

JERRY W. VON ARX
17362 OCT 10 1995
NOTARY PUBLIC
FOR INDIANA

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
CARSON'S FARM

20

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 28th day of SEPTEMBER, 1995 by Beech Grove Overlook, LLC, an Indiana limited liability company (the "Developer").

Recitals
RAT 49-012214

1. Developer is the owner of the real estate which is described in Exhibit "A" attached hereto and made a part hereof (the "Real Estate").
2. Developer intends to subdivide the Carson's Farm Real Estate into residential lots. The subdivision shall be known as Carson's Farm and is sometimes hereafter referred to as "the Subd'vision."
3. Before so subdividing the Real Estate, Developer desires to subject the 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 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 Plat Covenants and Restrictions for the Real Estate as recorded in the office of the Recorder of Marion County, Indiana and of collecting and disbursing the assessments and charges as herein provided.

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 rights, title or interest in or to the Real Estate or any part thereof.

WOOD-CO

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 Carson's Farm Community Association, INC., an Indiana not-for-profit corporation, which developer has caused or will cause 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.

1.3 "Common Areas" means (i) all portions of the Real Estate (including improvements thereto) shown on any Plat of a part of the Real Estate which are not located on Lots and which 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 and (iii) those Landscaping and Mounding Easements described in Article I, Paragraph 1.8 of this Declaration and designated Landscaping and Mounding Easement or L.M.E. on the Plats. Common areas may be located within a public right-of-way or in an easement area as shown on the plat.

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 and Sewer Easement or Landscaping and Mounding 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 and 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 Beach Grove Overlook, LLC, an Indiana limited liability company, 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 seven (7) years after the date this Declaration is recorded.

1.7 "Drainage Utility and Sewer Easement" means those areas so designated or designated D.U. & S.E. on a Plat of any part of the Real Estate. The Drainage Utility and Sewer Easements are hereby created and reserved (a) for the use of Developer, all public utility companies (not including transportation companies), governmental agencies and the Association for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including but not limited to sanitary sewers, storm sewers and cable television services; and (b) for (i) the use of Developer during the Development Period for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property, (ii) the use of the Association and the Departments of Public Works and/or Capital Asset Management of the City of Indianapolis for access to and maintenance, repair and replacement of such drainage system and for access to and maintenance, repair and replacement of the sanitary sewer system. The owner of any Lot subject to a Drainage Utility and Sewer Easement, including any builder, shall be required to keep the portion of said Drainage Utility and Sewer Easement on the Lot free from obstructions so that the storm water drainage will be unimpeded and will not be changed or altered without a permit from the Department of Public Works or Department of Capital Asset Management of the City of Indianapolis and prior written approval of the Developer. The delineation of the Drainage Utility and Sewer Easement areas on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it hereunder. Except as provided above, no structures or improvements (except walkways and driveways), including without limitation decks, patios or landscaping of any kind, shall be erected or maintained upon said easements, and any such structure or improvement so erected upon such easement shall, at Developer's written request, be removed by the Owner at the Owner's sole cost and expense. The Owners of Lots in the Subdivision subject to a Drainage Utility and Sewer Easement shall take and hold title to the Lots subject to the Drainage Utility and Sewer Easements herein created and reserved.

000-085

1.8 "Landscape and Mounding Easements" means those areas of ground so designated or designated L.M.E. on a Plat of any part of the Real Estate. Developer hereby declares, creates and reserves the Landscape and Mounding Easements for the preservation of the subdivision identification signage, the mounds, the trees, bushes, shrubbery and other vegetation in such areas. No improvements (including, without limitation, walkways, driveways, decks, patios and fences except those fences constructed by the Developer which are explicitly permitted) shall be erected or maintained within or upon such Landscape and Mounding Easements without the prior written permission of the Architectural Review Committee. No living trees, bushes, shrubbery or other vegetation shall be removed from any Landscape and Mounding Easement except (a) by public utility companies, governmental agencies, Developer, the Department of Public Works or the Department of Capital Asset Management of the City of Indianapolis or the Association in connection with such entity's use of the Drainage Utility and Sewer Easements as herein permitted; or (b) by Developer (or any entity related to Developer) in connection with the development of the Real Estate. The Owners of Lots in the Subdivision shall take and hold title to the Lots subject to the Landscape and Mounding Easements herein created and reserved.

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 "Mortgage" 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 related to Developer.

1.12 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, or other residential unit designed for occupancy by one family, 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 other part of 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 Marion County, Indiana.

1.14 "Residence Unit" means any single family house designed for residential occupancy.

000-0000

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 affiliate 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 the Owner, the Owner's heirs, personal representatives, successors and assigns, with Developer and the 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' Assesment 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;

(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 and in any Plat of any part of the Real Estate;

(vii) the terms and provisions of this Declaration;

(viii) the assessments received 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 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. Upon sixty (60) days notice to the Association, Developer may convey all of its right, title, interest in and to any of the Common Areas to the Association by quitclaim deed, and such Common Areas so conveyed shall then be the property of the Association.

ARTICLE IV

USE RESTRICTIONS

4.1 Initial Sale of Units. All initial sales of Residence Units by the Developer or its affiliates 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 a unit such rental shall be pursuant to a written lease with a minimum term of one year and such lease shall provide that the lease shall be subject to all rules and regulations of the Association.

4.2 Use of Common Areas. The Common Areas shall not be used for commercial purposes.

4.3 Lot Access. All lots shall be accessed from the interior streets of the subdivision.

4.4 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 and nuisances 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 Residence Unit.

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 event Developer shall then have a Class A membership). 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 or Residence Unit 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 or December 31, 2008, whichever occurs first.

5.4 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a Residence Unit, all such persons or entities shall be members of the Association,

but the single vote in respect of such Residence Unit shall be exercised as the persons or entities holding an interest in such Residence Unit determine among themselves. In no event shall more than one person exercise a Residence Unit's vote under paragraph 5.2 (in the case of Class A membership). No Residence Unit's vote shall be split.

5.3 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.

5.4 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. Maintenance of the Landscaping and Mounding Assessments may be performed by the Association but the Owners whose Lots are subject to such assessments shall have the primary responsibility for such maintenance.

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

(iii) Maintenance, repair and replacement of all 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 reduce the obligation of the Owner, including any builder, of a Lot subject to a Drainage Utility and Sewer Assessment to keep the portion of the drainage system and Drainage Utility and Sewer Assessment on the Lot free from obstructions so that the storm water drainage will be unimpeded.

001090

(v) 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.

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

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

(viii) 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; provided nothing set forth herein shall require or obligate the Association to provide such services.

(ix) Enforcing the rules and regulations of the Association and the requirements of this Declaration and the zoning covenants and commitments.

8.8 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.

8.9 Compensation. No director or officer of the Association shall receive compensation for 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.

8.10 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.

00-09

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 the 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 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 Purpose and Powers of the 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, and the installation and removal of any trees, bushes, shrubbery and other landscaping on any Lot, 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.

(1) In General. No residence, building, structure, antenna, walkway, fence, deck, 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 replacement. Such plans shall include plot plans showing the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated.

00-0000

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. It is contemplated that the Architectural Review Committee will review and grant general approval of the floor plans and exterior styles of the homes expected to be offered and sold in the Subdivision by the builders and that such review and approval will occur prior to the builders selling any homes in the Subdivision. Unless otherwise directed in writing by the Architectural Review Committee, once a builder has received written approval of a particular floor plan and exterior style, it shall not be necessary to reapply to the Architectural Review Committee in order for such builder to build the same floor plan and exterior style on other lots.

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

(a) The plans, specifications, drawings or other material 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 surrounding 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 the Architectural Review Committee. If the Architectural Review Committee does not disapprove a Requested Change within thirty (30) days after all required information

0000994

on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed approved. One copy of submitted material shall be retained by the Architectural Review Committee for its permanent files.

6.4 Liability of the Architectural Review Committee. Neither the Architectural Review Committee, the Association nor any agent 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.

6.8 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 estate, (ii) for the improvement, maintenance and repair of the Common Areas, the improvements, lawn foliage and landscaping within and upon the Common Areas, any Landscaping and Mounding Easement, any Drainage Utility and Sewer Easement and the drainage system, and (iii) for the performance of the responsibilities specifically provided for 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.

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:

- (1) Until December 31, 1996, the Maximum Regular Assessment on any Residence Unit for any calendar year shall not exceed Sixty dollars (\$60.00).

00-095

(ii) From and after January 1, 1997, the Maximum Regular Assessment on any Residence Unit for any calendar year may be increased by not more than fifteen percent (15%) 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 January 1, 1997, 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.

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 to time incur, but only with the assent of two-thirds (2/3) 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 or Builders During the Development Period. Neither the Developer nor, except as otherwise provided in paragraph 7.3 and Article 8 below, any builder nor any related 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 such Residence Unit to an Owner who is not one of the persons named in paragraph 7.4 above.

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

000-095

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 shall be exempt 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 accruing 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 reasonable attorneys' fees) and interest from the date such assessments were due until paid.

(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

000-0000

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 (other than the Developer or a builder during the Development Period) of a Residence Unit or 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 (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 reasonable attorneys' 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 Expenses Incurred to Clear Drainage Utility and Sewer Easement Deemed a Special Assessment. As provided in paragraph 1.3 above, the Owner of any lot subject to a Drainage Utility and Sewer Easement, including any builder, shall be required to keep the portion of said Drainage Utility and Sewer Easement on the 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 Department of Public Works or Department of Capital Asset Management and prior written approval of the Developer. Also, no structures or improvements, including without limitation decks, patios, fences or landscaping of any kind, shall be erected or maintained upon said easements, and any such structure or improvement so erected shall, at

00-098

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 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 possible, contain provision 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 insure to the benefit of the Association, its Board of Directors, officers, agents and employees, any committee of the

0000000000

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 and Sewer Easements located on the Lot, free of weeds, 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 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 to the extent of the availability of 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 or against such Owners who benefit by the Special Assessments if less than all benefit. 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 the Owner's 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 Mortgagee. 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 Mortgagee 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 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 Owner or Mortgagee of any Lot or Residence Unit may make the payment on behalf of the Association and shall be entitled to reimbursement by 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, that any such amendment shall require the prior written approval of Developer so long as Developer or any entity related to 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 10.3.

(v) Mortgagees' Vote on Special Amendments. No amendments to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 601.02 of Part V, Chapter 4, of the Zannia Mae Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first mortgagee's consent under the Trudis Mac Sellers' and Harvey's Guide, Vol. 1, Section 2103(d) without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 10.2

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if the Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee) or if the Mortgagee does not send its written objection to the proposed amendment prior to such meeting. In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees, whose interests have been made known to the Board of Directors, of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed and if such notice advises the Mortgagee of the time limitation contained in this sentence.

11.2 By the Developer. Developer hereby reserves the right, so long as Developer or any entity related to 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 the obligations imposed by this Declaration on any Owner.

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 Marion 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, in Plat Covenants and Restrictions, in a Plat of any part of the Real Estate or zoning commitments now or hereafter recorded in the office of the Recorder of Marion County, Indiana, 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, restrictions or commitments. 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, conditions, restrictions or commitments; 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, restrictions or commitments.

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, restrictions or commitments enumerated in this Declaration or in a Plat of any part of the Real Estate or otherwise shall be held to be a waiver by that party for an estoppel of that party to assert) any right available to it upon the occurrence, recurrence or continuance of such violation or violations.

001104

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, 2015, and thereafter shall continue automatically until terminated or modified by vote of a 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 Reversibility. 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.

12.6 Applicable Law. This Declaration shall be governed by the laws of the State of Indiana.

12.7 Government Financing Entities' Approval. If there is Class B membership in the Association and if there is financing provided for any of the Real Estate by the Federal Housing Administration, Veterans Administration, Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, and any of these entities requires that its consent be obtained prior to amending this Declaration or dedicating the Common Areas subject to this Declaration, then while there is Class B Membership the Developer and the Association must obtain the consent of such entity. If none of the Real Estate is financed by any of such entities, then the Developer, while there is a Class B Membership, or the Association may amend this Declaration or dedicate any Common Areas without obtaining the consent of the above referenced entities.

00-1-05

DEVELOPER'S RIGHTS

13.1 Access rights. Developer hereby declares, creates and reserves an access license over and across all the Real Estate (subject to the limitations hereinafter provided in this paragraph 13.1) for the use of Developer and its representatives, agents, contractors and affiliates during the Development Period. Notwithstanding the foregoing, the area of the access license created by this paragraph 13.1 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of a building or other improvement properly located on the Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access rights only to the extent reasonably necessary and appropriate.

13.2 Signs. Developer shall have the right to use signs of any size during the Development Period and shall not be subject to the Plat Covenants and Restrictions with respect to signs during the Development Period. The Developer shall also have the right to construct or change any building, improvement or landscaping on the Real Estate without obtaining the approval of the Architectural Review Committee at any time during the Development Period.

13.3 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, Developer, any entity related to Developer and any other person or entity with the prior written consent of Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer or such person or entity as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate and the sale of lots and the construction of Residence Units thereon. Such facilities may include, without limitation, storage areas, parking areas, signs, model residences, construction offices and sales offices or trailers.

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

BEECH GROVE OVERLOOK, LLC

By *Robert P. Ellis*
Robert P. Ellis, Manager

STATE OF INDIANA }
COUNTY OF MARION } SS:

Before me, a Notary Public, in and for the State of Indiana, personally Robert P. Ellis, Manager of Beach Grove Overlook, LLC an Indiana limited liability company, who, as Manager of said company, acknowledged the execution of this instrument on behalf of such company.

Witness my hand and Notarial Seal this 28th day of September, 1998.

Maxim H. Webb
Notary Public
Printed Maxim H. Webb

My Commission Expires:
12-12-98
County of Residence:
Hamilton



This instrument prepared by James M. Seabey, Landman & Seabey, 1150 Market Square Center, 181 N. Delaware Street, Indianapolis, IN 46204-2818, (317) 836-1040.



APPROVED THIS 18th
DAY OF October 1998
BY CHRISTOPHER ASBERG
Christoph Asberg DIRECTOR

00107

CARSON'S FARM
LAND DESCRIPTION

Part of the Southwest Quarter of Section 28, Township 18 North, Range 4 East and part of the Northwest Quarter of Section 33, Township 18 North, Range 4 East in Marion County, Indiana, described as follows:

Commencing at the Northwest corner of said Southwest quarter; thence on an assumed bearing of South 00 degrees 18 minutes 05 seconds East on the West line of said Southwest quarter 860.00 feet to the POINT OF BEGINNING; thence continuing South 00 degrees 18 minutes 05 seconds East on said West line 240.00 feet; thence North 88 degrees 38 minutes 02 seconds East parallel with the North line of said Southwest Quarter 218.00 feet; thence South 00 degrees 18 minutes 05 seconds East parallel with the West line of said Southwest quarter 180.00 feet; thence South 88 degrees 38 minutes 02 seconds West parallel with said North line 218.00 feet to the West line of said Southwest Quarter; thence South 00 degrees 18 minutes 05 seconds East on said West line 1604.84 feet to the Northwest corner of said Northwest Quarter; thence South 00 degrees 12 minutes 12 seconds East on the West line of said Northwest Quarter 714.01 feet; thence North 90 degrees 00 minutes 00 seconds East 400.00 feet; thence North 32 degrees 58 minutes 38 seconds East 408.00 feet; thence North 16 degrees 21 minutes 31 seconds East 408.00 feet to the South line of said Southwest Quarter; thence North 38 degrees 39 minutes 26 seconds West 478.00 feet; thence North 80 degrees 35 minutes 32 seconds West 130.00 feet; thence North 04 degrees 14 minutes 55 seconds West 644.38 feet; thence North 27 degrees 37 minutes 38 seconds East 131.44 feet; thence North 14 degrees 35 minutes 47 seconds East 477.87 feet; thence North 08 degrees 18 minutes 08 seconds West 292.38 feet; thence South 88 degrees 38 minutes 02 seconds West parallel with the North line of said Southwest Quarter 110.00 feet; thence North 00 degrees 18 minutes 05 seconds West parallel with the West line of said Southwest quarter 17.00 feet; thence South 88 degrees 38 minutes 02 seconds West parallel with said North line 330.00 feet to the place of beginning, containing 28.807 acres, more or less. Subject to all legal highways, rights of way, easements and restriction of record.

Exhibit "A"