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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF
KESLER POINTE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF KESLER POINTE (the "Declaration") is made this 16 day of July 1989, by Fletcher Development Group, Inc., an Indiana corporation (hereinafter referred to as the "Developer"), of 520 Virginia Avenue, Suite 205, Indianapolis, Indiana 46203.

W I T N E S S E T H

WHEREAS, the Developer is the owner of certain real estate located in Washington Township, City of Indianapolis, all as more particularly described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Developer has caused the real estate platted as "Kessler Pointe," and intends to develop the real estate for residential use under the name "Kessler Pointe" (the "Development"), all as more particularly described on the plat, recorded in the Office of the Recorder of Marion County, Indiana, in Book No. 910100186, Page No. 5, as instrument No. 910100186 dated 9/27/91, and

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WHEREAS, the Developer intends to sell and convey the residential lots situated within the platted areas of the Development (the "Lots"), and before doing so desires to provide for the preservation and enhancement of property values, amenities and appurtenances in the Development contributing to the personal and general health, safety and welfare of the residents thereof and visitors thereto, and for the maintenance of the real estate and improvements there on, and to this end, desires to subject all real estate within the platted areas of the Development to mutual and beneficial restrictions, covenants, conditions, easements, liens, and charges (the "Restrictions") under a general plan or scheme of improvement for the benefit of the Lots and future Owners thereof.

NOW, THEREFORE, the Developer hereby declares that all of the platted Lots and lands located within the Development are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in the Development, and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said Lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the Real Estate or any

part or parts thereof subject to such Restrictions, and shall insure to the benefit of the Developer and each and every one of the Developer's successors in title to any Real Estate in the Development.

1. Definitions. The following are the definitions of certain terms as they are used in this Declaration.

A. Association. "Association" shall mean and refer to the Kessler Pointe Property Owners Association, Inc., more particularly described in Section 11 hereof.

B. Committee. "Committee" shall mean and refer to the Kessler Pointe Development Review Committee referred to in Section 14 hereof, which Committee shall be composed of four (4) members appointed by the Association, who shall be subject to removal by the Association at any time with or without cause. Any vacancies from time to time existing shall be filled by appointments made by the Association. The Committee may include one (1) additional Committee member serving ad hoc, who is an owner of real property adjacent to the Development, for the purpose of satisfying the Developer's commitments made in connection with Zoning Petition 89-2-22. Approvals, determinations, permissions or consents required herein shall be deemed given if they are given in writing signed by three (3) members of the Committee.

C. Common Area. "Common Area" shall mean and refer to those areas, including property and improvements, so designated as Common Areas on any recorded subdivision plat of the Development.

D. Developer. "Developer" shall mean and refer to Fletcher Development Group, 520 Virginia Avenue, Suite 206, Indianapolis, Indiana 46203.

E. Development. "Development" shall mean and refer to the Kessler Pointe subdivision of the real estate described in Exhibit "A".

F. Lot. "Lot" shall mean and refer to any parcel of Real Estate, whether residential or otherwise, described by the plat of the Development which is recorded in the Office of the Recorder of Marion County, Indiana.

G. Owner. "Owner" shall mean and refer to a person who has acquired any fee title to a lot.

H. Restrictions. "Restrictions" shall mean and refer to the agreements, covenants, conditions, restrictions, easements, assessments, charges and all other provisions set forth in this Declaration, as the same may be amended from ~~910100185~~ **910100186** time.

11. Kessler Pointe Property Owners Association, Inc.

A. In General. There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "Kessler Pointe Property Owners Association, Inc.," which is referred to herein as the "Association." Every Owner of a Lot in the Development shall become a member of the Association in accordance with the terms and conditions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and every Owner shall be subject to all the requirements and limitations imposed in these Restrictions on other Owners of Lots within the Development and on members of the Association, including those provisions with respect to the payment of an annual charge.

B. Classes of Membership. The Association shall have two (2) classes of membership with the following voting rights:

Class A. Class A members shall consist of all fee owners of Lots in the Development with the exception of the Developer. When more than one (1) person holds a fee interest in any Lot, all such persons shall be members. However, Class A members shall be entitled to only one (1) vote for each Lot owned, and the vote for any Lot shall be exercised as the Owners there of may agree among themselves. Class A membership shall automatically terminate when such member ceases to be a fee owner of Lots, and any person acquiring a fee ownership in any Lot shall automatically become a Class A member. Any person who holds an interest obligation shall not be a member of the Association until such person realizes upon the security and takes a fee interest in and to such Lot.

Class B. The Class B member (a) shall be the Developer and all of its successors and assigns designated by it in a written notice mailed or delivered to the registered agent of the Association. Each Class B member shall be entitled to three (3) votes for each Lot in the Development in which it has fee ownership. Class A membership shall cease and be automatically converted to Class A membership upon the happening of either of the following events, whichever occurs first:

(a) when the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership; or

(b) December 31, 1992.

C. Board of Directors. The Members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall govern and manage the affairs of the Association.

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D. Responsibilities and Purposes of the Association. Unless otherwise limited in this Declaration, or in the Articles of Incorporation and By-Laws of the Association, the Association shall have the power to exercise all of the statutory powers specified in Section 4 of the Indiana Not-for-Profit Corporation Act of 1971. As it may be amended from time to time. Consistent with the foregoing, and not by way of limitation, the Association is created and formed for the following specific purposes:

1. On-going Legal Entity. To create an on-going legal entity responsible for the continuous and adequate maintenance of the Development, and to provide any other services that the Board of Directors of the Association may deem appropriate for the health, safety and welfare of the members of the Association and for the protection and enhancement of property values within the Development.

2. Operation of Common Areas. To provide a means whereby the Common Areas may be operated, maintained, improved, repaired or replaced.

3. Enforcement of Regulations. To provide a means for the promulgation and enforcement of regulations necessary to govern the use and enjoyment of such Common Areas within the Development.

4. Regulation of Design and Construction. Subject to the provisions of Section 111 hereof, to regulate design and construction throughout the Development during the initial development stages and afterwards, in order to promote a high quality, aesthetically pleasing, architecturally sound environment and to generally maintain and enhance property values throughout the Development.

5. Regulation of Offensive Activities. To regulate noxious or offensive activities throughout the Common Areas and Lots which may become nuisances to members of the Association or which could threaten the health, safety and welfare of members of the Association or which could threaten the health, safety and welfare of members of the Association or the general public.

111. Delegation of Enforcement to the Association. The Developer hereby delegates and assigns to the Association, its successors and assigns, the responsibility of preserving and enhancing the values of properties subject to the Restrictions set forth in this Declaration. The Association shall cause a Development Review Committee to be formed in accordance with this Declaration and the Association's By-Laws to perform the duties and to exercise the powers enumerated below.

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IV. The Kessler Pointe Development Review Committee. The Committee has the right to promulgate and enforce reasonable rules to regulate the external design, appearance, use, location and maintenance of Lots, land and improvements subject to the Restrictions in such a manner as to preserve and enhance values, to protect the health, safety and welfare of residents and visitors of the Development, and to maintain a harmonious relationship among structures and the natural vegetation and topography.

A. Powers of the Committee. In order to execute the responsibility provided for in this Section IV, the Committee shall have the powers to:

1. Select authorized builders or contractors for the construction or expansion of residential dwelling structures of the construction of other improvements on land subject to the Restrictions, or approve or disapprove of the engagement of any proposed builder or contractor by any Lot Owner to perform such construction or expansion.

2. Approve or disapprove plans and specifications for all proposed construction of residential dwellings, additions, or other improvements on land subject to the Restrictions, and to generally supervise such construction to assure that it is performed in a satisfactory manner consistent with the Restrictions.

NO RESIDENTIAL DWELLING STRUCTURE, OTHER BUILDING, NEW CONSTRUCTION, IMPROVEMENTS, CHANGES OR ALTERATIONS OF ANY TYPE OF KIND SHALL BE CONSTRUCTED OR PLACED ON ANY LOT IN THE DEVELOPMENT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE COMMITTEE. SUCH APPROVAL SHALL BE OBTAINED ONLY AFTER WRITTEN APPLICATION HAS BEEN MADE TO THE COMMITTEE BY THE LOT OWNER REQUESTING AUTHORIZATION FROM THE COMMITTEE. SUCH WRITTEN APPLICATION SHALL BE IN A MANNER AND FORM PRESCRIBED FROM TIME TO TIME BY THE COMMITTEE, AND SHALL BE ACCOMPANIED BY THREE (3) COMPLETE SETS OF PLANS AND SPECIFICATIONS FOR ANY SUCH PROPOSED STRUCTURE, BUILDING, CONSTRUCTION, IMPROVEMENT, CHANGE OR ALTERATION.

B. Duties of the Committee. The Committee shall have up to thirty (30) days in which to approve or reject any plans submitted pursuant to this Section IV or any other provision in this Declaration.

C. Submission of Plans and Specifications to the Committee. All plans and specifications must be submitted to the Committee for approval, with three (3) duplicate copies, and conform to the following minimum specifications:

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1. All plans, drawings and blueprints of proposed residential dwelling structures shall be of professional quality and drawn to a scale of not less than 1/4" = 1'. All plot plans shall be drawn to a scale of not less than 1" = 30'.

2. Plans shall be submitted for each of the following elements of new construction: front elevation; rear elevation; side elevation; floor plan of each floor; and foundation plan.

3. All plans shall specify primary building material proposed to be used, i.e. brick, stone, wood, etc.

4. All plot plans shall provide and identify the following items: proposed location of the residential dwelling structure and driveway on the lot; location of any easements and undisturbed areas; location of proposed fences, screening, walkways and walls; existing and proposed grades; location of all trees (outside of the building and parking areas) which are of eight (8) inch caliper diameter (as determined by methods employed by the Indiana Department of Natural Resources, Forestry Division); and the type of trees designated on such plot plan.

D. Liability of the Committee. Neither the Committee, the Association, nor any agent thereof, nor the Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to the Committee for approval, nor for any defects for any construction or similar work performed in accordance therewith. Further, the Committee does not make any representation or warranty as to suitability or advisability of the design, the engineering, the method of construction involved or the materials to be used.

E. Inspection by the Committee. The Committee may inspect any and all such work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

V. Architectural Guidelines. The construction of any new project, structure, building or improvement or any addition to any existing structure or building or any exterior alteration or hang to an existing structure or building must have the prior written approval of the Committee, and any improvement, addition, alteration or change to an existing residential dwelling structure or other building shall be compatible with the design character of the original structure or building. Any and all construction projects, structures, or buildings, improvements, additions, alterations or changes to existing structures shall, in all respects, conform to the Restrictions and other limitations set forth in this Declaration.

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VI. Character of the Development.

A. In General. Every numbered lot in the Development, is unless it is otherwise designated by the Developer, is a residential lot and shall be used exclusively for single-family residential purposes. No structure shall be erected, placed or permitted to remain upon any of the lots except a single-family residential dwellings. All tracts of land located within the Development which have not been designated by numbering as lots in the recorded plat shall be Common Areas.

B. Occupancy of Partially Completed Dwellings Prohibited. No residential dwelling structure or other structure constructed on any of the lots shall be occupied until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the residential dwelling structure shall have been substantially completed in accordance with the approved building plan shall be made by the Committee, and such decision shall be binding upon all parties. This restriction shall not apply to any improvements or additions made to any dwelling.

C. Other Restrictions. All real estate in the Development shall be subject to the easements, restrictions and limitations or record, and to all governmental zoning authority and regulations of affecting the Development, all of which are incorporated herein by reference.

VII. Restrictions Concerning Construction, Size, Placement and Maintenance of Residential Dwelling Structures.

A. Approval of Builders/Contractors. Construction of residential dwelling structures in the Development may only be performed by builders or contractors approved by the Committee, and the Committee shall have the power to disapprove any builder or contractor in its sole and absolute discretion. The Committee may publish an exclusive or non-exclusive list of approved builders or contractors, and amend such list from time to time in its discretion.

B. Minimum Living Space Areas. The minimum square footage of living space of all residential dwelling structures constructed on the various lots in the Development shall be 1,800 livable square foot if it is one story, and 2,000 livable square feet if it is two stories (minimum 1,200 square feet on the first floor).

C. Setback. The Committee shall have the power to establish minimum or maximum setback requirements consistent with applicable zoning or platting requirements and all applicable laws, rules, regulations or ordinances for dwelling structures erected on specific lots.

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D. Tree Preservation. No tree of more than eight (8) inches caliper diameter (outside of any building and parking area of a lot) shall be cut down or removed without the prior written approval of the Committee and such approval shall be granted only upon proof of unusual hardship in the practical utilization of the lot. Tree diameters shall be determined by methods employed by the Indiana Department of Natural Resources, Forestry Division. Accordingly, all plat plans submitted to the Committee for approval shall designate thereon all trees more than eight (8) inches caliper diameter (outside of the building and parking area), and removal or destruction of such trees without the consent of the Committee shall result in liability to the Owner to replace said trees with trees of comparable age and maturity. During construction of any dwelling or improvement on any lot, every Owner, and every builder, contractor, subcontractor, employee or other person acting on behalf of such Owner, shall exercise every reasonable effort to minimize disruption and damage to trees (and their root systems) shown on the plat plan and shall diligently preserve the natural vegetation and topography of the Development. All construction/service vehicles must be parked on designated driveways or dedicated streets.

E. Color and Material of Homes. Colors of residential dwelling structures and any related buildings, improvements, additions, changes or alterations shall generally consist of subdued, earthen tones or white, and shall be compatible with other structures in the immediate area. The Committee shall discourage the use of aluminum or vinyl exterior siding on any structure or improvement.

F. Fences, Walls and Screening. All fences, walls, screens, and similar such improvements shall be subject to the restrictions and terms of this Subsection D. No fence or screen shall obstruct sight lines for vehicular traffic. Except for decorative fences (as defined by the Committee), fences shall not be nearer to the front of a residential dwelling structure than the rear foundation line of such residential dwelling structure. Fences may be privately installed but shall be consistent with professional levels of quality. Non-professionally installed fences shall be subject to inspection by the Committee following completion thereof, and final approval of the Committee with respect thereto, if any, shall be withheld until successful completion of such inspection.

1. Height Restriction. The specific fence height restrictions are as follows:

a. Unless the rear line of the particular lot offers some circumstances unique to the particular property, fencing and walls shall not exceed four (4) feet above grade.

b. Patio screens/privacy fences shall not exceed six (6) feet in height.

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2. Material and Finish:

a. Wood fencing or screening shall conform with the architectural design of the community.

b. Chain link or other galvanized metal fencing shall not be permitted unless it is vinyl coated or covered with similar coated material black in color.

c. All fencing or screening shall have finished material on both sides, subject however to the condition that, if only one side has finished materials, that side must face the public side of adjoining property.

d. Walls above grade shall be constructed of natural stone masonry or attractive timber.

G. Landscaping and Plantings. Landscape improvements include, subject to the Committee's discretion and regulations, improvements such as terraces, retaining walls, unusual vegetation coverings, walks, bank treatment, detached patios, and cabanas. With respect to such proposed improvements, the applicant or lot owner shall submit to the Committee:

1. Three (3) copies of a plot plan showing proposed location of the property improvements on the lot had existing grades at the nearest property line with proposed finished grades as applicable to the improvement.

2. Three (3) copies of additional plans as required in order to evaluate the appearance of the improvement and type of construction including the type of material used, the color of the finished improvement and type of vegetation, if any.

Landscaping and planting in general shall not require approval of the Committee. However, trees, hedges and shrubs which restrict sight lines for vehicular traffic shall be cutback or removed. Shrubs shall not unduly restrict the view of the amenities from other properties. Special landscaping beyond that normally associated with a single-family residential dwelling structure or similar such buildings is required to be approved by the Committee prior to installation. If any lot is not completely wooded, satisfactory lawns, by seeding or sodding the lot, shall be required as soon as possible following completion of a residential dwelling structure, weather conditions permitting.

H. Exterior Antennas and Satellite Dishes. No television or radio antennas, satellite dishes or similar devices for television, radio and/or telephone reception or transmission may be erected by any lot owner on the exterior of a residential dwelling structure in the Development. However, inside attic antennas and cable service are acceptable.

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1. Swimming Pools. Construction of permanent backyard swimming pools must be approved by the Committee prior to commencement of any construction work related there to. Temporary swimming pools above grade having a depth of less than twenty-four (24) inches shall not require such approval. An application for the construction of a permanent type backyard swimming pool shall be accompanied by an application for an acceptable fence design. The design shall conform to county and municipal regulations for such fencing, if any.

J. Tennis Courts, Racquetball Courts, Paddle Ball Courts, etc. construction of tennis courts, racquetball courts, paddleball courts, squash courts, etc. are required to be approved by the Committee prior to commencement of any construction work related thereto. Lighted courts are not permitted.

K. Garages. All dwelling structures shall have an attached garage that is of sufficient size to accommodate at least two (2) automobiles. Detached garages are prohibited.

L. Driveways. All driveways shall be paved, such pavement consisting of asphalt, brick or concrete. Approval of the Committee shall be required prior to construction of any extension, widening or rerouting of existing driveways.

M. Retaining Walls. Approval of the Committee shall be required prior to installation of any retaining wall. Retaining walls which divert ground water onto adjoining properties or which otherwise substantially change the existing drainage pattern are not permitted.

N. Play Equipment. Children's play equipment, including but not limited to sandboxes, temporary swimming pools having a depth of less than twenty-four (24) inches, swing and slide sets, playhouses and tents shall be permitted without prior approval of the Committee, provided, however, that such equipment shall not be more than eight (8) feet high, shall be in good repair (including paint) and every reasonable effort shall have been made to screen or shield such equipment from view. With respect to equipment higher than eight (8) feet, prior approval by the Committee of the design, location, color, material and use shall be required.

O. Mailboxes. Size, location, height and composition of every mailbox shall be approved by the Committee prior to installation and shall conform to specifications set forth by the United State Postal Service and/or Postmaster General.

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P. Diligence in Construction. Each and every residential dwelling structure or other building erected on any and all Lot (s) shall be completed within twelve (12) months immediately following the commencement date of such construction. No improvement which has been partially or totally destroyed by fire or otherwise, shall be allowed to remain in such state of disrepair or damage for more than three (3) months from the time of such destruction or damage.

Q. Sidewalks. Concrete sidewalks with a minimum of four (4) feet shall be constructed on each side of the street. Lot Owners shall be responsible for the cost of constructing and maintaining the sidewalks on their respective Lots. Sidewalks shall be installed at the time of construction of any residential dwelling, and shall be completed prior to occupancy of such dwelling; provided, however, that in no event shall a sidewalk be completed any later than one (1) year from the date an Owner first purchases a Lot from the Developer, even if construction of such residential dwelling has not commenced or is only partially complete as of such date. All sidewalks must be constructed in accordance with the Committee's specifications. Lot Owners shall keep sidewalks on their respective Lots free of snow and cleared of debris.

R. Outside Lights. Each property Owner shall be required to install and maintain an outside pedestal light in conformance with the Committee's standards. Each Pedestal light shall be activated by a light sensor and will be constructed at the time of residence construction. Any additional exterior lighting must be directed so as to minimize annoyance to adjacent Lot Owners.

S. Maintenance of Lots and Improvements. The Owner of any Lot in the Development shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly; and, specifically, such Owner shall:

1. Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.
2. Remove all debris or rubbish.
3. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
4. Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

910100186

52
5. Within sixty (60) days following completion of a house on a Lot, the Owner shall landscape the Lot, weather permitting.

T. Association's Right to Perform Certain Maintenance. In the event that any Owner of a Lot in the Development shall fail to maintain his Lot and any improvements situated thereon in accordance with the provision of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as maybe reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions.

U. Miscellaneous.

1. Trash and garbage containers shall not be permitted to remain conspicuous except on days of (or evening before) trash collection.

2. Lot owners shall make a reasonable effort to keep garage doors closed except during times of actual use of the garage facility.

3. Collapsible and removal clothes lines will be permitted by the Committee, but permanent clothes lines will not be approved by the Committee.

4. Owners of dogs shall promptly remove and dispose of any excrement left by their dogs on any other Lot or on any sidewalk, street or Common Area.

5. Boats and recreational vehicles must be stored in garages.

VIII. General Prohibitions.

A. In General. No noxious or offensive activities shall be carried on any Lot in the Development, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another Lot in the Development, nor shall any Owner engage in any activity which threatens the health, safety or welfare of any other Lot owner.

B. Signs. No signs or advertisements shall be displayed or placed on any Lot or structures in the Development without the prior written approval of the Committee. However, Committee approval is not required for any sign advertising such Lot for sale.

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C. Animals. No animals shall be kept or maintained on any Lot in the Development except the usual household pets. Dogs must be leashed or kept reasonable confined so as not to become an annoyance or nuisance. Under no circumstances shall any Lot Owner allow any horses, pigs, cows, sheep, chickens or other such farm animals in the Development.

D. Garbage and Other Refuse. No Owner of a Lot in the Development shall burn or permit the burning out of doors of leaves, garbage or other refuse, nor shall any Owner accumulate or permit the accumulation of out of doors of such refuse on his Lot except as may be permitted in Subparagraph E, below. All residential dwelling structures built in the Development shall be equipped with a suitable garbage can or container.

E. Trash Receptacles. Every outdoor can or container for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street within the Development, except at the times when refuse collections are being made. Every such can or container shall be secured so as to prevent entry by insects and animals.

F. Model Homes. No Owner of any Lot in the Development shall build or permit the construction of any residential dwelling structure or other building upon said Lot, which structure or building is to be used as a model home or exhibit, without the prior approval of the Developer.

G. Temporary Structures. No temporary house, garage or other outbuilding shall be placed or erected on any Lot.

H. Ditches and Swales. It shall be the duty of every Owner of every Lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this subsection.

I. Utility Services. Utility services shall be installed underground in such a manner as to minimize removal of trees.

J. Wells and Septic Tanks. No water wells shall be drilled, nor any septic tanks be installed, on any of the Lots in the Development.

K. Trailers, Mobile Homes, Etc. No trailers, mobile homes, barns or other similar structures shall be placed or constructed on any Lot in the Development.

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IX. Rules governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous lots in the Development shall be owned by the same person, and such Owner shall desire to use two or more of the said lots as a site for a single-dwelling residential structure, such lot Owner shall apply in writing to the Committee for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying these with a one-single dwelling residential structure. However, no such combination of lots shall, by itself, reduce any member's vote with the Association (i.e., each Owner will still have one vote for each lot owned).

X. Remedies

A. In General. Any party to whose benefit these Restrictions insure, including the Developer, may proceed at law or inequity to prevent the occurrence or continuation of any violation of these restrictions, but the Developer shall not be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of the Association or any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to such party upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

XI. Covenant For Maintenance Assessments.

A. Creation of the Lien and Personal Obligations of Assessments. Each Owner of any Lot in the Development, except the Developer, by acceptance of a deed there for, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

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B. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Development and for the improvement and maintenance of the Common Areas, landscape easements and drainage facilities on the Development and other purposes as specifically provided herein.

C. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, replacement, alteration or change of any capital improvement which the Association is required to construct or maintain, or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

D. Notice and Quorum for Any Action Authorized Under Subsection C. Written notice of any meeting of the Association called for the purpose of taking any action authorized under Section C shall be sent to all members of such Association not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of the aggregate votes of the membership of shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

XII. Duration. The foregoing covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under such parties until December 31, 2019, at which time this Declaration shall have no further force or effect. This Declaration may be amended, or revoked in whole or in part, by the Association at any time in accordance with Article XIII hereof and upon the affirmative vote of an absolute majority of the eligible votes entitled to be cast by members of the Association.

XIII. Amendments or Revocation. This Declaration may be amended, or revoked in whole or in part, by an instrument signed by the Association. Any amendment or revocation must be recorded in the Office of the Recorder of Marion County, Indiana. No such amendments or revocation shall be effective unless written notice of the proposed amendment or revocation is sent to every Owner of a lot at least thirty (30) days in advance of recordation thereof, and no such amendment or revocation shall be effective with respect to any permanent easements or other permanent rights or interest relating to the Common Areas created hereunder.

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IN TESTIMONY WHEREOF, witness the signature of Developer
this 11th day of APRIL 1991.

FLETCHER DEVELOPMENT GROUP, INC.
(the "Developer")

By: [Signature]
Printed: James W. Frazell
Title: President
By: [Signature]
Printed: Thomas M. Schubert
Title: Secretary

ATTEST:

William S. Alford
Printed: William S. Alford
STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared James W. Frazell and Thomas M. Schubert, the President and Secretary, respectively, of Fletcher Development Group, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for and on behalf of said Corporation, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 12th day of April, 1991.
My Commission Expires: 7-24-94

[Signature]
Notary Public
Amy M. Devor
Printed

County of Residence: Marion

910100186

THIS INSTRUMENT PREPARED BY
Fletcher Development Group, Inc.

EXHIBIT A

KESSLER POINTE LEGAL DESCRIPTION

The following describes a parcel of land located in the south half of Section 4, Township 16 North, Range 4 East in Washington Township, Marion County, Indiana:

Beginning at the Northwest corner of the Southeast Quarter of said section, thence South 69 degrees 57 minutes 15 seconds East 628.22 feet along the North line of said quarter section to the Northwestern limited access right-of-way of State Road 37; thence South 25 degrees 40 minutes 03 seconds West 178.99 feet along said Northwestern limited access right-of-way to a non-tangent point on a curve to the left whose arc defines a part of said northwestern limited access right-of-way; thence 400.43 feet along the arc of said curve to the left (said curve having a radius of 11559.16 feet and a chord bearing South 31 degrees 37 minutes 25 seconds West 400.44 feet); thence South 28 degrees 53 minutes 29 seconds West 428.20 feet along said Northwestern limited access right-of-way; thence South 30 degrees 37 minutes 52 seconds West 448.00 feet along said Northwestern limited access right-of-way; thence South 73 degrees 44 minutes 39 seconds West 109.81 feet along said Northwestern limited access right-of-way to a non-tangent point on a curve to the right whose arc defines the Northeastern boundary of Kessler Boulevard; thence Northwesternly 348.98 feet around said curve and along the boundary of Kessler Boulevard (said curve having a radius of 666.20 feet and a chord bearing North 29 degrees 06 minutes 57 seconds West 344.98 feet); thence North 58 degrees 50 minutes 40 seconds East 428.10 feet to the west line of said Southeast Quarter; thence North 0 degrees 05 minutes 51 seconds West 770.24 feet along said west line to the point of beginning. Containing 10.785 acres, more or less.

EXCEPT, the following described real estates:

Part of the Southwest Quarter of Section 4, Township 16 North, Range 4 East in Washington Township, Marion County, Indiana, being more particularly described as follows:

Beginning at a point on the east line and 1021.80 feet south of the northeast corner of said quarter section; thence south 30 degrees 37 minutes 52 seconds West 111.18 feet to the point of tangency of a curve to the right; thence Southwesterly 96.45 feet around said curve to the right (said curve having a radius of 66.01 feet and a chord length of 91.48 feet); thence North 79 degrees 05 minutes 35 seconds West 104.95 feet; thence South 78 degrees 04 minutes 29 seconds West 82.73 feet to a non-tangent point on a curve to the right whose arc defines the northeastern boundary of Kessler Boulevard; thence Northwesternly 176.69 feet around said curve and along said northeastern boundary (said curve having a radius of 666.20 feet); thence North 58 degrees 50 minutes 40 seconds East 226.10 feet; thence South 48 degrees 59 minutes 29 seconds East 226.40 feet to the point of beginning. Containing 1.56 acres, more or less.

Total Acreage of Kessler Pointe Subdivision is 8.226 acres, more or less.
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EXHIBIT A (CONT.)

Subject to all easements and rights-of-way of record.

Subject to an ELECTRICAL POWER LINE EASEMENT, granted to Indianapolis Power and Light Company as recorded in Deed Record 1710, Page 267 in the Office of the Recorder of Marion County, Indiana.

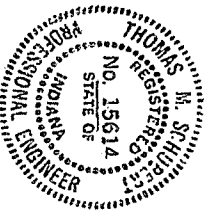
The subject real estate as shown on the enclosed plat is derived from two parcels of real estate, the descriptions of which are recorded in Instrument No. 89-108896 and 89-122344 in the Office of the Recorder of Marion County, Indiana.

The subject real estate is not located in a Special Flood Hazard Area as established by the United States Department of Housing Development, Federal Insurance Administration.

Certified as of this 12TH day of September, 1991



Thomas M. Schubert, P.E.
No. 15614



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