

75.00
(34)

DULY ENTERED FOR TAXATION
Subject to final acceptance for transfer
4th day of Aug., 2003
Robin McMillan Auditor of Hamilton County
Parcel # _____

200300077125
Filed for Record in
HAMILTON COUNTY, INDIANA
JENNIFER J HAYDEN
08-04-2003 At 02:30 pm.
DEC COV RES 75.00

DECLARATION OF CONDOMINIUM OWNERSHIP
OF

WATERFORD GARDENS CONDOMINIUM

THIS DECLARATION, made this 1st day of August, 2003, by
ALLISONVILLE, LLC, an Indiana limited liability company (the "Declarant")

RECITALS

A. Declarant is the sole owner of fee simple title to the real estate, and such appurtenant easements and interests that benefit such real estate, located in Fishers, Hamilton County, Indiana, as is more particularly described in Exhibit "A" attached hereto and incorporated herein (collectively, the "Real Estate").

B. Declarant desires to develop the Real Estate as a residential condominium pursuant to the "expandable condominium" provisions of the Indiana Condominium Law, Indiana Code §32-25-1-1 *et seq.*, under the conceptual plan for development as depicted on Exhibit "B" attached hereto (the "General Development Plan").

C. Declarant has constructed the first condominium building on the Real Estate, containing four (4) condominium units, depicted on Exhibit "C" attached hereto ("Building #1"), located on a certain 0.59 acre portion of the Real Estate more particularly described in Exhibit "D" attached hereto ("Tract #1"), and desires to submit and subject Building #1 and Tract #1 to the terms of this Declaration as part of the first phase of the expandable condominium regime.

DECLARATION

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

"Applicable Date" means the earliest of (a) five (5) years from the date of the sale of the first Condominium Unit in Waterford Gardens Condominium; or, (b) four (4) months after seventy-five percent (75%) of the Condominium Units that may be developed on the Real Estate have been conveyed to purchasers, or (c) the date Declarant files of record in the Office of the Recorder of Hamilton County, Indiana, an instrument waiving and releasing its reserved rights as set forth in Paragraph 16 of this Declaration, to expand or further expand Waterford Gardens Condominium.

"Association" means Waterford Gardens Owners Association, Inc. an Indiana nonprofit corporation, being the Association of Owners of Waterford Gardens Condominium as more particularly described in Paragraph 12 hereof.

"Board of Directors" or "Board" means the governing body of the Association, being the initial Board of Directors referred to in the Bylaws or subsequent Board of Directors elected by the Owners in accordance with the Bylaws.

"Building" means any structure located on a portion of the Real Estate in which one or more Condominium Units are located, including any additional structure containing one or more Condominium Units which may be submitted and subjected to the Act and this Declaration by Supplemental Declarations as herein provided. The initial and additional Buildings to be built shall be more particularly described and identified on Plans to be prepared and filed with the Office of the Recorder of Hamilton County and in Supplemental Declaration(s) to this Declaration.

"Bylaws" means the Bylaws of the Association providing for the administration and management of the Property, a true copy of which is attached to this Declaration and incorporated herein by reference as **Exhibit "E"**.

"Constitutional Majority" means those Owners eligible to cast not less than sixty-seven percent (67%) in the aggregate of the Percentage Vote eligible to be cast by the Owners.

"Common Areas" means the common areas and facilities defined in Paragraph 6 of this Declaration.

"Common Expenses" means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Common Areas (to the extent provided herein) and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the Bylaws.

"Condominium" means Waterford Gardens Condominium, a residential condominium development created by this Declaration pursuant to the Indiana Condominium Law.

"Condominium Unit" means the enclosed space consisting of one or more rooms that comprise each of the residential living units located in Building #1 of Tract #1, and the Condominium Units included in all subsequent Tracts and Buildings submitted and subjected to

the Act by Supplemental Declaration of and for Waterford Gardens Condominium as provided herein, each individual living unit being more particularly described and identified on the Plans and in Paragraphs 4 and 5 of this Declaration, together with the undivided interest in the Common Areas and Limited Common Areas appertaining to each such Condominium Unit.

"Declarant" means Allisonville, LLC, an Indiana limited liability company, 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 Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

"Indiana Condominium Law," "Law" or "Act" means Indiana Code §32-25-1-1, *et seq.*, as amended. The Law is incorporated herein by reference.

"Insurance Trustee" means such bank with trust powers authorized to do business in Hamilton County, Indiana, as the Board of Directors may designate for the custody and disposition, as herein or in the Bylaws provided, of insurance proceeds and condemnation awards.

"Limited Common Areas" means the limited common areas and facilities defined in Paragraph 7 of this Declaration.

"Majority of Mortgagees" means those Mortgagees who hold first mortgages on Condominium Units to which are allocated at least fifty-one percent (51%) of the Percentage Vote allocated to Mortgaged Units.

"Majority of Owners" and "Majority of the Percentage Vote" means the Owners entitled to cast more than fifty percent (50%) of the Percent Votes in accordance with the applicable percentages set forth in this Declaration.

"Mortgaged Unit" means a Condominium Unit that is subject to the lien of a mortgage held, insured or guaranteed by a Mortgagee.

"Mortgagee" means the holder, insurer or guarantor of a first mortgage lien on a Condominium Unit who has requested notice in accordance with the provisions of Section 12.01 of the Bylaws.

"Owner" means a Person who or which owns the fee simple title to a Condominium Unit.

"Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Common Areas appertaining to each Condominium Unit as specifically expressed in Paragraph 8 of this Declaration.

"Percentage Vote" means that percentage of the total vote accruing to all of the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof.

"Person" means an individual, firm, corporation, partnership, association, trust, limited liability company, or other legal entity, or any combination thereof.

"Plans" means the General Development Plan (which depicts the Real Estate and the general plan of development for expansion of the Waterford Gardens Condominium in additional phases to a maximum of eighty (80) Condominium Units); the site plan for Tract #1 and Building #1 that Declarant is submitting and subjecting to the Act by recordation of this Declaration, attached as Exhibit "C"; and "Floor Plans" (showing the layout, elevation, location, unit numbers and dimensions of Building #1 and its Condominium Units, and all subsequent Buildings and Condominium Units), which shall be prepared and certified by a registered architect or licensed professional engineer and shall certify that such Plans are accurate copies of portions of the plans of the Building(s) as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of the building(s), and shall include a verified statement by registered architect or licensed professional engineer that such plans fully and accurately depict the layout, location, unit numbers and dimensions of the Condominium Units as built, which shall be recorded prior to the first conveyance of any Condominium Unit depicted in such Plans, and as such Plans may be supplemented and amended to reflect the addition of Buildings and Condominium Units in further phases as contemplated by Paragraph 16. The plat of Tract #1 and the Floor Plans for Building #1 and the Condominium Units that comprise Building #1 shall be recorded contemporaneously with this Declaration, and the Book, Page, Date of Record and Instrument No. of such Plans shall be set forth on Exhibit "F," attached hereto and incorporated herein.

"Property" means Tract #1 and appurtenant easements, the Condominium Units, Building #1, and all other improvements, and property of every kind and nature whatsoever, real or personal, that is or are located on Tract #1 and that shall be used in connection with the operation, use and enjoyment of the Waterford Gardens Condominium, excluding the personal property of Owners, and all additional Tracts that shall formally be subjected and submitted to the Waterford Gardens Condominium regime upon filing of Supplemental Declaration(s) and supplemental and amended Plans.

"Restoration" means construction, reconstruction, building, or rebuilding of the Buildings, the Condominium Units, the Common Areas and the Limited Common Areas to not less than the same condition as they existed immediately prior to any loss, damage or destruction with the same type of architecture and using, where appropriate, new materials of like kind and quality.

"Supplemental Declaration" means any supplement or amendment to this Declaration that may be recorded by Declarant and that imposes and extends the provisions of this Declaration to any part of the Real Estate and contains such complementary or supplementary provisions for such part of the Real Estate as are required or permitted by the Act or this Declaration.

"Tract" means Tract #1 and such other portions of the Real Estate that shall be identified as Tract #2, Tract #3 and continuing successively, as have, as of any given time, been subjected to the Act by this Declaration, by a Supplemental Declaration, and filing of the Plans as herein provided.

"Waterford Gardens" or "Waterford Gardens Condominium" means the name by which the Property and Condominium shall be known.

2. **Declaration.** Declarant hereby expressly declares that the Property shall be a residential condominium development in accordance with the provisions of the Indiana Condominium Law.

3. **Description of Buildings.** As depicted on the General Development Plan, there shall be located on the Real Estate single story Buildings, some containing Four (4) Condominium Units and others Two (2) Condominium Units. The first such building, located on Tract #1, shall be known as Building #1. In Supplemental Declarations, additional Buildings shall be identified on the Plans as Building #2, Building #3, etc. A depiction of Building #1 and the Condominium Units contained therein is set forth in the Plans for Tract #1 and Building #1, attached as Exhibit "D," and more particularly depicted and described on the Plans as filed of record with the Office of the Recorder of Hamilton, County, Indiana as specified on Exhibit "F" attached hereto. A depiction of the Buildings and the Condominium Units contained in additional Tracts shall be set forth in subsequent Plans, copies of which shall be attached to one or more Supplemental Declarations, and subsequent Buildings and Condominium Units shall be identified in subsequent Supplemental Declarations.

4. **Legal Description.** Each Condominium Unit shall be identified on the Plans by a distinct number which identifies the Condominium Unit. The legal description for each Condominium Unit shall consist of the number for such Condominium Unit as shown on the Plans, and shall be stated as "Condominium Unit (the identifying number) in the Waterford Gardens Condominium".

5. **Description of Condominium Units.**

(a) **Appurtenances.** Each Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including, without limitation, all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Unit wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit or which may be necessary for the safety, support, maintenance, use and operation of any of the Buildings or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Condominium Unit shall constitute a part of such Condominium Unit, whether or not the same are located within or partly within the

boundaries of such Condominium Unit. The spaces attached to each Building designated garage and storage spaces and the driveways leading to such spaces as shown on the Plans are considered a part of and for the exclusive use of the Condominium Unit of such Building to which such garage and storage space appertains as indicated on the Plans, and shall be considered as Limited Common Area hereinafter defined in Paragraph 7. The interior sides and surfaces of all doors and windows in the perimeter walls of a Condominium Unit, whether or not located within or partly within the boundaries of a Condominium Unit, and all interior walls (except load-bearing walls) and all of the floors and ceilings within the boundaries of a Condominium Unit, are considered part of the Condominium Unit.

b) **Boundaries.** The boundaries of each Condominium Unit shall be as shown on the Plans without regard to the existing construction. The vertical boundaries shall run from the upper surfaces of the interior, unfinished surfaces of the lowest floors or subfloors to the interior unfinished surfaces of the highest ceilings and the horizontal boundaries shall be the interior, unfinished surfaces of the common exterior and interior load-bearing walls (including windows and doors) of each Condominium Unit. In the event any horizontal, vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Condominium Unit, because of inexactness of construction, settling after construction, Restoration, or any other reason, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to such space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor or ceiling surfaces of the Condominium Unit.

6. **Common Area and Facilities.** "Common Areas" mean (a) the land on which the Buildings shall be located, (b) the foundations, roofs and exterior wall surfaces of the Buildings, (c) the clubhouse including all furniture and fixtures, pool, yards, gardens, open spaces, landscaping, lakes, ponds, storm water pipes, inlets, manholes and other storm drainage improvements and facilities, woodland areas, sidewalks, streets, roads, driveways, and parking areas, except to the extent the same are otherwise classified and defined herein as Limited Common Areas or are reserved or excluded from the Condominium as provided in Paragraph 18, below, (d) central electricity, telephone, cable, gas, water, sanitary sewer lines, mains serving the Condominium Units, (e) exterior lighting fixtures and electrical service lighting the exterior of the Buildings and certain of the other Common Areas unless separately metered to a particular Condominium Unit, (f) master television antenna or other telecommunication systems with connecting wiring and outlets to each Condominium Unit, if any, (g) pipes, ducts, insulation, electrical wiring and conduits and public utilities lines that serve more than one Condominium Unit, (h) the recreational facilities, if any, located on a Tract, (i) subfloors, ceilings and interiors of all structural walls, including all exterior perimeter and other load-bearing walls, walls between attached Condominium Units, walls and floors between the garage and the Condominium Unit, except to the extent the same are otherwise classified and defined herein as

part of the Condominium Unit or Limited Common Areas, (j) all structures, structural components, facilities and appurtenances located outside of the boundary lines of the Condominium Units, including those areas and facilities expressly classified and defined herein as Limited Common Areas but excluding such areas that are part of a Condominium Unit.

7. **Limited Common Areas and Facilities.** "Limited Common Areas" means those Common Areas and facilities of a Tract to which use thereof is limited to a Condominium Unit Owner as follows:

(a) The entranceways through which access to a Condominium Unit is obtained shall be limited to the use of the Condominium Unit served by such entranceway.

(b) Balconies, patios, decks and porches, storage areas, if any, together with any area around such patios, deck or porch or in the garage area specifically shown and designated on the Plans and any fences and gates therein enclosing or surrounding the same, and the driveways and sidewalks serving a particular Condominium Unit to which there is direct access shall be limited to the use of the Condominium Unit served by such facilities.

(c) Air conditioning compressors, if any, attached to, or located in, a Building are limited to the use of the Condominium Units to which they are connected.

(d) The exterior sides and surfaces of doors, windows and frames surrounding the same in the perimeter walls in each Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they appertain.

(e) Any other areas designated and shown on the Plans as Limited Common Areas shall be limited to the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

8. **Ownership of Common Area and Percentage Interest.** Each Owner shall have an undivided interest in the Common Areas and Limited Common Areas equal to such Owner's respective Percentage Interest. The Percentage Interest in the Common Areas and Limited Common Areas appertaining to each Condominium Unit is set forth in **Exhibit "G"** attached hereto and made a part hereof. The Percentage Interest of each Condominium Unit shall be equal for all purposes and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units that, from time to time, have been submitted and subjected to the Act and this Declaration as herein provided and that constitute a part of Waterford Gardens Condominium. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Common Areas shall be of a permanent nature and shall not be altered except in compliance with all requirements of the Act.

The Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to Waterford Gardens Condominium and the Association upon which the Owners are entitled to vote.

9. **Encroachments and Easements for Common Areas.** If, by reason of the location, construction, Restoration, settling or shifting of a Building, any Common Area or Limited Common Area now encroaches or shall hereafter encroach upon any Condominium Unit, then in such event, an easement shall be deemed to exist and run to the Owners and the Association for the maintenance, use and enjoyment of such Common Area or Limited Common Area.

Each Owner shall have an easement in common with the Owner of all other Condominium Units to use all pipes, wires, ducts, flues, cables, conduits, utility lines and other common facilities located in any of the other Condominium Units and serving his Condominium Unit.

Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Condominium Unit and any Limited Common Area designated for use in connection therewith, and shall have the right to the horizontal and lateral support of his Condominium Unit. Such rights shall be appurtenant to and pass with the title to each Condominium Unit.

10. **Casualty and Restoration.** In the event of damage or destruction of the Property by fire or other cause, the following provisions shall be applicable:

(a) **Partial Destruction.** In the event that less than all of the Buildings are completely destroyed by the occurrence of fire or by other cause, then the Association shall cause the Property to be promptly repaired and restored in accordance with this Declaration and the original Plans and specifications. The proceeds of the insurance carried by the Association shall be applied to the cost of such Restoration. If the insurance proceeds are not adequate to cover the cost of Restoration, or in the event there are no proceeds, the cost for restoring the damage shall be paid by all of the Owners of the Condominium Units based on their Percentage Interest. If any Owner, or Owners, refuses or fails to make the required payments, the other Owners shall (or the Association, if such other Owners fail to do so) complete the Restoration and pay the cost thereof, and the cost attributable to the Owner or Owners who refuse or fail to make such payments at the time required by the Board of Directors shall become a lien on such defaulting Owner's Condominium Unit and may be foreclosed in the same manner as provided for the lien for Common Expenses.

(b) **In the Event of Complete Destruction.** In the event of complete loss or destruction of all the Buildings, this Condominium shall terminate, the Property shall be deemed owned in common by the Owners and the provisions of Indiana Code §32-25-8-12 shall apply.

(c) **Determination of Complete Destruction.** It shall be conclusively presumed that complete destruction of all Buildings did not occur unless it is determined by a Constitutional Majority at a special meeting of the Association held within thirty days following the date of damage or destruction that all Buildings have been completely destroyed together with written consents of the Majority of Mortgagees.

11. **Condemnation.** If at any time or times during the continuance of this Condominium, all or a part of the Property shall be taken or condemned by any Person with the power of eminent domain or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall be applicable:

(a) **Representation.** The Association, or the Insurance Trustee, if so appointed by the Association shall represent the Owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority. Each Owner hereby appoints the Association or its designee as attorney-in-fact for the purposes described in this subparagraph.

(b) **Proceeds.** All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Insurance Trustee as trustee for all Owners and their Mortgagees according to their respective interests therein.

(c) **Total Taking.** In the event that the entire Property is taken or condemned, or sold or otherwise disposed of or in lieu of or in avoidance thereof, this Condominium shall terminate. The Condemnation Award shall be apportioned among the Owners in accordance with their respective Percentage Interests and paid into separate accounts, each such account representing one Condominium Unit. Each such account shall remain in the name of the Insurance Trustee and shall be further identified by the legal description of the Condominium Unit and the name of the Owner. From each separate account the Insurance Trustee shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to the payment of valid tax and special assessment liens on the Condominium Unit in favor of any governmental taxing or assessing authority, next to payment of any assessments made pursuant to this Declaration or the Bylaws, next to other holders of liens or encumbrances on the Condominium Unit in the order of priority of their liens, and the balance remaining, if any, to each respective Owner.

(d) **Partial Taking.** In the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, this Condominium shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Insurance Trustee shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows:

(i) the total amount allocated to the taking of or injury to the Common Areas and Limited Common Areas shall be apportioned among the Owners in proportion to their respective Percentage Interests;

(ii) the total amount allocated to the severance damages shall be apportioned to the Owners of those Condominium Units that were not taken or condemned;

(iii) the respective amounts allocated to the taking of or injury to a particular Condominium Unit and/or improvements an Owner has made within his own Condominium Unit shall be apportioned to the Owner of the particular Condominium Unit involved; and

(iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Insurance Trustee determines to be equitable in the circumstances.

If any allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Insurance Trustee shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by the Insurance Trustee by checks payable jointly to the respective Owners and their respective Mortgagees, provided that, with respect to an Owner whose Condominium Unit was taken or condemned, there shall first be deducted therefrom and paid or applied by the Insurance Trustee as appropriate such Owner's pro-rata share of the expenses of the Insurance Trustee, the amounts of any valid tax or special assessment lien in favor of any governmental taxing or assessing authority and any assessments made pursuant to this Declaration or the Bylaws.

(e) **Reorganization.** In the event a partial taking results in the taking of a complete Condominium Unit, the Owner thereof shall automatically cease to be an Owner and a member of the Association. Thereafter, the Board of Directors shall reallocate to the remaining Owners, pro-rata, the Percentage Interest and Percentage Vote of such Owner. Such reallocation shall be submitted by the Board of Directors to the Owners of the remaining Condominium Units for approval by a Constitutional Majority thereof and appropriate amendment of this Declaration, but any such amendment to be effective must be approved by the Majority of Mortgagees.

(f) **Restoration and Repair.** Anything to the contrary in this Paragraph 11 notwithstanding, in the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof and any Condominium Unit, Common Area or Limited Common Area may reasonably be restored or repaired, as determined by an independent licensed architect or engineer employed by the Board of

Directors for making such determination or by the Majority of Mortgagees, the amount, if any, of the Condemnation Award allocable to the taking of or injury to the Common Areas and Limited Common Areas and to severance damages shall be applied to the cost of Restoration or repair of such Common Area and/or Limited Common Area, and the amount, if any, allocable to the taking of or injury to a particular Condominium Unit that may be restored or repaired shall be applied to the cost of such Restoration or repair. If any amount of the Condemnation Award then remains, such amount shall be allocated and disbursed in accordance with the provisions of subparagraph (d) above. If the amount of the Condemnation Award is insufficient to cover the cost of any such Restoration or repair, the provisions of Paragraph 10(a) shall apply.

(g) **Alternative Valuation in Event of Total Taking.** In the event the amount of the Condemnation Award is determined in negotiation, judicial decree or otherwise according to the value of individual Condominium Units as separately determined, the Condemnation Award shall be apportioned, with respect to such Condominium Units, according to the values so determined and not in accordance with the respective Percentage Interests of the Owners; but if the value of the Common Areas and/or Limited Common Areas is determined separately, the amount of the Condemnation Award attributable thereto shall be allocated among the Owners in accordance with their respective Percentage Interests.

12. **Association of Owners.** Subject to the rights of Declarant reserved in Paragraph 19 hereof, the maintenance, repair upkeep, replacement, administration, management and operation of the Property shall be by the Association. Each Owner shall, automatically upon becoming an Owner of a Condominium Unit, be and become a member of the Association and shall remain a member until such time as his ownership ceases, but membership shall terminate when such Person ceases to be an Owner, and will be transferred to the new Owner.

The Association shall elect a Board of Directors annually (except for the Initial Board as defined in the Bylaws) in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast his Percentage Vote for the election of the Board of Directors, except for the Initial Board who shall serve for the period provided in the Bylaws. 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 Association and an Owner solely for the purposes of the Statute (as defined in the Bylaws) and 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 Association nor an Owner for any other purpose (unless he is actually an Owner and thereby a member of the Association).

An individual designated by an Owner that is not a natural Person shall be deemed a member of the Association for the purpose of qualifying for membership on the Board of Directors.

The Board of Directors shall be the governing body of the Association, representing all of the Owners in providing for the management, administration, operation, maintenance, repair,

replacement and upkeep of the Property (exclusive of the Condominium Units except to the extent herein or in the Bylaws otherwise provided).

13. Covenants and Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Condominium Units, the Common Areas and Limited Common Areas are set forth in the Bylaws, including the limitation that each of the Condominium Units shall be limited to residential use. These covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or the Association. Present or future Owners and the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for and injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the Bylaws, including but not limited to any covenants and restrictions set forth in the Bylaws, Declarant shall have, until the date described in Paragraph 16 hereof as the date upon which Declarant's right to expand the Property and Waterford Gardens Condominium terminates, the right to use and maintain any Condominium Units owned by Declarant, such other portions of the Property (other than individual Condominium Units owned by persons other than Declarant) and any portions of the Real Estate not then part of a Tract, 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 renovation and sale of Condominium Units, or to promote or effect sales of Condominium Units or for the conduct of any business or activity attendant thereto, including, without limitation, model Condominium 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 Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Property at any time.

14. Amendment of Declaration. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) **Notice.** Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

(b) **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 Percentage Vote.

(c) **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 Bylaws.

(d) **Adoption.** Except as otherwise provided herein, any proposed amendment to this Declaration must be approved by a Majority of Owners.

(e) **Restrictions on Amendments.**

(i) The unanimous consent of all Owners and the approval of all holders of all liens affecting any of the Condominium Units shall be required to (1) terminate the Condominium, or (2) alter interests in the Common Areas or Limited Common Areas, except as otherwise provided in Paragraph 16 hereof.

(ii) The consent of a Constitutional Majority and the approval of the Majority of Mortgagees shall be required to amend materially any provisions of the Declaration, Bylaws or equivalent organizational documents of the Condominium or to add any material provisions thereto which establish, provide for, govern or regulate any of the following:

(A) voting rights;

(B) increases in assessments that raise the previously assessed amount by more than twenty five (25%) percent, assessment liens or subordination of such liens;

(C) reductions in reserves for maintenance, repair and replacement of the Common Areas;

(D) hazard or fidelity insurance requirements;

(E) responsibility for maintenance and repair;

(F) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium except as provided for in Paragraph 16;

(G) redefinition of the boundaries for any Condominium Unit;

(H) the interest in the Common Areas or Limited Common Areas;

(I) convertibility of Condominium Units into Common Areas or Common Areas into Condominium Units;

(J) imposition of any restrictions on the leasing of Condominium Units;

(K) imposition of any restriction on the right of an Owner to sell, transfer or otherwise convey his Condominium Unit.

(L) restoration or repair of the Property (after damage or partial condemnation in a manner other than that specified in the Declaration, Bylaws or equivalent documents of the Condominium, or as prescribed pursuant to the Act.

(iii) The consent of a Constitutional Majority and the approval of the Majority of Mortgagees shall be required to amend any provisions included in the Declaration, Bylaws or the equivalent organizational documents of the Condominium that are for the express benefit of Mortgagees.

(f) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association provided that any amendment requiring the consent of Declarant shall contain Declarant's signed consent. All amendments shall be recorded in the office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

(g) **Amendments by Declarant Only.** Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have the right acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration from time to time if (i) such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time, (ii) such amendment or supplement is made to implement expansion of the Property and Waterford Gardens Condominium pursuant to Declarant's reserved rights to so expand the same, or to forego such expansion, as set forth in Paragraph 16 hereof, (iii) such amendment or modification is necessary to conform this Declaration to requirements of applicable public authorities, including but not limited to the Town Council and Plan Commission of the Town of Fishers, Indiana, (iv) such amendment or supplement is made 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, the Veterans Administration 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, (v) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages, or (vi) if such amendment or supplement is made to correct clerical or typographical errors. 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 14 on behalf of each Owner as proxy or attorney-in-fact, as the case may be.

Each deed, mortgage or other instrument affecting a Condominium 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 amendment, but the right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 14 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

15. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the Bylaws appended hereto, and the rules and regulations as adopted by the Board of Directors as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Condominium Unit shall constitute an agreement that the provisions of this Declaration, the Act, the Bylaws 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 bind any person having at any time any interest or estate in a Condominium Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may occupy, use, enjoy or control a Condominium Unit or Condominium Units or any part of the Property in any manner shall be subject to the Declaration, the Act, the Bylaws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

16. Expandable Condominium and Declarant's Reserved Option Not to Expand. Waterford Gardens Condominium is and shall be an "expandable condominium," as defined in the Act, and Declarant expressly reserves the right and option to expand the Property and Waterford Gardens Condominium in accordance with the provisions of the Act and the following provisions:

(a) The real estate that shall be described and defined as Tract 1, Exhibit "D" to this Declaration, shall be the real estate subjected to the Condominium by this Declaration and shall constitute the first phase of the General Development Plan, containing Building #1, with four Condominium Units. The Real Estate described in Exhibit "A" (except for those areas that may be dedicated to the public for streets and rights-of-way as set forth in Paragraph 18, below, or as otherwise excepted or reserved in this Declaration) is the area into which expansion of Waterford Gardens Condominium may be made by Declarant. The maximum number of Condominium Units that may be developed on the Real Estate shall be eighty (80). Subject to said limit as to the maximum number of Condominium Units to be developed on the Real Estate, Waterford Gardens Condominium may be expanded by Declarant in one (1) or more additional phases by the execution and recording of one (1) or more Supplemental Declarations; but no single exercise of such right and option of expansion as to any part or parts of the Real Estate shall preclude Declarant from thereafter from time to time further expanding Waterford Gardens Condominium to include other portions of the Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Real Estate so long as additional phases are developed within five (5) years and all such phases are added to the Condominium within ten (10) years from date of recording hereof. Such expansion is entirely at the discretion and option of Declarant

and nothing contained in this original Declaration or otherwise shall require Declarant to expand Waterford Gardens Condominium to any portion of the Real Estate that Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration by Supplemental Declarations as provided above.

(b) The Percentage Interest that will appertain to each Condominium Unit in Waterford Gardens Condominium, as Waterford Gardens Condominium may be expanded from time to time by Declarant in accordance with the terms hereof (including the Percentage Interest that appertains to each of the Condominium Units included in this original Declaration), shall be equal and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units that, from time to time, have been subjected and submitted to this Declaration and then constitute a part of Waterford Gardens Condominium.

(c) Simultaneously with the recording of Supplemental Declarations expanding Waterford Gardens Condominium, Declarant shall record Plans as required by the Act. Such Supplemental Declarations shall also include provisions reallocating Percentage Interests so that the Condominium Units depicted on such new Plans shall be allocated Percentage Interests in the Common Areas and Limited Common Areas on the same basis as the Condominium Units depicted in the prior Plans. Such reallocation of Percentage Interests shall vest when each Supplemental Declaration incorporating those changes has been recorded.

(d) When the Supplemental Declaration incorporating the creation or addition of Condominium Units or expansion of Common Areas and Limited Common Areas, or both, is recorded, all liens including but not limited to mortgage liens shall be released as to the Percentage Interests in the Common Areas and Limited Common Areas described in this Declaration and shall attach to the reallocated Percentage Interests in the Common Areas and Limited Common Areas as though the liens had attached to those Percentage Interests on the date of the recordation of the mortgage or other lien. The Percentage Interests appertaining to additional Condominium Units being added by the Supplemental Declaration are subject to mortgages and liens upon the recordation of the Supplemental Declaration.

(e) In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, as attorney-in-fact, to shift the Percentage Interest in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit to the percentages set forth in each Supplemental Declaration recorded pursuant to this Paragraph 16. Each deed, mortgage or other instrument with respect to a Condominium Unit and the acceptance thereof shall be deemed a consent to and acknowledgment of, and grant of (i) such power to said attorney-in-fact and (ii) the right pursuant to such power to shift and reallocate from time to time the percentages of ownership in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit to the percentages set forth in each such recorded Supplemental Declaration.

(f) Each Owner of a Condominium Unit by acceptance of a deed thereto, further acknowledges, consents and agrees, as to each recorded Supplemental Declaration, as follows:

(i) The portion of the Real Estate described in each such Supplemental Declaration shall be governed in all respects by the provisions of this Declaration.

(ii) The Percentage Interest in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit shall automatically be shifted and reallocated to the extent set forth in each Supplemental Declaration and upon the recording thereof such Percentage Interest shall thereby be and be deemed to be released and divested from such Owner and reconveyed and reallocated among the other Owners as set forth in each recorded Supplemental Declaration.

(iii) Each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed given subject to the conditional limitation that the Percentage interest in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit shall, upon the recording of each Supplemental Declaration, be divested by so much as the reduced percentage set forth in such Supplemental Declaration and vested among the other Owners, mortgagees and others owning an interest in the other Condominium Units in accordance with the terms and percentages of each such recorded Supplemental Declaration.

(iv) A right of revocation is hereby reserved by the grantor in each deed, mortgage or other instrument affecting a Condominium Unit to so amend and reallocate the Percentage Interest in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit.

(v) The Percentage Interest in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit shall include and be deemed to include any additional Common Areas and Limited Common Areas included in land to which Waterford Gardens Condominium is expanded by a recorded Supplemental Declaration and each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed to include such additional Common Areas and Limited Common Areas and the ownership of any such Condominium Unit and lien of and such mortgage shall automatically include and attach to such additional Common Areas and Limited Common Areas as such Supplemental Declarations are recorded.

(vi) Each Owner shall have a perpetual easement appurtenant to his Condominium Unit for the use of any additional Common Areas described in any recorded Supplemental Declaration, for the purposes therein set forth, except as to

any portion the use of which is limited by exclusive easements granted in the Limited Common Areas to the Owners of specific Condominium Units as may be provided in such Supplemental Declaration, and each Owner of a Condominium Unit described in any recorded Supplemental Declaration shall have a perpetual easement appurtenant to his Condominium Unit for the use of all Common Areas (except Limited Common Areas) described in this Declaration as supplemented or amended prior to the date of such recorded Supplemental Declaration.

(vii) The recording of any Supplemental Declaration shall not alter the amount of the lien for expenses assessed to or against a Condominium Unit prior to such recording.

(viii) Each Owner, by acceptance of the deed conveying his Condominium Unit, agrees for himself and all those claiming under him, including mortgagees, that this Declaration and each Supplemental Declaration are and shall be deemed to be in accordance with the Act and, for the purposes of this Declaration and the Act, any change in the respective Percentage Interests in the Common Areas and Limited Common Areas as set forth in each Supplemental Declaration shall be deemed to be made by agreement of all Owners.

(ix) Each Owner agrees to execute and deliver such documents necessary or desirable to cause the provisions of this Paragraph 16 to comply with the Act as it may be amended from time to time.

(x) Assessments, method of payment and enforcement thereof on Condominium Units built as an expandable Condominium Unit pursuant to any Supplemental Declaration shall be governed by the same provisions pertaining to Assessments as set forth in the Bylaws.

(xi) Voting rights of an Owner in an expandable Condominium Unit created by Supplemental Declaration shall vest upon becoming a Member of the Association as prescribed by the Bylaws.

(g) In the event Declarant elects to expand the Property and Waterford Gardens Condominium, all improvements constructed on the Real Estate shall be consistent with the General Development Plan and the improvements constructed on each expansion tract (one or more of which may be referred to herein in the singular as the "Expansion Parcel") shall be consistent with the improvements then located on the Real Estate and forming a part of the Condominium in terms of structure type and the quality of construction. No lien arising in connection with Declarant's ownership of, and construction of improvements on, any such Expansion Parcel shall adversely affect the rights of existing Owners or the priority of first mortgages on Condominium Units in the existing Property. All taxes and other assessments relating to the Expansion Parcel covering any period prior to the addition of the Expansion Parcel shall be paid by or otherwise satisfactorily provided for by Declarant.

17. **Granting and Amendment of Easements.** After the Applicable Date, the Board of Directors is granted the authority to grant such easements and to amend easements encumbering the Common Areas upon such terms and conditions and for such consideration as they deem appropriate.

18. **Grant of Access Easement for Ingress and Egress; Dedication of Public Streets; Use and Maintenance of Streets; Reservation of Easement Rights with Respect to the Use of the Common Areas; Easements for Public Utility Services and Facilities; Other Easements and Encumbrances.**

(a) Certain streets and roads bisect the Real Estate, have been designed and constructed to serve the Property, and have been designated "Easy Street," "Red Fox Run," "Avila Way" and "Quail Run" on the Waterford Gardens Condominium Conditional Final Plat, recorded in the office of the Recorder of Hamilton County, Indiana, Instrument No. 2003-70602, and the General Development Plan (the "Streets"). As required by the Town of Fishers, Indiana, under the terms and conditions of its Ordinance 080601C, dated October 15, 2001, Declarant and/or the Association shall offer to dedicate a right-of-way corridor fifty feet (50') in width (the "**Right of Way Corridors**"), that shall include the Streets, for perpetual use by the public for vehicular and pedestrian access, and for public utility facilities and improvements. Upon acceptance of the Streets and Right of Way Corridors by the Town of Fishers for use by the public, the Streets and Right of Way Corridors shall be maintained by the Town of Fishers. Upon such dedication and acceptance, the Streets and Right of Way Corridors shall no longer be subject to the terms and conditions of this Declaration and shall be regulated by the laws, ordinances, and rules and regulations of the Town of Fishers, Indiana, and other applicable public authorities.

(b) Until such time as the Streets and Right of Way Corridors dedicated to the public and accepted by applicable public authorities, or with respect to those portions of the streets and roads not so dedicated or accepted, Declarant hereby gives, grants and conveys a perpetual, non-exclusive easement appurtenant to and for the benefit of the Real Estate for use of the Streets and Right of Way Corridors for vehicular and pedestrian access to and from the Real Estate and public streets abutting the Real Estate, and for the installation and maintenance of public utility facilities and improvements to serve the Real Estate. The Streets and Right of Way Corridors shall be maintained as Common Area by the Owners until the Streets and Right of Way are accepted for public dedication. Vehicle parking shall not be allowed in the Streets and Right of Way Corridors, and shall be strictly limited to those areas specifically set aside and designated as parking areas in the Plans or in the driveways and aprons appurtenant to each Condominium Unit; except, however, upon dedication and acceptance of the Streets for public right-of-way, parking in the public right-of-way shall be limited by applicable ordinance adopted by the Town of Fishers.

(c) If the Town of Fishers fails to accept the Streets and Right of Way Corridors for public dedication, the Declarant, or, after the Applicable Date, the Owners, shall be entitled to submit and subject such areas to dedication as part of the Common Areas of the Condominium, to be so owned, managed, maintained and replaced by the Owners as provided by this Declaration. In such event, the Streets and Right of Way Corridors shall be subjected to this Declaration by execution and recordation of a Supplemental Declaration as provided herein.

(d) If, at any time, and from time to time, any portion of the Real Estate has not been subjected and submitted to this Declaration or to the Act by a Supplemental Declaration and such portion or portions of the Real Estate not so subjected to this Declaration or to the Act is/are developed with single or multi-family dwelling units (whether for rent or otherwise), then the owner or owners of such portions of the Real Estate, including without limitation their families, tenants and guests, shall have the benefit of the easement for access and utilities over, under and across the Streets and Right of Way Corridors as provided above, and an easement over, under and across the Common Areas for the use of Persons occupying such dwelling units upon the same terms and conditions as the owners of the Condominium Units, their families, tenants and guests. If the Streets and Right of Way Corridors have not been accepted for public dedication, the owner or owners of such portions of the Real Estate shall then pay for the cost of operation and maintenance of the Streets and Right of Way Corridors, or such other facilities used in common with the Owners, for the year of such usage and based on the number of dwelling units so entitled to use such facilities in the proportion that the number of dwelling units on the Real Estate exclusive of Condominium Units on any Tract bears to the sum of (i) such number of dwelling units plus (ii) the number of Condominium Units. The owner or owners of such dwelling units shall make payments for the usage provided herein to the Association at the same time and in the same manner as the Owners of Condominium Units pay their assessments to the Association.

(e) Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas, including, to the extent necessary, the Limited Common Areas, for the purposes of installing, maintaining, repairing, replacing, relocating and otherwise servicing all customary and necessary public utility facilities and installations to serve the Property, any portions of the Real Estate that are not part of the Property, and/or other real estate, including but not limited to water, sanitary sewer, electricity, telephone, cable television or other telecommunication services, as originally installed or as such may be improved or modified from time to time; to provide access to and ingress and egress to and from the Property, to any such portions of the Real Estate that are not part of the Property, and to other real estate; to make improvements to and within the Property, to any such portions of the Real Estate that are not part of the Property, and to other real estate; to make sidewalk improvements, and repairs thereto, within the Property and any such portions of the Real Estate that are not part of the Property; and to provide for the rendering of public and quasi-public services to the Property, to such portions of the Real Estate that are not part of the Property, and to other real estate. The foregoing easement shall be a transferable easement, and, as reasonably

requested by public or private utility companies or other applicable Persons, Declarant may at any time and from time to time grant and convey such easements by separate instruments to establish and confirm such easement rights to the satisfaction of such public or private utility companies or other Persons for the same purposes. By way of example, but not in limitation of the generality of the foregoing, Declarant, and others to whom Declarant may grant such similar easements, rights or privileges, may so use the Common Areas and, to the extent necessary, the Limited Common Areas, to supply utility and telecommunication services to the Property, to any portions of the Real Estate that are not part of the Property, and to other real estate, and to permit 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, and their personnel to enter upon and use the drives and streets, the Common Areas and, to the extent necessary, the Limited Common Areas of Waterford Gardens Condominium in the performance of their duties.

(f) The Property is also subject to such other easements and restrictions as may be of record prior to recordation of this Declaration, and use and ownership of the Property and the Common Areas shall be subject to such prior existing easements, restrictions and covenants of record.

19. **Initial Management.** As set forth in the Bylaws, the Initial Board of Directors consists and will consist of Persons selected by Declarant until the Applicable Date. The Board of Directors has entered, or may hereafter enter, into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term which will expire not later than the Applicable Date, under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Areas, and, to the extent the same is not otherwise the responsibility of Owners of individual Condominium Units, the Limited Common Areas, and, in general, perform all of the duties and obligations of the Association. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) at any time prior to the expiration of its term, in which event the Association shall thereupon and thereafter resume performance of all of its duties and obligations and functions. Notwithstanding anything to the contrary contained herein, so long as such management agreement remains in effect, Declarant (or its affiliate, as appropriate) shall have, and Declarant hereby reserves to and for its benefit (or to its affiliate, as appropriate), the exclusive right to manage the Property and to perform all the functions of the Association.

The Initial Board may extend the management agreement beyond the Applicable Date providing the contract includes a right of termination without cause that the Association can exercise at any time after the Applicable Date. Any professional management contract, including without limitation any such contract with the Declarant, shall not require the payment of any penalty or an advance notice of more than ninety (90) days as a condition to the right of termination. Both the term and termination provisions apply only to professional management contracts and not to any other types of service contracts.

20. Assessments and Limitation on Declarant's Liability for Assessments. Owners are obligated to contribute pro rata in the same percentages as their established Percentage Interest in Common Areas and Limited Common Areas set forth in Paragraph 8 of this Declaration to the usual and ordinary maintenance and replacement reserve fund to assure continuous and adequate maintenance of Waterford Gardens Condominium as prescribed by the Act, and the assessment procedures and the method of collection and enforcement set forth under Article VI of the Bylaws attached to this Declaration. Provided, however, Declarant or its successors in interest, as an Owner, shall be excused from payment of assessments from the date this Declaration is recorded until the first day of the twenty-fourth (24th) calendar month following the month in which the closing of the sale of the first Condominium Unit in any Tract occurs; such provision shall also apply to assessments for Condominium Units owned by Declarant in Buildings located in subsequent Tracts committed to the Condominium by Supplemental Declarations. Provided, further, that if the annual expenses of the Owner's Association incurred under the assessment procedure exceed the amount assessed against the other Unit Owners (excluding the Declarant), then the Declarant or its successor shall pay the excess required during this twenty-four (24) month period on an annual basis. Prior to the Applicable Date, Declarant shall bear all expenses incurred with respect to any Tract arising out of construction or other activities on any portion of the Real Estate not included in that Tract, including but not limited to road damage and clean-up of debris caused by construction traffic, connection to any utility lines or mains located on that Tract and damage to, or deterioration of, grass, trees, fences or other portions of the Property due to construction off site or the state of areas under development.

21. Sale or Lease of Condominium Unit by Owners.

(a) **Lease.** It is in the best interests of all the Owners that those persons residing in Waterford Gardens Condominium have similar proprietary interests in their Condominium Units and be Owners. For the purpose of maintaining the congenial and residential character of Waterford Gardens Condominium, no Owner including the Declarant shall lease his Condominium Unit or enter into any other rental or letting arrangement for his Condominium Unit unless such lease is in writing and is for a term in excess of six (6) months. Any such lease shall be made explicitly subject to the terms of this Declaration and the Bylaws.

(b) **Sale.** The Association shall have no right of first refusal to purchase any Condominium Unit which an Owner wishes to sell and an Owner may sell or lease his Condominium Unit free of any such restriction.

(c) **Statement of Regular or Special Assessments.** No less than five (5) business days prior to the sale of any Condominium Unit by an Owner, other than the Declarant, such Owner must request the Board of Directors to issue a written statement of all assessed and unpaid Regular and Special Assessments due from such Owner in a form suitable for recording. The Board of Directors may, by an instrument of incumbency authorize one or more members of the Board, or the Treasurer of the Association, to sign such written statement. The recording of such written statement with a Unit Deed shall

operate to discharge the Unit from any lien for any other Regular and Special Assessments unpaid as of the date of such statement.

22. **Right of Action.** Subject to the provisions of Paragraph 28, the Association and any aggrieved Owner (as further defined herein) shall have a right of action against any Owner or Owners for failure to comply with the provisions of the Declaration, Bylaws or any decision of the Association or its Board of Directors which are made pursuant to authority granted to the Association or its Board of Directors in such documents. Owners shall have a similar right against the Association.

For purposes of this Declaration an "aggrieved Owner" shall mean an Owner whose rights are affected or infringed by any such alleged failure to comply with the provisions of the Declaration, Bylaws or any decision of the Association or its Board of Directors in a manner different from the rights of all other Unit Owners. Any Owner who alleges that he is an "aggrieved Owner" shall first notify the Board of Directors of such Owner's aggrieved status and request a special meeting of the Board of Directors to be held within thirty (30) days of such request (or within five (5) days in an emergency situation) to establish to the Board and the Association that such Owner is "aggrieved" within the meaning hereof, prior to the commencement of any right of action commenced hereunder.

23. **Costs and Attorneys' Fees.** In any proceeding arising because of failure of any Owner to make any payments required by this Declaration, the Bylaws or the Act, or to comply with any provision of the Declaration, the Act, the Bylaws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

24. **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 Areas or Limited Common Areas or by abandonment of his Condominium Unit.

25. **Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration or the Bylaws filed herewith shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration or the attached Bylaws.

26. **Rules of Interpretation.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include the masculine, feminine and neuter genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

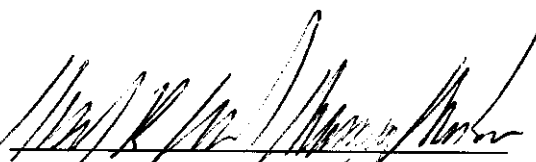
27. **Exculpation.** This instrument is executed and delivered on the express condition that anything herein to the contrary notwithstanding, each and all of the representations, covenants, undertakings and agreements herein made on the part of Declarant ("Representations"), while in form purporting to be the Representations of Declarant, are

nevertheless each and every one of them, made and intended not as personal Representations by Declarant or for the purpose or with the intention of binding Declarant personally but are made and intended for the purpose of binding only the Tracts; and no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against Declarant personally or its Directors and Officers, on account of this instrument or on account of, in connection with or arising out of any Representations of Declarant in this instrument contained, either express or implied, all such personal liability, if any, being expressly waived and released by each Person who acquires any interest in a Condominium Unit as a condition to the acquisition thereof.

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

DECLARANT:

ALLISONVILLE, LLC, *an Indiana
limited liability company*

By: 
Ronald R. Rubeck, Managing Member

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said county and state, personally appeared **Ronald R. Rubeck**, who being first duly sworn by me upon his oath, stated that he is the Managing Member of **ALLISONVILLE, LLC**, an limited liability company, that he is duly authorized to execute the foregoing on its behalf, and he acknowledged execution of the foregoing for and on behalf of said company.

Witness my hand and Notarial Seal this 1st day of August, 2003.



NOTARY PUBLIC:

Heather K. Hatfield

Printed:

Heather K. Hatfield

My Commission Expires:

2-10-11

My County of Residence:

Marion

This instrument was prepared by and please return after recordation to:

Peter D. Cleveland, Attorney-at-Law.
PETER D. CLEVELAND, P.C.
a professional corporation
7709 E. 42nd Street
Indianapolis, IN 46226

EXHIBIT A

Perimeter Legal Description of Entire Parcel of Real Estate into which Condominium Development may be Expanded

Blocks "A", "B", "C", "D" and "E" in Waterford Gardens Condominium, Conditional Final Plat, per plat thereof recorded as Instrument No. 200300070602 in the Office of the Recorder of Hamilton County, Indiana.

EXCEPT:

Part of the Northwest Quarter of Section 2, Township 17 North, Range 4 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the southwest corner of the recorded plat of Waterford Gardens, Instrument No. 200300070602 in the Office of the Recorder of Hamilton County, Indiana; thence along the south line of said Waterford Gardens North 89 degrees 48 minutes 00 seconds East 1156.59 feet; thence North 00 degrees 07 minutes 30 seconds West 176.67 feet to a point on the east line of the aforesaid recorded plat, and the Point of Beginning; thence South 89 degrees 52 minutes 30 seconds West 177.00 feet to the east right-of-way line of Red Fox Run as shown on the aforesaid recorded plat; thence along said right-of-way North 00 degrees 07 minutes 30 seconds West 144.89 feet; thence North 89 degrees 52 minutes 30 seconds East 177.00 feet to the east line of the aforesaid Waterford Gardens; thence along said east line South 00 degrees 07 minutes 30 seconds East 144.89 feet to the point of beginning, containing 0.59 acres, more or less.

Put in
Revised
MLC
Don't Chg.

EXHIBIT B

[General Development Plan follows Next Page]



The Schneider Corp.
6845 East U.S. 36
Suite 500
Avon, Indiana
46123
317-272-0108
317-272-0412 FAX

Architecture
Civil Engineering
Home Builder Services
Geotechnical Services
GIS * LIS

Environmental Engineering
Interior Design
Land Surveying
Landscape Architecture
Transportation Engineering

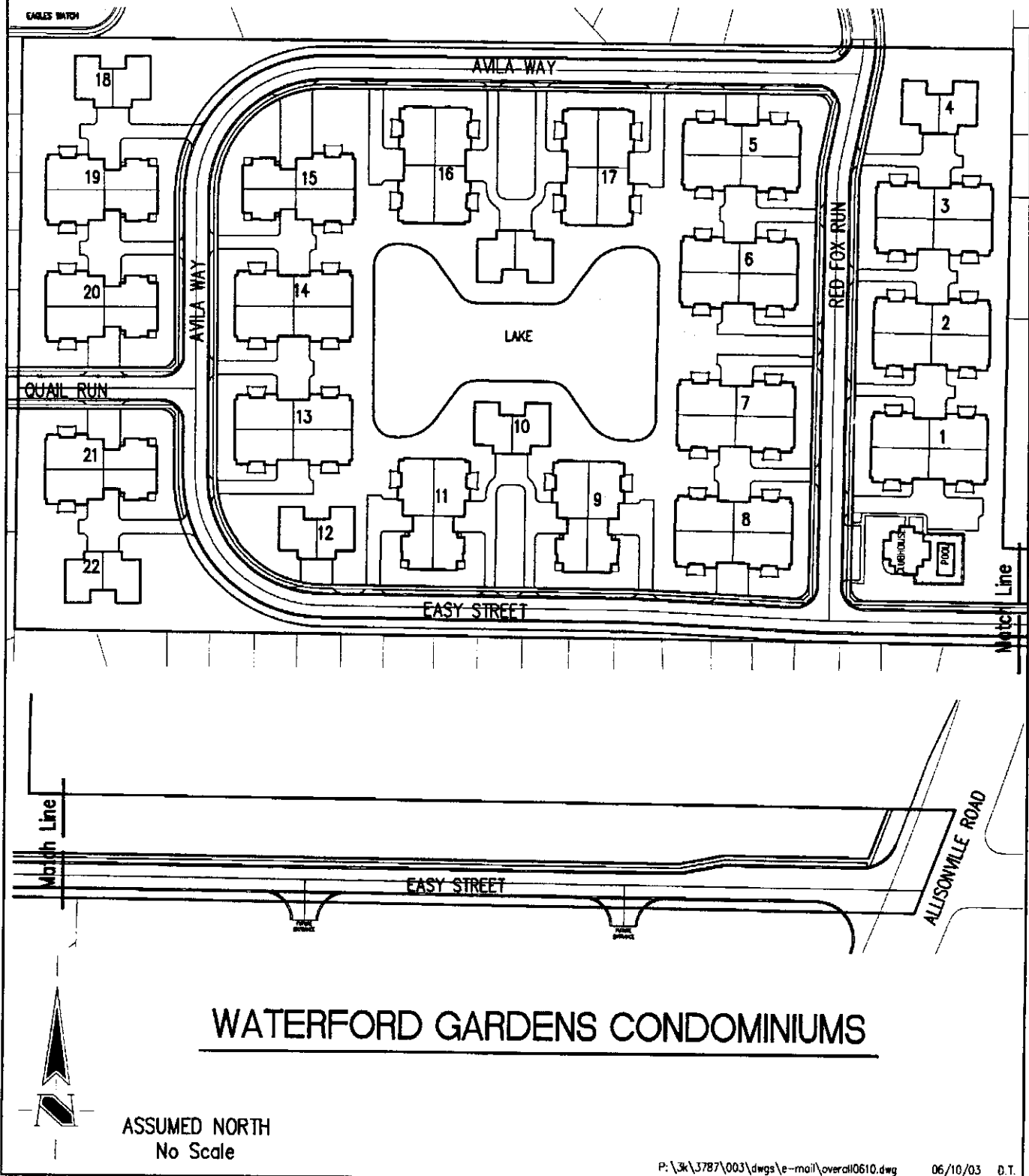


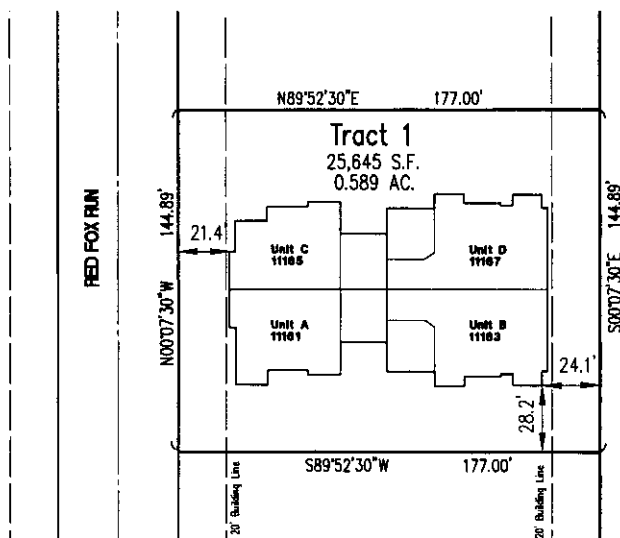
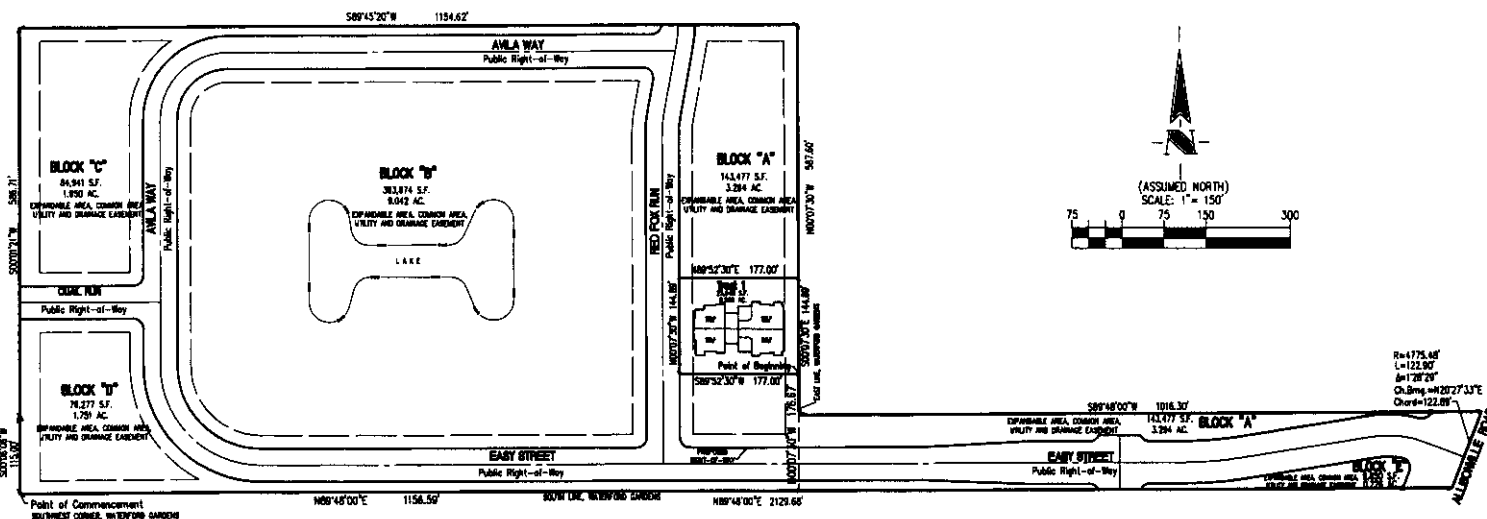
EXHIBIT C

[Plans for Building #1 located on Tract #1 follow Next Page]

WATERFORD GARDENS CONDOMINIUM

☒ INDICATES CONCRETE MONUMENT 6" X 4" X 36" LONG (TO BE SET UNLESS NOTED OTHERWISE)
 ○ INDICATES 5/8" DIA. SHAFT ALUMINUM MONUMENT 1/2" X 1/2" DIA. HEAD STAMPED "SCHODDER FIRM 0001" (TO BE SET UNLESS NOTED OTHERWISE)
 ● INDICATES 5/8" X 30" REBAR - 1/8", 1/1"-1/2" DIA. HEAD STAMPED "SCHODDER FIRM 0001" (TO BE SET UNLESS NOTED OTHERWISE)
 _____ BUILDING LINE
 SF SQUARE FOOTAGE
 N.A.E. NON-ACCESS EASEMENT
 G.R.E. GREENBELT EASEMENT
 (N.B.) NOTE-BEFORE

SURVEYOR
THE SCHNEIDER CORPORATION
6845 E. U.S. HWY. 36, SUITE 500
AVON, IN. 46123
(317) 272-0108



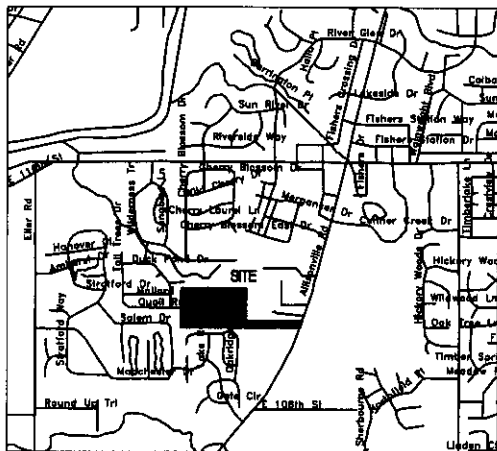
WATERFORD GARDENS CONDOMINIUM

TRACT 1, BUILDING 1
PART OF THE N.W.1/4 AND S.W. 1/4
SECTION 2-T17N-R4E
HAMILTON COUNTY, INDIANA

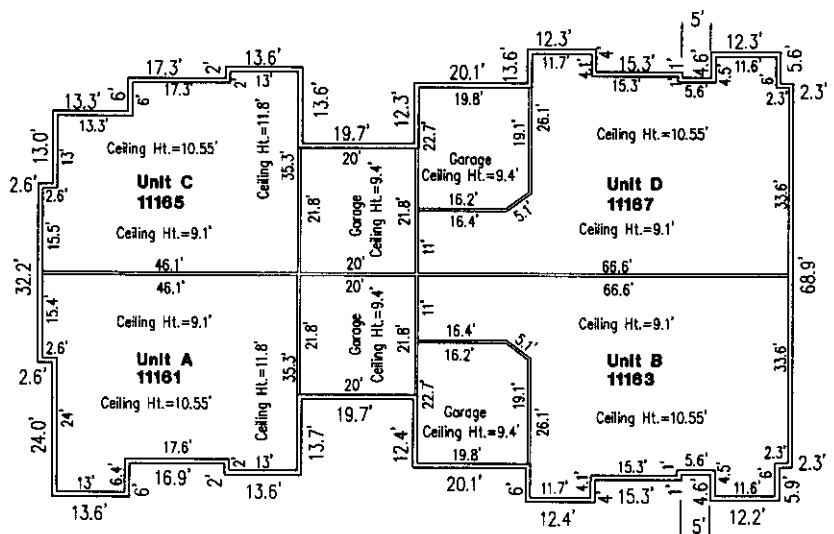
OWNER/SUBDIVIDER
ALLISONVILLE, LLC
1315 W. LINCOLN HWY, SUITE 188
DEKALB, IL 60015
(815) 758-7374

SURVEYOR
THE SCHNEIDER CORPORATION
6845 E. U.S. HWY. 36, SUITE 500
AVON, IN. 46123
(317) 272-0108

BY BRYAN F. CATLIN
REGISTERED LAND SURVEYOR-INDIANA #910012
6845 E. US 36, SUITE 500
AVON, INDIANA 46123
TELEPHONE (317) 272-0108



AREA MAP



BLDG. NO.	UNIT	STREET ADDRESS	UNIT MODEL TYPE	FLOOR SQ. FT.	GARAGE SQ. FT.	BEDROOMS	BATHS
1	A	11161 Red Fox Run	Veranda 1700	1,602	436	3	2
	B	11163 Red Fox Run	Versailles	1,983	443	3	2
	C	11165 Red Fox Run	Veranda 1550	1,435	436	2	2
	D	11167 Red Fox Run	Versailles	1,983	443	3	2

WATERFORD GARDENS CONDOMINIUM

TRACT 1, BUILDING 1
PART OF THE N.W.1/4 AND S.W. 1/4
SECTION 2-T17N-R4E
HAMILTON COUNTY, INDIANA

BY BRYAN F. CATLIN
REGISTERED LAND SURVEYOR-INDIANA #910012
6845 E. US 36, SUITE 500
AVON, INDIANA 46123
TELEPHONE (317) 272-0108

LAND DESCRIPTION

Land Description
Tract 1, Building 1

Part of the Northwest Quarter of Section 2, Township 17 North, Range 4 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the southwest corner of the recorded plat of Waterford Gardens, Instrument No. 200300070602 in the Office of the Recorder of Hamilton County, Indiana; thence along the south line of said Waterford Gardens North 89 degrees 48 minutes 00 seconds East 1156.59 feet; thence North 00 degrees 07 minutes 30 seconds West 176.67 feet to a point on the east line of the aforesaid recorded plat, and the Point of Beginning; thence South 89 degrees 52 minutes 30 seconds West 177.00 feet to the east right-of-way line of Red Fox Run as shown on the aforesaid recorded plat; thence along said proposed right-of-way North 00 degrees 07 minutes 30 seconds West 144.89 feet; thence North 89 degrees 52 minutes 30 seconds East 177.00 feet to the east line of the aforesaid Waterford Gardens; thence along said east line South 00 degrees 07 minutes 30 seconds East 144.89 feet to the point of beginning, containing 0.59 acres, more or less.

Land Description
Expandable Area, Common Area, Utility and Drainage Easement

Blocks "A", "B", "C", "D" and "E" in Waterford Gardens Condominium, Conditional Final Plat, per plat thereof recorded as Instrument No. 200300070602 in the Office of the Recorder of Hamilton County, Indiana.

EXCEPT:

Part of the Northwest Quarter of Section 2, Township 17 North, Range 4 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the southwest corner of the recorded plat of Waterford Gardens, Instrument No. 200300070602 in the Office of the Recorder of Hamilton County, Indiana; thence along the south line of said Waterford Gardens North 89 degrees 48 minutes 00 seconds East 1156.59 feet; thence North 00 degrees 07 minutes 30 seconds West 176.67 feet to a point on the east line of the aforesaid recorded plat, and the Point of Beginning; thence South 89 degrees 52 minutes 30 seconds West 177.00 feet to the east right-of-way line of Red Fox Run as shown on the aforesaid recorded plat; thence along said right-of-way North 00 degrees 07 minutes 30 seconds West 144.89 feet; thence North 89 degrees 52 minutes 30 seconds East 177.00 feet to the east line of the aforesaid Waterford Gardens; thence along said east line South 00 degrees 07 minutes 30 seconds East 144.89 feet to the point of beginning, containing 0.59 acres, more or less.

Overall Land Description

Blocks "A", "B", "C", "D" and "E" in Waterford Gardens Condominium, Conditional Final Plat, per plat thereof recorded as Instrument No. 200300070602 in the Office of the Recorder of Hamilton County, Indiana.

OWNER'S CERTIFICATE

The portion of real estate included in this plat is also subject to the Declaration of Condominium Ownership of Waterford Gardens Horizontal Property Regime recorded as Instrument Number _____ in the Office of the Recorder for Hamilton County, Indiana.

I, Allisonville, LLC, by _____, the owner of the real estate shown, do hereby declare the real estate as described to be platted into the horizontal property regime to be known as "Waterford Gardens - Tract 1, Building 1"

Dated this _____ day of _____, 2003.

Allisonville, LLC

Printed: _____

Position: _____

STATE OF INDIANA)
COUNTY OF _____) SS

Before me, a Notary Public in and for said County and State, personally appeared the above and acknowledged execution of this instrument as his voluntary act and deed for the uses and purposes therein expressed.

Witness my signature and Notarial Seal this _____ day of _____, 2003.

County of Residence _____ Printed Name _____

My Commission Expires: _____ Notary Public _____

I, BRYAN F. CATLIN, BEING A DULY REGISTERED LAND SURVEYOR IN THE STATE OF INDIANA, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE WITHIN PLAT ACCURATELY REPRESENTS A SURVEY MADE UNDER MY DIRECTION IN JUNE, 2003, OF THE REAL ESTATE DESCRIBED HEREIN, AND FURTHER, THAT THIS PLAT ACCURATELY REPRESENTS THE BUILDING LAYOUT, BUILDING NUMBERS, UNIT ADDRESSES, AND LIMITED COMMON AREAS WITHIN SAID REAL ESTATE, AND THAT THE BUILDINGS ARE SHOWN AS-BUILT OF THE AFOREMENTIONED FIELD SURVEY DATE.

WITNESS MY SIGNATURE THIS _____ DAY OF _____, 2003.

BRYAN F. CATLIN
REGISTERED LAND SURVEYOR
INDIANA #910012



I, THE UNDERSIGNED, BEING A DULY REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF INDIANA, DO HEREBY CERTIFY THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, THE ATTACHED FLOOR PLAN FOR BUILDING NUMBER 1, TRACT 1, AT WATERFORD GARDENS HORIZONTAL PROPERTY REGIME, ACCURATELY DEPICTS THE LOCATION, DIMENSIONS, AREA AND ELEVATION OF THE CONDOMINIUM UNITS AS-BUILT THEREIN.

WITNESS MY SIGNATURE THIS _____ DAY OF _____, 2003.

DONALD E. WILSON, JR.
PROFESSIONAL ENGINEER
INDIANA #19700403



SHEET 3 OF 3

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EXHIBIT D

Tract #1 Legal Description

Part of the Northwest Quarter of Section 2, Township 17 North, Range 4 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the southwest corner of the recorded plat of Waterford Gardens, Instrument No. 200300070602 in the Office of the Recorder of Hamilton County, Indiana; thence along the south line of said Waterford Gardens North 89 degrees 48 minutes 00 seconds East 1156.59 feet; thence North 00 degrees 07 minutes 30 seconds West 176.67 feet to a point on the east line of the aforesaid recorded plat, and the Point of Beginning; thence South 89 degrees 52 minutes 30 seconds West 177.00 feet to the east right-of-way line of Red Fox Run as shown on the aforesaid recorded plat; thence along said proposed right-of-way North 00 degrees 07 minutes 30 seconds West 144.89 feet; thence North 89 degrees 52 minutes 30 seconds East 177.00 feet to the east line of the aforesaid Waterford Gardens; thence along said east line South 00 degrees 07 minutes 30 seconds East 144.89 feet to the point of beginning, containing 0.59 acres, more or less.

EXHIBIT E

[Bylaws of Waterford Gardens Condominium follow Next Page]