quarter Section 235.00 feet; thence South 00°15'59" West 565.40 feet; thence South 89°15'04" West 724.79 feet to the easterly right-of-way line of Dandy Trail as described in a right-of-way grant to the Indianapolis Flood Control District of Marion County and recorded as Instrument No. 68-45153 in the office of the Recorder of Marion County, Indiana; thence along said right-of-way line North 05°09'40" West 812.43 feet; thence North 84°50'20" East 9.96 feet; thence North 33°56'36" East 38.36 feet; thence North 73°40'55" East 49.40 feet to a point on a curve concave southerly having a central angle of 52°58'36" and a radius of 110.00 feet; thence easterly along said curve an arc distance of 101.71 feet (said arc being subtended by a chord having a bearing of South 79°49'47" East and a length of 98.12 feet); thence North 32°55'16" East 50.88 feet; thence North 90°00'00" East 160.00 feet; thence South 66°49'18" East 210.30 feet; thence North 90°00'00" East 154.14 feet; thence South 46°22'28" East 100.00 feet to a point on a non-tangent curve concave westerly having a central angle of 43°21'30" and a radius of 200.00 feet; thence Northeasterly and Northerly along said curve an arc distance of 151.35 feet (said arc being subtended by a chord having a bearing of North 21°56'44" East and a length of 147.76 feet); thence North 90°15'59" East 74.86 feet; thence South 89°44'01" East parallel with the North line of said Southeast Quarter Section 200.00 feet to the Point of Beginning, containing 16.71 acres, more or less; subject to any easements, highways or rights-of-way.

EXHIBIT "B"

870140946

CROSS REFERENCE
RECEIVED

890044624

FIRST SUPPLEMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF BALLINSHIRE

MAY 12 1989

PIKE TOWNSHIP
ASSESSOR

252
14

CROSS REFERENCE

11:12 AM 5/12/89

This First Supplement is made this 20th day of March 1989, by BALLINSHIRE ASSOCIATES, an Indiana limited partnership ("Developer").

Recitals

1. Developer is the owner of certain real estate more particularly described in Exhibit A attached hereto and by reference made a part thereof (the "Additional Real Estate").

2. Developer executed that certain Declaration of Covenants, Conditions and Restrictions of Ballinshire on December 9, 1987, and recorded the same on December 10, 1987, as Instrument No. 87-140946 in the office of the Recorder of Marion County, Indiana (the "Declaration").

3. Developer reserved in said Declaration the right from time to time, acting alone, to subject certain additional real estate located within the tract described in Exhibit B to the Declaration to the provisions of the Declaration by execution and recordation in the office of the Recorder of Marion County, Indiana, of a supplemental declaration so annexing all or any part of such real estate to the "Real Estate" (as such term is defined in the Declaration).

4. The Additional Real Estate (as described in Exhibit A attached hereto) constitutes a part of the tract described in Exhibit B to the Declaration.

NOW, THEREFORE, Developer, in accordance with the rights reserved to it in the Declaration, makes this First Supplement as follows:

1. Definitions. All terms used in this First Supplement with initial capital letters (and not otherwise defined in this First Supplement) shall have the same meanings herein as in the Declaration (as the same may be amended or supplemented from time to time as therein provided). Accordingly, the Additional Real Estate shall hereafter for all purposes be included in the definition of Real Estate in the Declaration.

2. First Supplement to Declaration. Developer hereby expressly declares that the Additional Real Estate, together with all improvements of every kind and nature whatsoever located thereon, shall be annexed to the Real Estate and be subject to the provisions of the Declaration (as the same may be amended or supplemented from time to time as therein provided); and the Real

RECEIVED FOR RECORD

89 MAY 12 PM 2:53

FILE

Estate is hereby expanded to include the Additional Real Estate, all as if the same had originally been included in the Declaration. The Additional Real Estate shall be hereafter held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to all of the provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens of the Declaration (as the same may be amended or supplemented from time to time as therein provided).

3. Effect of Covenants. All such provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, shall be covenants running with the land and shall be binding upon, and inure to the benefit of, the Developer and any other person or entity having any right, title or interest in the Real Estate, or any part thereof.

4. Declaration Continuous. Except as expressly supplemented by this First Supplement, the Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, this First Supplement to Declaration has been executed by Developer as of the date first above written.

BALLINSHIRE ASSOCIATES,
an Indiana limited partnership

By: DAVIS DEVELOPMENT - BALLINSHIRE,
INC., an Indiana corporation,
its general partner

By: 
Dean S. Ziegler, President

CHICAGO TITLE

89-44624

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for the State of Indiana, personally appeared Dean S. Ziegler, the President of Davis Development - Ballinshire, Inc., an Indiana corporation, the general partner of BALLINSHIRE ASSOCIATES, an Indiana limited partnership, who acknowledged the execution of the foregoing First Supplement to Declaration of Covenants, Conditions and Restrictions of Ballinshire for and on behalf of said corporation as the general partner of BALLINSHIRE ASSOCIATES.

WITNESS my hand and Notarial Seal this 20th day of March, 1989.

Deborah L. Secors
Notary Public
Deborah L. Secors
Printed Name



My commission expires:
12/12/92

I am a resident of
Marion County, Indiana.



This instrument was prepared by Mary K. Lisher, Baker & Daniels,
810 Fletcher Trust Building, Indianapolis, Indiana 46204.

CHICAGO TITLE

890014624

EXHIBIT A

Legal Description
Ballinshire - Section II

Part of the Southeast Quarter of Section 10, Township 16 North, Range 2 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said Southeast Quarter; thence North $89^{\circ}44'01''$ West along the North line of said Southeast Quarter 1380.00 feet to the Northeast corner of Ballinshire Section I, the plat of which is recorded as Instrument No. 87-140947 in the Office of the Recorder of said County, said corner also being the Northwest corner of Eagle Creek Woods Section II, the plat of which is recorded as Instrument No. 84-81759 in the Office of the Recorder of said County; thence South $00^{\circ}15'59''$ West along the East line of said Ballinshire Section I, also being the West line of said Eagle Creek Woods Section II and an extension thereof, 770.14 feet to the point of Beginning; thence on the following three courses along the West boundary of the Trees II Section II, the plat of which is recorded as Instrument No. 88-119222 in the Office of the Recorder of said County: 1) South $00^{\circ}15'59''$ West 379.86 feet; 2) North $89^{\circ}44'01''$ West 235.00 feet; 3) South $00^{\circ}15'59''$ West 565.40 feet to the North line of the "Cobblestone Development"; thence South $89^{\circ}15'04''$ West along the North line of said Cobblestone Development 724.79 feet; thence North $05^{\circ}09'40''$ West 970.21 feet to a point being the Southwest corner of said Ballinshire Section I; thence on the following eleven courses along the South Boundary of said Ballinshire Section I: 1) North $84^{\circ}50'20''$ East 10.09 feet; 2) South $42^{\circ}57'15''$ East 39.48 feet; 3) South $80^{\circ}47'51''$ East 73.63 feet to the Point of Curvature of curve concave sou'westerly having a central angle of $32^{\circ}14'53''$ and a radius of 200.00 feet; 4) Easterly and Southeasterly along said curve an arc distance of 112.57 feet (said arc being subtended by a chord having a bearing of South $73^{\circ}12'11''$ East and a length of 111.09 feet); 5) North $90^{\circ}00'00''$ East 160.00 feet; 6) South $66^{\circ}49'18''$ East 210.30 feet; 7) North $90^{\circ}00'00''$ East 154.14 feet; 8) South $46^{\circ}22'28''$ East 100.00 feet to the Point of Curvature of a curve concave Northwesterly having a central angle of $43^{\circ}21'30''$ and a radius of 200.00 feet; 9) Northwesterly and Northerly along said curve an arc distance of 151.35 feet (said arc being subtended by a chord having a bearing of North $21^{\circ}56'44''$ East and a length of 147.76 feet); 10) North $00^{\circ}15'59''$ East 74.86 feet; 11) South $89^{\circ}44'01''$ East 200.00 feet to the Point of Beginning, containing 17.03 acres more or less, subject to all highways, rights of way, and easements.

890044624

**FIRST AMENDMENT TO THE
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF BALLINSHIRE**

WHEREAS, the original Declaration of Covenants, Conditions, and Restrictions of Ballinshire was executed on December 9, 1987, by the Declarant, Ballinshire Associates, an Indiana limited partnership, and recorded on December 10, 1987, as Instrument No. 87-140946 in the Office of the Recorder of Marion County; and

WHEREAS, the First Supplement to the Declaration of Covenants, Conditions and Restrictions of Ballinshire was executed on March 20, 1989 by the Declarant, Ballinshire Associates, an Indiana limited partnership and recorded May 12, 1989 as Instrument No. 890044624 in the Office of the Recorder of Marion County; and

WHEREAS, Article XIII, Section 13.1, of the Declaration currently provides that the Declaration may be amended upon affirmative vote of two-thirds (2/3) of the then owners and upon notice to the mortgagees on record with the Secretary of Ballinshire Homeowners Association, Inc. pursuant to Article XII, Section 12.1; and

WHEREAS, in excess of two-thirds (2/3) of the owners of property at Ballinshire have approved the following amendments to the Declaration and all mortgagees entitled to notice have received the same;

NOW, THEREFORE, the Declaration of Covenants, Conditions, and Restrictions of B Ballinshire are amended as follows:

Article V, Paragraph 5.19 is amended by deleting the existing paragraph and inserting in lieu thereof:

5.19 Satellite Dishes. A maximum of one (1) satellite dish may be installed on each Lot; provided, however, no satellite dish shall be installed (i) which is larger than 24 inches in diameter; and (ii) without the prior written approval of the Ballinshire Architectural Control Committee. All permitted satellite dishes shall, by landscaping or otherwise, be aesthetically concealed on all sides, unless attached to the dwelling in which case it shall be substantially concealed, from views by other Owners in the neighborhood. All permitted satellite dishes shall be installed so as not to constitute a nuisance or offensive effect on other owners in the neighborhood. Any Owner desiring to install a satellite dish which meets the requirements of this Section shall submit to and for the approval of the Ballinshire Architectural Control Committee an application and two copies of plot plans, showing the proposed location and description of the satellite dish and the surrounding landscaping and other means of concealment. No satellite dish shall be positioned in a front yard, on a roof or, if not attached to the dwelling, more than four (4) feet off the ground unless, in addition to meeting all other criteria, the Ballinshire Architectural Control Committee determines in its sole discretion that the proposed location is necessary because any other location on the lot would be inadequate and would have a more offensive effect on surrounding Owners.

IN WITNESS WHEREOF, Ballinshire Homeowners Association, Inc., has executed this amendment as of the 13 day of November, 1994.

BALLINSHIRE HOMEOWNERS ASSOCIATION, INC.

By: Beverly McDermott
 Beverly McDermott, President

ATTEST:

By: Maria Malin
 Maria Malin, Secretary

STATE OF INDIANA)
) SS:
 COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Beverly McDermott, President of Ballinshire Homeowners Association, Inc. and Maria Malin, Secretary of Ballinshire Homeowners Association, Inc., who acknowledged the execution of the foregoing First Amendment to the Declaration of Covenants, Conditions and Restrictions of Ballinshire.

WITNESS, my hand and notarial seal, this 13th day of November, 1994.

My Commission Expires:
Sept. 16, 1997

Linda J. Crith
 Notary Public (R)
 Linda J. Crith
 Printed

Residing in Marian
 County, Indiana



This instrument prepared by Stephen R. Buschmann,
 X BUSCHMANN, CARR & SHANKS, P.C., 1020 Market Tower,
 Ten West Market Street, Indianapolis, Indiana 46204-2963.