

JOHN R. VOI ARX
MAR 1978

57

FILED

DECLARATION OF COVENANTS AND RESTRICTIONS OF
GUYON CREEK WOODS PROPERTY OWNERSHIP JUN 20 1996

	<u>Index</u>	PIKE TOWNSHIP ASSESSOR
1. <u>Definitions</u>		2
(a) Additional Tract		2
(b) Applicable Date		2
(c) Articles or Articles of Incorporation		2
(d) Board of Directors		2
(e) Building		2
(f) By-Laws		2
(g) Common Area		2
Private Street		3
Nature Trail (Jogging/Walking Path)		3
Lakes (Ponds)		3
Entrance Identification Sign		3
(h) Common Expense		3
(i) Declarant Builder		4
(j) Corporation		4
(k) Declarant Owner		4
(l) Dwelling Unit		4
(m) Lot		4
(n) Member		4
(o) Mortgagee		4
(p) Section		4
(q) Owner		5
(r) Conditional Plat		5
(s) Tract		5
2. <u>Declaration</u>		5
3. <u>Description of Initial Tract</u>		5
4. <u>Lots and Easements</u>		5
5. <u>Common Area</u>		6
6. <u>Ownership of Common Area</u>		6
7. <u>Delegation of Use of the Common Area</u>		7
8. <u>Encroachments and Easements in Common Area</u>		7
9. <u>Patios (if any) and Parking Space</u>		7
10. <u>Easement for Utilities and Public and Quasi-Public Vehicles</u>		8

<u>(Index Cont'd)</u>		<u>Page f</u>
11.	<u>Corporation; Membership; Voting; Functions</u>	8
	(a) Membership in Corporation	8
	(b) Voting Rights	9
	(i) Class A	9
	(ii) Class B	9
	(c) Functions	9
12.	<u>Board of Directors</u>	10
	(a) Management	10
	(b) Initial Board of Directors	10
	(c) Additional Qualifications	11
	(d) Terms of Office and Vacancy	11
	(e) Removal of Director	12
	(f) Duties of the Board of Directors	12
	(g) Powers of the Board of Directors	14
	(h) Limitation on Board Action	15
	(i) Compensation	15
	(j) Non-Liability of Directors	15
	(k) Additional Indemnity of Directors	15
	(l) Bond	16
13.	<u>Initial Management</u>	17
14.	<u>Real Estate Taxes</u>	17
15.	<u>Utilities</u>	18
16.	<u>Maintenance, Repairs and Replacements</u>	18
17.	<u>Architectural Control</u>	19
	(a) The Architectural Review Board	19
	(b) Purpose	20
	(c) Conditions	20
	(d) Procedures	20
	(e) Maintenance of Architectural Control	20
18.	<u>Party Walls</u>	21
	(a) General Rules of Law to Apply	21
	(b) Sharing of Repair and Maintenance	21
	(c) Destruction by Fire or Other Casualty	21
	(d) Weatherproofing	21
	(e) Right of Contribution Runs with Land	21
	(f) Arbitration	21

	<u>(Index Cont'd)</u>	<u>Page #</u>
19.	<u>Assessments</u>	22
	(a) Annual Accounting	22
	(b) Proposed Annual Budget	22
	(c) Regular Assessment	24
	(d) Special Assessment	26
	(e) Regular Assessment Prior to the Applicable Date	27
	(f) Failure of Owner to Pay Assessments	29
	(g) Subordination of Assessment Lien to Mortgage	30
20.	<u>Mortgages</u>	31
	(a) Notice to Corporation	31
	(b) Notice of Unpaid Assessments	32
	(c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums	32
	(d) Notice of Condemnation or Casualty Loss	32
	(e) Notice of Insurers and Guarantors	32
21.	<u>Insurance</u>	32
	(a) Casualty Insurance	32
	(b) Public Liability Insurance	34
	(c) Other Insurance	35
	(d) General Provisions	35
	(e) Insurance by Owners	36
	(f) Condemnation Awards	36
22.	<u>Casualty of Dwelling Units</u>	36
	(a) Restoration of Dwelling Units	36
	(b) Restoration of Common Area	38
23.	<u>Covenants and Restrictions</u>	39
	(a) thru (n)	39-42
24.	<u>Amendment of Declaration</u>	42
	(a) Generally	42
	(i) Notice	42
	(ii) Resolution	42
	(iii) Meeting	42
	(iv) Adoption	43
	(v) Mortgagees' Vote on Special Amendments	43
	(b) By Declarant Owner	43
	(c) Recording	44
	(d) Amendment Prior to the Applicable Date	45

	<u>(Index Cont'd)</u>	<u>Page #</u>
25.	<u>Annexation of Additional Tract</u>	45
26.	<u>Acceptance and Ratification</u>	46
27.	<u>Negligence</u>	47
28.	<u>Costs and Attorneys' Fees</u>	47
29.	<u>Waiver</u>	47
30.	<u>Severability Clause</u>	47
31.	<u>Pronouns</u>	47
32.	<u>Interpretation</u>	47

**DECLARATION OF COVENANTS AND RESTRICTIONS OF
GUJON CREEK WOODS PROPERTY OWNERSHIP**

THIS DECLARATION made this 11TH day of JUNE, 1996, by 56th & Gujon Joint Venture consisting of two joint venturers; namely 56th - Georgetown Land Trust, Christian C. Barnes, Trustee, an Indiana Land Trust (GLT) having its principal place of business at 10684 N. Meridian St., Suite 276, Indianapolis, IN 46290, and Land Innovators Company, an Indiana Limited Partnership (Land Innovators) having its principal place of business at 234 S. Franklin Road, Indianapolis, IN 46219; said joint venture hereinafter referred to as "DECLARANT OWNER" and BRUCE GUNSTRA BUILDERS, INC., an Indiana Corporation having its principal place of business at 5383 Creang St Suite 300 Indpls Ind 46250 (hereinafter referred to as "Declarant Builder"): Builder shall in the aggregate be referred to as Declarant unless otherwise noted. In the event Land Innovators Company transfers its interest in the Exhibit "A" and/or all or any portion of the Exhibit "B" to R. N. Thompson Development Corporation, (an Indiana corporation), then the latter shall become the Declarant owner to the extent of the realty so transferred.

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarants are the sole owner in fee simple title to certain real estate located in Marion County, Indiana, more particularly described in the attached Exhibit "A", which are incorporated herein by reference (hereinafter referred to as "Initial Tract" or "Gujon Creek Woods Section I"), and the real estate hereinafter defined as "Additional Tract" and described in Exhibit "B" attached. Declarant Builder shall cease being the Declarant hereunder when the Declarant Builder is no longer the exclusive Builder of new Dwelling Units hereunder.

B. Declarant by execution of this Declaration assures that all properties which are conveyed by Declarant and which are a part of the Tract (as hereinafter defined in paragraph 1(s)) shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the Tract and be binding upon all parties having any right, title or interest in the Tract, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner; provided no part of the Tract shall be subject to this

Declaration except the "Initial Tract" until a Final Plat of such part has been recorded.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

- (a) "Additional Tract" means that real estate or any part of it described in Paragraph 26 of this Declaration.
- (b) "Applicable Date" means the date determined pursuant to Paragraph 11 of this Declaration.
- (c) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.
- (d) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.
- (e) "Building" means any one of the potential of twenty-six (26) separated structures each of which has four (4) or six (6) Dwelling Units.

That portion of the realty included in a recorded plat entitled SECTION which contains a single building and some surrounding common area.

- (f) "By-Laws" shall mean the By-Laws of the Corporation and shall provide for the election of Directors and Officers and other governing officials of the Corporation. A copy of the By-Laws is incorporated herein by reference.

- (g) Common Area.

The Common Area shall be determined by an examination of the Conceptual Plan of Guion Creek Woods (attached as Exhibit "C") and by reference to Exhibit "A" and Exhibit "B", but shall exclude any dedicated right-of-way in Exhibit "A" and Exhibit "B" and exclude each of the Lots within each Building depicted in the plat of recorded Sections.

Section I as depicted on Exhibit "C" is one and the same as Exhibit "A" in paragraph A

and consist of two BLOCKS with one building within each block with the balance of Section located at the 56th Street entrance to the Project (See Instrument # 95-122155 recorded September 28, 1995 for the plat of Section 1).

The Common Areas made subject to this Declaration shall be general common areas for the use of residents and their guests in the Guion Creek Woods development except for any patios and/or decks (if any), driveways to residences, and common areas between driveways which will be limited to the residents and their guests of the Dwelling Unit, served by such amenities . Note also the limited use of the private street hereinafter described.

Private Street

All streets but one in the Guion Creek Woods development shall be public streets. The street depicted in Exhibit "C" running East and West parallel to 56th Street at the North end of the development and serving a potential of three buildings is limited common area for the residents and their guests of said three buildings.

Nature Trail (Jogging/Walking Path)

Declarant shall provide a common area in proximity to Guion Creek in the configuration depicted on Exhibit "C" or in a different configuration determined by Declarant. This improvement shall commence when the title to two-thirds (2/3rds) of 144 Dwelling Units shown on Exhibit "C" are transferred to occupant owners.

Lakes (Ponds)

One or more detention or retention ponds may be necessary to address surface water within the Exhibit "A" and/or Exhibit "B" realty with a number of ponds conceptually shown on the Conceptual Plan (Exhibit "C") but with the number, size and location and time of construction and completion thereof to be determined by Declarant during the course of development of Guion Creek Woods. No set level of water is assured as to any of these ponds.

Entrance Identification Sign

Declarant will construct an entrance identification wall sign plus accompanying landscaping on one side of the 58th Street entrance to the Guion Creek Woods development. Declarant shall commence this construction while the first Building of the development is being constructed and complete same as soon as practical thereafter.

- (h) "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Area and the improvements therein and utilities serving said improvements, and all sums logically

associated thereto.

- (i) "Declarant Builder" or "Builder" is the entity to which Declarant has conveyed a SECTION for the purpose of construction of a Building, exclusive of any other such builders and shall retain the rights and obligations under the title Declarant Builder or Builder so long as such entity maintains such exclusivity.
- (j) "Corporation" means Guion Creek Woods Homeowners Associations, Inc., its successors and assigns, a not-for-profit corporation, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 11 of this Declaration; such Corporation being more particularly described in Paragraph 11 of this Declaration.
- (k) "Declarant Owner" shall mean and refer to 56th & Guion Joint Venture, and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of Declarant Owner hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Tract pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant Owner.
- (l) "Dwelling Unit" means one of the living units located upon a Lot within a given Building on a designated SECTION.
- (m) "Lot" means any plot of ground designated as such within a Building within a BLOCK upon the recorded Final Plat of a SECTION I, or upon the recorded Final Plat, if any, of the SECTIONS located in the Additional Tract or any part thereof (Additional SECTIONS) and upon which a Building or Buildings is or is to be constructed. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon, unless the context requires otherwise.
- (n) "Member" means a member of the Corporation.
- (o) "Mortgagee" means the holder of a first mortgage lien on a Lot.
- (p) "SECTION". Each SECTION after SECTION I shall be subject to this Declaration upon the recordation of a Final Plat for said SECTION pursuant to paragraph 25. Title to the Lots for ultimate owners shall be distinguishable from Common Areas outside the Lots

Section I and any additional sections recorded as final plats may contain more than one BLOCK and consequently, more than one Building.

- (q) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.
- (r) "Conditional Plat" is one and the same as Exhibit "C" and consequently depicts a maximum of 28 Buildings of 4 - 8 Dwelling Units per Building and an maximum of 144 Dwelling Units . Notwithstanding any representation on Exhibit "C" Declarant reserves the right to place 4 Units or 6 Units within any Building depicted so long as the aforesaid maximum for number of Buildings and Dwelling Units is not exceeded.
- (s) "Tract" means the real estate described in Paragraph A above and recorded as Section I and such portions of the Additional Tract for which a Final Plat has been recorded in the office of the Recorder of Marion County, Indiana, and which has been subjected to this Declaration as provided herein. In the aggregate the tracts subject to this Declaration may be labeled Guion Creek Woods or Guion Creek Woods development.

2. Declaration. Declarant hereby expressly declares that the Tract shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of the Initial Tract. The Initial Tract shall consist of SECTION #1 which is comprised of _____ Lots, together with the Common Area as designated on the Final Plat thereof. The Common Area and the size of the Lots are as designated on said Final Plat. The legal description for each Lot in Guion Creek Woods shall be as follows:

Lot _____ in Block No. _____ in SECTION _____ of Guion Creek Woods, a subdivision in Marion County, Indiana, as per plat thereof recorded _____, 19____, as Instrument No. _____, in the office of the Recorder of Marion County, Indiana.

4. Lots and Easements. The boundaries of each Lot in Guion Creek Woods shall be as shown on the Final Plat of each SECTION; provided, however, in the event any vertical boundary line of any Dwelling Unit does not coincide with the actual Lot line because of inexactness of construction, settling after construction or for any other reasons, whether from the initial construction, subsequent

reconstruction or otherwise, the boundary lines shall be deemed to be treated for purposes of occupancy, possession, maintenance, use and enjoyment, in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Lot in and to such base line outside the actual boundary line of the Lot.

5. Common Area. Common Area includes all the area designated as such on the recorded Final Plat of the Initial Tract or on a recorded Final Plat of the Additional Tract or any part thereof, as detailed in the Definition of "Common Area(s)". If the Additional Tract is not platted, the Paragraphs in this Declaration relating to Common Area in the Additional Tract and ownership thereof by the Corporation shall be applicable. WITHIN THE COMMON AREA DECLARANT OWNER RESERVES THE RIGHT, WITHOUT THE OBLIGATION, TO BUILD OR CAUSE TO BE BUILT RECREATIONAL FACILITIES (OTHER THAN THE NATURE TRAIL - Item 1(g)), IF ANY, AS DECLARANT OWNER DEEMS APPROPRIATE.

6. Ownership of Common Area. The Common Area shall be conveyed to or owned by the Corporation, and shall be held for the use and enjoyment of the Members (unless specifically limited to designated Members), all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to each Lot, subject to the provisions of this Declaration, including but not limited to, the following:

- (a) The right of the Corporation to charge reasonable admission and other fees for use of any recreational facility.
- (b) The right of the Corporation to suspend any Member from the right to use any recreational facility for any period during which any assessment against such Member's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Corporation's published rules and regulations.
- (c) The right of the Corporation, upon approval by a written instrument signed by two-thirds (2/3) of all Class A Members, two-thirds (2/3) of all Class B Members, and by two-thirds (2/3) of all first mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such

conditions as may be agreed by the Corporation.

- (d) The right of the Corporation or its Board of Directors to determine the time and manner of use of recreational facilities, if any, by the Members.
- (e) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Paragraph 12.
- (f) The Common Area in the Initial Tract and within the SECTIONS as appear in recorded Final Plat shall be conveyed to or owned by the Corporation at the time of the Applicable Date with Declarant Owner reserving the right of earlier conveyance.

7. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Area and facilities to members of his family, his tenants or contract purchasers who reside on any Lot.

8. Encroachments and Easements in Common Area. If by reason of inexactness of construction, settling after construction or for any other reasons, any Common Area encroaches upon any Lot, an easement shall be deemed to exist and run to the Corporation for the maintenance, use and enjoyment of such Common Area.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in any other Dwelling Unit or in the Common Area and serving his Dwelling Unit.

9. Patios (if any) and Parking Space. The Owner of a Lot shall have an easement to and an exclusive right to use the driveways and sidewalks exclusively serving such Owner's Lot and non-exclusive right to use the sidewalks and driveways serving more than one Lot, whether or not such sidewalks or driveways are part of the Lot or located in the Common Area. Such right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title. The Owner of a Lot shall have an easement to and the exclusive right to use the patios exclusively serving such Owner's Lot and located adjacent thereto whether or not such patio is part of the Lot or located in the Common Area. Such right to use shall pass with title to the Lot even though not expressly mentioned in the

document passing title.

In the event that the Corporation decides to liquidate, dissolve or transfer all the Common Area to any public agency, the Corporation shall, prior to such action, convey to the Owner of each Lot the driveways and sidewalks which are designated for such Lot and the patios which are designated for such Lot under the terms of this Paragraph 9.

10. Easement for Utilities and Public and Quasi-Public Vehicles. All public and quasi-public vehicles including, but not limited to, police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the streets and Common Area in the Tract in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including, but not limited to, water, sewers, gas, telephone and electricity on the Tract; provided, however, nothing herein shall permit the installation of sewers, electric lines, water line or other utilities, except as initially designed and approved by Declarant Owner or as thereafter may be approved by Declarant Owner or by the Board of Directors. By virtue of this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Tract and to affix and maintain electrical and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Dwelling Units. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant Owner shall have the right to grant such easement on such Tract, without conflicting with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement on the Tract.

An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area to perform its duties.

11. Corporation; Membership; Voting; Functions.

- (a) Membership in Corporation Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases,

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

(b) Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:

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

(ii) Class B. Class B Members shall be Declarant Owner and Declarant Builder so long as Declarant Builder remains the exclusive Builder of new Dwelling Units (otherwise Declarant Bruce Gunstra Builder will be a Class A member) and all successors and assigns of the given Declarant designated by such Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member shall be entitled to FOUR (4) VOTES FOR EACH LOT SHOWN ON THE CONDITIONAL PLAT (Exhibit 'C') WHETHER OR NOT A FINAL PLAT HAS BEEN FILED FOR SUCH LOT of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of:

(i) THE DATE UPON WHICH THE WRITTEN RESIGNATION OF THE CLASS B MEMBERS AS SUCH IS DELIVERED TO THE RESIDENT AGENT OF THE CORPORATION;

(ii) THIRTY (30) DAYS AFTER THE DATE WHEN THE TOTAL VOTES OUTSTANDING IN THE CLASS A MEMBERSHIP EQUAL OR EXCEED THE TOTAL VOTES OUTSTANDING IN THE CLASS B MEMBERSHIP; OR

(iii) DECEMBER 31, 2015.

(c) Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area and for the maintenance, repair and replacement of such exterior portions of the Dwelling Units as designated in this Declaration, to pay taxes assessed against and

payable with respect to the Common Area and to pay any other necessary expenses and costs in connection with the Common Area, and to perform such other functions as may be designated for it to perform under this Declaration.

12. Board of Directors.

- (a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 12.
- (b) Initial Board of Directors. The Initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: R. N. Thompson, Bruce Gunstra and Christian C. Barnes (hereinafter referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant Owner. Notwithstanding anything to the contrary contained in, or any other provisions of this Declaration, the Articles or the By-Laws (a) the Initial Board shall hold office until the Applicable Date or until removed by Declarant Owner who may remove said Board Member without cause, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant Owner, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type or juridical acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant Owner as such Owner's agent, attorney-in-fact and proxy, which shall be deemed with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant Owner determines, on all matters as to which members of the Corporation are entitled to vote under the Declaration, the Articles, the By-Laws or otherwise; provided, however, this right to vote granted to Declarant Owner shall not

extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging Common Area or merger/consolidation of the Corporation with another corporation. This appointment of Declarant Owner as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant Owner to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

- (c) Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one person at a time.
- (d) Term of Office and Vacancy. Subject to the provisions of subparagraph (b) of this Paragraph 12, one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one member of the Board of Directors shall be elected for a three (3) year term, one for a two (2) year term, and one for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his

election and until his successor is elected and qualified. Subject to the provisions of subparagraph (b) of this Paragraph 12 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with subparagraph (e) of this Paragraph 12. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

- (e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.
- (f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Tract, the management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners), and the maintenance, repair, upkeep and replacement of such exterior portions of the Dwelling Units as designated in this Declaration, and the collection and disbursement of regular and special assessments collected by the Corporation. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be

terminated by either party upon ninety (90) days written notice to the other party. Any decision not to employ a professional property management agent shall require the prior consent of the Owners of at least sixty-seven percent (67%) of the vote and fifty-one percent (51%) of the vote of Mortgagees registered with the Corporation. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (i) protection, surveillance and replacement of the Common Area, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
- (ii) procuring of utilities in connection with the Lots and Dwelling Units, removal of garbage and waste, and snow removal from the Common Area;
- (iii) landscaping, painting, decorating, furnishing, maintenance and upkeep of the Common Area, AND SUCH EXTERIOR PORTIONS OF THE DWELLING UNITS AS HEREINAFTER DESIGNATED IN THIS DECLARATION. Maintenance of lawns shall include and be limited to the watering, fertilizing, mowing and replanting when necessary of the grass; and the care, fertilizing, trimming, removal and replacement of trees planted by the Declarant Owner. It shall not include the care and maintenance of shrubs and trees which were not planted by Declarant Owner or Declarant Builder, flowers or other plants on any Lot;
- (iv) surfacing, paving and maintaining any off-street parking spaces constituting a part of the Common Area;
- (v) removal of trash and waste from the Real Estate on a basis of not less than weekly, provided further that only the Board or Managing Agent shall contract for such service and no Owner shall contract for such service;
- (vi) snow removal from the public streets dedicated to the public by the Plat and if funding exists, for the removal of snow from driveways to the Dwelling Units if in the Board's sole determination the accumulation of snow justifies such removal;
- (vii) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
- (viii) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (ix) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each owner simultaneously with delivery of the proposed annual budget for the current year;

- (x) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage at any time during normal business hours;
 - (xi) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
 - (xii) paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area; and
 - (xiii) to furnish, upon request of any Mortgagee, insurer or guarantor of first mortgage, an audited financial statement for the immediately preceding fiscal year.
- (g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:
- (i) to employ a Managing Agent to assist the Board in performing its duties;
 - (ii) to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
 - (iii) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
 - (iv) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
 - (v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
 - (vi) to open and maintain a bank account or accounts in the name of the Corporation;
 - (vii) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Tract and the Common Area (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners;
 - (viii) to grant permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of Gulon Creek Woods; and

- (ix) to enter the Dwelling Unit of any Owner in case of any emergency whether the Owner is present at the time or not and in the case of non-emergency repairs to enter the Dwelling Unit provided the request is made in advance and is at a time reasonably convenient to the Owner.
- (h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 adjusted annual based on the cost of living index or equivalent inflationary index without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary.
- (i) contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
 - (ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
 - (iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.
- (i) Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.
- (j) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.
- (k) Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action,

suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relating to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director 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 was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

- (1) Bond. The Board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation, and such other officers or directors of the Corporation that handle or are responsible for funds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection

for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be canceled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

13. **Initial Management.** The Board of Directors has entered or will hereafter enter into a management agreement with Declarant Owner or with a corporation or other entity affiliated with Declarant Owner or Declarant Builder or designated by Declarant Owner for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice under which Declarant Owner (or such other corporation or entity as appropriate) will provide supervision, management and maintenance of the Common Area, and to the extent the same is not otherwise the responsibility of Owners of individual Dwelling Units, the maintenance of Dwelling Units and in general perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years or a new management agreement with different parties may be executed under similar terms and conditions. Any management agreement is or will be subject to termination by Declarant Owner (or such other corporation or entity as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and Declarant Owner or Declarant Builder (or such other corporation or entity as appropriate) is in effect, Declarant Owner (or such other corporation or entity as appropriate) shall have and Declarant Owner hereby reserves to itself (or such other corporation or entity as appropriate), the exclusive right to manage the Tract and perform all the functions of the Corporation.

14. **Real Estate Taxes.** Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Initial Tract and Additional Tract or part thereof as a whole,

without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed for the land, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Initial Tract and Additional Tract or part thereof assessed as a whole, and shall pay his proportionate share of the real estate taxes assessed on the improvements on the Initial Tract and Additional Tract or part thereof assessed as a whole based upon the ratio that the square footage of the improvements on his Lot bears to the square footage of improvements of all improved Lots. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

15. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.

16. Maintenance, Repairs and Replacements. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

In addition to maintenance upon the Common Area, the Corporation shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces. Such exterior maintenance shall not include glass surfaces, screens and screen doors, door and window fixtures and other hardware, patios, and such other items as the Board of Directors may so designate (unless specifically designated in this Declaration as the Corporation's obligation) so long as such items of exception shall apply to all units equally. However, the Corporation shall be responsible for staining or painting of the outside surface of exterior doors and it shall also be responsible for painting or staining the outside or exterior surfaces of patio fences, if any. Each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon in a good, clean and sanitary condition and shall do all work thereon which is not required hereunder to be performed by the Corporation, including the interiors of patio areas and patio fences (if any). The Corporation shall not be responsible for repairing and maintaining any patio fences other than painting or staining the exterior unless the Board of Directors shall otherwise provide.

Notwithstanding any obligation or duty of the corporation to repair or maintain any Lot or the Common Area, 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, 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 Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's lot is subject.

If any Owner shall fail so to maintain and keep his property or any part thereof in a good, clean and sanitary condition, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

So long as the Tract is subject to this Declaration each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

17. Architectural Control.

- (a) The Architectural Review Board. As a standing committee of the Corporation, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more persons as may, from time to time, be provided in the By-Laws. The Architectural Review Board shall be the Initial Board of Directors and whomever they appoint thereafter until the last Lot capable of being subjected to this Declaration is conveyed to a purchaser other than Builders purchasing to construct Dwelling Units on a Lot. The Architectural Review Board shall thereafter be appointed by the Board of Directors of the Corporation.

- (b) Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Real Estate and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography
- (c) Conditions. No improvements, alterations, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant Owner to Declarant Builder or by Declarant Builder to any Owner shall be made or done without the prior approval of the Architectural Review Board. Except as otherwise expressly provided in this Declaration, no building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board.
- (d) Procedures. In the event the Architectural Review board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) has been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.
- (e) Maintenance of Architectural Control. The Association may not waive or abandon the procedure for regulating and enforcing the architectural design or exterior appearance of the Dwelling Units nor for maintaining the exterior of the Dwelling Units or the Common Area (including the upkeep of common fences, driveways, lawns and plantings) without the

prior written approval of all Owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

18. Party Walls.

- (a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Dwelling Unit upon the Tract and which connects two Dwelling Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.
- (b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.
- (c) Destruction by Fire or other Casualty. If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such party wall, and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.
- (d) Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- (e) Right of Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- (f) Arbitration. In the event of any dispute arising concerning a party wall, or under the

provisions of this Paragraph 18, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor from another party the Board of Directors of the Corporation shall select an arbitrator for the refusing party.) The cost of the arbitrators shall be borne equally by the parties.

19. Assessments.

(a) Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then servicing the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget in a manner that corresponds to the matters separately attributable to Regular Assessment A and Regular Assessment B, as hereafter defined, for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted, shall be the basis for the Regular Assessment A and Regular Assessment B (hereinafter defined and hereafter referred to as Regular Assessments unless otherwise noted) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall the annual meeting of the

Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget may include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration from Regular Assessment A only, which replacement reserve fund (if established) shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana selected from time to time by the Board. The funds from Regular Assessment A and Regular Assessment B shall be maintained in like manner in either separate bank accounts or otherwise so long as separate accounting for each is maintained.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

(c) Regular Assessment.

Regular Assessment A *

This assessment addresses the care, maintenance, replacement and insurance responsibilities of the Corporation in this Declaration as follows:

- any and all improvements made by the Builder in each SECTION, including but not limited to, the exterior portions of the Dwelling Unit as designated in this Declaration, landscaping within the SECTIONS, patios (if any), the limited common areas (including the private street) as detailed in this Declaration and the General Common Areas referred to as GENERAL COMMON AREAS "a" as depicted on Exhibit "D" attached and made a part hereof.

Regular Assessment B *

This assessment addresses the care and maintenance of the infrastructure, defined herein of the Guion Creek Woods development, not otherwise covered by viable maintenance bonds of record under the Marion County Subdivision ordinance which include the Lakes, the identification sign at the entranceway, (including entranceway landscaping) the nature trail and the General Common Area "B" as depicted on Exhibit "D" attached.

* FROM AND AFTER THE APPLICABLE DATE REGULAR ASSESSMENT A AND REGULAR ASSESSMENT B SHALL BE COMBINED INTO A SINGLE ASSESSMENT.

The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which Regular Assessment A and Regular Assessment B shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The

aggregate amount of the Regular Assessment A shall be equal to the total amount of expenses attributable to Regular Assessment A matters as provided and included in the final annual budget, including reserve funds as hereinabove provided. The aggregate amount of Regular Assessment B shall be equal to the total amount of expenses attributable to Regular Assessment matters as provided and included in the final annual budget. The Regular Assessment against each Lot shall be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installments of the Regular Assessment shall be made to the board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay assessments quarterly, semi-annually or annually, in advance. In the event an owner makes payment in an amount less than the total of Regular Assessment A and Regular Assessment B, the payment shall be allocated pro-rata. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget.

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

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

T=AUTO

Mr. Justice Gauthier for the majority of the Court

@PJL ENTER LANGUAGE=PCL

the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

- (e) Regular Assessments Prior to the Applicable Date. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly, and notwithstanding any other provision contained in the Declaration, the Articles or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Paragraph 18.

The Corporation will enter into a management agreement as hereinbefore detailed (hereinafter referred to as "Management Agent" or "Managing Agent") in accordance with the provisions of Paragraph 13 of this Declaration. So long as such management agreement (or similar agreement) remains in effect, the Regular Assessments shall be paid by Owners to Management Agent. Declarant shall guarantee that until the earlier of (1) the termination of said management agreement or (2) 1 year after the date of recordation of the Declaration, the monthly Regular Assessment A shall not exceed \$60.00 (the "Guaranteed Charge") and the monthly Regular Assessment B shall not exceed \$15.00 ("Guaranteed Charge"). After this date (assuming that said management agreement or similar agreement is still in effect) and so long thereafter as said management agreement

(or similar agreement) remains in effect and management Agent continues to perform such functions, Declarant guarantees that the monthly either of the Regular Assessment A and/or B shall not exceed the amount of the Guaranteed Charge plus a maximum of a twenty percent (20%) increase in the Guaranteed charge for each year. Such adjustments to the Guaranteed Charge (up to a twenty percent (20%) increase as determined by the Board) shall be made annually on January 1 of each year so long as said management agreement remains in effect and Management Agent continues to perform such functions. Such monthly charge shall during such guaranteed period entirely defray the Owner's obligation for his share of Common Expenses or shall be the Owner's entire Regular Assessment. Declarant shall be responsible for any operating deficit, in Regular Assessment B only, during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures shall be covered through Special Assessments, or, if sufficient, the replacement reserve fund, if any such fund exists. If the development of Guion Creek Woods is accomplished by Bruce Guntra Builders, Inc., as the exclusive Builder any operating deficiency prior to the Applicable Date in like kind to that described above for Regular Assessment A shall be responsible of Declarant Builder. However, any such deficiency prior to the applicable relative to Regular Assessment B matter shall be the responsibility to Declarant Owner.

That portion of the Regular Assessment A collected by Declarant prior to the Applicable date designated for any replacement reserve account which Declarant may create and shall if created and funded be held by the Initial Board and if required, applied to the replacement of Common Areas or those portions of Dwelling Units obligated to be repaired and replaced by the Corporation. To the extent that any such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

Payment of Regular Assessment A and/or B prior to the Applicable Date with

respect to each Dwelling Unit (that is not owned by Declarant) shall commence on the date of conveyance by Declarant Owner or Declarant Builder to an owner other than Declarant Builder. The first payment shall be payable on the date of conveyance prorated to the first day of the next calendar month next ensuing. Thereafter, payment of the Regular Assessment shall be paid the first day of each calendar month during the period prior to the Applicable Date. FOR EACH LOT DECLARANT OWNER/DECLARANT BUILDER OWNS AND WHICH HAS BEEN MADE SUBJECT TO THIS DECLARATION BY THE RECORDATION OF A FINAL PLAT, THE APPROPRIATE DECLARANT OWNER SHALL PAY TO MANAGEMENT AGENT TWENTY-FIVE PERCENT (25%) OF THE AMOUNT OF THE REGULAR ASSESSMENT B ONLY BUT SHALL NOT BE OBLIGATED TO PAY REGULAR ASSESSMENT A AND DECLARANT BUILDER SHALL PAY IN LIKE MANNER TWENTY-FIVE PERCENT (25%) OF REGULAR ASSESSMENT A BUT SHALL NOT BE OBLIGATED TO PAY REGULAR ASSESSMENT; PROVIDED, HOWEVER, SUCH PAYMENT BY DECLARANT FOR LOTS WITHIN A PARTICULAR FINAL PLAT OF A SECTION SHALL NOT COMMENCE AS TO ANY LOTS WITHIN A BUILDING UNTIL THE FIRST LOT IN SUCH BUILDING SUBJECT TO THE FINAL PLAT IS CONVEYED BY DECLARANT TO AN OWNER INCLUDING BUILDER.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 13 of this Declaration and to adhere to and abide by the same.

- (f) Failure of Owner to Pay Assessments. No Owner (including Builder) may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expense or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person the liability of such

person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may in its discretion accelerate the entire balance of unpaid assessments in such event the Owner and any occupant of the Lot and Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and Dwelling Unit and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In actions to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board for and on behalf of the Corporation shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including, but not limited to, reasonable attorney's fees) and interest from the date such assessments were due until paid at the rate equal to the publicly announced prime interest rate then being charged by NBD Bank, N.A. to its largest and best corporate customer (or if said bank is no longer in existence then such rate charged by another national bank in Marion County, Indiana selected by the Board of Directors). The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage.

- (g) Subordination of Assessment Lien to Mortgage Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance

to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment 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 and Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special 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).

20. Mortgages.

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

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations

of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

- (b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 19 hereof.
 - (c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any Mortgagee making such payment shall be owed immediately reimbursement by the Corporation.
 - (d) Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation loss which affects a material portion of Guion Creek Woods or any Dwelling Unit. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.
 - (e) Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.
21. Insurance.
- (a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Dwelling Units and the

Common Area in an amount consonant with the full replacement value of the improvements which in whole or in part, comprise the Dwelling Units and Common Area. If a single insurance policy precludes separating the insurance premiums for matters applicable to Regular Assessment A as compared to Regular Assessment B matters separate insurance policies will be secured to permit premium separation and allocation thereof. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds according to the separation of matter involved relative to Regular Assessment A or B and for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation as provided in the By-Laws shall specifically include protection for any insurance proceeds so received.

The interest of each damaged Owner in the trust fund of insurance proceeds as to Regular Assessment A shall be the ratio of the direct damage of such Owner's damaged Dwelling Unit to the damages of all Dwelling Units and Common Area directly damaged by any event insured under the said master casualty insurance policy applicable to the matters covered in Regular Assessment A.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right

to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Mortgagees and at least ten (10) days prior written notice to the Corporation.

Each Owner shall be solely responsible for loss or damage to the contents of his Dwelling Unit however caused (including, but not limited to, all floor, ceiling and wall covers and fixtures, betterments and improvements installed by him) and his personal property stored elsewhere on the Tract and the Corporation shall have no liability to the Owner for loss or damage to the contents of any Dwelling Unit or any personal property stored elsewhere on the Tract. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

- (b) Public Liability Insurance. With full deference to the need to allocate premiums to Regular Assessment A versus Regular Assessment B matters the Corporation shall also purchase one or two master comprehensive public liability insurance policies in such amount or amounts as the Board of Directors shall deem appropriate from time to time but not less than \$1,000,000 for each policy for bodily injury, including deaths of person and property damage arising out of a single occurrence. Such comprehensive public liability insurance policies shall cover the Corporation, the Board of Directors, any committee of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Tract, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer

from denying the claim of an Owner because of negligent acts of the Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be canceled or substantially modified without at least ten (10) days written notice to the Corporation.

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

(d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses allocated and payable from the funds of Regular Assessment A or B as herein described. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notice of meeting of the Corporation.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In

such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Area. In the event of condemnation of all or any part of the Common Area the Corporation, as owner of the Common Area, shall represent the Owners in any negotiation or settlement regarding such condemnation. No Owners or any other party shall have priority over any rights of a mortgagee pursuant to its mortgage in the case of distribution to such Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Indiana Not-For-Profit Corporation Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

- (e) Insurance by Owners. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.
 - (f) Condemnation Awards. All proceeds payable as a result of condemnation shall be paid to the Corporation who shall act as trustee and hold such proceeds for the benefit of the individual Owners and Mortgagees. Such proceeds shall be distributed as provided above.
22. Casualty of Dwelling Units.
- (a) Restoration of Dwelling Units.
 - (1) Damage to or destruction of any Dwelling Unit due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Corporation and the proceeds of insurance, if any, attributable to funds from Regular Assessment B shall be applied for that purpose.
 - (2) If the insurance proceeds, if any, received by the Corporation as a result of any

such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Dwelling Units so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Owners of the Dwelling Units damaged in proportion to the ratio that damages to an Owner's Dwelling unit have to the total damage to all Dwelling Units that are damaged. Any such amounts payable by the Owners of damaged Dwelling Units shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

- (3) For purposes of subparagraphs (1) and (2) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Dwelling Units to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.
- (4) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.
- (5) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against the Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Dwelling Units are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:
 - (i) If the estimated cost of reconstruction and repair of the Dwelling Units is more than Twenty Thousand Dollars (\$20,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by

the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, sub-contractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs, as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of the construction fund remaining after payment of the sum so requested.

- (ii) Encroachments upon or in favor of Dwelling Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Dwelling Units were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Dwelling Units stand.
- (iii) In the event that there is any surplus of monies in the construction funds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums shall be distributed to the Owners of the Dwelling Units affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damaged Dwelling Units shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

- (b) Restoration of Common Area. In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed from the funds of Regular Assessment A or Regular Assessment B according to the definition thereof which sets out which fund is obligated for a particular matter. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the owners in equal

shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

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

- (a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family.
- (b) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or on the Common Area which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common Area. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Area which will result in a cancellation of insurance on any Dwelling Unit or any part of Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit, the Common Area or on any Lot. The Board of Directors determination as to what is a

nuisance shall be conclusive.

- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Architectural Review Board.
- (e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any dwelling Unit or on any Lot or any of the Common Area, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Area, caused by his pet. The tethering of pets in any area outside an Owner's fenced patio does not constitute "attended". The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Tract within ten (10) days after written notice from the Board to the respective Owner to do so.
- (f) All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be stored in closed sanitary containers in areas designated by the Corporation, shall be regularly removed from the premises, and shall not be allowed to accumulate on any part of the Tract. Trash may be stored in enclosed containers provided by the Corporation for that purpose. All clotheslines shall be confined to patio areas and shall be below the height of the patio fence. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed so as to be visible from any part of the Common Area. The Common area shall be kept free and clear of rubbish, debris and other unsightly materials.

- (g) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Tract, except those home occupations which are permitted by applicable zoning regulations in Marion County, Indiana.
- (h) No "for sale", "for rent" or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Tract, any Lot or any Dwelling Unit by an Owner without the prior consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Tract in connection with any unsold or unoccupied Lots and Dwelling Units.
- (i) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Area or any part thereof (whether designated General or Limited Common Area), shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Area.
- (j) No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trucks (larger than 1/2 ton), motorcycles, mini-bikes, or mopeds shall be permitted, parked or stored anywhere within the Tract except as otherwise specifically permitted by the Board. No repair work shall be done on the Tract on any vehicles, including passenger automobiles.
- (k) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area, except with express permission from the Board.
- (l) Common Area shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.
- (m) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes.

- (n) Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.

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

24. Amendment of Declaration.

- (a) Generally. 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 designated vote at a meeting 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 fifty percent (50%) in the aggregate of all Owners; provided, that any such amendment shall require the prior written approval of the Declarant Owner so long as the Declarant Owner or any entity related to the Declarant Owner owns any Lot or Dwelling Unit within and upon the Tract. In the event any Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of this Declaration.
- (v) Mortgagees' Vote on Special Amendments. No amendments 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 601.02 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, or which would be deemed to require the first mortgagee's consent under the Freddie Mac Sellers' and Servicers' Guide, Vol. 1, Section 2103(d) without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of this Declaration.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if the 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) or if the Mortgagee does not send its written objection to the proposed amendment prior to such meeting. In the event that a proposed amendment is deemed by the Board of Directors of the Corporation 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 Mortgagee of the time limitation contained in this sentence.

- (b) By Declarant Owner. Declarant Owner hereby reserves the right, so long as Declarant Owner or any entity related to Declarant Owner owns any Lot or Dwelling Unit within and upon the Tract, to make any amendments to this Declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Declarant Owner, including without limitation: to bring Declarant Owner or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof; to conform with zoning covenants and conditions; 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 Veterans Administration or any other governmental agency or 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 in no event shall Declarant Owner be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant Owner to vote in favor of, make, or consent to any amendments described in this Paragraph 24 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Declarant Owner to vote in favor of, make, execute and record any such amendments. This right of the Declarant Owner to act pursuant to rights reserved or granted under this Paragraph 24 shall terminate at such time as the Declarant Owner no longer holds or controls title to any part or portion of the Tract.

- (c) Recording. Each amendment to this Declaration shall be executed by Declarant Owner only in any case where Declarant Owner 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 Declarant Owner shall contain Declarant Owner'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.

(d) Amendment Prior to the Applicable Date. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration prior to the applicable Date without the consent and approval of Declarant Owner.

25. Annexation of Additional Tract. In addition to the Initial Tract (Exhibit "A") a/k/a Gulon Creek Woods, Section I Declarant Owner is the owner of the real estate described in the attached Exhibit "B" which is incorporated herein by reference.

At any time prior to December 31, 2015, Declarant Owner, without the consent of the Owners, may, but is not obligated to, develop the Additional Tract or any part thereof, in substantially the same manner as the Buildings shown for Exhibit "C" provided, however, that the maximum number of Lots which may be contained in the total development shall be not more than 144 Lots. The Dwelling Units to be built within such additional Blocks within additional SECTIONS shall be consistent with the quality of construction of previous Dwelling Units built on Lots subject to this Declaration. Improvements (excluding Dwelling Units) within the area to be annexed must be substantially completed prior to annexation.

In the event the Additional Tract or any part of it is platted in a manner similar to Gulon Creek Woods, the Owners of such Lots in the Additional Tract or parts thereof, shall have the same right and obligations as the Owners herein, and the Corporation shall have the same jurisdiction and authority over such Additional Tract or parts thereof as its authority and jurisdiction herein.

In the event Declarant Owner decides not to record a final plat for the Additional Tract or any part thereof, Declarant Owner shall file of record a Declaration stating that the Additional Tract or any part thereof shall not be developed as contemplated herein; provided, however, any part of the Additional Tract for which a Final Plat has not been filed by December 31, 2015, shall be automatically removed from the possibility of having a common entity provide for the maintenance, repair, replacement, administration and operation of such part of the Additional Tract, unless such is established by the Owners in the Tract and those in the Additional Tract.

Regardless of the method of development of the Additional Tract and whether or not any part of the Additional Tract comes within the jurisdiction of the Corporation or subject to the Declaration,

Declarant Owner reserves unto itself, its successors and assigns, for the use and benefit of that part of the Additional Tract not coming within the jurisdiction of the Corporation or subject to the Declaration, the right and easement to enter upon the streets and Common Area of Gulon Creek Woods to provide ingress and egress to the Additional Tract.

It is the purpose and intent of the easements herein granted and reserved to provide free and unrestricted use and access across the roadways and streets of the Tract and Additional Tract, no matter how developed, for the owners, their guests, invitees, and all public, quasi-public vehicles, including but not limited to, police, fire and emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles.

The assessment which the Owner of each Lot in the Additional Tract or part thereof, if within the jurisdiction of the Corporation, shall be obligated to pay shall be equal to that paid by any Owner herein and shall commence on the date of conveyance of such Lot to Owner. No assessment (Regular, Special or otherwise) on any Lot in the Additional Tract shall be due until the Final Plat of the SECTION in which such Lot is located has been recorded.

26. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Tract as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnership, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Tract in any manner shall be subject to the Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended or

supplemented from time to time.

27. **Negligence.** Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or its appurtenances or of the Common Area.

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

29. **Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot.

30. **Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

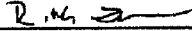
31. **Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

32. **Interpretation.** The captions and titles of the various articles, section, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.


IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

56TH & GUION JOINT VENTURE

LAND INNOVATORS COMPANY,
an Indiana Limited Partnership


By: 
Printed: R. N. Thompson
Joint Venturer, General Partner

56TH - GEORGETOWN LAND TRUST,
an Indiana Land Trust

By: 
Printed: Christian C. Barnes, Trustee
Joint Venturer, Trustee of Land Trust

"Declarant Owner"

BRUCE GUNSTRA BUILDERS, INC.

By: 
Printed: President
Capacity

"Declarant Builder"

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for said County and State, personally appeared Christian C. Barnes, Trustee of 56th - Georgetown Land Trust, an Indiana Land Trust, who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of Guion Creek Woods Property Ownership" for and on behalf of said Joint Venture.

WITNESS my hand and Notarial Seal this 11th day of June, 1996.

Carolyn England
Notary Public

My Commission Expires:
8-23-99

CAROLYN ENGLAND
(Printed)

County of Residence: Marion

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for said County and State, personally appeared R. N. Thompson, General Partner of Land Innovators Company, an Indiana Limited Partnership, who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of Guion Creek Woods Property Ownership" for and on behalf of said Joint Venture.

WITNESS my hand and Notarial Seal this 11th day of JUNE, 1996.

Judy K. Kieneyer
Notary Public

My Commission Expires:
APRIL 8, 1998

JUDY K. KIENEYER
(Printed)

County of Residence: MARION

ACKNOWLEDGEMENT

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, a Notary Public, personally appeared Bruce Guntra, President of Bruce Guntra Builders, Inc., and hereby acknowledges the Declaration of Covenants and Restrictions of Guion Creek Woods Property Ownership this 18th day of June, 1996.

WITNESS my hand and Notarial Seal this 18th day of June, 1996.

Pamela J. Smith
Notary Public

My Commission Expires:
July 1, 1996

Pamela J. Smith
(Printed)

County of Residence: Marion



This Instrument Prepared by:
Raymond Good Esq, ID #7201-49
SCHNORR, GOOD, SCAHILL & MAIER
144 N. Delaware Street
Indianapolis, IN 46204-2551
317/264-3636

f2\rg\realest\C2Guion

LAND DESCRIPTION

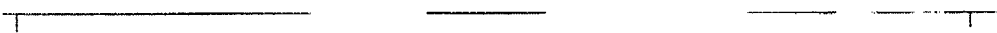
Part of the North Half of the Northeast Quarter of Section 7 and part of the North Half of the Northwest Quarter of Section 8, all in Township 16 North, Range 3 East of the Second Principal Meridian in Marion County, Indiana, being more particularly described as follows:

Beginning at the Northwest corner of the Northwest Quarter of said Section 8; thence North 88 degrees 58 minutes 05 seconds East (assumed bearing) along the North line of said Northwest Quarter a distance of 3.94 feet; thence South 00 degrees 50 minutes 00 seconds East a distance of 219.30 feet; thence South 89 degrees 10 minutes 00 seconds West, parallel with the North line of the Northeast Quarter of said Section 7, a distance of 121.67 feet to a curve having a radius of 125.00 feet, the radius point of which bears North 79 degrees 05 minutes 34 seconds East; thence Southerly along said curve on an arc distance of 43.15 feet to a point which bears South 59 degrees 18 minutes 50 seconds West from said radius point; thence South 59 degrees 18 minutes 50 seconds West a distance of 50.00 feet; thence South 89 degrees 10 minutes 00 seconds West, parallel with the North line of the Northeast Quarter of said Section 7, a distance of 128.37 feet to the East line of a tract of land conveyed to Beechtree Commons Apartments of Indianapolis recorded as Instrument # 85-66506 in the Office of the Recorder of Marion County, Indiana; thence North 00 degrees 50 minutes 00 seconds West along said East line a distance of 284.54 feet to the North line of the Northeast Quarter of Section 7; thence North 89 degrees 10 minutes 00 seconds East along the North line thereof a distance of 274.81 feet to the Point of Beginning, containing 1.640 acres, more or less.



Gary R Kent

EXHIBIT A



LAND DESCRIPTION
(Part of Instrument No. 79-65889)

Part of the North Half of the Northeast Quarter of Section 7 and part of the North Half of the Northwest Quarter of Section 8, all in Township 16 North, Range 3 East of the Second Principal Meridian in Marion County, Indiana, described as follows:

Beginning at the northwest corner of the northwest quarter of said section 8; thence on an assumed bearing of North 88 degrees 58 minutes 05 seconds East along the north line of said northwest quarter a distance of 589.67 feet to the centerline of Gulon Road; thence South 00 degrees 07 minutes 14 seconds West along the centerline of Gulon Road a distance of 586.34 feet; thence South 11 degrees 36 minutes 40 seconds East along said centerline a distance of 763.20 feet to the south line of the north half of the said northwest quarter section; thence South 88 degrees 58 minutes 30 seconds West along said south line a distance of 727.21 feet to the southwest corner of the north half of said northwest quarter section; thence South 89 degrees 10 minutes 48 seconds West along the south line of the north half of the said northeast quarter section a distance of 270.23 feet to the southerly extension of the east line of the Rosewood Commons Apartments of Indianapolis II (Instrument No. 86-102541, Marion County Recorder Office); thence North 00 degrees 50 minutes 00 seconds West along the said extension, along the east line of said Rosewood Commons Apartments and along the east line of Beechtree Commons Apartments of Indianapolis (Instrument No. 85-66506, Marion County Recorder) a distance of 1336.32 feet to the north line of the northeast quarter of said section 7; thence North 89 degrees 10 minutes 00 seconds East along said north line a distance of 274.81 feet to the Beginning Point. Containing 27.517 acres, more or less.

Except, however, the following described Right of Way Grant for Gulon Road (Instrument No. 80-58786).

Part of the Northwest Quarter of Section 8, Township 16 North, Range 3 East, described as follows:

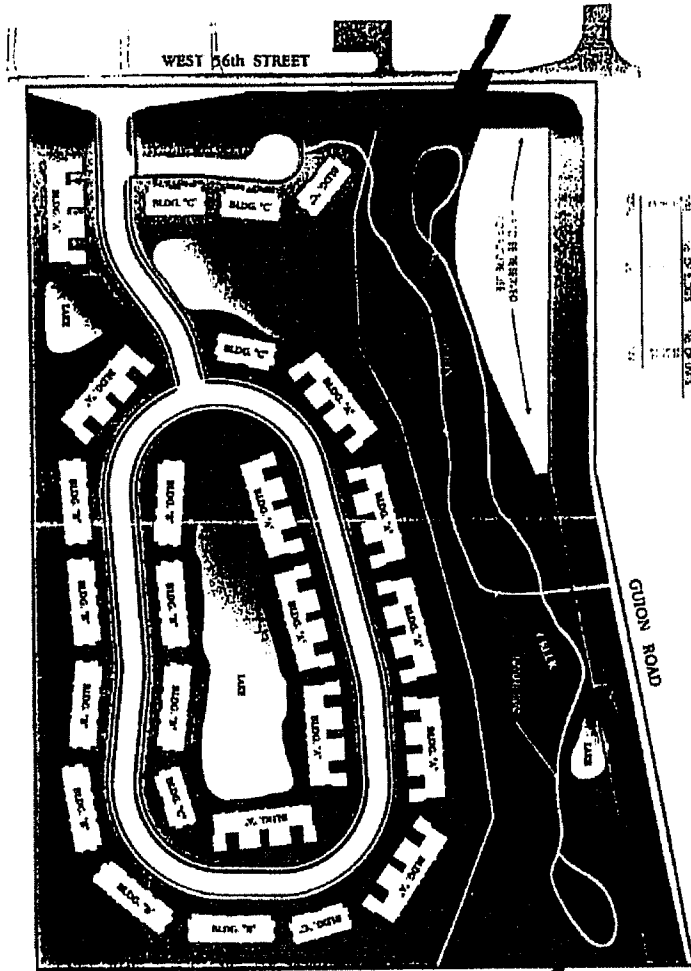
Beginning at a point on the existing Westerly right-of-way line of Gulon Road located 568.78 feet East of the Northwest corner of said Quarter Section, measured along the North line of said Quarter Section, and 70.00 feet South of said Quarter Section corner measured perpendicular to the North line of said Quarter Section; thence along the existing Westerly right-of-way line of Gulon Road South 00 degrees 56 minutes 26 seconds West 414.52 feet to a point on the existing right-of-way line of Gulon Road; thence North 09 degrees 38 minutes 31 seconds West 108.90 feet to a point; thence North 00 degrees 50 minutes 19 seconds West 298.17 feet to a point; thence North 35 degrees 13 minutes 49 seconds West 23.03 feet to a point; thence parallel to the North line of said Section line, South 89 degrees 48 minutes West 125.00 feet to a point; thence perpendicular to the North line of said Section line North 00 degrees 12 minutes West 15.00 feet to a point on existing right-of-way line of 56th Street located 401.25 feet East of said Section corner measured along the North line of said Section and 45.00 feet South of said Section corner measured perpendicular to the North line of said Section; thence along the existing Southerly right-of-way line of 56th Street and parallel to the North line of said Section North 89 degrees 48 minutes East 142.53 feet to a point on the existing right-of-way line of 56th Street; thence South 44 degrees 48 minutes East 35.36 feet to the Point of Beginning, and containing 0.258 acres, more or less.

Excepting there from that tract of land described in Exhibit A, attached hereto.

EXHIBIT B



Gary R. Kent



IRRIGATION TABLE

NO.	ACRES	NO. CROPS
1	1.0	1
2	1.0	1
3	1.0	1
4	1.0	1
5	1.0	1
6	1.0	1
7	1.0	1
8	1.0	1
9	1.0	1
10	1.0	1
11	1.0	1
12	1.0	1
13	1.0	1
14	1.0	1
15	1.0	1
16	1.0	1
17	1.0	1
18	1.0	1
19	1.0	1
20	1.0	1
21	1.0	1
22	1.0	1
23	1.0	1
24	1.0	1
25	1.0	1
26	1.0	1
27	1.0	1
28	1.0	1
29	1.0	1
30	1.0	1
31	1.0	1
32	1.0	1
33	1.0	1
34	1.0	1
35	1.0	1
36	1.0	1
37	1.0	1
38	1.0	1
39	1.0	1
40	1.0	1
41	1.0	1
42	1.0	1
43	1.0	1
44	1.0	1
45	1.0	1
46	1.0	1
47	1.0	1
48	1.0	1
49	1.0	1
50	1.0	1
51	1.0	1
52	1.0	1
53	1.0	1
54	1.0	1
55	1.0	1
56	1.0	1
57	1.0	1
58	1.0	1
59	1.0	1
60	1.0	1
61	1.0	1
62	1.0	1
63	1.0	1
64	1.0	1
65	1.0	1
66	1.0	1
67	1.0	1
68	1.0	1
69	1.0	1
70	1.0	1
71	1.0	1
72	1.0	1
73	1.0	1
74	1.0	1
75	1.0	1
76	1.0	1
77	1.0	1
78	1.0	1
79	1.0	1
80	1.0	1
81	1.0	1
82	1.0	1
83	1.0	1
84	1.0	1
85	1.0	1
86	1.0	1
87	1.0	1
88	1.0	1
89	1.0	1
90	1.0	1
91	1.0	1
92	1.0	1
93	1.0	1
94	1.0	1
95	1.0	1
96	1.0	1
97	1.0	1
98	1.0	1
99	1.0	1
100	1.0	1

EXHIBIT C