

**INSTR. # 89 18976**

RECEIVED  
HAMILTON CO. IN

AUG 30 3 33 PM '89

SHARON K. CHERRY  
CLERK  
HAM. CO. IN

**8918976**

DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
TOWNE LAKE

This instrument Recorded 8-30 1989  
Sharon K. Cherry, Recorder, Hamilton County, IN

DECLARATION OF COVENANTS AND RESTRICTIONS

TOWNE LAKE

TABLE OF CONTENTS

	<u>Page</u>
1. Definitions	1
2. Declaration	4
3. Description of Towne Lake	4
4. Lot Boundaries	4
5. Common Area	4
6. Ownership of Common Area	4
7. Delegation of Use of the Common Area	5
8. Easements in Common Area and Across Lots	5
9. Easement for Utilities and Public and Quasi Public Vehicles	6
10. Corporation; Membership; Voting; Functions	7
(a) Membership in Corporation	7
(b) Voting Rights	7
(c) Functions	8
11. Board of Directors	8
(a) Management	8
(b) Initial Board of Directors	8
(c) Additional Qualifications	9
(d) Term of Office and Vacancy	10
(e) Removal of Directors	10
(f) Duties of the Board of Directors	11
(g) Powers of the Board of Directors	12
(h) Limitation on Board Action	13
(i) Compensation	14
(j) Non-Liability of Directors	14
(k) Additional Indemnity of Directors	14
(l) Bond	15
12. Initial Management	16
13. Real Estate Taxes	16
14. Utilities	17
15. Maintenance, Repairs and Replacements	17

TABLE OF CONTENTS (continued)

	<u>Page</u>
16. Architectural Control & Restrictions	19
(a) Towne Lake Development Control Committee	19
(b) Purposes	20
(c) Waiver of Restriction	20
(d) Maintenance of Architectural Control	20
(e) Tree Preservation	20
(f) Committee Functions	21
(g) Rules Governing Building on Several Contiguous Lots Having One Owner	25
(h) Restrictions, Covenants & Regulations	25
17. Assessments	30
(a) Annual Accounting	31
(b) Proposed Annual Budget	31
(c) Regular Assessments	33
(d) Special Assessments	35
(e) Regular Assessments Prior to the Applicable Date	36
(f) Failure of Owner to Pay Assessments	39
(g) Subordination of Assessment Lien to Mortgage	41
18. Mortgages and Unpaid Assessments	42
(a) Notice to Corporation	42
(b) Notice of Unpaid Assessments	42
19. Insurance	43
(a) Casualty Insurance	43
(b) Public Liability Insurance	44
(c) Other Insurance	45
(d) General Provisions	45
(e) Insurance by Owners	47
20. Casualty and Restoration of Common Area	47
21. Application for Declarant	48
22. Amendment of Declaration	49
(a) Generally	49
(b) Amendments by Declarant Only	50
23. Acceptance and Ratification	51
24. Costs and Attorneys' Fees	52
25. Waiver	52
26. Severability Clause	52
27. Pronouns	52
28. Interpretation	53
Exhibit "A"                      Tract	

8918976

0747S/n1  
11.2.98

DECLARATION OF COVENANTS AND RESTRICTIONS  
OF

TOWNE LAKE

THIS DECLARATION made this 28<sup>th</sup> day of August,  
1989, by CIRCLE GROUP, INC., an Indiana corporation (Declarant)

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner in fee simple title to certain real estate located in Hamilton County, Indiana, more particularly described in the attached Exhibit A, which is incorporated herein by reference (hereinafter referred to as the "Tract").

B. Declarant desires and intends to create on the Tract a residential community with private streets, landscaped buffer areas, open spaces and other common areas and amenities for the benefit of such residential community, to be known as "Towne Lake".

C. Declarant by execution of this Declaration assures that all properties which are conveyed which are a part of the Tract 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.

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:

8918976



(a) "Applicable Date" means the date determined pursuant to Paragraph 10 of this Declaration.

(b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation (as that term is hereinafter defined). The Articles of Incorporation are incorporated herein by reference.

(c) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.

(d) "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.

(e) "Common Area" means the ground designated as such upon the recorded Plat of Towne Lake including, but not limited to, the roads.

(f) "Common Expense" means expenses for administration of the Corporation, expenses for the upkeep, maintenance, repair and replacement of the Common Area and expenses for the maintenance and upkeep of the landscaping, and all sums lawfully assessed against the Members of the Corporation including, but not limited to, those necessary for common lighting and fire hydrants.

(g) "Corporation" means Towne Lake Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation, whose Members shall be the Owners of Lots, or appointees as provided in Paragraph 10 of this Declaration; such Corporation being more particularly described in Paragraph 10 of this Declaration.

(h) "Declarant" shall mean and refer to Circle Group, Inc., an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of Declarant 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.

(i) "Dwelling Unit" means one of the living units located upon a Lot.

(j) "Lot" means any plot of ground designated as such upon the recorded Final Plat of Towne Lake and upon which one (1) Dwelling Unit is constructed, may be constructed or exists thereon. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon.

(k) "Member" means a member of the Corporation.

(l) "Mortgagee" means the holder of a first mortgage lien on a Lot.

(m) "Towne Lake" means the name by which the Tract, which is the subject of this Declaration, and which the Corporation manages, shall be known.

(n) "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.

(o) "Plat" or "Final Plat" means the survey of the Tract and Lots and Common Areas thereon prepared by Wiehe Engineers, Inc., certified by Allan H. Weihe, a registered land surveyor, under date of September 11, 1987, and recorded as Instrument Number 88 02650, in the

Office of the Recorder of Hamilton County, Indiana, which is incorporated herein by reference.

(p) "Tract" means the real estate described in Paragraph A above.

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 Towne Lake. Towne Lake consists of thirty (34) Lots numbered 1 through 34 inclusive, together with the Common Area as designated on the Final Plat. The Common Area and the size of the Lots are as designated on the Final Plat. The legal description for each Lot in Towne Lake shall be as follows:

Lot \_\_\_ in Towne Lake, a subdivision in Hamilton County, Indiana as per plat thereof recorded February 11, 1988 as Instrument Number 88 02650, in the Office of the Recorder of Hamilton County, Indiana.

4. Lot Boundaries. The boundaries of each Lot in Towne Lake shall be as shown on the Final Plat.

5. Common Area. Common Area includes all the area designated as such on the recorded Final Plat of Towne Lake, including but not limited to the streets, sidewalks, parking areas, and recreational areas, if any, and any Lots conveyed to the Corporation by Declarant and dedicated as Common Area, but excluding all other Lots.

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, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:

(a) The right of the Corporation, upon approval by a written instrument signed by two-thirds of all Class A Members, two-thirds of all Class B Members, and by two-thirds 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.

(b) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Paragraph 11.

(c) The Common Area in Towne Lake shall be conveyed to or owned by the Corporation at the time of conveyance of the first Lot in Towne Lake; provided, however, this shall not prevent Declarant from later conveying a Lot or Lots to the Corporation and dedicating such as Common Area, and further provided that the conveyance of the Common Area to the Corporation shall not prevent Declarant from improving the Common Area as Declarant deems appropriate (including, but not limited to construction of roads located on the Tract) and at Declarant's expense at any time prior to the Applicable Date.

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. Easements in Common Area and Across Lots. 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 the Common Area and the Lots and serving his Dwelling Unit.

9. 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, Common Area and Lots in the Tract in the performance of their duties. An easement is also granted to all utilities (including cable companies) and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including but not limited to water, sewers, gas, telephone, electricity and cable equipment on the Tract (both Common Area and Lots); provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines or other utilities, except as initially designed and approved by Declarant on the Plat or as thereafter may be approved by Declarant 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 (both Common Area and Lots). In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement. 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 and Lots to perform its duties.

10. 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 persons 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 and all successors and assigns of Declarant designated by 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 five (5) votes for each 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 Declarant no longer owns any Lot in Towne Lake; (ii) December 31, 1998; or (iii) such earlier date as Declarant may determine.

(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 and upkeep of such other areas of the Tract 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.

11. 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, or is a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 11.

(b) Initial Board of Directors. The Initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: Vural Gurtunca and Esen Gurtunca (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Declarant may, prior to the applicable date, appoint a third member to the Initial Board. Notwithstanding anything to the contrary contained in this Declaration, the Articles or the By-Laws (a) the Initial Board shall hold office until the Applicable Date, 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, 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 of juridical acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled 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 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. This appointment of Declarant 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 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 11, 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 one (1) year. 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 11 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 11. 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 and upkeep of such other portions of the Tract as designated in this Declaration, and the collection and disbursement of the Common Expenses. 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. 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 as needed;

(iii) landscaping, maintenance and upkeep of the Common Area, and such other portions of the Tract as designated in this Declaration;

(iv) surfacing, paving and maintaining any private streets and all off-street parking spaces constituting a part of the Common Area;

(v) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;

(vi) 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;

(vii) 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;

(viii) 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 shall be available for examination by an Owner at any time during normal business hours;

(ix) 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;

(x) 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

(xi) all duties and obligations imposed upon the Corporation or the Board under this Declaration, the Articles, or the By-Laws.

(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.

(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 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 relation 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 may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, 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 and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

12. Initial Management. Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have, and Declarant hereby reserves to itself, the exclusive right to manage or designate a Managing Agent for the Tract and Common Areas, and to perform all the functions of the Corporation, until the Applicable Date. Declarant may, at its option, engage the services of a Managing Agent affiliated with it to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services.

13. 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 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 to the land comprising the Tract or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the 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 Tract or part thereof assessed as a whole based upon the ratio that the square footage of his improved Lot bears to the

total square footage 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.

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

15. 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 the maintenance of the Common Areas, the Corporation, as part of its duties, and as a part of the Common Expenses, shall provide for maintenance for the following items, which shall be considered part of the Common Areas for purposes of maintenance only:

(a) any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the Tract and any area (other than public right-of-way) located outside of such fencing whether or not it is part of any Lot;

(b) landscaping and other items installed in the Common Area by Declarant as part of its initial development of the Tract; and

(c) any lake or pond shown on the Plat, including any equipment (such as water wells, fountains or other aeration equipment) installed by Declarant as appurtenant to or to aid in the functioning of such lake or pond, whether or not located on Lots.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Areas as it deems necessary, provided that the same are not inconsistent with the express provisions of this Declaration.

Each Owner shall, at his own expense, be responsible for, and shall promptly perform as the need therefore arises, all maintenance, repairs, decoration and replacement of his own Dwelling Unit, both interior and exterior. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot, except for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Areas for purposes of maintenance only. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Areas. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

Notwithstanding any obligation or duty of the Corporation to repair or maintain the Common Area or other portions of the Tract designated herein, 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 to maintain and keep his Dwelling Unit and other structural improvements located on his Lot in a good, clean and sanitary condition as determined by the Board of Directors, 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 Lot.

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, landscaping or other work contemplated herein.

16. Architectural Control and Restrictions

(a) Towne Lake Development Control Committee. As a standing committee of the Corporation (which can be the same as the Board if the Board so determines or if no committee is appointed), there shall be, and hereby is,

established Towne Lake Development Control Committee (the "Committee") consisting of three (3) persons. Until the Applicable Date, the Committee shall be the Initial Board of Directors. After the Applicable Date, the Committee shall be appointed by the Board of Directors.

(b) Purposes. The Committee shall regulate the external design, appearance, use, location and maintenance of the Tract 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) Waiver of Restriction. The Committee shall have the right, power and authority to waive any building line setback as designated in the plat or as designated in this Declaration, subject to any applicable requirements of the appropriate governmental authorities.

(d) 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 Common Area 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.

(e) Tree Preservation. Prior to the commencement of the construction or demolition activity on a Lot, a delineation of the building area for each Lot shall be submitted to the Committee for approval by the Committee, and all trees outside the building, driving and parking areas shall be designated by type and size and shall not be removed unless approved by the Committee upon proof of

unusual hardship in the practical utilization of the Lot and such removal shall not cause a material adverse effect upon the aesthetic values of adjoining lands and rights-of-way.

Unpermitted removal or destruction of trees by an Owner or his successors in title, other than by acts of God or circumstances beyond the Owner's control, shall, within ninety (90) days after notice in writing from the Committee, be replaced by a tree of a type and size established by the Committee, and upon failure to do so, the Committee shall cause such tree to be replaced and the cost of such replacement shall be lien upon the Lot collectable in any court of law or equity together with reasonable attorney's fees for the enforcement of such lien. For purposes of executing this covenant, an easement for ingress and egress shall be and hereby is reserved on each Lot for the performance thereof.

Adequate physical barriers, such as straw bales or snow fence, shall be provided by builders to protect trees to be preserved from damage by construction equipment or otherwise in the erection of building improvements.

(f) Committee Functions. The Committee shall regulate the exterior design, appearance, use, location and maintenance of the Tract, in such a manner as to preserve and enhance values, to maintain a harmonious relationship among structures and the natural vegetation and topography, and to provide for the proper functioning of the storm drainage system for the Tract. For these purposes, the Committee may, from time to time and at any time, make, amend and modify such rules, regulations and



guidelines as it may deem necessary or desirable to guide Owners as to the terms, conditions, procedures and requirements of the Committee for the submission and approvals of items to it. Such rules, regulations and guidelines may, in addition, set forth additional specifications to those set forth herein or in the Plat, so long as the same are not inconsistent with this Declaration or the Plat. It shall be the responsibility of an Owner or a potential purchaser of a Lot to inquire of and obtain from the Corporation or the Committee a copy of the rules and regulations (1) prior to commencement of construction of or improvement to any Dwelling Unit on any Lot, (2) prior to the removal of any trees, and (3) prior to any other activity on the Lot that requires approval of the Committee.

(i) Generally. No dwelling, building, structure or improvement of any type or kind shall be constructed or placed on any Lot without the prior written approval of the Committee obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be made in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include as a minimum the following:

- (a) A site plan that includes complete topographic study, location of all trees, existing and proposed structures, drives, proposed (or existing) sanitary sewage disposal system location, utility services, terraces and all landscape details (including size of all plantings and type); and
- (b) A foundation plan, floor plan, cross-sections, exterior elevations, interior elevations, electrical drawings, interior details, and complete specifications for all materials to be used both inside and outside the house, building, structure or other improvement.



Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed (and existing) landscaping, together with any other material or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4"=1' and all plot plans shall be drawn to a scale of 1"=30', or to such other scale as the Committee shall require. There shall also be submitted, where requested, such other permits or reports as may be requested by the Committee.

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

(aa) The plans and specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of this Declaration, the Plat or any rules, regulations or guidelines adopted by the Committee;

(bb) the design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Committee; or

(cc) the proposed improvement, or any part thereof, would, in the sole opinion of the Committee, be contrary to the interests, welfare or rights of all or any of other Owners.

(iii) Change, Modification or Amendment of Rules, Regulations and Guidelines. Any rules, regulations and guidelines at any time made by the Committee may be changed, modified and amended by the Committee at any time, and from time to time, on a prospective basis; provided, however, that no such change, modification or amendment shall be applied by the Committee retroactively as to any construction theretofore completed nor as to the construction of any improvement which has previously been formally approved by the Committee if such construction has been commenced or is commenced within ninety (90) days after such change, modification or amendment is effective. Any rules, regulations or guidelines adopted and made by the Committee, and any changes, modifications or amendments of any such rules, regulations and guidelines shall be effective upon such adoption. The making, adoption, change, modification and amendment of any such rules, regulations or guidelines by the Committee shall not be considered or deemed to be amendments of this Declaration requiring the consent or approval of any Owners, Mortgagees or other Persons.

The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor.

Neither the Committee, nor any member thereof, nor any agent thereof, nor the Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

The Committee and the Declarant may inspect work being performed to assure compliance with this Declaration, the restrictions contained in the Plat and applicable regulations. However, neither the Committee, nor any member thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Committee or the Declarant, shall be liable or responsible for defects or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Committee or the Declarant shall be taken or deemed to be

or constitute a warranty or guaranty of the work so inspected or approved.

(g) Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two (2) or more contiguous Lots shall be owned by the same Person, and such Owner shall desire to use two (2) or more of said Lots as a site for a single Dwelling Unit, he 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 Unit shall be treated as a single Lot for the purpose of applying this Declaration to said Lots, so long as, and only so long as, the Lots remain improved with one single Dwelling Unit.

(h) Restrictions, Covenants and Regulations.

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 plat of any part of the Tract heretofore or hereafter recorded, 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 insure to the benefit of and 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:

(1) Every Lot in the Tract, unless it is otherwise designated by the Declarant, is a residential lot and shall be used exclusively for single family residential purposes and for occupancy by a single family. No structure shall be erected, placed or permitted to remain upon any Lot except a single family dwelling house and such other improvements, appurtenances and facilities as are usual and customary accessory uses to a single family dwelling house and in accordance with the Declaration and any other covenants and restrictions relating to the Tract.

(2) No accessory outbuildings or other accessory uses or improvements shall be erected on any of the Lots prior to the erection thereon of a single family Dwelling Unit, and in no event shall any such accessory outbuilding or any temporary structure which may be constructed upon a Lot subject to these Restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation.

(3) No Dwelling Unit constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the Dwelling Unit shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties.

(4) The minimum square footage of living space of Dwelling Units constructed on the Lots shall be 2000 square feet for a one-story Dwelling Unit and 2500 square feet for a two-story Dwelling Unit exclusive of garages, carports, porches and basements.

(5) Set-back and yard size requirements for Lots shall be as set forth on the Plat.

(6) In order to aid in the preservation of aesthetic appearances within the Tract, any mailbox installed on the Tract must be approved by the Committee as to size, location, height and composition before it is installed. A standard mailbox design will be prepared by the Committee, and such design shall be the standard for all mailboxes installed on the Tract.

(7) The finished exterior of every Dwelling Unit and other building constructed or placed on any Lot shall be of material other than aluminum siding, vinyl siding, rollbrick siding or any other similar artificial material. All materials used on the exterior of any Dwelling Unit and any other building improvements on a Lot shall be subject to the approval of the Committee. All driveways must be paved from their point of connection with the abutting street or road to their point of connection with the garage apron.

(8) Heating Plants and Garages. Every Dwelling Unit located on the Tract must contain a heating

plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the Dwelling Unit. Every Dwelling Unit located on the Tract must have at least a two-car attached garage, of the same architectural design and materials as the Dwelling Unit.

(9) Diligence in Construction. Every building whose construction or placement on any Lot is begun shall be completed within eighteen (18) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

(10) Prohibition of Used Structures. All structures constructed or placed on any Lot shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.

(11) Maintenance of Lots and Improvements. The owner of any Lot 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:

(i) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds and, in any event, not less frequently than once each month during the months of April through October, inclusive, of each year;

(ii) Remove all debris or rubbish;

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Lot;

(iv) Cut down and remove dead trees;

(v) Where applicable, prevent debris and foreign material from entering drainage areas;

(vi) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly; and

(vii) Within sixty (60) days following completion of a Dwelling Unit on a Lot, the Owner shall landscape the Lot, weather permitting.

In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions and the provisions of the Plat, the Declarant, until the Applicable Date, and, thereafter, the Corporation, 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 may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of this Declaration and the Plat. The cost thereof to the Declarant or the Corporation shall be collected as a special assessment against such Owner and his Lot in the manner provided for herein for the collection of Common Expenses. Neither the Declarant nor the Corporation, nor any of its agents, employees, or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder.

(12) Provisions Respecting Disposal of Sanitary Waste. No outside toilets shall be permitted on any Lot (except during a period of construction), and no sanitary waste or other wastes shall be permitted to be exposed. All sanitary sewage lines and disposal facilities on the Lots shall be designed, constructed and installed in accordance with the provisions and requirements of Hamilton County, Indiana and this Declaration.

(13) No Offensive Activities. No noxious or offensive activities shall be carried on on any Lot, 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.

(14) No Signs. Except as otherwise permitted by the Plat, no signs or advertisements shall be displayed or placed on any Lot or structures without the prior written approval of the Committee.

(15) No Burning. No Owner of a Lot shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his Lot except as may be permitted in subparagraph (iv) below. All houses shall be equipped with a garbage disposal unit.

(16) Storage Tanks. Every tank for the storage of fuel that is installed outside any building shall be buried below the surface of the ground. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Tract at any time, except at the times when refuse collections are being made.

(17) Model Homes. No Owner of any Lot shall build or permit the building upon his Lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Declarant.

(18) No Temporary Buildings or Outbuildings. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any Lot, nor shall any overnight camping be permitted on any Lot.



(19) Maintenance of Drainage Areas. It shall be the duty of every Owner of every Lot 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 (both by improvement and plant material) and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary for appropriate drainage.

(20) Utilities. Utility service shall, to the greatest extent possible, be installed underground and in or adjacent to public rights-of-way to minimize removal of or damage to trees.

(21) Wells. No water wells shall be drilled on any of the Lots, nor shall any septic tanks or other sewage disposal systems be installed on any of the Lots, without the approval of the Committee and of the governing public health agency or other civil authority.

(22) Insurance. Nothing shall be done or kept by an owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance on any Common Area. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Areas, or ordinance or the requirements of any insurance underwriting or rating bureau.

(23) No Displays or Signs. 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 Committee unless otherwise expressly authorized herein, or in any recorded subdivision plat, or by the rules, regulations and guidelines of the Committee.

(24) No Unlawful Use. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the subdivision developed or to be developed on the Tract, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Dwelling Units or neighboring property, including, without limitation, the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.

(25) No Unsightly Material. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Area shall be kept free and clear of rubbish, debris and other unsightly materials.



(26) No Industry. 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 Real Estate.

(27) Observance of Rules. 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, 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.

(28) Landscaping in Common Area. 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.

(29) Use of Common Area. Common Area shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the lake or pond to be installed on the Tract, is and will be an integral part of the storm water drainage system serving the Tract and is intended to be used for such purpose and primarily as a visual, and aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made of such lake or pond which in any way interferes with its proper functioning as part of such storm water drainage system. No boating, swimming, diving, skiing or ice skating shall be permitted in or on said lake or pond. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into said lake or pond, except the Corporation may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. Fishing from the shores of such lake or pond adjacent to an Owner's Lot by the Owner thereof and his invited guests and family shall be permitted subject to obedience and compliance with all applicable fishing and game laws, ordinances, rules and regulations.

17. 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 an accounting group approved by the Board, 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 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 Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, notwithstanding any other provision in this Declaration, the Articles or the By-Laws, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of those Owners present either in person or by proxy; 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 and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such other portions of the Tract as designated in this Declaration that must be repaired and replaced on a periodic basis, which replacement reserve fund 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 other portions of the Tract 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 Hamilton County or Marion County, Indiana selected from time to time by the Board.

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 Assessments. The annual budget as adopted by the Owners shall (subject to the provisions of subparagraph (e)), 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 shall be the same 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 Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in two equal semi-annual installments with the first payment due on the first day of the first month of each fiscal year. Payment of the semi-annual 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 annually, in advance. 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 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 on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot

shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 18 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final Budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Semi-annual installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

(d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, 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. During the period that the Declarant is selling Lots and Dwelling Units are being constructed within the Tract, it is difficult to accurately allocate the Common Expenses to the individual Lots. 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, the Bylaws, 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 any concurrence of the Owners; provided, however, Regular Assessments shall be determined in accordance with the provisions contained in this paragraph 17.

The Corporation will enter into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) (hereinafter referred to as "Management Agent" or "Managing Agent") in accordance with the provisions of paragraph 12 of this Declaration. So long as such Management Agreement remains in effect, the Common Expenses or Regular Assessments shall be paid by Owners to Management Agent. Management Agent shall guarantee that until the earlier of (1) the termination of said Management Agreement or



(2) December 31, 1990 the yearly Regular Assessment shall not exceed \$300 (the "Guaranteed Charge"). After December 31, 1990 (assuming that said Management Agreement has not been terminated) and so long thereafter as said Management Agreement remains in effect and Management Agent continues to perform such functions, Management Agent guarantees that the yearly Regular Assessment shall not exceed the amount of the Guaranteed Charge (\$300) plus (1) the greater of an amount representing an increase thereof to reflect any increase in the Consumer Price Index (all items—all cities) published by the United States Government over such Index as existed in the month of December, 1989 or (2) ten percent (10%). The amount to be added to the Guaranteed Charge shall be in an amount equal to the same percentage of the Guaranteed Charge as the percentage increase in said Consumer Price Index or ten percent (10%), whichever is greater. Such adjustments to the Guaranteed Charge shall be made annually on the first day of each fiscal year so long as said Management Agreement remains in effect and Management Agent continues to perform such functions. Such yearly 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. Management Agent shall be responsible for any deficit 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

would be covered through Special Assessments or if sufficient the replacement reserve fund.

Ten percent (10%) of the Regular Assessment prior to the Applicable Date shall be designated as a reserve fund for maintenance, repairs or replacement of Common Area and those portions of the Lots which are the obligation of the Corporation to maintain, that must be repaired and replaced on a periodic basis.

That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to the replacement reserve shall be held by the Initial Board and, if required, applied to the replacement of Common Area or those portions of Lots obligated to be repaired and replaced by the Corporation. To the extent that such replacement reserve is not so applied the balance thereof shall be retained by the Corporation at the Applicable Date.

Prior to the Applicable Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessment, Special Assessment or other charges shall be owed or payable by Declarant with respect to any Lot or any portion of the Tract owned by Declarant while the same is owned by Declarant nor shall any such assessments or charges become a lien on any such Lot or other portion of the Tract owned by Declarant. Prior to the Applicable Date, Regular Assessments against a Lot shall commence to accrue nine (9) months after the date of conveyance of such Lot by Declarant to such new Owner or on the date the new Owner occupies such Lot, whichever occurs first ("Commencement Date"). The first payment shall be

payable on the Commencement Date prorated to the first day of the month when the next semi-annual payment is due. Thereafter payment of the Regular Assessment shall be paid semi-annually beginning with the first day of the fiscal year or the first day of the seventh calendar month of the fiscal year, as applicable.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid Management Agreement described in paragraph 12 of this Declaration and to adhere to and abide by the same. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to paragraph 11 hereof shall be deemed to cover and include each Owner's right to vote on and approve the Annual Budget and any Regular Assessments and Special Assessments prior to the Applicable Date.

(f) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expenses 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 and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessments 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 any action 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 the applicable costs and expenses of such action incurred (including but not limited to reasonable attorneys fees) and interest from the date such assessments were due until paid at the rate equal to the highest prime interest rate charged by Indiana National Bank of

Indianapolis to its largest and best corporate customers (or if said bank is no longer in existence then such rate charged by another national bank in Marion County or Hamilton County, Indiana selected by the Board of Directors) during the unpaid period plus two percent (2%).

(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 of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot 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).

18. Mortgages and Unpaid Assessments.

(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 forth 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 17 hereof.

19. Insurance.

(a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Common Area in an amount consonant with the full replacement value of the improvements which in whole or in part, comprise the Common Area. 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.

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. 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.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (i) 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 (ii) contains an endorsement that such policy shall not be terminated for nonpayment of premiums without at least thirty (30) days prior written notice to Mortgagees.

Each Owner shall be solely responsible for loss or damage to his Dwelling Unit and the contents thereof however caused and his personal property stored elsewhere on the Tract and the Corporation shall have no liability to the Owner for such loss or damage. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

(b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, and all persons acting or who may come to

act as agents or employees of any of the foregoing with respect to the Real Estate. 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.

(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. 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 notices of meetings 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. No Owner 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 be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Tract, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation.

20. Casualty and 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. 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 they existed immediately prior to the damage or destruction and with the same type of architecture.

21. Application for Declarant. 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, until the Applicable Date, 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. 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 be or become part of the Common Area, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Tract at any time. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in this Declaration shall not apply to or be binding upon the Corporation in its ownership, management, administration, operation, maintenance,

repair, replacement and upkeep of the Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Corporation in the performance of its duties, obligations and responsibilities as to the Common Areas.

22. 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-five percent (55%) in the aggregate of the votes of all Owners. In the event any Lot or 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 in accordance with the provisions hereof.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 19 with respect to casualty insurance to be maintained by the Corporation, or (3) the provisions of Paragraph 20 of this Declaration with respect to reconstruction or repair of the Common Area in the event of fire or any other casualty or disaster, or (4) the provisions of Paragraph 16 of this Declaration establishing the Committee and providing for its functions, or (5) the provisions of Paragraph 17 of this Declaration with respect to the commencement of assessments or any Lot, without,

in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

(vi) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

(b) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (i) to comply with 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, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, or (iii) to correct clerical, typographical or scrivener's errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and



granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 22 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, or 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 acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 22 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Tract.

23. 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, partnerships, 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. Interpretation. The captions and titles of the various articles, sections, 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.

CIRCLE GROUP, INC.

Attest: \_\_\_\_\_

Title \_\_\_\_\_

By Vincent J. [Signature]

Title President

"Declarant"

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Vincent J. [Signature], by me known and by me known to be the President and \_\_\_\_\_, respectively, of Circle Group, Inc., who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of Towne Lake" on behalf of said corporation.

WITNESS my hand and Notarial Seal this 22<sup>nd</sup> day of August, 1989.

SANDRA S. SMITH  
Hamilton County  
Expiration 3/31/93

Sandra S. Smith  
Notary Public

(Printed Signature)



My Commission Expires:

My County of Residence:

This instrument prepared by Philip A. Nicely, Attorney at Law, Bose McKinney & Evans, 8888 Keystone Crossing, Suite 1201, Indianapolis, Indiana 46240.

63244

**LEGAL DESCRIPTION**

Being part of the Northeast Quarter of Section 8, Township 17 North, Range 3 East in Hamilton County, Indiana described as follows: Beginning at a point on the East line of said Quarter Section being North 00 degrees 00 minutes 00 seconds East (assumed basis of bearing) 898.4 feet from the Southeast corner thereof; thence South 88 degrees 33 minutes 21 seconds West, parallel with the South line of said Quarter Section, 2704.10 feet to the West line thereof; thence North 00 degrees 06 minutes 53 seconds West, on and along said West line 438.27 feet to the Northwest corner of the Southwest Quarter of said Quarter Section; thence North 88 degrees 34 minutes 48 seconds East, on and along the North line of said Quarter Section 1352.48 feet to the Northeast corner thereof; thence North 00 degrees 03 minutes 26 seconds West on and along the West line of the Northeast Quarter of said Northeast Quarter Section, 500.91 feet; thence North 88 degrees 35 minutes 50 seconds East 1352.95 feet to the East line of said Northeast Quarter Section; thence South 00 degrees 00 minutes 00 seconds West, on and along said East line 937.66 feet to the point of beginning, containing 42.713 acres, more or less.

Subject to the right-of-way for Towne Road along the East side of tract.

Subject to an easement for underground cable and incidental purposes in favor of Indiana Bell Telephone Company, Incorporated, dated April 23, 1970, recorded October 2, 1970 in Deed Record 239, page 89.

Subject to all other legal easements and rights-of-way.

EXHIBIT A

This Instrument Recorded 8-30 1969  
Sharon K. Cherry, Recorder, Hamilton County, IN

8918976

**INSTR. # 9507468**

9507468

**FIRST AMENDMENT TO THE DECLARATION OF COVENANTS AND RESTRICTIONS OF TOWNE LAKE AND THE FLAT OF TOWNE LAKE**

SEAN-1 M111-36  
Zachary J. Clark  
Attorney at Law

8  
8

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS AND RESTRICTIONS OF TOWNE LAKE AND THE FLAT OF TOWNE LAKE (the "Amendment") is made this 7 day of November, 1994, by SEAN/CHRISTOPHER HOMES, LLC, an Indiana limited liability company, as successor in interest to Circle Group, Inc., an Indiana corporation ("Declarant").

**RECITALS:**

- A. Declarant has previously recorded in the office of the Recorder of Hamilton County, Indiana a Declaration of Covenants and Restrictions of Towne Lake on August 30, 1989, as Instrument No. 8918976 ("Declaration").
- B. The plat of Towne Lake Subdivision is recorded in Plat Book 15 at Page 54 in the office of the Recorder of Hamilton County, Indiana ("Plat").
- C. Declarant now desires to amend the name of the subdivision from "Towne Lake" to "Pine Lake Estates". The Subdivision Committee of the Carmel Plan Commission approved the name change request at its April 12, 1994 meeting.
- D. Declarant also desires to amend Section 17 (e) of the Declaration.
- E. All of the Owners of the Lots of Towne Lake Subdivision have agreed to the name change and the amendment, which Consent is attached hereto as Exhibit A, and incorporated herein by reference.

NOW, THEREFORE, Declarant hereby amends the Declaration and Plat as follows:

**Section 1. Name.** The Declaration and the Plat are hereby amended to provide that the name of the Subdivision is Pine Lake Estates and the name of the Corporation is Pine Lake Estates Homeowners Association, Inc.

**Section 2. Assessments.** Section 17(e) of the Declaration is hereby amended to read as follows:

(e) **Regular Assessments Prior to the Applicable Date.** During the period that the Declarant is selling Lots and Dwelling Units are being constructed within the Tract, it is difficult to accurately allocate the Common Expenses to the individual Lots. 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

SEAN-1 M111-36  
Zachary J. Clark  
Attorney at Law