

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
AVON TRAILS

1999000302655
Filed for Record in
HENDRICKS COUNTY IN
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THIS DECLARATION, made on the 1st day of June, 1999, by TRI-
NORTH DEVELOPMENT COMPANY, LLC, an Indiana limited liability company, ("Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate, located in Hendricks County, Indiana, which is more particularly described in Exhibit "A" (hereafter "Real Estate") attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision known as Avon Trails.

WHEREAS, the real estate more completely described in what is attached hereto and incorporated herein by reference as Exhibit "B" shall hereafter be referred to as the "Additional Real Estate";

WHEREAS, Declarant desires to subdivide and develop the Real Estate and may in the future desire to subdivide and develop such portions (or all) of the Additional Real Estate as may be made subject to the terms of this Declaration, as hereinafter provided;

WHEREAS, the term "Property" shall hereafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to and at anytime subject to this Declaration.

NOW, THEREFORE, the Declarant hereby declares that all of the Lots (as defined in Article II below) in the Property, as they are held and shall be held, conveyed, hypothecate, or encumbered, leased, rented, used, occupied, and improved, are subject to the following restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. The restrictions shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its respective successors entitled to the Property or any part or parts thereof.

As of the date of execution hereof, the Property consists solely of the Real Estate. The Owner of any Lots subject to these restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy such Lot subject to each restriction and agreement herein contained.

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By acceptance of such deed, execution of such contract, and/or actively occupying such Lot, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to these restrictions and also for itself, its heirs, personal representatives, successors, and assigns covenants and agrees and consents to and with Declarant, the Association, and the Owners of each of the Lots hereby affected to keep, observe, and comply with the terms and conditions hereof.

Declarant shall have, and hereby reserves the right, at any time, and from time to time, at any time prior to the expiration of the Development Period, to add to the Property and subject to this declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this declaration and all rights, obligations, and privileges herein, when Declarant places of record in Hendricks County, Indiana an instrument so declaring the same to be part of the Property, which supplementary declaration (hereafter "Supplementary Declaration") may be as part of a subdivision plat for any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Such Supplementary Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the added Dwelling Units or Additional Real Estate.

Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add and expand the Property as to any part or parts of the Additional Real Estate, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional 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 Additional Real Estate so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the discretion of the Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or to any portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

ARTICLE I

Name

The subdivision of the Property created by this Declaration shall be known and designated as *Avon Trails*, a subdivision located in Hendricks County, Indiana.

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ARTICLE II

Definitions

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

Section 2.1 "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.2 "Association" means the **AVON TRAILS HOMEOWNERS ASSOCIATION, INC.**, a non-profit corporation, its successors and assigns.

Section 2.3 "Board of Directors" means the Board of Directors of the Association.

Section 2.4 "Builder" means a person or entity engaged in and responsible for the original construction of a residence on a Lot.

Section 2.5 "Common Area" means: (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), (2) Lake Area, as defined below, (3) items (if any) deemed Common Area for maintenance purposes only, and (4) Block "B", comprising 19,517 square feet, as identified in the Final Plat of Crystal Farms Section 5, recorded with the Recorder of Hendricks County, Indiana, on September 25, 1998, as Instrument Number 9800025681, plat cabinet 1, slide 107, pages 1A & 1B. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat (as hereafter defined) as a "Block", "Common Area", "C.A.", or such other areas within the Property that are not otherwise identified on the Plat (as hereafter defined) as a lot or street. The Common Area is to be conveyed to the Association.

Section 2.6 "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 2.7 "Declarant" means the **TRI-NORTH DEVELOPMENT, LLC, an Indiana limited liability company** and its successors and assigns.

Section 2.8 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property. The Development Period shall recommence each time the Declarant acquires any part (or all) of the Additional Property.

Section 2.9 "Dwelling Unit" means any single-family residence situated upon a Lot (as hereafter defined).

Section 2.10 "Lake Area(s)" means any Common Area on which a lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 2.11 "Lot" or "Lots" means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed a Dwelling Unit that is conveyed to an Owner (as hereinafter defined) by the Declarant. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

Section 2.12 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 2.13 "Plat" means the subdivision plats of the Property, which are recorded with the Recorder of Hendricks County, Indiana, as the same may be hereafter amended or supplemented pursuant to this Declaration.

Section 2.14 "Pool" means the pool and bathhouse to be constructed by the Declarant, at the Declarant's option and in the Declarant's discretion, upon a Common Area.

Section 2.15 "Recreation Facility" means the recreational facilities, including playground equipment, located in Block "A" common area in Crystal Farms, Section 5, as per the plat thereof recorded with the Recorder of Hendricks County, Indiana, on the 25th day of September, 1998, as Instrument No. 9800025681, PC 1, SL 107, Pages 1A and 1B.

Section 2.16 "Shiloh Farms" shall mean the residential subdivision which is located adjacent to the property and which comprises (i) *Shiloh Farms Section 1* as per the plat thereof recorded with the Recorder of Hendricks County, Indiana, as of the 9th day of August, 1995, in plat cabinet 3, slide 72, page 2, slide 73, page 1; (ii) *Shiloh Farms Section 2* as per the plat thereof recorded with the Recorder of Hendricks County, Indiana, on the 3rd day of January, 1997, in plat cabinet 4, slide 54, pages 1 and 2, slide 55, page 1; (iii) *Shiloh Farms Section 3* as per the plat thereof recorded with the Recorder of Hendricks County, Indiana, on the 10th day of June, 1998, as Instrument No. 9800014663, plat cabinet 1, slide 39, pages 2A, 2B, and 2C; (iv) *Shiloh Farms Section 4* as per the plat thereof recorded with the Recorder of Hendricks County, Indiana, as of the 29th day of July, 1999, as Instrument No. 199900022456, plat cabinet 2, slide 124, pages 1A, B, and C; and (v) *Crystal Farms Section 5* as per the plat thereof recorded with the Recorder of Hendricks County, Indiana, on the 25th day of September, 1998, as Instrument No. 9800025681, PC 1, SL 107, Pages 1A and 1B.

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Section 2.17 "Ashton" shall mean the residential subdivision which comprises (i) Ashton Section Six as per the plat thereof recorded with the Recorder of Hendricks County, Indiana on the 29th day of September, 1995, in plat cabinet 3, slide 110, page 2, slide 111, pages 1 and 2; and (ii) Ashton Section Eight as per the plat thereof recorded with the Recorder of Hendricks County, Indiana, on the 2nd day of December, 1997, as Instrument No. 9700025398, plat cabinet 4, slide 158, pages 1 and 2, slide 159, page 1.

ARTICLE III

Property Rights, Easements and Encroachments

Section 3.1 Owners' Easements of Enjoyment of Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any Common Area, which nonexclusive right and easement of enjoyment shall be appurtenant to and shall pass with title to every Lot (in the form of a right to membership in the Association), subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;
- (b) The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such rights) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;
- (d) The rights of Declarant as provided in this Declaration, as the same may be amended from time to time;
- (e) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;
- (f) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;
- (g) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to

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such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the membership of each class of members of the Association;

(b) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented; and

(i) Residents of Shiloh Farms and Ashton shall be permitted to use the Pool in the same manner as any Owner, but only if the resident within Shiloh Farms and/or Ashton desiring to use the Pool pays to the Association, in advance and on an annual basis, that portion of the Regular Annual Assessment which is to be paid by each Owner and which is attributable to and to be utilized for the maintenance and repair of the Pool.

Section 3.2 Recreational Facilities. The Owners shall be permitted to use the Recreational Facilities so long as (i) the Shiloh Farms Homeowners Association, Inc. permits such use of the Recreational Facilities and (ii) each Owner desiring to use the Recreational Facilities pays to the Shiloh Farms Homeowners Association, Inc., in advance and on an annual basis, that portion of the annual assessment which is to be paid by a resident of Shiloh Farms and which is attributable to and to be utilized for the maintenance and repair of the Recreational Facilities.

Section 3.3 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Declaration, any Owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the Lot.

Section 3.4 Certain Obligations and Access Rights to the Common Area.

(a) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

(b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder's warranty.

Section 3.5 General Drainage, Utility, Sewer and Other Development Easement - The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

(a) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement ("Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Dwelling Unit constructed on the Property. Any Drainage, Utility, Sewer and other Development Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(b) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Lake Easement") and right-of-way in and to any Lake Area (b) or areas now or hereafter shown on the Plat as a "Block", "Common Area", or "Lake" or any other Common Area within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

(c) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs

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advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(d) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer and Lake, Sign and Facilities Easement, or any facility at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,

(iii) Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Hendricks County, Indiana.

(e) The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

Section 3.6 Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 3.7 Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any Plat as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the Association for the common enjoyment of all residents in Avon Trails.

Section 3.8 Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention

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areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof except fences which do not retard or impede the flow of drainage water and which are approved pursuant to Section 6.2 below, shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 3.9 Designated Mounding, Landscaping and Screening and Sign Easements. Any strips of grounds shown or designated on the Plat for (i) mounding easements, (ii) landscape or landscape maintenance easements, and/or (iii) sign easements, are hereby reserved for such (i) mounding easements, (ii) landscape easements and/or landscape maintenance easements and/or (iii) sign easements. Declarant hereby reserves unto itself during the Development Period, and thereafter, unto the Association, any such easements for the purposes of (i) providing signs which either advertise the Property and the availability of Lots or identify the Property or, (ii) installing landscaping, mounding, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground shown on the Plat as landscaping, mounding, and sign easements. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

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Section 3.10 Street Dedication. All streets now or hereafter located upon the Property are hereby dedicated to the public.

Section 3.11 Easement Work Notwithstanding any architectural approval under Section 6.2 below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever planted, to any owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.7 and Section 3.8 above.

Section 3.12 No Access. There may be strips of ground designated on the Plat as "no access strips", "no access", "no access easement", "no access easmt", or by other similar language. Vehicular ingress, egress, and traveling and/or the construction of improvements for such ingress, egress and/or traveling, is prohibited on, over, or across any such strips or areas.

Section 3.13 Reservation of Right to Grant Easement. The Declarant hereby reserves the right, in its discretion, to (i) grant easements upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements upon, under, over and across the real estate which is adjacent to the Property.

ARTICLE IV

Association Membership, Voting Rights Board of Directors and Professional Management

Section 4.1 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant.

Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed to the Declarant to an Owner. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) when the total number of votes outstanding in the Class A membership is equal to the total number of votes outstanding in the Class B membership; or, (b) December 31, 2015.

Section 4.3 Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 4.4 Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant 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 and without payment of any termination fee upon written notice of ninety (90) days or less.

ARTICLE V

Covenant for Maintenance Assessments

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot now or hereafter owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance 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:

- (a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses); and
- (b) Special Assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Declaration.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest at eight percent (8%) per annum, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 5.2 Purpose of Regular Yearly Assessments. The Regular Yearly Assessments levied by the Association shall be used in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Area, including, but not limited to any Pool located thereon, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. As and if necessary, a portion of the Regular Yearly Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 5.3 Maximum Regular Yearly Assessments.

- (a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Yearly Assessment on any Lot shall be \$170.00 per Lot per year.
- (b) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year not more than 10% above the maximum Regular Yearly Assessment for the previous year, without a vote of the membership.
- (c) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year by more than 10% above the maximum Regular Yearly Assessment for the previous year, by a vote of two-thirds (2/3) of the votes entitled to be cast by members who cast votes in person or by proxy at a meeting duly called for this purpose.
- (d) The Board of Directors from time to time may fix the Regular Yearly Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 5.4 Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Yearly Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the approval of two-thirds (2/3) of the votes entitled to be cast by those members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 5.5 Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding

meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.6 Uniform Rate of Assessment. Regular Yearly Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots, except that Declarant and any individual or entity purchasing a Lot or Lots solely for the purpose of construction of a for-sale Dwelling Unit thereon (a "Builder") shall pay only twenty-five percent (25%) of the Regular Yearly Assessments and Special Assessments so long as any Dwelling Unit constructed upon a Lot by Declarant or Builder has not been conveyed to an Owner intending to occupy or rent said Dwelling Unit as a residence or leased to an individual or entity for use as a residence.

Section 5.7 Date of Commencement of Yearly Assessments; Due Dates. The Regular Yearly Assessment provided for herein shall commence as to each Lot within a recorded Plat on the first day of the first month following the recording of such Plat. The Board of Directors shall fix any increase in the amount of the yearly assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Yearly Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period (i.e., annual, monthly, lump-sum or otherwise) for any Special Assessment, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A property executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 5.8 Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Declaration, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action, and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area owned by the Association or abandonment of his Lot.

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Section 5.9 Subordination of the Lien to Mortgage, Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

ARTICLE VI

Use, Restrictions, and Architectural Control

Section 6.1 Lot Use and Conveyance. All Lots shall be used exclusively for single family detached residential purposes, except that Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners and other members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association, and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described feehold estate subject to the covenants, conditions and restrictions contained herein.

Section 6.2 Architectural Control. No building, outbuilding, mailbox, fence, satellite dish, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, until the end of the Development Period, and thereafter by the Board of Directors of the Association. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Committee. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval thereof as above provided. However, there shall be no such approval of the planning of hedges, walls, fences, structures and/or other improvements prohibited under Section 3.8 above, and any such approval shall be null and void. In the event that

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written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, then the request for approval shall be deemed denied.

Section 6.3 Leasing. Any Lot may be leased by its Owner.

Section 6.4 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Property, on any Lot, or in any Dwelling Unit, except that no more than a total of two (2) dogs, cats, or other normal household pets may be kept in residences subject to rules and regulations adopted by the Association through its Board of Directors, provided that such pets are not kept, bred, or maintained for any commercial purpose.

Section 6.5 Outside Storage. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers.

Section 6.6 Setback Lines. Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof, except fences in keeping with architectural style as specifically approved by the Declarant until the end of the Development Period, and thereafter by the Association Board of Directors or Architectural Review Committee; provided, however, except that in no case will such fences be permitted on the public right-of-way. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

Section 6.7 Side Setbacks. The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances.

Section 6.8 Temporary Structures and Outbuildings. No structure of a temporary character, tent, shack, basement, garage, barn or other out-building shall be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently, or at any time be used for such purpose.

Section 6.9 Motor Vehicle Repair. The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed per the terms of the Declaration.

Section 6.10 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. Any structure or building permitted to be constructed on any Lot by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

Section 6.11 Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

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Section 6.12 Drains. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 6.13 Number of Dwelling Units. The number of Dwelling Units shall not exceed the number of Lots within the Property.

Section 6.14 Residential Use. Lots may be used only for residential purposes and only for one single-family dwelling, a private garage, and other such outbuildings as are usual and incidental to the use of a residential lot. All lots in this subdivision shall be designated as residential Lots, and no home shall exceed two and one half (2-1/2) stories or thirty-five (35) feet in height.

Section 6.15 Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot within shall have a minimum living area, exclusive of open porches, unfinished basements and attached garages, of not less than what is required by the applicable zoning and subdivision control ordinances.

Section 6.16 Unsanitely Growth. In order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Property, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant or the Association to cut weeds or clear the refuse from the Property at the expense of the Owner, and there shall be a lien against said Property for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association or the Declarant may file suit and recover such amount together with reasonable attorneys fees and costs of collection.

Section 6.17 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sightline limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 6.18 Semi-tractor trucks, trailers, etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers, mobile homes, disabled vehicles, and/or trailers shall be permitted to park on the Property or a Lot unless fully enclosed in a garage, or unless the same is necessary and incident to the Declarant's, builder's or Association's business on the Property.

Section 6.19 Sign Limitations. No sign of any kind, other than those installed by Declarant, the Association, or a Builder, may be displayed to public view on any Lot, except that one sign with an area of not more than six (6) feet may be displayed with the purpose of advertising the Lot for sale.

Section 6.20 Lakes, Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in siltng or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. A Lake may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Section 6.21 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 6.22 Development and Sale Period. Nothing contained in this Article 6 shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

Section 6.23 Outside Use of Lots. Except in an individual patio area appurtenant to a Dwelling Unit, no planting or gardening shall be done, and no fences, hedges, walls or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the Board of Directors. Above ground swimming pools are prohibited on the Property.

Section 6.24 Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Declarant during the Development Period and, thereafter, by the Board of Directors of the Association.

Section 6.25 Yard Lights. The builder on each Lot shall supply and install two (2) exterior carriage lights in operable condition on such Lot at a location, having a height and of a type, style and manufacture approved by the Declarant during the Development Period and, thereafter, by the Board of Directors of the Association. Each such light fixture shall also have a bulb of sufficient wattage to insure uniform illumination on each Lot and shall be equipped with a photo-electric cell or similar device to insure automatic illumination from dusk to dawn each day. The yard light thereafter shall be maintained in proper working order by the Owner of each Lot.

Section 6.26 Notice of Zoning Commitments. Notice is hereby given that certain written commitments were made in connection with the zoning of all or part of the Property in connection with Ordinance 1993-13 enacted on May 17, 1999, by the Board of Commissioners of Hendricks County, Indiana, which commitments address matters including but not limited to landscaping, minimum brick and masonry required for Dwelling Units and exterior color of homes.

Section 6.27 Exterior Color of Residence. Until and including the 31st day of October, 2009, the exterior color of all Dwelling Units shall be earth tones only and, as such, shall not, for instance, be blue or yellow.

ARTICLE VII

Maintenance, Repairs and Replacements

Section 7.1 By Owners. Except as specifically provided in this Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. All fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

Section 7.2 Common Properties and Lawns by the Association.

(a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:

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(i) Maintenance of the Common Area. Maintenance of each Common Area (including the pool) shall include, but shall not be limited to, fertilizing, treating any Lakes, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Area.

(ii) Maintenance of the entry signs, permanent subdivision identification sign, and landscaping installed by the Declarant in any Common Area, Landscape Easement, or Landscape Maintenance Easement;

(iii) The maintenance of any street lights which are installed by Declarant and which are not located upon any Lot; and

(iv) The maintenance of any brick surface installed by Declarant on any internal street or entryway.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only) as it deems necessary.

(b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or 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 Area owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, 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 become a part of the assessment to which such Owner's Lot is subject.

(c) The authorized representatives of the Association, the Board of Directors and the Managing Agent for the Association (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with maintenance only, repairs or replacements of or to the Common Area owned by the Association or any items deemed as Common Area for purposes of maintenance only, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.

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ARTICLE VIII Insurance

Section 8.1 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or 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 Association. It shall also cover all Common Area owned by the Association, public ways and any other areas under the Association's control or supervision. The premiums for all such liability policies shall be a Common Expense.

Section 8.2 Fidelity Bonds. The Association shall have blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association bonds shall name the Association as the obligee and the premium shall be paid as a Common Expense by the Association. Any management agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the management agent's bond. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal one (1) year's assessments on all Dwelling Units in the Property, plus the Association's reserve funds. If available, the fidelity bonds must include a provision that calls for ten (10) days' written notice to the Association or insurance trustee before the bond can be canceled or substantially modified for any reason.

Section 8.3 Miscellaneous Insurance Provisions. The Association shall obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of the Association, its Board of Directors and any managing agent acting on behalf of the Association. The premiums for all such insurance coverage shall be a Common Expense.

Section 8.4 Casualty and Restoration. Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. The same obligation shall apply to an Owner, and not the Association, for damage or destruction to the Owner's Dwelling Unit. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

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Section 8.5 Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a Special Assessment against all Lots for such deficiency.

Section 8.6 Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

ARTICLE IX

Mortgages

Section 9.1 Mortgage Rights. In addition to any other rights provided elsewhere in this Declaration to mortgages, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 9.2 Notice to Mortgagees. The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in this Declaration.

Section 9.3 Condemnation and Insurance Awards. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

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Section 9.4 Right of First Refusal. The Association DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any right of "right of first refusal" subsequently granted to the Association through amendment of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Properties must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property must not impair the rights of a first mortgagee to:

- (a) Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage;
 - (b) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor,
- OR
- (c) Sell or lease a unit acquired by the mortgagee.

Section 9.5 Unpaid Dues or Charges. Any first mortgagee who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Dwelling Unit's unpaid dues or charges accrued before the acquisition of the title to the Dwelling Unit by the mortgagee.

ARTICLE X

General Provisions

Section 10.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 10.2 Severability and Waiver. Invalidity of any one 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. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

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Section 10.3 Amendment. This Declaration and the covenants, conditions and restrictions set forth in this Declaration, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties closing under them. This Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Hendricks County, Indiana, approved and signed by at least seventy-five percent (75%) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited below, this Declaration may also be amended by Declarant, if it then has any ownership interest in the Property, at any time within four (4) years after the recording hereof. Any amendment must be recorded. Neither the Association, the Owners or Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the Owners of Lots (excluding Declarant or Builder):

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners of the Dwelling Units. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area owned by the Association by the Dwelling Unit Owners is not a transfer in the meaning of this clause;
- (b) Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least 100 percent of the insurable value (based on current replacement costs);
- (c) Use hazard insurance proceeds for losses to any Common Area owned by the Association for other than the repair, replacement, or reconstruction of the Common Area owned by the Association.

Section 10.4 HUD Amendment Approval. All other provisions of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property notwithstanding, so long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development:

- (a) Annexation of additional properties other than the Additional Real Estate;
- (b) Dedication or Mortgaging of Common Area; and
- (c) Amendment of the Declaration of Covenants, Conditions and Restrictions.

Section 10.5 Assignment. Declarant may assign or otherwise transfer any and all of its rights as Declarant in whole or in part.

Section 10.6 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part

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of the Common Area owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

IN WITNESS WHEREOF, TRI-NORTH DEVELOPMENT COMPANY, LLC, an Indiana limited liability company, has caused this Declaration to be executed as of the date first written above.

**TRI-NORTH DEVELOPMENT COMPANY, LLC,
an Indiana limited liability company**

**BY: NORTHSIDE REAL ESTATE COMPANY,
INC., an Indiana corporation, Member**

By: 
Thomas A. Grant, President

STATE OF INDIANA)
COUNTY OF Marion) SS:

Before me the undersigned, a Notary Public in and for said County and State, personally appeared **Thomas A. Grant**, as President of Northside Real Estate Company, Inc., an Indiana corporation, member of Tri-North Development Company, LLC, an Indiana limited liability company, and having been duly sworn, acknowledged execution of this Declaration of Covenants, Conditions and Restrictions of Avon Trails.

Witness my hand and Notarial Seal this 1st day of June, 1999.

My Commission Expires:

01/1/2005

Residing in Marion County


Notary Public

America M. Eder
Printed Name



Prepared By: **Charles D. Frankenberger, NELSON & FRANKENBERGER, 3021 East 98th Street
Suite 220, Indianapolis, Indiana 46280 - (317) 844-0106**

Pr. Under Blank Coverment from Frydberg/Trilico/2004

EXHIBIT "A"

A part of the Northwest Quarter of Section 5, Township 15 North, Range 2 East, Hendricks County, Indiana and a part of the Northeast Quarter of Section 6, Township 15 North, Range 2 East, Hendricks County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of the Northwest Quarter of Section 5, Township 15 North, Range 2 East, Hendricks County, Indiana; thence South 89 degrees 53 minutes 23 seconds East along North line of said Northwest Quarter a distance of 19.31 feet; thence South 00 degrees 05 minutes 39 seconds East a distance of 94.53 feet to the Southwest corner of a tract of land conveyed to Hendricks County recorded in Deed Book 349 pages 127-128, thence North 89 degrees 54 minutes 09 seconds East along South line of said tract a distance of 37.30 feet to the West line of a tract of land conveyed to Hendricks County recorded in Deed Book 342 pages 265-266, (the next (4) courses being on said tract): (1) thence North 89 degrees 54 minutes 09 seconds East a distance of 471.23 feet; (2) thence South 00 degrees 05 minutes 51 seconds East 213.25 feet; (3) thence South 22 degrees 54 minutes 02 seconds East a distance of 126.98 feet to a curve to the left having a radius of 1853.68 feet, the radius point of which bears North 89 degrees 54 minutes 08 seconds East; (4) thence Southeasterly along said curve an arc distance of 516.91 feet to a point which bears South 73 degrees 55 minutes 30 seconds West from said radius point and the Northeast corner of Crystal Farms, Section 5, as recorded in the Office of the Recorder of Hendricks County, Indiana, Plat Cabinet 1, Slide 107, pages 1A-1B, (the next (7) courses being along said Crystal Farms Section 5); (1) thence South 86 degrees 47 minutes 27 seconds West a distance of 382.05 feet; (2) thence South 00 degrees 00 minutes 00 seconds West a distance of 359.86 feet; (3) thence South 21 degrees 06 minutes 50 seconds West a distance of 163.03 feet; (4) thence South 00 degrees 17 minutes 50 seconds West a distance of 129.05 feet; (5) thence South 10 degrees 00 minutes 00 seconds East a distance of 50.00 feet, to a curve to the right having a radius of 25.00 feet, the radius point of which bears South 10 degrees 00 minutes 00 seconds East; (6) thence Southeasterly along said curve an arc distance of 34.24 feet to a concave curve to the left having a radius of 225.00 feet, the radius point of which bears North 68 degrees 27 minutes 47 seconds East; (7) thence Southeasterly along said curve an arc distance of 108.11 feet to a point which bears South 40 degrees 55 minutes 55 seconds West from said radius point and a point on the Westerly boundary of Shiloh Farms, Section 2 as recorded in Plat Cabinet 4, Slide 54 pages 1-2 and Slide 55 page 1 in the Office of the Recorder of Hendricks County, Indiana; thence South 40 degrees 55 minutes 55 seconds West along said Section 2 a distance of 77.11 feet; thence North 79 degrees 14 minutes 24 seconds West a distance of 445.58 feet; thence North 14 degrees 32 minutes 39 seconds East a distance of 96.05 feet; thence North 41 degrees 16 minutes 01 seconds West a distance of 115.04 feet; thence North 79 degrees 35 minutes 30 seconds West a distance of 108.31 feet; thence South 09 degrees 56 minutes 53 seconds West a distance of 185.00 feet; thence North 80 degrees 03 minutes 07 seconds West a distance of 110.00 feet; thence South 09 degrees 56 minutes 15 seconds West a distance of 19.32 feet; thence North 80 degrees 16 minutes 46 seconds West a distance of 50.00 feet; thence North 80 degrees 03 minutes 07 seconds West a distance of 115.11 feet; thence North 00 degrees 43 minutes 07 seconds East a distance of 387.21 feet; thence South 89 degrees 06 minutes 53 seconds West a distance of 225.69 feet; thence North 00 degrees 53 minutes 34 seconds West a distance of 149.90 feet; thence South 89 degrees 06 minutes 19 seconds West a distance of 84.86 feet; thence North 53 degrees 30 minutes 59 seconds West a distance of 86.68 feet; thence North 19 degrees 58 minutes 43 seconds East a distance of 120.00 feet to a curve to the right having a radius of 225.00 feet the radius point which bears North 19 degrees 58 minutes 43 seconds East; thence Northwesterly along said curve a distance of 35.22 feet to a point which bears South 28 degrees 56 minutes 50 seconds West from said radius point; thence North 28 degrees 56 minutes 50 seconds East a distance of 169.42 feet; thence North 52 degrees 51 minutes 35 seconds West a distance of 279.18 feet; thence North 37 degrees 15 minutes 33 seconds East a distance of 121.16 feet; thence North 53 degrees 37 minutes 14 seconds West a distance of 37.71 feet; thence North 37 degrees 15 minutes 33 seconds East a distance of 333.25 feet; thence North 00 degrees 06 minutes 42 seconds East a distance of 281.14 feet to the North line of the Northeast Quarter of Section 6, Township 15 North, Range 2 East, Hendricks County, Indiana; thence along said North line South 89 degrees 53 minutes 23 seconds East a distance of 917.17 feet to the Point of Beginning containing 50.98 acres more or less.

TOGETHER WITH:

Block "B", comprising 19,517 square feet, as identified in the Final Plat of Crystal Farms Section 5, recorded with the Recorder of Hendricks County, Indiana, on September 25, 1998, as Instrument Number 9800025681, plat cabinet 1, slide 107, pages 1A and 1B.

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EXHIBIT "B"

A part of the Northwest and Southwest Quarters of Section 5, Township 15 North, Range 2 East, Hendricks County, Indiana and a part of the Northeast Quarter of Section 6, Township 15 North, Range 2 East, Hendricks County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of the Northwest Quarter of Section 5, Township 15 North, Range 2 East, Hendricks County, Indiana; thence South 89 degrees 53 minutes 23 seconds East along North line of said Northwest Quarter a distance of 19.31 feet; thence South 00 degrees 05 minutes 39 seconds East a distance of 94.53 feet to the Southwest corner of a tract of land conveyed to Hendricks County recorded in Deed Book 349 pages 127-128, thence North 89 degrees 54 minutes 09 seconds East along South line of said tract a distance of 57.30 feet to the West line of a tract of land conveyed to Hendricks County recorded in Deed Book 342 pages 265-266, (the next (4) courses being on said tract); (1) thence North 89 degrees 54 minutes 09 seconds East a distance of 471.23 feet; (2) thence South 00 degrees 05 minutes 51 seconds East 213.25 feet; (3) thence South 22 degrees 54 minutes 02 seconds East a distance of 126.98 feet to a curve to the left having a radius of 1853.68 feet, the radius point of which bears North 89 degrees 54 minutes 08 seconds East; (4) thence Southeasterly along said curve an arc distance of 516.91 feet to a point which bears South 73 degrees 55 minutes 30 seconds West from said radius point and the Northeast corner of Crystal Farms, Section 5, as recorded in the Office of the Recorder of Hendricks County, Indiana, Plat Cabinet 1, Slide 107, pages 1A-1B, (the next (7) courses being along said Crystal Farms Section 5); (1) thence South 86 degrees 47 minutes 27 seconds West a distance of 382.05 feet; (2) thence South 00 degrees 00 minutes 00 seconds West a distance of 358.88 feet; (3) thence South 21 degrees 06 minutes 50 seconds West a distance of 163.03 feet; (4) thence South 00 degrees 17 minutes 50 seconds West a distance of 129.05 feet; (5) thence South 10 degrees 00 minutes 00 seconds East a distance of 50.00 feet, to a curve to the right having a radius of 25.00 feet, the radius point of which bears South 10 degrees 00 minutes 00 seconds East; (6) thence Southeasterly along said curve an arc distance of 34.24 feet to a concave curve to the left having a radius of 225.00 feet, the radius point of which bears North 88 degrees 27 minutes 47 seconds East; (7) thence Southeasterly along said curve an arc distance of 108.11 feet to a point which bears South 40 degrees 55 minutes 55 seconds West from said radius point and a point on the Westerly boundary of Shiloh Farms, Section 2 as recorded in Plat Cabinet 4, Slide 54 pages 1-2 and Slide 55 page 1 in the Office of the Recorder of Hendricks County, Indiana; (the next (5) courses along said Section 2); (1) thence South 40 degrees 55 minutes 55 seconds West a distance of 153.99 feet; (2) thence South 00 degrees 00 minutes 00 seconds West a distance of 287.00 feet; (3) thence North 90 degrees 00 minutes 00 seconds East a distance of 125.00 feet; (4) thence South 00 degrees 00 minutes 00 seconds West a distance of 34.31 feet to a curve to the left having a radius of 625.00 feet, the radius point which bears North 90 degrees 00 minutes 00 seconds East; (5) thence Southeasterly along said curve an arc distance of 32.72 feet to a point which bears South 87 degrees 00 minutes 00 seconds West from said radius point; thence South 87 degrees 00 minutes 00 seconds West a distance of 126.85 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 233.23; thence South 88 degrees 50 minutes 07 seconds East a distance of 57.75 feet; thence South 21 degrees 30 minutes 00 seconds East a distance of 254.18 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 594.91 feet; thence South 19 degrees 41 minutes 30 seconds East a distance of 148.70 feet; thence South 29 degrees 17 minutes 56 seconds East a distance of 143.40 feet; thence South 01 degrees 35 minutes 28 seconds West a distance of 82.50 feet; to the Northeast corner of Weaver Tract Deed Record 291 page 422-423 in the Office of the Recorder, Hendricks County, Indiana; thence North 89 degrees 04 minutes 25 seconds West along said North line a distance of 511.95 feet, to the West line of said Southwest Quarter; thence North 00 degrees 36 minutes 18 seconds East along said West line a distance of 940.74 feet to the Southwest corner of Northeast Quarter of Section 8, Township 15 North, Range 2 East, Hendricks County, Indiana; thence South 89 degrees 06 minutes 06 seconds West along the South line of said Northeast Quarter a distance of 1880.67 feet; thence North 00 degrees 00 minutes 19 seconds West a distance of 2355.52 feet; thence South 89 degrees 53 minutes 23 seconds East a distance of 150.00 feet; thence North 00 degrees 06 minutes 42 seconds East a distance of 369.50 feet to the North line of the Northeast Quarter of Section 6, Township 15 North, Range 2 East, Hendricks County, Indiana; thence along said North line South 89 degrees 53 minutes 23 seconds East a distance of 1757.25 feet to the Point of Beginning containing 147.60 Acres more or less.

Excepting Therefrom the Real Estate more particularly described in what is attached hereto as Exhibit "A" to this Declaration of Covenants, Conditions and Restrictions of Avon Trails.