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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

AVIAN GLEN

THIS DECLARATION is made this 21st day of September, 1992 by Avian Glen Associates, L.P., an Indiana limited partnership (the "Developer").

Recitals

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

NOW, THEREFORE, Developer hereby declares that the Real Estate is and shall be acquired, held, transferred, sold, hypothecated, leased, rented, improved, used and occupied subject to the following provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens, each of which shall run with the land and be binding upon, and inure to the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in or to the Real Estate or any part thereof.

This Instrument Recorded 9-22 1992
Sharon K. Cherry, Recorder, Hamilton County, Indiana

ARTICLE I

DEFINITIONS

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

1.1 "Association" means the Avian Glen Community Association, Inc., an Indiana not-for-profit corporation, which Developer has caused to be incorporated, and its successors and assigns.

1.2 "Architectural Review Committee" means the architectural review committee established pursuant to Article VI, paragraph 6.1, of this Declaration, as provided in such Article VI, paragraph 6.1.

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1.3 "Common Areas" means (i) all portions of the Real Estate shown on any Plat of a part of the Real Estate as a "Common Area" or which are otherwise not located in Lots and are not dedicated to the public and (ii) all facilities, structures, buildings, improvements and personal property owned or leased by the Association from time to time. Common areas may be located within a public right-of-way.

1.4 "Common Expenses" means (i) expenses of and in connection with the maintenance, repair or replacement of the Common Areas and the performance of the responsibilities and duties of the Association, including without limitation expenses for the improvement, maintenance or repair of the improvements, lawn, foliage and landscaping not located on a Lot (unless located on a Drainage, Utility or Sewer Easement or unless located on a Landscape Easement located on a Lot to the extent the Association deems it necessary to maintain such easement), (ii) expenses of and in connection with the maintenance, repair or continuation of the drainage facilities located within and upon the Drainage, Utility or Sewer Easements, (iii) all judgments, liens and valid claims against the Association, (iv) all expenses incurred to procure liability, hazard and any other insurance with respect to the Common Areas and (v) all expenses incurred in the administration of the Association.

1.5 "Developer" means Avian Glen Associates, L.P., an Indiana limited partnership, and any successors and assigns whom it designates in one or more written recorded instruments to have the rights of Developer hereunder.

1.6 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the date Developer or its affiliates no longer own any Residence Unit or Lot within or upon the Real Estate, but in no event shall the Development Period extend beyond the date ten (10) years after the date this Declaration is recorded.

1.7 "Landscape Easements" means those areas of ground so designated on a Plat of any part of the Real Estate.

1.8 "Lake Easements" means those areas of ground so designated on a Plat of any part of the Real Estate.

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

1.10 "Mortgagee" means the holder of a recorded first mortgage lien on any Lot or Residence Unit.

1.11 "Nonaffiliated Owner" means any Owner other than Developer or any entity affiliated with Developer.

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

1.13 "Plat" means a duly approved final plat of any part of the Real Estate as hereafter recorded in the office of the Recorder of Hamilton County, Indiana.

1.14 "Residence Unit" means any single family home in the subdivision designed for residential occupancy.

1.15 "Utility, Drainage or Sewer Easements" means those areas of ground so designated on a Plat of any part of the Real Estate.

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ARTICLE II
APPLICABILITY

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

The Owner of any Residence Unit (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or its affiliates or any builder or any subsequent Owner of the Residence Unit, or (ii) by the act of occupancy of the Residence Unit, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions, restrictions, terms and provisions of this Declaration. By acceptance of a deed, execution of a contract or undertaking of such occupancy, each Owner covenants for himself, his heirs, personal representatives, successors and assigns, with Developer and the other Owners from time to time, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

ARTICLE III
PROPERTY RIGHTS

3.1 Owners' Easement of Enjoyment of Common Areas. Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas. Such easement shall run with and be appurtenant to each Residence Unit, subject to the following provisions:

- (i) the right of the Association to charge reasonable admission and other fees for the use of the recreational facilities, if any, situated upon the Common Areas;
- (ii) the right of the Association to fine any Owner or make a special assessment against any Residence Unit or Lot in the event a person permitted to use the Common Areas by the Owner of the Residence Unit violates any rules or regulations of the Association as long as such rules and regulations are applied on a reasonable and nondiscriminatory basis;
- (iii) the right of the Association to make reasonable regular assessments for use of the Common Areas;
- (iv) the right of the Association to dedicate or transfer all or any part of the Common Areas or to grant easements to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, provided that the open space shall permanently run with the subdivision and shall not be developed or separated from the subdivision at a later date;
- (v) the right of the Association to enforce collection of any fines or regular or special assessments through the imposition of a lien pursuant to paragraph 7.7;
- (vi) the rights of Developer as provided in this Declaration or in any Plat of any part of the Real Estate;
- (vii) the terms and provisions of this Declaration;
- (viii) the easements reserved elsewhere in this Declaration and in any Plat of any part of the Real Estate; and
- (ix) the right of the Association to limit the use of Common Areas in a reasonable nondiscriminatory manner for the common good.

3.2 Permissive Use. Any Owner may permit his or her family members, guests, tenants or contract purchasers who reside in the Residence Unit to use his or her right of use and enjoyment of the Common Areas. Such permissive use shall be subject to the By-Laws of the Association and any reasonable nondiscriminatory rules and regulations promulgated by the Association from time to time.

3.3 Conveyance of Common Areas. Developer may at any time and from time to time convey all of its right, title and interest in and to any of the Common Areas to the Association by quit-claim deed, and such Common Areas so conveyed shall then be the property of the Association.

ARTICLE IV USE RESTRICTIONS

4.1 Lakes. There shall be no swimming, skating, boating or fishing in or on any lake, pond, creek or stream on the Real Estate. The Association may promulgate rules and regulations with respect to the permitted uses, if any, of the lakes or other bodies of water on the Real Estate.

4.2 Initial Sale of Units. All initial sales of Residence Units by the Developer or any builder or any affiliate of Developer or any builder shall be to owner-occupants; provided, however, this provision shall not apply to a mortgagee or its successor who acquires the development or a portion thereof through foreclosure or sale in lieu thereof. If any owner-occupant desires to lease his unit, such rental shall be pursuant to a written lease with a minimum term of one year and such lease shall expressly provide that the leasee shall be subject to all rules and regulations of the Association.

4.3 Use of Common Areas. The Common Areas shall be used only for recreational purposes.

4.4 Lot Access. All Lots shall be accessed from the interior streets of the Subdivision. No direct access is permitted to any Lot via Hazel Dell Road or Cherry Tree Avenue.

4.5 Other Use Restrictions Contained in Plat Covenants and Restrictions. The Plat Covenants and Restrictions relating to the Real Estate contain additional restrictions on the use of the Lots in the Subdivision, including without limitation prohibitions against commercial use, detached accessory buildings and nuisances; restrictions relating to the use of Landscape Easements, Lake Easements, and Utility, Drainage and Sewer Easements; and restrictions relating to temporary structures, vehicle parking, signs, mailboxes, garbage and refuse disposal, storage tanks, water supply and sewage systems, ditches and swales, driveways, antenna and satellite dishes, awnings, fencing, swimming pools, solar panels and outside lighting. Such prohibitions and restrictions contained in the Plat Covenants and Restrictions are hereby incorporated by reference as though fully set forth herein.

ARTICLE V

ASSOCIATION

5.1 Membership. Each Owner, automatically upon becoming an Owner, shall be and become a member of the Association and shall remain a member of the Association so long as he or she owns the Lot.

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

(i) Class A Members. Class A members shall be all Owners other than Developer (unless Class B membership has been converted to Class A membership as provided in the following subparagraph (ii), in which case Developer shall then be a Class A member). Each Class A member shall be entitled to one (1) vote.

(ii) Class B Member. The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot owned by Developer. The Class B membership shall cease and terminate and be converted to Class A membership upon the "Applicable Date" (as such term is hereinafter defined in paragraph 5.3).

5.3 Applicable Date. As used herein, the term "Applicable Date" shall mean the date when the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership.

5.4 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a Lot, all such persons or entities shall be members of the Association, but the single vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves. In no event shall more than one person exercise a Lot's vote under paragraph 5.2. No Lot's vote shall be split.

5.5 Board of Directors. The members of the Association shall elect a Board of Directors of the Association as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association.

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

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

(i) Maintenance of the Common Areas including any and all improvements thereon in good repair as the Association deems necessary or appropriate.

(ii) Installation and replacement of any and all improvements, signs, lawn, foliage and landscaping in and upon the Common Areas or Lake Easements or Landscape Easements as the Association deems necessary or appropriate.

(iii) Maintenance, repair and replacement of any private street signs.

(iv) Replacement of the drainage system in and upon the Common Areas as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon the Common Areas by Developer or the Association. Nothing herein shall relieve or replace the obligation of the Owner, including any builder, of a Lot subject to a Drainage Easement to keep the portion of the drainage system and Drainage Easement on his Lot free from obstructions so that the storm water drainage will be unimpeded.

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(v) Maintenance of lake water levels so as not to create stagnant or polluted waters affecting the health and welfare of the community through recirculation of accumulated water or chemical treatment.

(vi) Procuring and maintaining for the benefit of the Association, its officers and Board of Directors and the Owners, the insurance coverage required under this Declaration and such other insurance as the Board of Directors deems necessary or advisable.

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

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

(ix) Performing or contracting for such services as management, snow removal, Common Area maintenance, security control, trash removal or other services as the Association deems necessary or advisable.

(x) Enforcing the rules and regulations of the Association and the requirements of this Declaration and any applicable zoning covenants.

5.8 Powers of the Association. The Association may adopt, amend, or rescind, reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and the management and administration of the Association, as the Association deems necessary or advisable. The rules and regulations promulgated by the Association may provide for reasonable interest and late charges on past due installments of any regular or special assessments or other charges against any Residence Unit or Lot. The Association shall furnish or make copies available of its rules and regulations to the Owners prior to the time when the rules and regulations become effective.

5.9 Compensation. No director or officer of the Association shall receive compensation for his or her services as such director or officer except to the extent expressly authorized by a majority vote of the Owners present at a duly constituted meeting of the Association members.

5.10 Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

5.11 Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Association, against all costs and expenses, including attorneys fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is guilty of gross negligence or willful misconduct in the performance of his or her duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or for any judgment rendered in any action, suit or proceeding, unless it shall be adjudged in such action, suit or

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proceeding that such Indemnitee was guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any director or officer of the Association, or any accountant, attorney or other person or firm employed or retained by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by any Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this paragraph 5.11.

5.12 Bond. The Board of Directors of the Association may provide surety bonds and may require the managing agent of the Association (if any), the treasurer of the Association and such other officers as the Board of Directors deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication and other acts of theft, fraud or dishonesty in such sums and with such sureties as may be approved by the Board of Directors, and any such bond may specifically include protection for any insurance proceeds received for any reason by the Board of Directors. The expense of any such bonds shall be a Common Expense.

ARTICLE VI

ARCHITECTURAL REVIEW COMMITTEE

6.1 Creation. There shall be, and hereby is, created and established an Architectural Review Committee to perform the functions provided for herein. At all times during the Development Period, the Architectural Review Committee shall consist of three (3) members appointed, from time to time, by Developer and who shall be subject to removal by Developer at any time with or without cause. After the end of the Development Period, the Architectural Review Committee shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association. The three persons appointed by the Board of Directors to the Architectural Review Committee shall consist of Owners of Lots. The Board of Directors may at any time after the end of the Development Period remove any member of the Architectural Review Committee at any time upon a majority vote of the members of the Board of Directors.

6.2 Purposes and Powers of Architectural Review Committee. The Architectural Review Committee shall review and approve the design, appearance and location of all residences, buildings, structures or any other improvements placed by any person, including any builder, on any Lot within the community, and the installation and removal of any trees, bushes, shrubbery and other landscaping on any Lot within the community, in such a manner as to preserve and enhance the value and desirability of the Real Estate and to preserve the harmonious relationship among structures and the natural vegetation and topography.

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(i) In General. No residence, building, structure antenna, walkway, fence, deck, pool, tennis court, wall, patio or other improvement of any type or kind shall be erected, constructed, placed or altered on any Lot and no change shall be made in the exterior color of any Residence Unit or accessory building located on any Lot without the prior written approval of the Architectural Review Committee. Such approval shall be obtained only after written application has been made to the Architectural Review Committee by the Owner of the Lot requesting authorization from the Architectural Review Committee. Such written application shall be in the manner and form prescribed from time to time by the Architectural Review Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Architectural Review Committee may reasonably require. Unless otherwise specified by the Architectural Review Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect. Plot plans submitted for the Improvement Location Permit shall bear the stamp or signature of the Architectural Review Committee acknowledging the approval thereof.

(ii) Power of Disapproval. The Architectural Review Committee may refuse to approve any application made to it as required under paragraph 6.2 (i) above (a "Requested Change") when:

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

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

(c) The Requested Change, or any part thereof, in the opinion of the Architectural Review Committee, would not preserve or enhance the value and desirability of the Real Estate or would otherwise be contrary to the interests, welfare or rights of the Developer or any other Owner.

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

6.3 Duties of Architectural Review Committee. If the Architectural Review Committee does not approve a Requested Change within thirty (30) days after all required information on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed denied. One copy of submitted material shall be retained by the Architectural Review Committee for its permanent files.

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6.4 Liability of the Architectural Review Committee. Neither the Architectural Review Committee, the Association nor any agent or member of any of the foregoing, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto or for any decision made by it unless made in bad faith or by willful misconduct.

6.5 Inspection. The Architectural Review Committee or its representative may, but shall not be required to, inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VI and may require any work not consistent with the approved Requested Change, or not approved, to be stopped and removed.

ARTICLE VII

ASSESSMENTS

7.1 Purpose of Assessments. The purpose of Regular and Special Assessments is to provide funds to maintain and improve the Common Areas and related facilities for the benefit of the Owners, and the same shall be levied for the following purposes: (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas, the improvements, lawn foliage and landscaping within and upon the Common Areas, Landscape Easements, Landscape Preservation Easements, Drainage, Utility or Sewer Easements or Lake Easements and the drainage system, (iii) for the performance of the responsibilities and duties and satisfaction of the obligations of the Association and (iv) for such other purposes as are reasonably necessary or specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain. The Regular and Special Assessments levied by the Association shall be uniform for all Lots and Residence Units within the Subdivision.

7.2 Regular Assessments. The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix from time to time the Regular Assessment against each Residence Unit at any amount not in excess of the Maximum Regular Assessment as follows:

(i) Until December 31, 1993, the Maximum Regular Assessment on any Residence Unit for any calendar year shall not exceed Four Hundred, Eighty Dollars (\$480.00).

(ii) From and after December 31, 1993, the Maximum Regular Assessment on any Residence Unit for any calendar year may be increased by not more than Sixty Dollars (\$60.00) per year above the Regular Assessment for the previous calendar year without a vote of the members of the Association as provided in the following subparagraph (iii).

(iii) From and after December 31, 1993, the Board of Directors of the Association may fix the Regular Assessment at an amount in excess of the maximum amount specified in subparagraph (ii) above only with the approval of a majority of those members of each class of members of the Association who cast votes in person or by proxy at a meeting of the members of the Association duly called for such purpose.

(iv) Each Residence Unit shall be assessed an equal amount for any Regular Assessment, excepting any proration for ownership during only a portion of the assessment period.

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7.3 Special Assessments. In addition to Regular Assessments, the Board of Directors of the Association may make Special Assessments against each Residence Unit, for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any deficits (whether from operations or any other loss) which the Association may from time incur, but only with the assent of a majority of the members of each class of members of the Association who cast votes in person or by proxy at a duly constituted meeting of the members of the Association called for such purpose.

7.4 No Assessment against Developer During the Development Period. Neither the Developer nor, any affiliated entity shall be assessed any portion of any Regular or Special Assessment during the Development Period.

7.5 Date of Commencement of Regular or Special Assessments; Due Dates. The Regular Assessment or Special Assessment, if any, shall commence as to each Residence Unit on the first day of the first calendar month following the first conveyance of the related Lot to an Owner, provided that in the case of the conveyance by Developer of a Lot to any builder, such commencement shall occur on the first day of the sixth calendar month following the first conveyance of the Lot to the builder.

The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the Regular Assessment, any Special Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

7.6 Failure of Owner to Pay Assessments.

(i) No Owner may exempt himself from paying Regular Assessments and Special Assessments due to such Owner's nonuse of the Common Areas or abandonment of the Residence Unit or Lot belonging to such Owner. If any Owner shall fail, refuse or neglect to make any payment of any assessment (or periodic installment of an assessment, if applicable) when due, the lien for such assessment (as described in paragraph 7.7 below) may be foreclosed by the Board of Directors of the Association for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any assessment when due, the Board of Directors of the Association may in its discretion accelerate the entire balance of any 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 assessment, the Owner and any occupant of the Residence Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Residence Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence Unit or Lot, and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors of the Association, at its option, may in the alternative bring suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Residence Unit or Lot, costs and expenses of such action incurred (including but not limited to attorneys reasonable fees) and interest from the date such assessments were due until paid.

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(ii) Notwithstanding anything contained in this paragraph 7.6 or elsewhere in this Declaration, any sale or transfer of a Residence Unit or Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Residence Unit, or the purchaser thereof, at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien therefor.

7.7 Creation of Lien and Personal Obligation. Each Owner of a Residence Unit or Lot by acceptance for itself and related entities of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association for his obligation for (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as herein provided. All such assessments, together with interest, costs of collection and attorneys reasonable fees, shall be a continuing lien upon the Residence Unit or Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Residence Unit or Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Residence Unit at the time such assessment became due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Residence Unit) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Residence Unit, shall furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid Regular or Special Assessments or other charges against the Residence Unit or Lot. Such statement shall be binding upon the Association as of the date of such statement.

7.8 Expense Incurred to Clear Drainage, Utility or Sewer Easement Deemed a Special Assessment. As provided in the Plat covenants relating to the Real Estate, the Owner of any Lot subject to a Drainage, Utility or Sewer Easement, including any builder, shall be required to keep the portion of said Drainage, Utility or Sewer Easement on his Lot free from obstructions so that the storm water drainage will not be impeded and will not be changed or altered without a permit from the applicable local governmental authority and prior written approval of the Developer. Also, no structures or improvements, including without limitation decks, patios, pools, fences, walkways or landscaping of any kind, shall be erected or maintained upon said easements, and any such structure or improvement so erected shall, at Developer's written request, be removed by the Owner at the Owner's sole cost and expense. If, within thirty (30) days after the date of Developer's written request, such Owner shall not have commenced and diligently and continuously effected the removal of any obstruction of storm water drainage or any prohibited structure or improvement, Developer may, on behalf of the Association, enter upon the lot and cause such obstruction, structure or improvement to be removed so that the Drainage Utility and Sewer

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Easement is returned to its original designed condition. In such event, Developer, on behalf of the Association, shall be entitled to recover the full cost of such work from the offending Owner and such amount shall be deemed a Special Assessment against the Lot owned by such Owner which, if unpaid, shall constitute a lien against such Lot and may be collected by the Association pursuant to this Article 7 in the same manner as any other Regular Assessment or Special Assessment may be collected.

ARTICLE VIII

INSURANCE

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

8.2 Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of One Million Dollars (\$1,000,000) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Areas and shall inure to the benefit of the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate and the Developer.

8.3 Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be maintained, including but not limited to workers compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to officers' and directors' liability insurance.

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

ARTICLE IX

MAINTENANCE

9.1 Maintenance of Lots and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot, including any builder during the building process, to keep the grass on the Lot properly cut and keep the Lot, including any Drainage, Utility or Sewer Easements located on the Lot, free of weeds,

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trash or construction debris and otherwise neat and attractive in appearance, including, without limitation, the proper maintenance of the exterior of any structures on such Lot. If the Owner of any Lot fails to do so in a manner reasonably satisfactory to the Association, the Association, after approval by a majority vote of the Board of Directors, shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and to clean, repair, maintain or restore the Lot, as the case may be, and the exterior of the improvements erected thereon. The cost of any such work shall be and constitute a Special Assessment against such Lot and the owner thereof, whether or not a builder, and may be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

9.2 Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas or any improvements which the Association is required to maintain hereunder, the Association shall repair or replace the same from the insurance to the extent of the availability of such insurance proceeds. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas if, due to the willful, intentional or negligent acts or omissions of any Owner (including any builder) or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then the Association shall cause such repairs to be made and such Owner shall pay for such damage and such maintenance, repairs and replacements, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and constitute a Special Assessment against such Owner, whether or not a builder, and its Residence Unit and Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

ARTICLE X

MORTGAGES

10.1 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults, if any, of the Owner of a Residence Unit or Lot in the performance of the Owner's obligations under this Declaration or any other applicable documents.

10.2 Notice to Association. Any Mortgagee who holds a first mortgage lien on a Lot or Residence Unit may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of the Mortgagee. A record of the Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to the Mortgagee at the address shown in such record in the time provided. Unless notification of a Mortgage and the name and address of the Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association or otherwise shall be required, and no Mortgagee

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shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

10.3 Mortgagees' Rights Upon Default by Association. If the Association fails (i) to pay taxes or the charges that are in default and that have or may become charges against the Common Areas, or (ii) to pay on a timely basis any premium on hazard insurance policies on Common Areas or to secure hazard insurance coverage for the Common Areas upon lapse of a policy, then the Mortgagee on any Lot or Residence Unit may make the payment on behalf of the Association.

ARTICLE XI

AMENDMENTS

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

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the members of the Association 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 votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the vote required by paragraph 11.1 (iv) at a meeting of the members of the Association duly called and held in accordance with the provisions of the By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than sixty-seven percent (67%) in the aggregate of all Owners; provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer or any entity affiliated with Developer owns any Lot or Residence Unit within and upon the Real Estate. In the event any Residence Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 10.2.

11.2 By the Developer. Developer hereby reserves the right, so long as Developer or any entity affiliated with Developer owns any Lot or Residence Unit within and upon the Real Estate, to make any amendments to this Declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Developer, including without limitation: to bring Developer or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof; to conform with zoning covenants and conditions; to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages; or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided that in no event shall Developer be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

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

ARTICLE XII

MISCELLANEOUS

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

12.2 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party, including without limitation the Developer, to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate shall be held to be a waiver by that party (or an estoppel of that party to assert) of any right available to it upon the occurrence, recurrence or continuance of such violation or violations.

12.3 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2012, and thereafter shall continue automatically until terminated or modified by vote in the majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

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

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

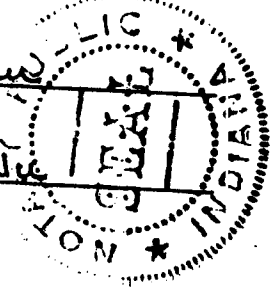
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STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for the State of Indiana, personally appeared Christopher R. White, Executive Vice President of Davis Development, Inc., an Indiana corporation, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Avian Glen.

WITNESS my hand and Notarial Seal this 21st day of September, 1992.

Li. Ching Wu
Notary Public
Li. Ching Wu
Printed



My Commission Expires: April 21, 1996
County of Residence: Marion

This instrument was prepared by C. Richard Davis, President of Davis Development, Inc., 8250 Haverstick Road, Suite 290, Indianapolis, Indiana 46240, (317) 259-6217.

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EXHIBIT A

AVIAN GLEN

SECTION II

Commencing at the Northeast corner of said Southeast Quarter Section; thence along the East line thereof, South 00 degrees 00 minutes 00 seconds (assumed bearing) 1715.62 feet to the Point of Beginning, which point is the Southeast corner of a 2.79 acre tract described in Deed Record 240 page 71 in the Office of the Recorder of Hamilton County, Indiana, and which point bears South 00 degrees 00 minutes 00 seconds 395.00 feet from the Northeast corner of the Southeast Quarter of said Southeast Quarter Section; thence along said East line, South 00 degrees 00 minutes 00 seconds 439.95 feet to the Northeast corner of a two and one-half acre tract described as an exception in Deed Record 145 page 251 in said Recorder's Office; thence along the Northwesterly line of said two and one-half acre tract and along the center line of Cherry Tree Avenue (formerly Noblesville and Indianapolis Highway), South 41 degrees 35 minutes 19 seconds West 649.41 feet to the center line of said Southeast Quarter Section; thence along said South line, South 89 degrees 59 minutes 39 seconds West 1068.85 feet; thence North 00 degrees 09 minutes 25 seconds West 187.10 feet to a point on a curve having a radius of 225.00 feet, the radius point of which bears North 38 degrees 31 minutes 38 seconds East; thence Northwesterly along said curve, 11.69 feet to a point on a curve having a radius of 20.00 feet, the radius point of which bears North 40 degrees 24 minutes 18 seconds East; thence Northwesterly and Northerly along said curve, 29.10 feet to a point which bears North 56 degrees 13 minutes 09 seconds West; thence Northerly along said curve, 80.46 feet to a point which bears South 74 degrees 39 minutes 35 seconds East from said radius point; thence North 89 degrees 59 minutes 39 seconds East 121.40 feet; thence South 69 degrees 59 minutes 19 seconds East 90.98 feet; thence South 64 degrees 24 minutes 53 seconds East 178.99 feet; thence North 41 degrees 46 minutes 35 seconds East 150.76 feet; thence South 48 degrees 36 minutes 11 seconds East 58.84 feet; thence North 39 degrees 12 minutes 27 seconds East 56.35 feet; thence North 22 degrees 34 minutes 00 seconds East 114.92 feet; thence South 67 degrees 26 minutes 00 seconds East 140.00 feet; thence South 57 degrees 31 minutes 47 seconds East 144.21 feet; thence South 56 degrees 16 minutes 38 seconds East 153.75 feet to a point located 60.00 feet Northwesterly, measured at right angles, from the center line of said Cherry Tree Avenue; thence parallel with said center line North 41 degrees 35 minutes 19 seconds East 47.97 feet to a curve having a radius of 240.00 feet, the radius point of which bears North 48 degrees 24 minutes 41 seconds West; thence Northwesterly and Northerly along said curve, 174.21 feet to a point located 50.00 feet West of the East line of said Southeast Quarter Section, which point bears North 90 degrees 00 minutes 00 seconds East from said radius point; thence parallel with said East line, North 00 degrees 00 minutes 00 seconds 327.30 feet to the South line of said 2.79 acre tract described in Deed Record 240 page 71 in said Recorder's Office; thence along said South line, South 88 degrees 47 minutes 00 seconds East 60.01 feet to the Point of Beginning, containing 16.105 acres, more or less.

This subdivision consists of 21 lots numbered 29 thru 49 inclusive and 4 Blocks as Common Area labeled B thru E inclusive, streets and easements as shown within. The size of lots, Blocks, streets and easements are shown in figures denoting feet and decimal parts thereof.

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AVIAN GLEN

SECTION III

Commencing at the Southwest corner of said Southeast Quarter Section; thence along the South line thereof, North 89 degrees 59 minutes 39 seconds East (assumed bearing) 323.42 feet to the Point of Beginning; thence continue along said South line, North 89 degrees 59 minutes 39 seconds East 842.45 feet to the Southwest corner of Avian Glen Section Two, the Secondary Plat of which was recorded Sub 72, 092 as Instrument 9-22-1992 in the Office of the Recorder of Hamilton County, Indiana (the next 13 courses are along the Westerly and Northerly boundary of said Avian Glen Section Two); (1) thence North 00 degrees 09 minutes 25 seconds West 187.10 feet to a point on a curve having a radius of 225.00 feet, the radius point of which bears North 38 degrees 31 minutes 38 seconds East; (2) thence Northwesterly along said curve, 11.69 feet to a point which bears South 41 degrees 30 minutes 17 seconds West from said radius point; (3) thence North 45 degrees 18 minutes 59 seconds East 50.14 feet to a point on a curve having a radius of 20.00 feet, the radius point of which bears North 40 degrees 24 minutes 18 seconds East; (4) thence Northwesterly along said curve, 29.10 feet to a point which bears North 56 degrees 13 minutes 09 seconds West from said radius point, and which point is on a reverse curve having a radius of 250.00 feet, the radius point of which bears North 56 degrees 13 minutes 09 seconds West; (5) thence Northerly along said curve, 80.46 feet to a point which bears South 74 degrees 39 minutes 35 seconds East from said radius point; (6) thence North 31 degrees 08 minutes 19 seconds East 121.40 feet; (7) thence North 00 degrees 09 minutes 25 seconds West 216.90 feet; (8) thence North 31 degrees 08 minutes 19 seconds East 148.49 feet; (9) thence South 89 degrees 59 minutes 39 seconds East 90.98 feet; (10) thence South 64 degrees 24 minutes 55 seconds East 178.99 feet; (11) thence North 41 degrees 46 minutes 35 seconds East 150.76 feet; (12) thence South 48 degrees 36 minutes 11 seconds East 58.24 feet; (13) thence North 39 degrees 12 minutes 27 seconds East 56.35 feet to the Southwest corner of Lot 32 in said Avian Glen Section Two; thence North 22 degrees 34 minutes 00 seconds East 329.87 feet; thence North 39 degrees 31 minutes 02 seconds West 94.24 feet; thence South 89 degrees 50 minutes 35 seconds West 234.67 feet; thence South 75 degrees 48 minutes 24 seconds West 123.69 feet; thence South 89 degrees 50 minutes 35 seconds West 365.20 feet; thence South 80 degrees 28 minutes 44 seconds West 66.75 feet; thence South 60 degrees 15 minutes 03 seconds West 54.25 feet; thence South 77 degrees 05 minutes 40 seconds West 121.55 feet; thence South 86 degrees 33 minutes 25 seconds West 240.00 feet; thence North 45 degrees 02 minutes 58 seconds West 53.00 feet; thence South 34 degrees 00 minutes 39 seconds West 183.19 feet to a point on a curve having a radius of 250.00 feet, the radius point of which bears North 27 degrees 33 minutes 13 seconds East; thence Westerly along said curve, 22.14 feet to a point which bears South 32 degrees 37 minutes 40 seconds West from said radius point; thence South 32 degrees 37 minutes 40 seconds West 50.00 feet to a point on a curve having a radius of 20.00 feet, the radius point of which bears South 32 degrees 37 minutes 40 seconds West; thence Southeasterly and Southerly along said curve, 35.92 feet to a point which bears South 44 degrees 27 minutes 56 seconds East from said radius point; thence South 44 degrees 27 minutes 56 seconds East 50.00 feet to a point on a curve having a radius of 200.00 feet, the radius point of which bears North 44 degrees 27 minutes 56 seconds West; thence Northeasterly along said curve, 31.13 feet to a point which bears South 55 degrees 23 minutes 04 seconds East from said radius point, and which point is on a reverse curve having a radius of 20.00 feet, the radius point of which bears South 53 degrees 23 minutes 04 seconds East; thence Northeasterly along said curve, 11.53 feet to a point which bears North 20 degrees 21 minutes 24 seconds West from said radius point; thence South 00 degrees 09 minutes 25 seconds East 201.16 feet; thence South 79 degrees 25 minutes 29 seconds West 122.01 feet; thence South 23 degrees 23 minutes 56 seconds West 120.76 feet; thence South 89 degrees 50 minutes 35 seconds West 110.00 feet; thence South 00 degrees 53 minutes 13 seconds West 139.50 feet; thence South 32 degrees 32 minutes 12 seconds East 77.01 feet; thence South 10 degrees 17 minutes 16 seconds West 252.28 feet to the Point of Beginning, containing 22.357 acres, more or less.

This subdivision consists of 37 lots numbered 50 thru 86 inclusive and Block F as Common Area, streets and easements as shown within. The size of lots, Block, streets and easements are shown in figures denoting feet and decimal parts thereof.

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SECOND SUPPLEMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF AVIAN GLEN

This Second Supplement is made this 24th day of August, 1993, by Avian Glen Associates, L.P., an Indiana limited partnership (the "Developer").

1. Developer is the owner of certain real estate more particularly described in Exhibit A attached hereto (the "Additional Real Estate").

2. Developer executed that certain Declaration of Covenants, Conditions and Restrictions of Avian Glen, on September 21, 1992 and recorded the same on September 22, 1992 as Instrument No. 92-36482 in the Office of the Recorder of Hamilton County, Indiana (the "Declaration").

3. Developer reserved in said Declaration the right from time to time, acting alone, to subject to the terms and provisions of the Declaration certain additional real estate located within the tracts adjacent to the Initial Real Estate (as defined in the Declaration) by execution and recordation in the Office of the Recorder of Hamilton County of a supplemental declaration so annexing all or any part of such real estate.

4. The Additional Real Estate constitutes a part of the tract adjacent to the Initial Real Estate.

NOW, THEREFORE, Declarant, in accordance with the rights reserved in the Declaration, makes this Second Supplement as follows:

1. Definitions. All terms used in this Second Supplement not otherwise defined in this Second Supplement shall have the meanings set forth in the Declaration. Accordingly, the Additional Real Estate shall hereafter for all purposes be included in the definition of Real Estate in the Declaration, as the same may be amended or supplemented from time to time as therein provided.

2. Second Supplement to Declaration. Developer hereby expressly declares that the Additional Real Estate, together with all improvements of every kind and nature whatsoever located thereon, shall be annexed to the Real Estate and be subject to the provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, and the Real Estate is hereby expanded include the Additional Real Estate, all as if the same had originally been included in the Declaration. The Additional Real Estate shall be hereafter held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to all of the provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens of the Declaration, as the same

This Instrument Recorded 9-10-1993
Sharon K. Cherry, Recorder, Hamilton County, IN

may be amended or supplemented from time to time as therein provided.

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

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

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

Avian Glen Associates, L.P.

By: Davis Development, L.P.,

By: Davis Development, Inc.,
general partner

By: 
C. Richard Davis
President

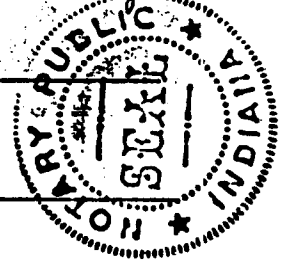
STATE OF INDIANA)
COUNTY OF MARION) SS:

Before me, a Notary Public in and for the State of Indiana, personally appeared C. Richard Davis, the President of Davis Development, Inc., who acknowledged the execution of the foregoing Second Supplement to Declaration of Covenants, Conditions and Restrictions of Avian Glen.

WITNESS my hand and Notarial Seal this 24th day of August, 1993.

Li-Ching Wu
Notary Public

Li-Ching Wu
Printed Name



My Commission Expires: 4-21-96

Residing in Marion County

This instrument was prepared by C. Richard Davis, President of Davis Development, Inc., 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240 (317)595-2900.

AVIAN GLEN SECTION 3
LAND DESCRIPTION

Part of the Southeast Quarter of Section 21, Township 18 North,
Range 4 East in Hamilton County, Indiana, more particularly
described as follows:

Beginning at the Southwest corner of said Southeast Quarter
Section; thence along the West line thereof, North 00 degrees 22
minutes 37 seconds West (assumed bearing) 793.36 feet; thence
North 89 degrees 58 minutes 35 seconds East 192.91 feet to a
point on a curve having a radius of 225.00 feet, the radius point
of which bears North 89 degrees 58 minutes 35 seconds East;
thence Southerly along said curve, 8.28 feet to a point which
bears South 87 degrees 44 minutes 00 seconds West from said
radius point; thence North 89 degrees 58 minutes 35 seconds East
144.85 feet; thence North 89 degrees 58 minutes 35 seconds West
359.36 feet; thence South 89 degrees 58 minutes 35 seconds East
147.92 feet; thence South 76 degrees 57 minutes 37 seconds East
50.00 feet to a point on a curve having a radius of 250.00 feet,
the radius point of which bears South 76 degrees 57 minutes 37
seconds East; thence Southerly along said curve, 23.49 feet to a
point which bears North 82 degrees 20 minutes 40 seconds West
from said radius point; thence South 82 degrees 20 minutes 40
seconds East 130.00 feet; thence North 40 degrees 37 minutes 20
seconds East 133.20 feet; thence North 67 degrees 35 minutes 10
seconds East 120.00 feet; thence North 70 degrees 42 minutes 55
seconds East 120.74 feet; thence North 27 degrees 15 minutes 46
seconds West 146.61 feet; thence North 67 degrees 35 minutes 10
seconds East 34.63 feet; thence North 22 degrees 24 minutes 50
seconds East 50.00 feet; thence North 67 degrees 35 minutes 10
seconds East 40.35 feet to a curve having a radius of 225.00
feet; the radius point of which bears North 22 degrees 24 minutes
50 seconds East; thence Northeasterly and Northerly along said
curve, 266.03 feet to a point which bears North 89 degrees 58
minutes 35 seconds East from said radius point; thence North 00
degrees 09 minutes 25 seconds West 331.41 feet; thence North 89
degrees 58 minutes 35 seconds East 220.00 feet to a point on the
East line of the West Half of said Southeast Quarter Section;
thence along said East line, South 00 degrees 09 minutes 25
seconds East 703.30 feet to the Northwest corner of the Southeast
Quarter Section; thence along the North line of said Quarter
Section, North 89 degrees 58 minutes 35 seconds East 747.66 feet to the
Northwesterly corner of Avian Glen Section Four, the Secondary Plat of which was recorded May 20,
1993 as Instrument 93-24085 in the Office of the Recorder of
Hamilton County, Indiana (the next four courses are along the
Westerly boundary of said Avian Glen Section Four); (1) thence
South 00 degrees 09 minutes 25 seconds East 153.86 feet to a
point on a curve having a radius of 200.00 feet, the radius point
of which bears South 18 degrees 42 minutes 14 seconds West; (2)
thence Westerly along said curve, 63.84 feet to a point which
bears North 00 degrees 09 minutes 25 seconds West from said
radius point; (3) thence South 00 degrees 09 minutes 25 seconds
East 50.00 feet; (4) thence South 14 degrees 28 minutes 53 sec-
onds West 149.86 feet to a point on the Northerly boundary of
Avian Glen Section Three, the Secondary Plat of which was record-
ed September 22, 1992 as Instrument 9236488 in said Recorder's
Office (the next 22 courses are along the Northerly and Westerly
boundary of said Avian Glen Section Three); (1) thence South 89
degrees 58 minutes 35 seconds West 219.67 feet; (2) thence South
75 degrees 48 minutes 24 seconds West 123.69 feet; (3) thence
South 89 degrees 58 minutes 35 seconds West 365.20 feet; (4)
thence South 80 degrees 28 minutes 44 seconds West 66.73 feet;
(5) thence South 60 degrees 13 minutes 03 seconds West 54.25
feet; (6) thence South 77 degrees 05 minutes 40 seconds West
121.66 feet; (7) thence South 86 degrees 33 minutes 25 seconds
West 240.00 feet; (8) thence North 45 degrees 02 minutes 58
seconds West 55.00 feet; (9) thence South 34 degrees 00 minutes
39 seconds West 183.19 feet to a point on a curve having a radius
of 250.00 feet, the radius point of which bears North 27 degrees
33 minutes 13 seconds East; (10) thence Westerly along said
curve, 22.14 feet to a point which bears South 32 degrees 37
minutes 40 seconds West from said radius point; (11) thence South
32 degrees 37 minutes 40 seconds West 50.00 feet to a point on a
curve having a radius of 20.00 feet, the radius point of which
bears South 32 degrees 37 minutes 40 seconds West; (12) thence
Southeasterly and Southerly along said curve, 35.92 feet to a
point which bears South 44 degrees 27 minutes 56 seconds East
from said radius point; (13) thence South 44 degrees 27 minutes
56 seconds East 50.00 feet to a point on a curve having a radius
of 200.00 feet, the radius point of which bears North 44 degrees
27 minutes 56 seconds West; (14) thence Northeasterly along said
curve, 31.13 feet to a point which bears South 53 degrees 23
minutes 04 seconds East from said radius point, and which point
is on a reverse curve having a radius of 20.00 feet, the radius
point of which bears South 53 degrees 23 minutes 04 seconds East;
(15) thence Northeasterly along said curve, 11.53 feet to a point
which bears North 20 degrees 21 minutes 24 seconds West from said
radius point; (16) thence South 00 degrees 09 minutes 25 seconds
East 201.16 feet; (17) thence South 79 degrees 25 minutes 29
seconds West 122.01 feet; (18) thence South 83 degrees 25 minutes
56 seconds West 120.74 feet; (19) thence South 89 degrees 58
minutes 35 seconds West 110.00 feet; (20) thence South 00 degrees
53 minutes 13 seconds West 129.68 feet; (21) thence South 32
degrees 31 minutes 12 seconds East 77.01 feet; (22) thence South
10 degrees 17 minutes 16 seconds West 252.28 feet to the South-
westerly corner of said Avian Glen Section Three, which point is
on the South line of said Southeast Quarter Section; thence along
said South line, South 89 degrees 58 minutes 35 seconds West
323.42 feet to the Point of Beginning, containing 26.966 acres,
more or less.

RECEIVED
FOR RECORD
93 SEP 10 PM 1:19
SHARON K. CHERRY
RECORDER
HAMILTON CO. IN

This Instrument Recorded 9-10-1993
Sharon K. Cherry, Recorder, Hamilton County, IN

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SECOND SUPPLEMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF AVIAN GLEN

This Second Supplement is made this 24th day of August, 1993, by Avian Glen Associates, L.P., an Indiana limited partnership (the "Developer").

1. Developer is the owner of certain real estate more particularly described in Exhibit A attached hereto (the "Additional Real Estate").

2. Developer executed that certain Declaration of Covenants, Conditions and Restrictions of Avian Glen, on September 21, 1992 and recorded the same on September 22, 1992 as Instrument No. 92-36482 in the Office of the Recorder of Hamilton County, Indiana (the "Declaration").

3. Developer reserved in said Declaration the right from time to time, acting alone, to subject to the terms and provisions of the Declaration certain additional real estate located within the tracts adjacent to the Initial Real Estate (as defined in the Declaration) by execution and recordation in the Office of the Recorder of Hamilton County of a supplemental declaration so annexing all or any part of such real estate.

4. The Additional Real Estate constitutes a part of the tract adjacent to the Initial Real Estate.

NOW, THEREFORE, Declarant, in accordance with the rights reserved in the Declaration, makes this Second Supplement as follows:

1. Definitions. All terms used in this Second Supplement not otherwise defined in this Second Supplement shall have the meanings set forth in the Declaration. Accordingly, the Additional Real Estate shall hereafter for all purposes be included in the definition of Real Estate in the Declaration, as the same may be amended or supplemented from time to time as therein provided.

2. Second Supplement to Declaration. Developer hereby expressly declares that the Additional Real Estate, together with all improvements of every kind and nature whatsoever located thereon, shall be annexed to the Real Estate and be subject to the provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, and the Real Estate is hereby expanded include the Additional Real Estate, all as if the same had originally been included in the Declaration. The Additional Real Estate shall be hereafter held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to all of the provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens of the Declaration, as the same

This Instrument Recorded 9-10-1993
Sharon K. Chery, Recorder, Hamilton County, IN

may be amended or supplemented from time to time as therein provided.

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

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

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

Avian Glen Associates, L.P.

By: Davis Development, L.P.,

By: Davis Development, Inc.,
general partner

By: 
C. Richard Davis
President

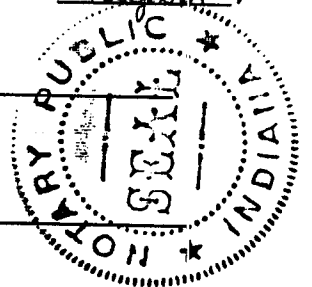
STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for the State of Indiana, personally appeared C. Richard Davis, the President of Davis Development, Inc., who acknowledged the execution of the foregoing Second Supplement to Declaration of Covenants, Conditions and Restrictions of Avian Glen.

WITNESS my hand and Notarial Seal this 24th day of August, 1993.

Li-Ching Wu
Notary Public

Li-Ching Wu
Printed Name



My Commission Expires: 4-21-96

Residing in Marion County

This instrument was prepared by C. Richard Davis, President of Davis Development, Inc., 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240 (317)595-2900.

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AVIAN GLEN SECTION 5

LAND DESCRIPTION

Part of the Southeast Quarter of Section 21, Township 18 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Beginning at the Southwest corner of said Southeast Quarter Section; thence along the West line thereof, North 00 degrees 22 minutes 37 seconds West (assumed bearing) 793.36 feet; thence North 89 degrees 50 minutes 35 seconds East 192.91 feet to a point on a curve having a radius of 225.00 feet, the radius point of which bears North 89 degrees 50 minutes 35 seconds East; thence Southerly along said curve, 8.28 feet to a point which bears South 87 degrees 44 minutes 00 seconds West from said radius point; thence North 89 degrees 50 minutes 35 seconds East 144.85 feet; thence North 00 degrees 09 minutes 25 seconds West 359.96 feet; thence South 89 degrees 55 minutes 27 seconds East 147.92 feet; thence South 76 degrees 57 minutes 37 seconds East 50.00 feet to a point on a curve having a radius of 250.00 feet, the radius point of which bears South 76 degrees 57 minutes 37 seconds East; thence Southerly along said curve, 23.49 feet to a point which bears North 82 degrees 20 minutes 40 seconds West from said radius point; thence South 82 degrees 20 minutes 40 seconds East 150.00 feet; thence North 40 degrees 37 minutes 20 seconds East 133.20 feet; thence North 67 degrees 35 minutes 10 seconds East 120.00 feet; thence North 70 degrees 42 minutes 55 seconds East 120.74 feet; thence North 27 degrees 15 minutes 46 seconds West 146.61 feet; thence North 67 degrees 35 minutes 10 seconds East 34.63 feet; thence North 22 degrees 24 minutes 50 seconds West 50.00 feet; thence North 67 degrees 35 minutes 10 seconds East 40.35 feet to a curve having a radius of 225.00 feet; the radius point of which bears North 22 degrees 24 minutes 50 seconds West; thence Northeasterly and Northerly along said curve, 266.03 feet to a point which bears North 89 degrees 50 minutes 35 seconds East from said radius point; thence North 00 degrees 09 minutes 25 seconds West 331.41 feet; thence North 89 degrees 50 minutes 35 seconds East 220.00 feet to a point on the East line of the West Half of said Southeast Quarter Section; thence along said East line, South 00 degrees 09 minutes 25 seconds East 703.30 feet to the Northwest corner of the Southeast Quarter Section; thence along the North line of said Quarter Section, North 89 degrees 59 minutes 13 seconds East 747.66 feet to the Northwesterly corner of Avian Glen Section Four, the Secondary Plat of which was recorded Nov 20, 1993 as Instrument 93-24025 in the Office of the Recorder of Hamilton County, Indiana (the next four courses are along the Westerly boundary of said Avian Glen Section Four); (1) thence South 00 degrees 09 minutes 25 seconds East 153.86 feet to a point on a curve having a radius of 200.00 feet, the radius point of which bears South 18 degrees 42 minutes 14 seconds West; (2) thence Westerly along said curve, 65.84 feet to a point which bears North 00 degrees 09 minutes 25 seconds West from said radius point; (3) thence South 00 degrees 09 minutes 25 seconds East 50.00 feet; (4) thence South 14 degrees 28 minutes 53 seconds West 149.86 feet to a point on the Northerly boundary of Avian Glen Section Three, the Secondary Plat of which was recorded September 22, 1992 as Instrument 9236486 in said Recorder's Office (the next 22 courses are along the Northerly and Westerly boundary of said Avian Glen Section Three); (1) thence South 89 degrees 50 minutes 35 seconds West 219.67 feet; (2) thence South 75 degrees 48 minutes 24 seconds West 123.69 feet; (3) thence South 89 degrees 50 minutes 35 seconds West 365.20 feet; (4) thence South 80 degrees 28 minutes 44 seconds West 66.75 feet; (5) thence South 60 degrees 15 minutes 03 seconds West 54.25 feet; (6) thence South 77 degrees 05 minutes 40 seconds West 121.66 feet; (7) thence South 86 degrees 33 minutes 25 seconds West 240.00 feet; (8) thence North 45 degrees 02 minutes 58 seconds West 55.00 feet; (9) thence South 34 degrees 00 minutes 39 seconds West 183.19 feet to a point on a curve having a radius of 250.00 feet, the radius point of which bears North 27 degrees 33 minutes 13 seconds East; (10) thence Westerly along said curve, 22.14 feet to a point which bears South 32 degrees 37 minutes 40 seconds West from said radius point; (11) thence South 32 degrees 37 minutes 40 seconds West 50.00 feet to a point on a curve having a radius of 20.00 feet, the radius point of which bears South 32 degrees 37 minutes 40 seconds West; (12) thence Southeasterly and Southerly along said curve, 35.92 feet to a point which bears South 44 degrees 27 minutes 56 seconds East from said radius point; (13) thence South 44 degrees 27 minutes 56 seconds East 50.00 feet to a point on a curve having a radius of 200.00 feet, the radius point of which bears North 44 degrees 27 minutes 56 seconds West; (14) thence Northeasterly along said curve, 31.13 feet to a point which bears South 53 degrees 23 minutes 04 seconds East from said radius point, and which point is on a reverse curve having a radius of 20.00 feet, the radius point of which bears South 53 degrees 23 minutes 04 seconds East; (15) thence Northeasterly along said curve, 11.53 feet to a point which bears North 20 degrees 21 minutes 24 seconds West from said radius point; (16) thence South 00 degrees 09 minutes 25 seconds East 201.16 feet; (17) thence South 79 degrees 25 minutes 29 seconds West 122.01 feet; (18) thence South 83 degrees 23 minutes 56 seconds West 120.76 feet; (19) thence South 89 degrees 50 minutes 35 seconds West 110.00 feet; (20) thence South 00 degrees 53 minutes 13 seconds West 139.68 feet; (21) thence South 32 degrees 51 minutes 12 seconds East 77.01 feet; (22) thence South 10 degrees 17 minutes 16 seconds West 252.28 feet to the Southwesterly corner of said Avian Glen Section Three, which point is on the South line of said Southeast Quarter Section; thence along said South line, South 89 degrees 59 minutes 39 seconds West 323.42 feet to the Point of Beginning, containing 26.966 acres, more or less.

RECORDED
 FILED
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 SHARON K. CHERRY
 RECORDER
 HAMILTON CO. IN

This Instrument Recorded 9-10-1993
 Sharon K. Cherry, Recorder, Hamilton County, IN

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