

(#3147)

7900
51140

840077308

GOLDEN OAKS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

September 28, 1984

DECLARANT: OLDE MILL, INC.

FILED ENTERED
FOR TAXATION

OCT 3 10 24 84

COURTY AUDITOR

Jimmy S. ...

RECEIVED FOR RECORD
BETH O'LAUGHLIN
RECORDING SERVICE CO.

OCT 3 10 37 AM '84

RETURN TO:
James W. Beatty
Landman & Beatty
400 Union Federal Building
Indianapolis, Indiana 46204

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>TITLE</u>	<u>PAGE</u>
I	Definitions	2
II	Declaration; Common Properties and Rights Therein; Easements	4
III	Obligations of Declarant as to Common Properties	6
IV	Corporation; Membership; Voting; Functions	7
V	Board of Directors	8
VI	Real Estate Taxes; Utilities	16
VII	Maintenance, Repairs and Replacements	16
VIII	Architectural Control	18
IX	Party Walls	19
X	Assessments	20
XI	Mortgages	28
XII	Insurance	30
XIII	Casualty and Restoration; Condemnation; Termination	34
XIV	Restrictions, Covenants and Regulations	37
XV	Amendment of Declaration	41
XVI	Acceptance and Ratification	43
XVII	Negligence	44
XVIII	Benefit and Enforcement	44
XIX	Annexations	45
XX	FHA and VA Approval	46
XXI	Miscellaneous	46

9-18-84
(#3147)

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
OLDE MILL, INC.

This Declaration (hereinafter referred to as "the Declaration" or "this Declaration"), made this 28th day of September, 1984, by OLDE MILL, INC., an Indiana corporation (hereinafter referred to as "Declarant"),

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real estate in Marion County, State of Indiana, more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as the "Real Estate").

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community to be known as Golden Oaks with provision for the maintenance of lawns, removal of snow from walks, drives and certain public streets, the maintenance of exteriors of Buildings and purchase of certain insurance for the benefit of such residential community; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and, to this end, Declarant desires to subject the Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each owner of all or part thereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the power and duty to (i) administer any Common Properties located on the Real Estate, (ii) provide for the maintenance of lawns, removal of snow from walks and drives and certain public streets, and the maintenance of exteriors of Buildings; (iii) purchase insurance, (iv) enforce the covenants and restrictions contained in this Declaration, (v) collect and disburse the assessments and charges imposed and created hereby and hereunder, and (vi) promote the health, safety and welfare of the owners of the Real Estate, and all parts thereof; and

84 77308

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name of Golden Oaks Homeowners Association, Inc., or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Lots situated therein.

ARTICLE I

Definitions

Section 1. The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

- (a) "Act" shall mean and refer to the Indiana Not-For-Profit Corporation Act of 1971, as amended;
- (b) "Applicable Date" shall mean and refer to the date determined pursuant to Article IV, Section 2(b) of this Declaration;
- (c) "Architectural Review Board" shall mean and refer to that committee or entity established pursuant to Article VIII, Section 1 of this Declaration for the purposes herein stated;
- (d) "Articles" shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time;
- (e) "Board" or "Board of Directors" shall mean and refer to the governing body of the Corporation elected, selected or appointed as provided for in the Articles, By-Laws and this Declaration;
- (f) "Building" shall mean and refer to a structure having more than one "Dwelling Unit";
- (g) "By-Laws" shall mean and refer to the Code of By-Laws of the Corporation, as the same may be amended from time to time;

84 77308

- (h) "Common Expenses" shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Properties, and all sums lawfully assessed against the Owners by the Corporation, and all sums, costs and expenses declared by this Declaration to be Common Expenses;
- (i) "Common Properties" shall mean and refer to (i) all portions of the Real Estate shown on any recorded subdivision plat of the Real Estate which are not Lots (or Blocks which are to be divided into Lots), whether such plat is heretofore or hereafter recorded, (ii) to the extent hereinafter established, such portions of the Real Estate as are herein declared to be Common Properties even though located on or constituting part of one or more Lots (or Blocks which are to be divided into Lots), including but not limited to driveway easements, (iii) to the extent hereinafter established, such improvements located, installed or established in, to, on, under, across or through the Real Estate as are herein declared to be Common Properties whether located, installed or established entirely or partially on Lots or portions of the Real Estate which are not Lots, or both, and (iv) items deemed Common Properties for purposes of maintenance;
- (j) "Corporation" shall mean and refer to Golden Oaks Homeowners Association, Inc., an Indiana not-for-profit corporation which Declarant has caused to be incorporated under said name or a similar name, its successors and assigns;
- (k) "Declarant" shall mean and refer to Olde Mill, Inc., an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any builder or builders who purchase more than one Lot for the purpose of the erection of buildings and the resale of Dwelling Units to Owners, and any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant;
- (l) "Dwelling Unit" shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) single family, whether such Dwelling Unit is detached or attached to another Dwelling Unit;
- (m) "Lot" shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Properties) designed and intended for use as a building site for, or developed and improved for use as, a Dwelling Unit, as designated by Declarant by its deed of the same to another Person. For purposes of this Declaration, a "Lot" shall be any single numbered parcel of land identified as a lot on a recorded subdivision plat of the Real Estate. The plat or plats will be initially recorded reflecting units described on the plat as "Blocks" and the plats of said areas will be amended and rerecorded to define specific Lot lines;
- (n) "Mortgagee" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;

- (o) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot, but in any event shall not include or mean to refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Lot, but upon so acquiring title to any Lot a mortgagee or tenant shall be an Owner;
- (p) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;
- (q) "Plat" shall mean and refer to the subdivision plat or plats of the Real Estate recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented;
- (r) "Real Estate" shall mean and refer to the parcel of real estate in Marion County, Indiana described in the first recital clause of this Declaration, and defined therein as the Real Estate;
- (s) "Restrictions" shall mean and refer to the agreements, covenants, conditions, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time;
- (t) "Zoning Commitments" shall mean and refer to the written Covenants, as amended, heretofore entered into by Declarant in connection with zoning of the Real Estate, which Covenants are recorded as Instrument No. 84-74199 in the office of the Recorder of Marion County, Indiana, said recorded instrument being incorporated herein by reference, as the same may hereafter be amended in accordance with its terms.

Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

ARTICLE II

Declaration; Common Properties and Rights Therein; Easements

Section 1. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, transferred, and occupied subject to the Restrictions. Subsequent owners or contract purchasers of any Lot (i) by 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) by the act of occupancy of any Lot, shall accept such deed, execute such contract or occupy the Lot subject to each Restriction and agreement herein contained. By acceptance of such deed, execution of such contract or occupancy of the Lot, each Owner, contract purchaser or occupant acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also

for its lf, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owner of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

Section 2. Easement to Owner. Declarant hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Properties, subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot. Without limiting the generality of the foregoing, each Owner, his tenants, invitees and guests, shall have and is hereby granted a non-exclusive easement and right of ingress to, egress from and access between his Lot and a public street, for pedestrian and vehicular traffic, upon, over and across the driveways on and adjacent to Owner's Lot and shown, or to be shown, on a Subdivision Plat of the Real Estate. It is intended that the areas shown on the Subdivision Plat shall be private driveways and not for public use. In addition to the Owners, their tenants, invitees and guests, all public and quasi-public vehicles, including but not limited to, police, fire and other emergency vehicles, trash and garbage collection vehicles, post office vehicles and privately owned delivery trucks shall have the right to enter upon and use said private driveways for ingress to, egress from and access between the Lots and public streets in the performance of their duties.

Section 3. Easement to Corporation. Declarant hereby grants a non-exclusive easement in favor of the Corporation for the maintenance of the Common Properties (including items deemed Common Properties for maintenance only which includes but is not limited to lawns). Said easement shall permit the Board or its agents to enter onto any Lot to maintain lawns or the exterior of buildings; to make emergency repairs or to do other work reasonably necessary for the proper maintenance or operation of the subdivision; and to enter onto any Lot for the purpose of reconstruction and restoration in the event of casualty. Maintenance shall include but not be limited to

maintenance of utilities which serve more than one Dwelling Unit and utilities owned and utilized by the Corporation.

Section 4. Encroachment Easements. If any Dwelling Unit encroaches upon another Dwelling Unit or Lot as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement shall be deemed to exist and run to the Owner of the encroaching improvement for the encroachment and for the maintenance thereof so long as said encroachment exists.

ARTICLE III

Obligations of Declarant

as to Common Properties; Dedication

Section 1. Agreement to Construct and Convey Common Properties. Declarant has constructed or provided for, or will construct or provide for, the Common Properties consisting of the following items required by, and in accordance with, the Zoning Covenants, or otherwise:

- (a) installation of utility equipment, facilities and systems to serve the Real Estate including the Common Properties,
- (b) intersection street lighting facilities for the public streets and private drives,
- (c) perimeter treatment of the Real Estate, including walls, fencing and landscaping as required by the Zoning Commitments,
- (d) the installation of recreational facilities as shown in the exhibits to the Revised Final Proposed Preliminary Plan approved by the Department of Metropolitan Development Planning Commission ("Department") and recorded as Instrument No. 84-74199 in connection with the rezoning of the Real Estate, or in accordance with such amended plans as the Department shall approve,
- (e) installation of water hydrants and water meter pits to be used by the Corporation for lawn maintenance,
- (f) lakes as shown on Plat.

Upon final construction or provision of the Common Properties described in this Section 1, Declarant covenants to convey all of his right, title and interest in and to said Common Properties to the Corporation and all such right, title and interest in and to said items (whether owned in fee, by leasehold or in the nature of an easement or license) shall then be the property of the Corporation, whether or not the

same may be located entirely or partially on any one or more of the Lots. As to any of such items of and constituting the Common Properties located entirely or partially on any one or more of the Lots, the Owners of such Lots shall have only non-exclusive easement rights therein, as described in Article II, Section 2 of this Declaration.

Section 2. Dedication. The streets shown on the plat as Emily Drive, Golden Oaks West, Golden Oaks North, Golden Oaks East, Golden Leaf Way and Oak Run Drive are hereby dedicated to the Department of Transportation for the use and benefit of the public.

ARTICLE IV

Corporation; Membership; Voting; Functions

Section 1. Membership in Corporation. Declarant and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a member of the Corporation and shall remain a member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Corporation.

Section 2. Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:

- (a) Class A. Class A members shall be all Owners except Class B members. Each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.
- (b) Class B. Class B members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B member shall be entitled to three (3) votes for each Lot of which it is the Owner on all matters requiring a vote of the members of the Corporation. The Class B membership shall cease and terminate upon the applicable date which is

the first to occur of (i) the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership or (iii) December 31, 1989 (the applicable date being herein referred to as the "Applicable Date").

Section 3. Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Properties, to pay taxes assessed against and payable with respect to the Common Properties, to pay any other necessary expenses and costs in connection with the Common Properties, and to perform such other functions as may be designated for it to perform under this Declaration.

ARTICLE V

Board of Directors

Section 1. Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 2 of this Article V.

Section 2. Initial Board of Directors. The initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: Robert A. Borns, Sandra Borns and Ewell Thrasher (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reasons or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Corporation and an Owner solely for the

64 77308

purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a member of the Corporation).

Section 3. Additional Qualifications. Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

Section 4. Term of Office and Vacancy. Subject to the provision of Section 2 of this Article V, one-third (1/3) of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, one-third (1/3) of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one-third (1/3) of the Board of Directors shall be elected for a three (3) year term, one-third (1/3) for a two (2) year term, and one-third (1/3) for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The Director so filling a vacancy shall serve until

84 77308

the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

Section 5. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

Section 6. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Properties (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) maintenance, repair, replacement and upkeep of the Common Properties (or items deemed Common Properties for purposes of maintenance only); **81 77308**
- (b) protection, surveillance and replacement of the Common Properties, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

- (c) maintenance of utility facilities used in connection with the Lots and Dwelling Units and the Common Properties (provided, that Owners shall each pay for their respective utility services and the Board shall have no obligation for such services);
- (d) removal of trash and waste from the Real Estate on a basis of not less than weekly, provided further that only the Board or Managing Agent shall contract for such service and no Owner shall contract for such service;
- (e) snow removal from walks, drives and public streets dedicated to the public by the Plat;
- (f) assessment and collection from the Owners of the Owners' respective share of the Common Expenses;
- (g) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (h) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (i) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Properties and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
- (j) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable; and
- (k) paying taxes assessed against and payable with respect to the Common properties and paying any other necessary expenses and costs in connection with the Common Properties;
- (l) making available to Owners and Mortgagees, and to holders, insurers or guarantors of any first mortgage, current copies of this Declaration, the By-Laws or other rules concerning the Subdivision and the books, records and financial statements of the Corporation. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances;
- (m) making available to any Mortgagee or any holder, insurer or guarantor of a first mortgage, upon request, a copy of the Corporation's audited financial statement for the immediately preceding fiscal year free of charge to the party making such request.

Section 7. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) to employ a Managing Agent to assist the Board in performing its duties; provided that no employment agreement with the Declarant (or a corporation or other entity affiliated with the Declarant) as Managing Agent or for any other service shall be for more than three (3) years after the Applicable Date and after the Applicable Date any such agreement shall be subject to termination by either party without cause and without payment of a termination fee upon ninety (90) days written notice to the other party;
- (b) to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (c) to employ legal counsel, architects, contractors, ~~accountants and others~~ as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
- (d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Properties;
- (e) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (f) to open and maintain a bank account or accounts in the name of the Corporation;
- (g) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Properties (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners.

Section 8. Limitation on Board Action. The Board's powers are subject to the following limitations. (a) After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary.

- (i) contracts for replacing or restoring portions of the Common Properties damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
- (ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

- (iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

(b) The Board shall not, without the prior written approval of at least sixty-seven percent (67%) of the Owners (other than Declarant) and such approval of the Mortgagees (whose mortgage interests have been made known to the Board of Directors) holding mortgages on Lots which have at least sixty-seven percent (67%) of the votes of Lots which are subject to mortgages:

- (i) by act or omission abandon, partition, subdivide, encumber, sell or transfer the Common Properties owned by the Corporation (provided, the granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this clause);
- (ii) by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of Dwellings, the exterior maintenance of Dwellings, the maintenance of side walls in the Common Properties or common fences, or the upkeep of lawns in the Subdivision;
- (iii) fail to maintain fire and extended coverage insurance on Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement costs; and
- (iv) use hazard insurance proceeds for losses to any of the Common Properties for other than the repair, replacement or reconstruction of Common Properties.

Section 9. Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 10. Non-Liability of Directors. The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such

contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 11. Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 12. Bond. The Board of Directors shall provide surety bonds and shall require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of directors and any such bond shall specifically include protections for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense. The amount of the bonds shall be based upon the judgment of the Board of Directors and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Corporation or its management agent at any given time during the term of the bond. In no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all units plus reserve funds.

Section 13. Initial Management. The Initial Board has entered, or will hereafter enter, into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term which will expire not later than December 31, 1989, under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Properties and, in general, perform all of the duties and obligations of the Corporation. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) at any time prior to the expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties, obligations and functions. Notwithstanding anything to the contrary contained in this Declaration, so long as such management agreement remains in effect, Declarant (or its affiliate, as appropriate) shall have, and Declarant hereby reserves to itself (or to its affiliate, as appropriate), the exclusive right to manage the Real Estate and Common Properties and to perform all the functions of the Corporation.

ARTICLE VI

Real Estate Taxes; Utilities

Section 1. Real Estate Taxes. Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Properties shall be paid by the Corporation and treated as a Common Expense.

Section 2. Utilities. Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities which are not separately metered to an Owner's Lot or Dwelling Unit shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation.

ARTICLE VII

Maintenance, Repairs and Replacements

Section 1. By Owners. Except as provided in Section 2(b) of this Article, each Owner shall, at his own expense, be responsible for, and shall promptly perform as the need therefor arises, all maintenance, repairs, decoration and replacement of his own Dwelling Unit, both interior and exterior. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot, except (a) for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Properties for purposes of maintenance only and (b) lawn maintenance as provided in Section 2 below. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Dwelling Unit, 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 Properties. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment

and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

Section 2. Common Properties and Exteriors of Dwelling Units and Lawns By the Corporation.

(a) Maintenance, repairs, replacements and upkeep of the Common Properties shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

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

(i) maintenance, repairs, replacement and upkeep of the exteriors of each Dwelling Unit. Such exteriors including, but not limited to, roofs, gutters, doors, windows (excluding glass which shall be considered a part of interior maintenance) and exterior walls shall be considered part of the Common Properties for purposes of maintenance only;

(ii) maintenance of the lawns, which shall be considered part of the Common Properties for purposes of maintenance only. Maintenance of lawns shall include but shall not be limited to the fertilizing, mowing and replanting when necessary of the grass; and the care, fertilizing, trimming, removal and replacement of trees planted by the Declarant. It shall not include the watering of lawns on Lots which shall be the responsibility of the Owner nor the care and maintenance of (i) shrubs, (ii) trees which were not planted by Declarant, (iii) flowers or (iv) other plants on any Lot;

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

(c) Notwithstanding any obligation or duty of the Corporation to repair or maintain any of the Common Properties (or items deemed Common Properties for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Properties (or 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 Corporation, unless such loss is covered by the Corporation's insurance with such

policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

(d) The authorized representatives of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance only, repairs or replacements of or to the Common Properties and items deemed as Common Properties for purposes of maintenance only, including, but not limited to, access to any easements reserved by any subdivision plat of any portion of the Real Estate for such purposes.

ARTICLE VIII

Architectural Control

Section 1. The Architectural Review Board. As a standing committee of the Corporation, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more Persons as may, from time to time, be provided in the By-Laws. Until the Applicable Date, Declarant shall appoint the members of the Architectural Review Board. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors.

Section 2. Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Real Estate and of improvements thereon in such manner as to reserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

Section 3. Conditions. No improvements, alterations, repairs, change of colors, excavations, changes in grade or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building,

fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot and no trees or shrubs may be planted on any Lot by a Lot Owner without the prior written approval of the Architectural Review Board; provided this restriction shall not be applicable to the original construction of a Dwelling Unit on a Lot whether such construction occurs before or after the Applicable Date.

Section 4. Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.

ARTICLE IX

Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Dwelling Unit upon the Real Estate and which connects two Dwelling Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.

Section 3. Destruction by Fire or Other Casualty. If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by

insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten days after written request therefor from another party, the Board of Directors of the Corporation shall select an arbitrator for the refusing party.)

ARTICLE X

Assessments

Section 1. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 2. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided that any increase of more than ten percent (10%) must be approved by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy; provided further, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all other sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Properties (or items deemed Common Properties for purposes of maintenance only as defined in Article VI, Section 2(b)), which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Properties. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Properties (including items deemed Common Properties for purposes of maintenance only as defined in Article VI, Section 2(b)) shall be maintained by the Corporation in an interest bearing account with one or more banks or savings and loan associations authorized to conduct business in Marion County,

Indiana and insured by a Federal depository agency selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 3. Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be computed as follows: all estimated Common Expenses except the estimated cost of the master casualty insurance policy provided for in Article XII Section 1 shall be divided by the total number of Lots in the subdivision to determine quotient A; the estimated cost of said master casualty insurance policy shall be divided on a pro-rata basis for each Dwelling Unit based upon the square feet of living area in each Dwelling Unit, including garages but excluding basements, to determine quotient B; quotients A and B shall be added together and the sum shall be the Regular Assessment for each Lot. The portion of the Regular Assessment attributable to the replacement reserve funds shall be computed in the same manner as set forth above, for the computation for quotient A.

Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within

fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year; provided, however, that Declarant is authorized to collect an amount equal to thirteen (13) monthly installments of the Regular Assessment at the closing of the purchase of each Lot. Payment of the quarterly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay quarterly assessments semi-annually or annually, in advance. At the election and option of the Board, the Regular Assessment may be required to be paid by the Owners in advance in equal monthly installments rather than quarterly installments. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

- (a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether quarterly or monthly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
- (b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether quarterly or monthly, until the entire amount of such excess has been so credited; provided, however, that if an Owner had paid his Regular Assessment either semi-annually or annually in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

81 77308

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that Date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 2 of Article XI hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Quarterly or monthly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

Each Owner shall prepay to the Corporation at the time his Lot is conveyed to such Owner an amount equal to thirteen (13) monthly installments of the amount required to pay for the Lot Owner's pro-rata portion of the master casualty insurance policy based upon the budget for the current fiscal year and the Owner shall maintain such prepayment account at all times.

The Corporation shall hold such pre-paid funds in a separate escrow account for the purchase of insurance as provided in Article XII, Section 1.

Section 4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time, unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"); provided, that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

Section 5. Failure of Owner to Pay Assessments. (a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Properties and items deemed Common Properties for purposes of maintenance only, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Properties or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or

as otherwise provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessments or Special Assessments, when due, the Board may in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot and Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments were due, until paid, at a rate equal to the "prime interest rate" then being charged by Merchants National Bank and Trust Company of Indianapolis to its largest and best corporate customers (or if said Bank is no longer in existence, then such rate charged by another national bank in Marion County, Indiana selected by the Board).

(b) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot and Dwelling Unit to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner

provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which it arose).

Section 6. Initial Budgets and Assessments.

Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners.

Further, until the Applicable Date, the Regular Assessments are and shall be established as follows:

(a) From the date of the first conveyance of a Lot by Declarant to any other Person until the earlier of the Applicable Date or December 31, 1984,

(i) the Regular Assessment shall be Forty-Three and 75/100 Dollars (\$43.75) per month on each Lot owned by someone other than Declarant, pro-rated on a daily basis for any period of time less than a month (the amount required to fund the insurance escrow shall be in addition to the Regular Assessment), and

(ii) the Regular Assessment shall be twenty-five percent (25%) of the amount of the Regular Assessment for each Lot owned by Declarant until sixty (60) days after completion of a Dwelling Unit on a Lot at which time the Regular Assessment for that Lot shall be raised to the full amount set forth in subparagraph (i).

(b) After December 31, 1985 (if the Applicable Date has not then occurred) and for each year thereafter until the Applicable Date, the Regular Assessment upon each Lot may be increased by the Board by an amount not greater than an amount equal to the same percentage of the Regular Assessment provided under subparagraph (a) above as the percentage increases, if any, in the Consumer Price Index between the Index figure for the month of July, 1984 and the Index figure for the last month of the year preceding the year for which such increase is to be effective. Such increases may be made by the Board annually on, or effective on, January 1 of each year until the Applicable Date. As used herein, "Consumer Price Index" means the "Consumer Price Index for All Urban Consumers, U.S. City Average of all items (CPI-U, reference base of 1967=100.)" published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the publication of the Consumer Price Index of the U.S. Bureau of Labor Statistics is either discontinued, or revised by changes in the weights assigned by the 1972-73 Consumer Expenditure Survey to the expenditure groups, in the sample of items priced, in the sample of places where the pricing takes place or in the statistical methods employed in the calculation of the Consumer Price Index, then, and in any of such events, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical selected by the Corporation shall be substituted for said Consumer Price Index and used for making such computations.

Notwithstanding the foregoing or anything else contained herein, until the Applicable Date (whether before or after December 31, 1985), the Regular Assessment to be paid by Declarant for each Lot owned by Declarant shall be twenty-five percent (25%) of the Regular Assessment for Owners (other than Declarant) of Lots until sixty (60) days after completion of a Dwelling Unit on a Lot at which time the Regular Assessment for that Lot shall be raised to one hundred percent (100%) of the Regular Assessment.

ARTICLE XI

Mortgages

Section 1. Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time

provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

Section 2. Notice of Certain Actions or Conditions. The Corporation shall, upon request of a Mortgagee (or insurer or guarantor) who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee (or insurer or guarantor) with written notice of:

- (i) any condemnation loss or any casualty loss which affects a material portion of the subdivision or any Dwelling Unit on which there is a first mortgage;
- (ii) any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days;
- (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation; and
- (iv) any proposed action which would require the consent or approval of Mortgagees.

Section 3. Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any

Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such Statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article X hereof.

Section 4. Unpaid Taxes and Insurance. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which have or may become a lien against any Common Properties (excluding items deemed Common Properties for maintenance only) and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for any Common Properties (excluding items deemed Common Properties for maintenance only), and the Mortgagees making such payments shall be owed immediate reimbursement therefor by the Corporation.

ARTICLE XII

Insurance

Section 1. Casualty Insurance. (a) The Corporation shall purchase a master casualty insurance policy with an "agreed amount and inflation guard endorsement" and a "blanket building endorsement" affording fire and extended coverage insurance insuring each Dwelling Unit in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the Dwelling Units, excluding all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by any Owner and excluding any personal property owned by any Owner whether located on any Lot or elsewhere. If the Board of Directors can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full

replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each such Owner.

(b) The Corporation shall purchase a casualty insurance policy with an "agreed amount and inflation guard endorsement" affording fire and extended coverage insurance insuring all Common Properties owned by the Corporation including, but not limited to, utilities and recreational equipment in an amount consonant with the full replacement value of the improvements. If the Board of Directors can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage for said improvements. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense of all Owners. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each Owner.

(c) All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Properties resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss.

The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners of the Corporation. The proceeds shall be used or disbursed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such casualty insurance policies, and "all risk" coverages if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

Section 2. Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time; provided, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the

Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "non-liability" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

Section 3. Other Insurance. The Corporation shall also obtain any other insurance which may 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, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

Section 4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the Mortgagee of each Lot.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy or the Board has notice of a Mortgagee as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same restriction on distribution shall apply to the distribution of any condemnation awards in connection with any taking of any of the Common Properties. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds in excess of amounts needed to repair damage or pay off any first mortgage or any condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

Section 5. Insurance by Owners. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation.

ARTICLE XIII

Casualty and Restoration; Condemnation; Termination

Section 1. Casualty and Restoration. In the event of damage to or destruction of the structure or exterior of any Building or Dwelling Unit or in the event of damage to or destruction of any of the Common Properties due to fire or any other casualty or disaster the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of

insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, (i) the cost for restoring the damage and repairing and reconstructing a Building or Dwelling Unit so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares and (ii) the cost for restoring the damage and repairing and reconstructing any Common Properties (excluding items deemed Common Properties for maintenance only) so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Building so damaged or destroyed to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Corporation has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any Building shall not constitute a claim or basis of a proceeding or action for the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the original plans and specifications or as the Building was originally constructed.

Section 2. Total or Partial Condemnation. (a) In the event of the condemnation of all or any part of the Common Properties or of all or any part of any Building, Dwelling Unit or Lot, the Board is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Properties, Buildings or Dwelling Units. For the purpose of such negotiation and/or of contest of such award to the Board as to Buildings and Dwelling Units and Lots, the Board is hereby declared to be the agent and attorney-in-fact of any Owner affected by the condemnation. This appointment of the Board shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any Owner from asserting any rights or claims to compensation which cannot be legally asserted by the Board.

(b) Awards for the taking of all or part of a Building, Dwelling Unit or Lot shall be collected by the Board and distributed to the affected Owners. To the extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among Owners affected. In the event that an Owner does not agree with the distribution of an award, said Owner shall be entitled to have the dispute settled by arbitration. The protesting Owner shall appoint one arbitrator, the Board acting as agent for all other affected Owners shall appoint one arbitrator and the two appointed arbitrators shall appoint a third arbitrator. A majority decision of the arbitrators shall be binding on all Owners and shall be enforceable.

Section 3. Termination. In the event of condemnation of two-thirds (2/3) or more of the Dwelling Units in the subdivision, the remaining Owners may, by a majority vote terminate this Declaration and dissolve the Corporation, provided, however, that the restrictions set forth in the subdivision Plat and in Article XIV shall remain in full force and effect in accordance with the terms of the Plat and Article XVIII of this Declaration.

ARTICLE XIV

Restrictions, Covenants and Regulations

Section 1. Restrictions on Use. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Properties shall be in addition to any other covenants or restrictions contained herein and in any subdivision plat of any part of the Real Estate heretofore or hereafter recorded, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family.
- (b) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or on the Common Properties which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common Properties. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Properties which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Properties, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

- (c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit or on any Lot.
- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or place on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Dwelling Unit without the prior consent of the Architectural Review Board.
- (e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Properties, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Properties, caused by his pet. The tethering of pets in any area outside an Owner's fenced Lot does not constitute "attended." The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time including, but not limited to, a requirement that any Owner desiring to bring or maintain a pet on the Real Estate shall deposit with the Board a security deposit in an amount to be determined by the Board to cover any damage that may be caused by such pet to the Common Properties. Any such security deposit shall be returned to the Owner when the pet is permanently removed from the Real Estate, except to the extent said deposit has been used or is needed to repair damage caused by such pet. Any requirement for the depositing of such security deposit shall not be deemed to release or in any way limit an Owner's responsibility and liability for injury and damage caused by his pets. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Real Estate within ten (10) days after written notice from the Board to the respective Owner to do so.
- (f) Nothing shall be done or permitted in any Dwelling Unit or on any Lot which will impair the structural integrity of any of the Common Properties or which would structurally change any of the Common Properties. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the subdivision developed or to be developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.

- (g) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Properties or any public street. The Common Properties shall be kept free and clear of rubbish, debris and other unsightly materials.
- (h) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate.
- (i) No "for sale," "for rent" or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Real Estate, any Lot or any Dwelling Unit without the prior consent of the Board; provided, however, that the right is reserved by the Declarant (including a Builder) and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Real Estate in connection with any unsold or unoccupied Lots and Dwelling Units and nothing contained herein shall be construed or interpreted to affect or restrict the activities of Declarant (including a Builder) in the marketing, advertising or sale of Lots or Dwelling Units as a part of the development of this subdivision.
- (j) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Properties or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Properties.
- (k) No boats, campers, trailers of any kind, buses, mobile homes, trucks, motorcycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the Real Estate; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage. No repair work shall be done on the Real Estate on any vehicles, including passenger vehicles.
- (l) No Owner shall remove any tree planted by Declarant for a period of two years after first occupancy of a Dwelling Unit without the written approval of the Board.
- (m) Each Owner shall keep his Lot in good order, condition and repair and free of debris, all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Lot shall fail to so maintain his Lot, the Corporation after notice to the Owner and approval by two-thirds (2/3) vote of all Owners, shall have the right to enter upon said Lot to correct, repair, maintain and restore the Lot. All costs incurred by the Corporation related to such correction, repair, maintenance or restoration shall be and constitute a Special Assessment against such Lot, payable by the Owner upon demand by the Corporation.

(n) All garbage, trash and refuse shall be stored in appropriate containers inside the Dwelling Units (including garages) and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collection as are designated by the Board.

(o) So long as the Zoning Covenants are in effect, no use shall be made of any part of the Real Estate which violates said Covenants, and all Owners, members of their families, their guests, tenants, invitees and all occupants or other parties entitled to use or who may use any part of the Real Estate shall at all times fully comply with, the terms, covenants, provisions, conditions, limitations, restrictions and requirements contained and described in the Zoning Covenants. Notwithstanding anything to the contrary contained herein or otherwise, this subparagraph (o) may not be amended or modified in any manner whatsoever without the prior written consent of Declarant (so long as it owns any part of the Real Estate or any Lots) and of any and all parties who, at any time, may have the right to enforce or prevent violations of, or the right to approve any changes in, the terms, covenants, provisions, conditions, limitations, restrictions and requirements contained and described in the Zoning Covenants; except that, notwithstanding the immediately preceding clause, Declarant shall have the right to amend the Zoning Covenants in any manner therein permitted or described without the consent or approval of any other party at any time having any interest in any part of the Real Estate.

(p) Swimming and boating on that portion of the Common Properties designated as lakes on the plat are prohibited.

(q) Common Properties shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including but not limited to any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Applicable Date, the right to use and maintain the Common Properties and any Lots and Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units and Lots owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction and sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to,

model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Properties, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

ARTICLE XV

Amendment of Declaration

Section 1. Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.
- (c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
- (d) Adoption. Any proposed amendment to this Declaration must be approved during the first twenty years by a vote of the Owners to which not less than ninety percent (90%) of the votes of the Corporation are allocated and thereafter by seventy-five percent (75%) of such Owners. The instrument of amendment must be signed by such Owners and recorded. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.
- (e) Special Amendments.

Sixty-Seven percent of
<u>Mortgagees required.</u> No amendment to this Declaration shall be adopted which changes the provisions hereof which establish, provide for, govern or regulate (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, (2) Article XII of this Declaration with respect to casualty insurance to be maintained by the Corporation (3) Article XIII of this Declaration with respect to reconstruction or repair of the Common Properties or Dwelling Units in the event of fire or any other casualty or disaster, (4) establishment of the Architectural Review Board and its functions, (5) voting rights, (6) assessments, assessment liens or subordination of such liens, (7) reserves for maintenance, repair and replacement of the Common Properties, (8) insurance

and fidelity bonds, (9) rights to use of the Common Properties, (10) responsibility for maintenance and repair of Common Properties and the Dwelling Units, (11) boundaries of any Lot or of the Common Properties, (12) the interests of Owners in the Common Properties, (13) the leasing of Dwelling Units, (14) imposition of any right of first refusal or similar restriction on the right of a Lot Owner to sell, transfer or otherwise convey such Lot, (15) the rights of mortgagees or insurers or guarantors of first mortgages on Lots, (16) convertibility of Dwelling Units into Common Properties or vice versa, (17) a decision by the Corporation to establish self management when professional management had been required previously by a Mortgagee or (18) termination of the legal status of the subdivision after substantial destruction or condemnation occurs; without, in each and any of such circumstances the approval of mortgagees (whose mortgage interests have been made known to the Board of Directors) holding mortgages on Lots which have at least sixty-seven percent (67%) of the votes of Lots which are subject to mortgages, provided, a Mortgagee who receives written notice of a proposed amendment and does not deliver or mail a negative response to the Secretary of the Board of Directors within thirty (30) days of said notice shall be deemed to have approved the proposed amendment.

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

Section 2. Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements or (d) to correct clerical or

typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Section 2 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

ARTICLE XVI

Acceptance and Ratification

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules and regulations as adopted by the Board of Directors, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the

Real Estate in any manner shall be subject to this Declaration, the Articles, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XVII

Negligence

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or Dwelling Unit or its appurtenances or of the Common Properties.

ARTICLE XVIII

Benefit and Enforcement

This Declaration and the Restrictions shall run with and bind the Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Marion County, Indiana and expiring December 31, 2015, after which time they shall be automatically extended for successive periods of ten (10) years each unless by vote of a majority of the then Owners of the Lots it is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same.

In the event of a violation, or threatened violation, of any of the covenants, conditions or restrictions set forth in this Declaration, Declarant (so long as Declarant remains an owner of any part of the Real Estate), the Board, or any Owner shall have the right to enforce the covenants, conditions and restrictions contained herein and to 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. The failure or delay at any time of Declarant, the Corporation, the Owners, or any other Person entitled to enforce this Declaration and the Restrictions, to enforce any of the same shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

Article XIX

Annexations

Additional real estate, consisting of all or any part of the real estate described in Exhibit "B" attached hereto and by this reference made a part hereof, may be annexed to the Real Estate by the Declarant and made subject to this Declaration of Covenants, Conditions and Restrictions without the consent of any other Owner at any time prior to December 31, 1989 provided that the Federal Housing Administration (FHA) and Veterans Administration (VA) determine that the annexation is in accordance with the general plan of development approved by FHA and VA. Declarant shall not, however, be obligated to annex all or any part of the real estate described in Exhibit "B" to the Real Estate. The number of additional Lots which may be annexed is two hundred (200). The annexed Lots shall be subject to assessments and the Owners thereof (including Declarant) shall be eligible to vote as members of the Corporation on and after the date of the re-recording of the subdivision into plat Lots for the annexed real estate and such real estate shall be subject to the terms of this Declaration on and after such date.

If additional real estate which is not described in Exhibit "B" is to be annexed, such annexation must be approved by the two-thirds (2/3) of each class of members.

ARTICLE XX

FHA and VA Approval

As long as there is a Class B membership in the Corporation, amendments of this Declaration pursuant to Article X, annexation of additional real estate pursuant to Article XIX and conveyance of Common Properties pursuant to Article III must receive the prior written approval of FHA and VA.

ARTICLE XXI

Miscellaneous

Section 1. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 2. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Properties or by abandonment of his Lot or Dwelling Unit.

Section 3. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the By-Laws and each shall be enforceable to the greatest extent permitted by law.

Section 4. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 5. Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

IN WITNESS WHEREOF, OLDE MILL, INC., Declarant, has executed this Declaration on the day and year first hereinabove set forth.

OLDE MILL, INC.

By *Robert A. Borns*
Robert A. Borns, President

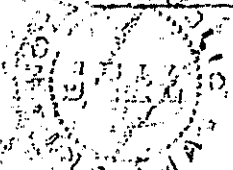
ATTEST:

Sandra Borns
Sandra Borns
Secretary

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Robert A. Borns and Sandra Borns, the President and Secretary, respectively, of Olde Mill, Inc., an Indiana corporation, and acknowledged the execution of the above and foregoing instrument for and on behalf of said corporation for the purposes and uses therein set forth.

WITNESS my hand and Notarial Seal this 2nd day of October, 1984.



Joyce Rives
Printed: Joyce Rives
Notary Public - Marion County

My Commission Expires:
9-24-88

This instrument prepared by James W. Beatty, Attorney at Law.

GOLDEN OAKS

LAND DESCRIPTION

Part of the Northwest Quarter of Section 16, Township 17 North, Range 3 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Northwest Quarter Section; thence along the West line thereof North $00^{\circ}18'02''$ East 400.00 feet to the Point of Beginning of the land herein described; thence continuing along said West line North $00^{\circ}18'02''$ East 377.43 feet; thence South $89^{\circ}41'58''$ East 20.00 feet; thence North $14^{\circ}20'12''$ East 96.19 feet; thence North $00^{\circ}18'02''$ East 306.00 feet; ~~thence North $03^{\circ}52'37''$ East 400.78 feet;~~ thence North $43^{\circ}24'16''$ East 99.49 feet; thence North $89^{\circ}11'42''$ East 855.18 feet; thence South $00^{\circ}00'00''$ East 172.25 feet; thence South $17^{\circ}14'29''$ East 139.15 feet; thence North $72^{\circ}45'31''$ East 96.84 feet; thence South $17^{\circ}14'30''$ East 30.02 feet to the point of curvature of a curve concave Westerly having a central angle of $17^{\circ}48'09''$ and a radius of 125.00 feet; thence Southerly along said curve an arc distance of 38.84 feet (said arc being subtended by a chord bearing South $08^{\circ}20'25''$ East having a length of 38.68 feet) to the point of tangency of said curve; thence South $00^{\circ}33'39''$ West 100.05 feet to the point of curvature of a curve concave Easterly having a central angle of $15^{\circ}07'16''$ and a radius of 175.00 feet; thence Southerly along said curve an arc distance of 46.18 feet (said arc being subtended by a chord bearing South $06^{\circ}59'59''$ East having a length of 46.05 feet) to the point of tangency of said curve; thence South $14^{\circ}33'37''$ East 39.89 feet; thence South $90^{\circ}00'00''$ West 108.75 feet; thence South $00^{\circ}00'00''$ East 338.47 feet; thence South $48^{\circ}54'52''$ West 324.72 feet; thence South $00^{\circ}00'00''$ East 125.12 feet to a point on a non-tangent curve concave Northerly having a central angle of $04^{\circ}04'22''$ and a radius of 550.00 feet; thence Easterly along said curve an arc distance of 39.10 feet (said arc being subtended by a chord bearing South $88^{\circ}19'12''$ East having a length of 39.09 feet) to the point of tangency of said curve; thence North $89^{\circ}38'37''$ East 1110.76 feet; thence South $00^{\circ}17'50''$ West 100.01 feet; thence South $89^{\circ}38'37''$ West 1109.62 feet to the point of curvature of a curve concave Northerly having a central angle of $14^{\circ}51'50''$ and a radius of 650.00 feet; thence Westerly along said curve an arc distance of 168.63 feet (said arc being subtended by a chord bearing North $82^{\circ}55'28''$ West having a length of 168.15 feet) to the point of tangency of said curve; thence North $75^{\circ}29'33''$ West 218.64 feet to the point of curvature of a curve concave Southerly having a central angle of $14^{\circ}49'14''$ and a radius of 550.00 feet; thence Westerly along said curve an arc distance of 142.27 feet (said arc being subtended by a chord bearing North $82^{\circ}54'10''$ West having a length of 141.87 feet) to the point of tangency of said curve; thence South $89^{\circ}41'13''$ West 282.49 feet; thence South $00^{\circ}18'02''$ West parallel with the West line of said Northwest Quarter Section 40.00 feet; thence South $89^{\circ}41'13''$ West 45.00 feet to the Point of Beginning, containing 30.022 acres, more or less; subject, however, to any easements, highways or rights-of-way.

84 77308

EXHIBIT "A"

Part of the Northwest Quarter of Section 16, Township 17 North, Range 3 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Northwest Quarter Section; thence along the West line thereof North 00°18'02" East 400.00 feet to the Point of Beginning of the land herein described; thence continuing along said West line North 00°18'02" East 377.43 feet; thence South 89°41'58" East 20.00 feet; thence North 14°20'12" East 96.19 feet; thence North 00°18'02" East parallel with said west line 300.00 feet; thence North 03°52'37" East 400.78 feet; thence North 43°24'16" East 99.49 feet; thence North 89°11'42" East 1197.29 feet; thence South 00°17'56" West 1.62 feet; thence North 89°11'36" East 523.49 feet; thence South 00°17'50" West parallel with the East line of said Northwest Quarter Section 1655.96 feet to the South line of said Northwest Quarter Section; thence South 89°41'13" West along said South line 623.45 feet; thence North 00°17'56" East 50.00 feet; thence South 89°41'13" West parallel with said South line 908.50 feet; thence North 00°18'02" East parallel with said West line 350.00 feet; thence South 89°41'13" West parallel with said South line 425.00 feet to the Point of Beginning, containing 68.870 acres, more or less; subject, however, to any easements, highways or rights-of-way

EXCEPT:

Part of the Northwest Quarter of Section 16, Township 17 North, Range 3 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Northwest Quarter Section; thence along the West line thereof North 00°18'02" East 400.00 feet to the Point of Beginning of the land herein described; thence continuing along said West line North 00°18'02" East 377.43 feet; thence South 89°41'58" East 20.00 feet; thence North 14°20'12" East 96.19 feet; thence North 00°18'02" East 300.00 feet; thence North 03°52'37" East 400.78 feet; thence North 43°24'16" East 99.49 feet; thence North 89°11'42" East 855.18 feet; thence South 00°00'00" East 172.25 feet; thence South 17°14'29" East 139.15 feet; thence North 72°45'31" East 96.84 feet; thence South 17°14'30" East 30.02 feet to the point of curvature of a curve concave Westerly having a central angle of 17°48'09" and a radius of 125.00 feet; thence Southerly along said curve an arc distance of 38.84 feet (said arc being subtended by a chord bearing South 08°20'25" East having a length of 38.68 feet) to the point of tangency of said curve; thence South 00°33'39" West 100.05 feet to the point of curvature of a curve concave Easterly having a central angle of 15°07'16" and a radius of 175.00 feet; thence Southerly along said curve an arc distance of 46.18 feet (said arc being subtended by a chord bearing South 06°59'59" East having a length of 46.05 feet) to the point of tangency of said curve; thence South 14°33'37" East 39.89 feet; thence South 90°00'00" West 108.75 feet; thence South 00°00'00" East 338.47 feet; thence South 48°54'52" West 324.72 feet; thence South 00°00'00" East 125.12 feet to a point on a non-tangent curve concave Northerly having a central angle of 04°04'22" and a radius of 550.00 feet; thence Easterly along said curve an arc distance of 39.10 feet (said arc being subtended by a chord bearing South 88°19'12" East having a length of 39.09 feet) to the point of tangency of said curve; thence North 89°38'37" East 110.76 feet; thence South 00°17'50" West 100.01 feet; thence South 89°38'37" West 1109.62 feet to the point of curvature of a curve concave Northerly having a central angle of 14°51'50" and a radius of 650.00 feet; thence Westerly along said curve an arc distance of 168.63 feet (said arc being subtended by a chord bearing North 82°55'28" West having a length of 168.15 feet) to the point of tangency of said curve; thence North 75°29'33" West 218.64 feet to the point of curvature of a curve concave Southerly having a central angle of 14°49'14" and a radius of 550.00 feet; thence Westerly along said curve an arc distance of 142.27 feet (said arc being subtended by a chord bearing North 82°54'10" West having a length of 141.87 feet) to the point of tangency of said curve; thence South 89°41'13" West 282.45 feet; thence South 00°18'02" West parallel with the West line of said Northwest Quarter Section 40.00 feet; thence South 89°41'13" West 45.00 feet to the Point of Beginning, containing 36.022 acres, more or less; subject, however, to any easements, highways or rights-of-way.

81 77308

EXHIBIT "B"

CROSS REFERENCE

850001285

CROSS REFERENCE

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GOLDEN OAKS

THIS FIRST AMENDMENT to the Declaration of Golden Oaks made this 21st day of December, 1984, by OLDE MILL, INC. (Declarant) and GOLDEN OAKS HOMEOWNERS ASSOCIATION, INC. (Corporation),

WITNESSETH:

WHEREAS, Declarant executed a Declaration of Covenants, Conditions and Restrictions dated September 28, 1984 (hereinafter referred to as "Declaration"), and

WHEREAS, the Declaration was recorded on October 3, 1984 as Instrument No. 84-77308 in the Office of the Recorder of Marion County, Indiana, and

WHEREAS, no part of the Real Estate which is the subject of the Declaration has been conveyed by the Declarant to Owner, and

WHEREAS, Declarant is the only member of Golden Homeowners Association, Inc., and

WHEREAS, Declarant and Corporation wish to make certain amendments to the Declaration in accordance with the powers granted to Declarant and Corporation in Article XV of the Declaration.

NOW, THEREFORE, Declarant and Corporation hereby declare that the real estate, which is described in Exhibit A attached to the Declaration and the additional real estate included in the description set forth in paragraph 1 below, are and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens set forth in the Declaration as amended by this instrument.

1. The legal description of the real estate set forth as Exhibit "A" to the Declaration is amended to read as follows:

"Part of the Northwest Quarter of Section 16, Township 17 North, Range 3 East in Marion County, Indiana, more particularly described as follows:

RECEIVED FOR RECORD
RETH CLAWGHLIN
RECORDER-BARON CO.

JAN 4 11 50 AM '85

DULY ENTERED
FOR INDEXATION
MAR 00 00 43 86
MARION COUNTY INDIANA

Commencing at the Southwest corner of said Northwest Quarter Section; thence along the West line thereof North 00°18'02" East 400.00 feet to the Point of Beginning of the land herein described; thence continuing along said West line North 00°18'02" East 377.43 feet; thence South 89°41'58" East 20.00 feet; thence North 14°20'12" East 96.19 feet; thence North 00°18'02" East 300.00 feet; thence North 03°52'37" East 400.78 feet; thence North 43°24'16" East 99.49 feet; thence North 89°11'42" East 945.34 feet; thence South 00°48'18" East 133.18 feet; thence South 17°21'58" East 244.52 feet; thence South 00°00'00" East 162.66 feet; thence South 41°13'15" West 42.98 feet; thence South 41°06'11" East 162.27 feet; thence South 02°39'39" West 141.81 feet; thence South 89°17'08" West 67.70 feet; thence South 03°52'44" West 154.47 feet; thence South 48°09'51" West 126.58 feet; thence South 00°21'23" East 140.98 feet; thence North 89°38'37" East 894.03 feet; thence South 00°17'50" West 100.01 feet; thence South 89°38'37" West 1109.62 feet to the point of curvature of a curve concave Northerly having a central angle of 14°51'50" and a radius of 650.00 feet; thence Westerly along said curve an arc distance of 168.63 feet (said arc being subtended by a chord bearing North 82°55'28" West having a length of 168.15 feet) to the point of tangency of said curve; thence North 75°29'33" West 218.64 feet to the point of curvature of a curve concave Southerly having a central angle of 14°49'14" and a radius of 550.00 feet; thence Westerly along said curve an arc distance of 142.27 feet (said arc being subtended by a chord bearing North 82°54'10" West having a length of 141.87 feet) to the point of tangency of said curve; thence South 89°41'13" West 282.49 feet; thence South 00°18'02" West parallel with the West line of said Northwest Quarter Section 40.00 feet; thence South 89°41'13" West 45.00 feet to the Point of Beginning, containing 33.643 acres, more or less; subject, however, to any easements, highways or rights-of-way."

2. The legal description of the real estate set forth as Exhibit "B" to the Declaration is amended to read as follows:

Part of the Northwest Quarter of Section 16, Township 17 North, Range 3 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Northwest Quarter Section; thence along the West line thereof North 00°18'02" East 400.00 feet to the Point of Beginning of the land herein described; thence continuing along said West line North 00°18'02" East 377.43 feet; thence South 89°41'58" East 20.00 feet; thence North 14°20'12" East 96.19 feet; thence North 00°18'02" East parallel with said west line 300.00 feet; thence North 03°52'37" East 400.78 feet; thence North 43°24'16" East 99.49 feet; thence North 89°11'42" East 1197.29 feet; thence South 00°17'58" West 1.62 feet; thence North 89°11'36" East 623.49 feet; thence South 00°17'50" West parallel with the East line of said Northwest Quarter Section 1655.96 feet to the South line of said Northwest Quarter Section; thence South 89°41'13" West along said South line 623.45 feet; thence North 00°17'56" East 50.00 feet; thence South 89°41'13" West parallel with said South line 908.50 feet; thence North 00°18'02" East parallel with said West line 350.00 feet; thence South 89°41'13" West parallel with said South line 425.00 feet to the Point of Beginning, containing 68.070 acres, more or less, subject, however, to any easements, highways or rights-of-way.

850001285

EXCEPT:

Part of the Northwest Quarter of Section 16, Township 17 North, Range 3 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Northwest Quarter Section; thence along the West line thereof North 00°18'02" East 400.00 feet to the Point of Beginning of the land herein described; thence continuing along said West line North 00°18'02" East 377.43 feet; thence South 89°41'58" East 20.00 feet; thence North 14°20'12" East 96.19 feet; thence North 00°18'02" East 300.00 feet; thence North 03°52'37" East 400.78 feet; thence North 43°24'16" East 99.49 feet; thence North 89°11'42" East 945.34 feet; thence South 00°48'18" East 133.18 feet; thence South 17°21'58" East 244.52 feet; thence South 00°00'00" East 162.66 feet; thence South 41°13'15" West 42.98 feet; thence South 41°06'11" East 162.27 feet; thence South 02°39'39" West 141.81 feet; thence South 89°17'08" West 67.70 feet; thence South 03°52'44" West 154.47 feet; thence South 48°09'51" West 126.58 feet; thence South 00°21'23" East 140.98 feet; thence North 89°38'37" East 894.03 feet; thence South 00°17'50" West 100.01 feet; thence South 89°38'37" West 1109.62 feet to the point of curvature of a curve concave Northerly having a central angle of 14°51'50" and a radius of 650.00 feet; thence Westerly along said curve an arc distance of 168.63 feet (said arc being subtended by a chord bearing North 82°55'28" West having a length of 168.15 feet) to the point of tangency of said curve; thence North 75°29'33" West 218.64 feet to the point of curvature of a curve concave Southerly having a central angle of 14°49'14" and a radius of 550.00 feet; thence Westerly along said curve an arc distance of 142.27 feet (said arc being subtended by a chord bearing North 82°54'10" West having a length of 141.87 feet) to the point of tangency of said curve; thence South 89°41'13" West 282.49 feet; thence South 00°18'02" West parallel with the West line of said Northwest Quarter Section 40.00 feet; thence South 89°41'13" West 45.00 feet to the Point of Beginning, containing 33.643 acres, more or less; subject, however, to any easements, highways or rights-of-way."

3. Article II, Section 2 is amended to provide as follows:

"Section 2. Easement to Owner. Declarant hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Properties, subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot. Without limiting the generality of the foregoing, each Owner, his tenants, invitees and guests, shall have and is hereby granted a non-exclusive easement and right of ingress to, egress from and access between his Lot and a public street, for pedestrian and vehicular traffic, upon, over and across the driveways on and adjacent to Owner's Lot and shown, or to be shown, on a Subdivision Plat of the Real Estate. It is intended that the areas shown as private drive easement (P.D.E.) on the Subdivision Plat shall be private driveways and not for public use. In addition to the Owners, their tenants, invitees and guests, all public and quasi-public vehicles, including but not limited to, police, fire and other emergency vehicles, trash and garbage collection vehicles, post office vehicles and privately owned delivery trucks shall have the right to enter upon and use said private driveways for ingress to, egress from and access between the Lots and public streets in the performance of their duties."

850001285

4. Article III, Section 2, is amended to read as follows:

"Section 2. Dedication. The streets shown on the plat as Emily Drive, Golden Oaks West, Golden Oaks North and Golden Leaf Way are hereby dedicated to the Department of Transportation for the use and benefit of the public."

5. Article X, Section 3, is amended to read as follows:

"Section 3. Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be computed as follows: all estimated Common Expenses except the estimated cost of the master casualty insurance policy provided for in Article XII Section 1 shall be divided by the total number of Lots in the subdivision to determine quotient A; the estimated cost of said master casualty insurance policy shall be divided on a pro-rata basis for each Dwelling Unit based upon the square feet of living area in each Dwelling Unit, including garages but excluding basements, to determine quotient B; quotients A and B shall be added together and the sum shall be the Regular Assessment for each Lot. The portion of the Regular Assessment attributable to the replacement reserve funds shall be computed in the same manner as set forth above, for the computation for quotient A.

Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the quarterly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay quarterly assessments semi-annually or annually, in advance. At the election and option of the Board, the Regular Assessment may be required to be paid by the Owners in advance in equal monthly installments rather than quarterly installments. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

- (a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether quarterly or monthly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

850001285

- (b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether quarterly or monthly, until the entire amount of such excess has been so credited; provided, however, that if an Owner had paid his Regular Assessment either semi-annually or annually in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that Date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 2 of Article XI hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Quarterly or monthly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

Each Owner shall prepay to the Corporation at the time his Lot is conveyed to such Owner an amount equal to thirteen (13) monthly installments of the amount required to pay for the Lot Owner's pro-rata portion of the master casualty insurance policy based upon the budget for the current fiscal year and the Owner shall maintain such prepayment account at all times. The Corporation shall hold such pre-paid funds in a separate escrow account for the purchase of insurance as provided in Article XII, Section 1."

6. Article II, Section 4, is amended to read as follows:

"Section 4. Encroachment Easements.

(a) Dwelling Units. If any Dwelling Unit encroaches upon another Dwelling Unit or Lot as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement shall be deemed to exist and run to the Owner(s) of the encroaching improvement for the encroachment and for the maintenance thereof so long as said encroachment exists.

850001285

(b) Driveways. If driveway pavement encroaches on a Lot as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the pavement, a valid private drive easement (P.D.E.) shall be deemed to exist and run to the Owner(s) of the platted P.D.E. for the encroachment and for the maintenance thereof so long as said encroachments exist. Moreover, in any such event, the P.D.E. as shown on the Plat shall be deemed amended to be coterminous with the driveway pavement."

IN WITNESS WHEREOF, OLDE MILL, INC. and GOLDEN OAKS HOMEOWNERS ASSOCIATION, INC. have executed this First Amendment to Declaration on the day and year first hereinabove set forth.

OLDE MILL, INC.

By *Robert A. Borns*
Robert A. Borns, President

ATTEST:
Sandra Borns
Sandra Borns, Secretary

GOLDEN OAKS HOMEOWNERS ASSOCIATION, INC.

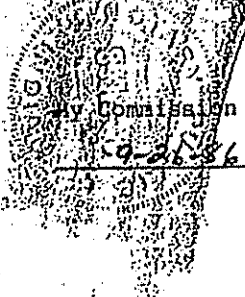
By *Robert A. Borns*
Robert A. Borns, President

ATTEST:
Sandra Borns
Sandra Borns, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Robert A. Borns and Sandra Borns, the President and Secretary, respectively, of Olde Mill, Inc., an Indiana corporation, and acknowledged the execution of the above and foregoing instrument for and on behalf of said corporation for the purposes and uses therein set forth.

WITNESS my hand and Notarial Seal this 21st day of December, 1984.



Barbara J. Delisle
Printed: Barbara J. Delisle
Notary Public - Marion County

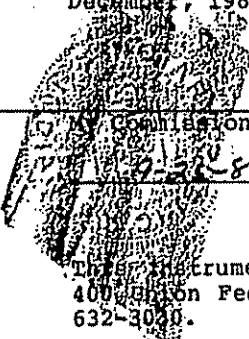
My Commission Expires:

9-21-86

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Robert A. Borns and Sandra Borns, the President and Secretary, respectively, of Golden Oaks Homeowners Association, Inc., an Indiana corporation, and acknowledged the execution of the above and foregoing instrument for and on behalf of said corporation for the purposes and uses therein set forth.

WITNESS my hand and Notarial Seal this 21st day of December, 1984.



Barbara J. DeLisle
Printed: Barbara J. DeLisle
Notary Public - MARION County

Commission Expires:
12-26-86

This instrument prepared by James W. Beatty, Attorney at Law, 400 Union Federal Building, Indianapolis, Indiana 46204, (317) 632-3000.

850001285

CROSS REFERENCE

SECOND AMENDMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR GOLDEN OAKS

850060082

This Second Amendment to the Declaration of Golden Oaks made this 13 day of June, 1985, by Olde Mill, Inc., an Indiana corporation (hereinafter referred to as "Declarant"),

WITNESSETH:

WHEREAS, Declarant entered into a Declaration of Covenants, Conditions and Restrictions on the 28th day of September, 1984 (hereinafter referred to as the "First Declaration") which Declaration was recorded as Instrument No. 84-77308 on the 3rd day of October, 1984 in the Office of the Recorder of Marion County, Indiana, and

WHEREAS, the Declaration was amended on the 21st day of December, 1984 by a First Amendment to Declaration of Covenants, Conditions and Restrictions for Golden Oaks (hereinafter referred to as "First Amendment") which First Amendment was recorded on the 4th day of January, 1985 as Instrument No. 85-1285 in the Office of the Recorder of Marion County, Indiana, and

WHEREAS, the Declaration, as amended, made provision in Article XIX for the annexation by Declarant of additional real estate to the subdivision which real estate is described in Exhibit "B" to the Declaration as amended, and

WHEREAS, Declarant is the Owner of the real estate described in Exhibit "B" to the Declaration, as amended, and

WHEREAS, Declarant now wishes to submit the real estate described in Exhibit "B" to the Declaration, as amended, to the provisions of the Declaration.

NOW, THEREFORE, Declarant hereby declares:

1. That the legal description of the real estate described in Exhibit "A" to the Declaration, as amended, is hereby further amended to read as follows:

"Part of the Northwest Quarter of Section 16, Township 17 North, Range 3 East in Marion County, Indiana, more particularly described as follows:

RECEIVED FOR RECORD
BETH O'LAUCHLIN
RECORDER-MARION CO.
JUL 22 9 51 AM '85


RECEIVED FOR RECORD
BETH O'LAUCHLIN
RECORDER-MARION CO.
JUL 22 9 51 AM '85

Commencing at the Southwest corner of said Northwest Quarter Section; thence along the West line thereof North 00°18'02" East 400.00 feet to the Point of Beginning of the land herein described; thence continuing along said West line North 00°18'02" East 377.43 feet; thence South 89°41'58" East 20.00 feet; thence North 14°20'12" East 96.19 feet; thence North 00°18'02" East parallel with said west line 300.00 feet; thence North 03°52'37" East 400.78 feet; thence North 43°24'16" East 99.49 feet; thence North 89°11'42" East 1197.29 feet; thence South 00°17'58" West 1.62 feet; thence North 89°11'36" East 623.49 feet; thence South 00°17'50" West parallel with the East line of said Northwest Quarter Section 1655.96 feet to the South line of said Northwest Quarter Section; thence South 89°41'13" West along said South line 623.45 feet; thence North 00°17'56" East 50.00 feet; thence South 89°41'13" West parallel with said South line 908.50 feet; thence North 00°18'02" East parallel with said West line 350.00 feet; thence South 89°41'13" West parallel with said South line 425.00 feet to the Point of Beginning, containing 68.070 acres, more or less, subject, however, to any easements, highways or rights-of-way."

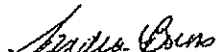
2. That the real estate described in Exhibit "A" as amended herein is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens set forth in the Declaration, as amended, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Lots situated therein.

3. The street shown on the plat of the Real Estate as Golden Oaks East is hereby dedicated to the Department of Transportation for the use and benefit of the public.

OLDE MILL, INC.

By 
Robert A. Borns, President

ATTEST:

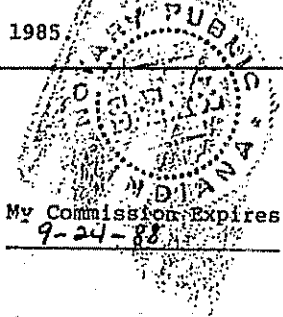

Sandra Borns, Secretary

85 60082

STATE OF INDIANA)
COUNTY OF MARION) SS:

Before me, a Notary Public in and for said County and State, personally appeared Robert A. Borns and Sandra Borns, the President and Secretary, respectively, of OLDE MILL, INC., an Indiana corporation, and acknowledged the execution of the above and foregoing instrument for and on behalf of said corporation for the purposes and uses therein set forth.

WITNESS my hand and Notarial Seal this 13 day of June, 1985



Joyce Rives, Joyce Rives
Printed:
Notary Public - Marion County

This instrument prepared by James W. Beatty, Attorney at Law.

COPY

15
11

CODE OF BY-LAWS
OF
GOLDEN OAKS HOMEOWNERS ASSOCIATION INC.

ARTICLE I

Identification and Applicability

Section 1.01. Name. The name of the Corporation is Golden Oaks Homeowners Association, Inc. (Hereinafter referred to as the "Association").

Section 1.02. Registered Office and Registered Agent. The post office address of the Registered Office of the Association is P.O. Box 436, 4520 Northwestern Drive, Zionsville, Indiana 46077. The name and post office address of its Registered Agent is Matt Englert, R & G Management Company, Inc., P.O. Box 436, 4520 Northwestern Drive, Zionsville, Indiana 46077. The location of the Registered Office of the Association or the designation of its Registered Agent, or both, may be changed at any time when authorized by the Board of Directors by filing with the Secretary of the State on or before the day any such change is to take effect, or as soon as possible after the death of its Registered Agent, or other unforeseen termination of its agent.

Section 1.03. Fiscal Year. The fiscal year of the Association shall begin on the first day of January of each year and end on the last day of December next succeeding.

Section 1.04. Application. All Owners (as that term is defined in the Declaration), residents, tenants, or their guests and invitees, or any other person that might use or occupy a Dwelling Unit (as that term is defined in the Declaration) or any part of the Real Estate (as that term is defined in the Declaration) shall be subject to the terms and conditions set forth in the Golden Oaks Declaration of Covenants, Conditions and Restrictions (hereinafter "Declaration"), these By-Laws, the Articles of Incorporation, and any Rules and Regulation promulgated by the Board of Directors.

ARTICLE II

Membership

Section 2.01. Classes. Since the developer of Golden Oaks is no longer a member, there is only one (1) class of membership in the Association. Each Owner shall be a Member of the Association.

09/28/95 12:44PM JOAN W. ROMERIL MARION CTY RECORDER AEL 29.00 PAGES: 11
Inst # 1995-0122096

Section 2.02. Voting Rights. Each member shall be entitled to one (1) vote for each Lot (as that term is defined in the Declaration) of which such Member is the Owner with respect to each matter submitted to a vote of Members. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Association, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Section 2.03. Rights, Preferences, Limitations and Restrictions of Classes. All Members shall have the same rights, privileges, duties, liabilities, limitations and restrictions as the other Members. All Members shall abide by the Declaration, the Articles of Incorporation, the Code of By-Laws, and the Rules and Regulations promulgated by the Board of Directors.

Section 2.04. Duration and Transfer of Membership. Membership in the Association shall terminate when an Owner ceases to be an Owner, and will be automatically transferred to the new Owner.

ARTICLE III

Meetings of Association

Section 3.01. Purpose of Meetings. At least annually and at such other times as may be necessary, the meetings of the Association shall be held for the purpose of electing the Board of Directors, and for such other purposes as may be required by these By-Laws.

Section 3.02. Annual Meetings. The annual meeting of the Members of the Association shall be held on the second Tuesday of September of each calendar year. At the annual meeting the Members shall elect the Board of Directors of the Association in accordance with the provisions of these By-Laws, approve the annual budget, if required, and transact such other business as may properly come before the meeting.

Section 3.03. Special Meetings. A special meeting of the Members of the Association may be called by the President, by resolution of a majority of the Board of Directors, or upon a written petition signed by not less than one tenth (1/10) of all Members authorized to vote. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 3.04. Notice and Place of Meetings. All meetings of the Members of the Association shall be held at any suitable place conveniently located for the Members, as may be designated by the Board of Directors. Written notice stating the date, time, and place of meeting, and in the case of a special meeting or when otherwise required by law, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary, or by the officer or person calling the meeting, to each Member of record entitled to vote at that meeting at such address as appears on the records of the Association at least fourteen (14) days before the date of the meeting.

Section 3.05. Waiver of Notice. Notice of any meeting may be waived by any Member by written notice to the Secretary. Attendance at any meeting in person, or by proxy, shall constitute a waiver of notice of such meeting.

Section 3.06. Voting by Proxy. A Member may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Member shall duly designate his attorney-in-fact in writing to the Secretary of the Association prior to commencement of the meeting.

Section 3.07. Quorum. Except where otherwise expressly provided in the Declaration, the Articles of Incorporation, or these By-Laws, at any meeting of the Members representation of fifteen percent (15%) of the votes available in person or by proxy shall constitute a quorum.

Section 3.08. Conduct of Meeting. The Chairman of the meeting shall be the President of the Association. The President shall call the meeting to order at the duly designated time and business will be conducted in the following order:

(a) Reading of Minutes. The Secretary shall read the Minutes of the last annual meeting and the Minutes of any special meeting held subsequent thereto. The Board shall approve the minutes subject to corrections.

(b) Treasurer's Report. The Treasurer shall report to the Members concerning the financial condition of the Association and answer relevant questions of the Members concerning the expenses and financial report for the prior year and the proposed budget for the current year.

(c) Managing Agent's Report. If the Association uses a Managing Agent (as defined in Section 4.06(a) of these By-Laws), such Agent shall report to the Members concerning maintenance issues and any other issue which, in the opinion of either the Board of Directors or the Managing Agent, should be reported to the Members.

(d) Committee Reports. The Chairperson of any duly appointed committee may report to the Members the status of issues which were assigned to committee.

(e) Election of Board of Directors. Nomination for the Board of Directors may be made by any Member from those persons eligible to serve. Such nomination shall be in writing and presented to the Secretary of the Association at least ten (10) days prior to the date of the annual meeting. However, should there be less than six (6) written nominations, nominations will be accepted from the floor at the annual meeting. Voting for the Board of Directors shall be by paper ballot. Ballots shall contain the name of each person nominated to serve as a Board member. Each member may cast the vote or votes to which he is entitled for as many nominees as are to be elected; however, he shall not be entitled to cumulate his votes. Those persons receiving the highest number votes shall be elected.

~~(f) Unfinished Business.~~

(g) New Business.

(h) Other Business. Other business may be brought before the meeting upon a written request submitted to the Secretary of the Association at least ten (10) days prior to the date of the meeting. However, such written request may be waived at the meeting if agreed by a majority vote of the Board of Directors.

ARTICLE IV

Board of Directors

Section 4.01. Number. The number of Directors of the Association shall be seven (7).

Section 4.02 Qualification and Election of Directors. All Directors shall be Members of the Association at the time of their election to office and during their term of office as Directors. Where an Owner consists of more than one person or is a partnership, corporation, trust, or other legal entity, then one of the persons constituting the multiple Owner or a partner, officer, or trustee, shall be eligible to serve on the Board of Directors except that no Lot may be represented on the Board of Directors by more than one (1) person at a time. The Directors shall be elected by the members at the annual meeting of the Association and shall hold office for a term of three years or until their successors have been duly elected and qualified. Of the seven (7) director positions, the terms of office shall be staggered such that three (3) directors shall be elected in one year, two (2) the next year, and two (2) the following year. In this manner, continuity of leadership will be maintained.

Section 4.03. Vacancies. Any vacancy or vacancies occurring on the Board of Directors shall be filled by vote of a majority of the remaining Directors or by vote of the Members if a Director has been removed in accordance with Section 4.04 of these By-Laws. Any Director elected to fill such vacancy shall serve for the unexpired term of the Director whose vacancy is thus filled.

Section 4.04. Removal of Director. A Director or Directors may be removed with or without cause by vote of a majority of the voting Members at a special meeting of the Members duly called and constituted. In such case, the successor shall be elected at the same meeting from eligible Members nominated at the meeting. The Director so elected shall serve until the next annual meeting of the Members or until his successor is duly elected and qualified.

Section 4.05. Duties of the Board of Directors. The business and affairs of the Association shall be managed and governed by the Board of Directors. The Board of Directors shall provide for the administration and operation of the maintenance of utility easements, for trash and snow removal, and for the collection and disbursement of the expenses therefor. In addition, the duties of the Board shall include, but are not limited to:

- (a) Contracting with others to perform the maintenance functions set forth in the Declaration;
- (b) Purchasing insurance as provided for in the Declaration;
- (c) Establishing appropriate assessments to be paid by Members;
- (d) Collection from the Members of the Member' pro rata share of assessments;
- (e) Preparation of an annual budget, a copy of which will be mailed or delivered to each Member at the time as the notice of annual meeting is mailed or delivered;
- (f) Surfacing, paving and maintenance of streets located within the Real Estate (except streets dedicated to and accepted by the City of Indianapolis), parking areas, driveways, sidewalks, and the regulation of the use thereof. Additionally, the Board of Directors shall prepare annually a Preventative Maintenance Program of these facilities, estimate its cost, and include the cost as a line item in the budget;
- (g) Maintain the drainage facilities located on and within the Real Estate pursuant to Drainage and Sediment Control Ordinance, Chapter 10 1/2 of the Code of Indianapolis and Marion County, Indiana, including subsequent amendments thereto. Said maintenance shall include cleaning out of, spraying, removing obstructions from and making minor repairs in the drainage facilities so that they will perform the function for which they were designed and constructed.

(h) Preparing and delivering annually to the Members a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Member simultaneously with delivery of the annual budget;

(i) Protection, maintenance, and replacement of the Common Properties including items deemed Common Properties for maintenance only as provided for in the Declaration;

(j) Maintenance, repairs, replacement and upkeep of the exterior of each Dwelling Unit as is more fully set forth in Article VII, Section 2(2)(i) of the Declaration;

(k) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the Common Properties owned by or maintained by the Association. All records and vouchers shall be available for examination and copying by a Member at any time during normal business hours. All cost incurred for such copying shall be paid by the Member requesting such copies.

(l) Performing such other duties as may be reasonably inferred from the provisions of the Declaration or these By-Laws.

Section 4.06. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of its duties. These powers include, but are not limited to, the power:

(a) To employ a managing agent or a real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties;

(b) To purchase, lease, or otherwise obtain for the benefit of the Members and the Association such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

(c) To procure for the benefit of Members and the Association fire and extended coverage insurance for the Common Properties to the full insurable value thereof, public liability and property damage insurance, workers compensation insurance (if necessary), and such other insurance as is necessary in the opinion of the Board of Directors;

(d) To employ legal counsel, architects, engineers, contractors, accountants, and others as, in the judgment of the Board of Directors, may be necessary or desirable in connection with the business and affairs of the Association.

(e) To include the costs of all of the above and foregoing as expenses of the Association;

(f) To open and maintain a bank account or accounts in the name of the Association;

(g) To appoint from among the Members an Architectural Review Committee consisting of not less than three (3) and not more than five (5) members who shall serve until a vacancy occurs by resignation or as the result of loss of status as a member of the Association. This Committee shall be composed of Members of the Association and report their recommendation to the Board of Directors;

(h) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Real Estate and Common Properties and to fix and impose penalties for the violation of such rules and regulations;

(i) To constitute, appoint, and establish such committees as the Board deems necessary to aid in operating and managing the Association.

Section 4.07. Compensation. No Director shall receive any compensation for his services.

Section 4.08. Annual Meeting. The annual meeting of the Board of Directors shall be held immediately following the annual meeting of the Members at the place where such meeting of the Members was held. This meeting shall be held for the purpose of electing or re-electing officers of the Association and consideration of any other business that may be brought before the meeting. No notice shall be necessary for the holding of this annual meeting.

Section 4.09. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. The Secretary shall give notice of the regular meetings of the Board to each Director personally or by United States Mail at least five (5) days prior to the date of such meeting.

Section 4.10. Special Meetings. Special meetings of the Board may be called by the President or any three (3) members of the Board. Persons calling such meeting shall give written notice thereof to the Secretary who shall give written notice either personally or by mail at least three (3) days prior to the date of such special meeting. Notice of the meeting shall contain a statement of the purpose for which the meeting was called. Such meeting shall be held at such place and at such time as shall be designated in the notice.

Section 4.11. Waiver of Notice. Before any meeting of the Board, any Director may in writing waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall as to such Director constitute waiver of notice of the time, place and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and business may be transacted at such meeting.

Section 4.12. Quorum. A majority of the entire Board of Directors shall be necessary to constitute a quorum for the transaction of any business and the action of a majority of the Directors present at any meeting at which a quorum is present shall be the decision of the Board of Directors unless the decision of a greater number is required by law, the Declaration, the Articles of Incorporation, or these By-Laws.

Section 4.13. Bond. The Board of Directors shall require the ~~Treasurer and such other officers as the Board deems necessary to~~ give bond, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as deemed appropriate and consistent with the Declaration by the Board of Directors.

ARTICLE V

Officers

Section 5.01. Officers of the Association. The principal officers of the Association shall be the President, Vice President, Secretary, and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary.

Section 5.02. Election of Officers. The officers of the Board of Directors shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmative vote of a majority of all members of the Board, any member may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 5.03. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board, and shall have and discharge all the general powers and duties usually vested in the office of president or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including but not limited to the power to appoint committees from among the Members as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

Section 5.04. The Vice President. The Vice President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice President shall also perform such other duties as these By-laws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 5.05. The Secretary. The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings, shall perform all other duties incidental to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed, or delivered in accordance with the provisions of these By-Laws.

Section 5.06. The Treasurer. The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incidental to the office of Treasurer. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Association. The Treasurer shall immediately deposit all funds of the Association coming into his hands into some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name of the Association.

Section 5.07. Assistant Officers. The Board of Directors may, from time to time, designate and elect from among the Members an Assistant Secretary and Assistant Treasurer who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board of Directors may prescribe.

Section 5.08. Delegation of Authority. In the case of the absence of any officer of the Association, or for any other reason that the Board may deem sufficient, the Board may delegate the powers or duties of such officer to any other officer or to any Director, for the time being, provided a majority of the entire Board concurs therein.

ARTICLE VI

Dues and Assessments

Section 6.01. Dues and Assessments.

(a) Annual Accounting. After the close of each calendar year and prior to the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnished to each Member a financial statement showing receipts and expenditures incurred and paid during the preceding calendar year.

(b) Annual Budget and Assessments. Annually, before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a budget for the ensuing calendar year estimating the total amount of the expenses for the ensuing year and furnishing a copy of such budget to each Member. The Board of Directors shall, based upon such budget and subject to the recorded Declaration, determine the annual assessment to be paid by each Member for the ensuing calendar year. Payment of such assessment shall be made to the Board of Directors or such other person as directed by the Board of Directors. Such annual assessment shall be payable at such time or times as the Board determines in accordance with the terms of the Declaration.

All assessments mentioned herein are exclusive of any taxes imposed by the federal, state, or other governmental bodies and agencies.

(c) Special Assessments. The Board of Directors shall have the power to levy special assessments in accordance with the terms of the recorded Declaration.

ARTICLE VII

Contracts, Checks, Notes, Etc.

Section 7.01. All contracts and agreements entered into by the Association and all checks, drafts, bills of exchanges, and orders for the payment of money shall, in the conduct of the ordinary course of business of the Association unless otherwise required by law, be signed by the President or, in his absence, the Treasurer. However, the Board of Directors may authorize the Managing Agent (if any) to sign, on behalf of the Association, these contracts, checks, drafts, bills of exchange, and orders for the payment of money. Any one of the documents heretofore mentioned in this Section for use outside the ordinary course of the Association shall be executed by and require signature of both the President and Secretary.

ARTICLE VIII

Amendments

Section 8.01. The power to make, alter, amend, or repeal these By-Laws is vested in the Board of Directors of the Association but such action shall be taken only at a meeting of such Board specifically called for such purpose. The affirmative vote of the majority of all the Directors shall be necessary to effect any such changes in these By-Laws, unless otherwise provided in the Articles or these By-Laws.

These Amended and Restated By-Law are approved and accepted for the Golden Oaks Homeowners Association, Inc., this 13th. day of September, 1994

Arthur I. Atlas
Arthur I. Atlas - President

Michael L. Smith
Michael L. Smith - Secretary

STATE OF INDIANA)
) SS:
COUNTY OF)

Before me, a Notary Public in and for said County and State, personally appeared Arthur I. Atlas and Michael L. Smith, the President and Secretary, respectively, of Golden Oaks Home Owners Association Inc., an Indiana corporation, and acknowledged the execution of the above and foregoing instrument for and on behalf of said corporation for the purposes and uses therein set forth.

WITNESS my hand and Notarial Seal this 13th day of SEPTEMBER 1995.

Ronald Edward Arnold
Notary Public Madison County

-11-

My Commission Expires:

AUGUST 7th, 1999

Prepared By: Golden Oaks Bnd. of Directors

AMENDMENT TO THE BY-LAWS
OF
GOLDEN OAKS HOMEOWNERS ASSOCIATION INC.

This Amendment, made this- 13th day of September 1994 by the membership of Golden Oaks Homeowners Assn. Inc. WITNESSETH THAT:

WHEREAS, the Board of Directors of Golden Oaks Homeowners Assn. Inc. gave due notice to the membership of Golden Oaks Homeowners Assn. Inc. that the annual meeting of the membership would be held on the 13th. Sept. 1994 which notice to the membership was given more than ten days (10) prior to the date of the said meeting; and

WHEREAS, the said notice of annual meeting notified the membership that among the matters to come before said meeting would be a proposal for the amendment of the By-Laws of Golden Oaks Homeowners Assn. Inc. to impose certain changes upon the ~~rights of owners to lease their dwellings within Golden Oaks.~~

WHEREAS, the annual meeting of the membership of Golden Oaks Homeowners Assn. Inc. was convened at 7:30 P.M. on 13th. Sept. 1994 and Arthur I. Atlas President of the Board of Directors of Golden Oaks Homeowners Assn. Inc. presided over said meeting as Chairman; and

WHEREAS, The Chairman observed that the total number of member votes eligible to be cast at a meeting of the membership of Golden Oaks Homeowners Assn. Inc. 276 votes, and the Chairman of the meeting thereafter observed the number of votes present in person and by proxy at the annual meeting was 104 votes, said number being sufficient to constitute a quorum pursuant to the By-Laws of Golden Oaks Homeowners Assn. Inc. and pursuant to the Declaration of Covenants of Golden Oaks; and

WHEREAS, upon motion duly made and seconded, the following Resolution was proposed:

BE IT RESOLVED THAT: The By-Laws of Golden Oaks Homeowners Assn. Inc. be amended by the insertion therein of the new Article IV Section 4.06 para. j, which shall read as follows:

ARTICLE IV SECTION 4.06 PARA. j

Each owner, hereinafter referred to as occupants of a Golden Oaks Parcel, shall, in addition to the obligations and duties as set forth in the Declarations, the By-Laws or amendments thereto, to be governed by the following regulations:

LEASING OF DWELLING UNITS

(a) Limits of the Number of Leased Units . In order to insure that the residents within Golden Oaks share the same proprietary interest in and respect of the Dwelling Units and the Common Areas, no more than fifteen percent (15%) of the two hundred seventy six (276) Dwelling Units may be leased or rented to non-owner occupants at any given time. If at any time such percentage of Dwelling Units are leased or rented, an Owner who wants to rent or lease his or her Dwelling Unit which is not already rented shall be placed upon a waiting list by the Board of Directors or the Managing Agent. When an existing tenant moves out, the Owner of that Dwelling Unit shall immediately notify the Board of Directors or Managing Agent of such fact and that Dwelling Unit cannot be re-rented until all prior Owners on the waiting list, if any, have had a chance to rent their Dwelling Units. Prior to the execution of any lease, and in addition to the requirements set forth below, the Owner must notify the Board of Directors or the Managing Agent as to that Owner's intent to lease his or her Dwelling Unit. After receiving such notice, the Board of Directors or the Managing Agent shall advise the Owner if Dwelling Units may be leased or whether the maximum number of Dwelling Units within Golden Oaks is currently being leased. If the maximum number of Dwelling Units is being leased, the Board of Directors or the Managing Agent shall also notify the Owner of that Owner's position on the waiting list.

(b) General Lease Conditions. All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board of Directors. No portion of any Dwelling Unit other than the entire Unit shall be leased for any period. No subleasing shall be permitted. All leases shall be made expressly subject and subordinate in all respects to the terms of the Golden Oaks Declaration of Covenants, Conditions & Restrictions, By-Laws, Articles of Incorporation, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Golden Oaks Homeowners Association, Inc. (hereafter, "Association"); and shall provide for direct action by the Association and /or any Owner against the tenant with or without joinder of the Owner of such Dwelling Unit. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease. In addition, the Board of Directors shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing.

(c) Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Association and

the other Owners for compliance with the provisions of the Declaration, the Articles of Incorporation, the By-Laws, and any rules and regulations promulgated by the Board of Directors, or from the Owners liability to the Association for payments of assessments.

(d) Approval of Form of Lease. Any Owner desiring to enter into a lease for his or her Dwelling Unit shall submit the form of the proposed lease to the Board of Directors or the Managing Agent (which form need not include the identity of the tenant or the rental amount) for review for compliance with the requirements of this provision. The Board of Directors may employ an attorney in connection with any such review, and a reasonable fee may be charged to the applicant to offset the expense so incurred. In the event the Board or the Managing Agent fails to approve or disapprove the form of the lease within thirty (30) days after submission by the applicant, the lease shall be deemed approved. A copy of each executed lease by an Owner (which may have the rental amount deleted) shall be provided to the Board of Directors by the Owner within thirty (30) days after execution.

(e) Violations. Any lease or attempted lease of a Dwelling Unit in violation of the provisions of this Paragraph, (i.e., "Leasing of Dwelling Units") shall be voidable at the election of the Association or any other Owner, except that neither party to such lease may assert this provision of this Paragraph (i.e., "Leasing of Dwelling Units") to avoid its obligations thereunder.

(f) Effective Date of Lease Conditions. These leasing restrictions shall not apply to any lease executed prior to the effective date of these restrictions or to any renewals thereof provided in such leases, so long as the occupants remain the same. However, all Owners shall promptly deliver to the Board of Directors or the Managing Agent copies of all existing leases (which may have the rental amount deleted) which the Owners currently have with any tenants within thirty (30) days of the effective date of these restrictions.

(g) Institutional Mortgagees. The provisions set forth in this Paragraph (i.e., "Leasing of Dwelling Units"), shall not apply to any institutional mortgagee of any Dwelling Unit which comes into possession of the Dwelling Unit by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure.

THEREAFTER, upon motion duly made, the Chairman of the Annual Meeting called for a vote upon the above described Resolution, and the Resolution received 80 votes for approval, and 20 votes for disapproval.

NOW THEREFORE, the Board of Directors of Golden Oaks Homeowners Assn. Inc. finds that pursuant to the vote of the membership cast at the Annual Meeting of Golden Oaks Homeowners Assn. Inc. on the 13th. Sept. 1994, the By-Laws of Golden Oaks Homeowners Assn. Inc. have been amended in the manner set forth immediately above and that said amendments shall be immediately incorporated into the body of said By-Laws having the effective date of 13th. Sept. 1994.

Golden Oaks Homeowners Assn. Inc.

Arthur I. Atlas

Arthur I. Atlas - President

ATTESTED:

Michael L. Smith

Michael L. Smith - Secretary

STATE OF INDIANA)
) SS:
COUNTY OF)

Before me, a Notary Public in and for said County and State, personally appeared Arthur I. Atlas and Michael L. Smith the President and Secretary, respectively, of Golden Oaks Home Owners Association Inc., an Indiana corporation, and acknowledged the execution of the above and foregoing instrument for and on behalf of said corporation for the purposes and uses therein set forth.

WITNESS my hand and Notarial Seal this 20th day of SEPTEMBER 1995.

Ronald Edward Arnold
Notary Public - MADISON County

My Commission Expires:

AUGUST 7th, 1999

Prepared by: Golden Oaks Bd. of Directors



9

AMENDED AND RESTATED CODE OF BY-LAWS
OF
GOLDEN OAKS HOMEOWNERS ASSOCIATION INC.

ARTICLE I

Identification and Applicability

*Inst #
1995-122096*

Section 1.01. Name. The name of the Corporation is Golden Oaks Homeowners Association, Inc. (Hereinafter referred to as the "Association").

Section 1.02. Registered Office and Registered Agent. The post office address of the Registered Office of the Association is 7050 East 116th Street, Fishers, Indiana 46038. The name and post office address of its Registered Agent is Robert H. Thompson, CPM, V.P. and Senior Property Manager, Revel & Underwood, Inc. Real Estate Services, 7050 East 116th Street, Fishers, Indiana, 46038. The location of the Registered Office of the Association or the designation of its Registered Agent, or both, may be changed at any time when authorized by the Board of Directors by filing with the Secretary of the State on or before the day any such change is to take effect, or as soon as possible after the death of its Registered Agent, or other unforeseen termination of its agent.

Section 1.03. Fiscal Year. The fiscal year of the Association shall begin on the first day of January of each year and end on the last day of December next succeeding.

Section 1.04. Application.. All Owners (as that term is defined in the Declaration), residents, tenants, or their guests and invitees, or any other person that might use or occupy a Dwelling Unit (as that term is defined in the Declaration) or any part of the Real Estate (as that term is defined in the Declaration) shall be subject to the terms and conditions set forth in the Golden Oaks Declaration of Covenants, Conditions and Restrictions (hereinafter "Declaration"), these By-Laws, the Articles of Incorporation, and any Rules and Regulation promulgated by the Board of Directors.

ARTICLE II

Membership

Section 2.01. Classes. Since the developer of Golden Oaks is no longer a member, there is only one (1) class of membership in the Association. Each Owner shall be a Member of the Association.

Section 2.02. Voting Rights. Each member shall be entitled to one (1) vote for each Lot (as that term is defined in the Declaration) of which such Member is the Owner with respect to each matter submitted to a vote of Members. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Association, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Section 2.03. Rights, Preferences, Limitations and Restrictions of Classes. All Members shall have the same rights, privileges, duties, liabilities, limitations and restrictions as the other Members. All Members shall abide by the Declaration, the Articles of Incorporation, the Code of By-Laws, and the Rules and Regulations promulgated by the Board of Directors.

Section 2.04. Duration and Transfer of Membership. Membership in the Association shall terminate when an Owner ceases to be an Owner, and will be automatically transferred to the new Owner of his Lot.

ARTICLE III

Meetings of Association

Section 3.01. Purpose of Meetings. At least annually and at such other times as may be necessary, the meetings of the Association shall be held for the purpose of electing the Board of Directors, and for such other purposes as may be required by these By-Laws.

Section 3.02. Annual Meetings. The annual meeting of the Members of the Association shall be held on the second Tuesday of September of each calendar year. At the annual meeting the Members shall elect the Board of Directors of the Association in accordance with the provisions of these By-Laws, approve the annual budget, if required, and transact such other business as may properly come before the meeting.

Section 3.03. Special Meetings. A special meeting of the Members of the Association may be called by the President, by resolution of a majority of the Board of Directors, or upon a written petition signed by not less than one tenth (1/10) of all Members authorized to vote. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 3.04. Notice and Place of Meetings. All meetings of the Members of the Association shall be held at any suitable place conveniently located for the Members, as may be designated by the Board of Directors. Written notice stating the date, time, and place of meeting, and in the case of a special meeting or when otherwise required by law, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary, or by the officer or person calling the meeting, to each Member of record entitled to vote at that meeting at such address as appears on the records of the Association at least fourteen (14) days before the date of the meeting.

Section 3.05. Waiver of Notice. Notice of any meeting may be waived by any Member by written notice to the Secretary. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 3.06. Voting Methods. A member can vote in one of two ways: 1) be present at the Annual Meeting and turn in his or her paper ballot to the authorized individual(s) when requested, or 2) mail his or her paper ballot to the management company in the supplied envelope. One ballot per envelope and the ballot must be signed by the owner.

Section 3.07. Quorum. Except where otherwise expressly provided in the Declaration, the Articles of Incorporation, or these By-Laws, at any meeting of the Members representation of fifteen percent (15%) of the votes available in person or by proxy shall constitute a quorum.

Section 3.08. Conduct of Meeting. The Chairman of the meeting shall be the President of the Association. The President shall call the meeting to order at the duly designated time and business will be conducted in the following order:

(a) Reading of Minutes. The Secretary shall read the Minutes of the last annual meeting and the Minutes of any special meeting held subsequent thereto. The Board shall approved the minutes subject to corrections

(b) Treasurer's Report. The Treasurer shall report to the Members concerning the financial condition of the Association and answer relevant questions of the Members concerning the expenses and financial report for the prior year and the proposed budget for the current year.

(c) Managing Agent's Report. If the Association uses a Managing Agent (as defined in Section 4.06(a) of these By-Laws), such Agent shall report to the Members concerning maintenance issues and any other issue which, in the opinion of either the Board of Directors or the Managing Agent, should be reported to the Members.

(d) Committee Reports. The Chairperson of any duly appointed committee may report to the Members the status of issues which were assigned to committee.

(e) Election of Board of Directors. Nomination for the Board of Directors may be made by any Member from those persons eligible to serve. Interested Homeowners must submit their names to the Management Company after July 1st and before August 1st. Candidates should include a brief written statement explaining why they want to serve on the Board. Ballots will be mailed to each Homeowner between August 10th and August 20th. The ballot must be returned to the Management Company and be postmarked at least one week prior to the date of the Annual Meeting. A representative of the Management Company will bring the sealed envelopes, containing the ballots, to the Annual Meeting and present them to the Secretary of the Golden Oaks Homeowners Association. These ballots shall be opened only after the meeting has been called to order. If any member has mailed his or her ballot, but is also present at the Annual Meeting, he or she may request their ballot be returned to them.

(f) Unfinished Business.

(g) New Business.

(h) Other Business. Other business may be brought before the meeting upon a written request submitted to the Secretary of the Association at least ten (10) days prior to the date of the meeting provided; however, such written request may be waived at the meeting if agreed by a majority vote of the Board of Directors.

ARTICLE IV

Board of Directors

Section 4.01. Number. The number of Directors of the Association shall be seven (7).

Section 4.02. Qualification and Election of Directors. All Directors shall be Members of the Association at the time of their election to office and during their term of office as Directors. Where an owner consists of more than one person or is a partnership, corporation, trust, or other legal entity, then one of the persons constituting the multiple Owner or a partner, officer, or trustee, shall be eligible to serve on the Board of Directors except that no Lot may be represented on the Board of Directors by more than one (1) person at a time. The Directors shall be elected by the members at the annual meeting of the Association and shall hold office for a term of three years or until their successors have been duly elected and qualified. Of the seven (7) director positions, the terms of office shall be staggered such that three (3) directors shall be elected in one year, two (2) the next year, and two (2) the following year. In this manner, continuity of leadership will be maintained.

Section 4.03. Vacancies. Any vacancy or vacancies occurring on the Board of Directors shall be filled by vote of a majority of the remaining Directors or by vote of the Members, if a Director has been removed in accordance with Section 4.04 of these By-Laws. Any Director elected to fill such vacancy shall serve for the unexpired term of the Director whose vacancy is thus filled.

Section 4.04. Removal of Director. A Director or Directors may be removed with or without cause by vote of a majority of the voting Members at a special meeting of the Members duly called and constituted. In such case, the successor shall be elected at the same meeting from eligible Members nominated at the meeting. The Director so elected shall serve until the next annual meeting of the Members or until his successor is duly elected and qualified.

Section 4.05. Duties of the Board of Directors. The business and affairs of the Association shall be managed and governed by the Board of Directors. The Board of Directors shall provide for the administration an ~~operation of the maintenance of utility easements, for trash and snow removal, and for the collection and disbursement of the expenses thereof.~~ In addition, the duties of the Board shall include, but are not limited to:

- (a) Contracting with others to perform the maintenance functions set forth in the Declaration;
- (b) Purchasing insurance as provided for in the Declaration;
- (c) Establishing appropriate assessments to be paid by Members;
- (d) Collection from the Members of the Member's pro rata share of assessments;
- (e) Preparation of an annual budget, a copy of which will be mailed or delivered to each Member at the time as the notice of annual meeting is mailed or delivered;
- (f) Surfacing, paving and maintenance of streets located within the Real Estate (except streets dedicated to and accepted by the City of Indianapolis), parking areas, driveways, sidewalks, and the regulation of the use thereof. Additionally, the Board of Directors shall prepare annually a Preventative Maintenance Program of these facilities, estimate its cost, and include the cost as a line item in the budget;
- (g) Maintain the drainage facilities located on and within the Real Estate pursuant to Drainage and Sediment Control Ordinance, Chapter 10 1/2 of the Code of Indianapolis and Marion County, Indiana, including subsequent amendments thereto. Said maintenance shall include cleaning out of, spraying, removing obstructions from and making minor repairs in the drainage facilities so that they will perform the function for which they were designed and constructed;
- (h) Preparing and delivering annually to the Members a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Member simultaneously with delivery of the annual budget;
- (i) Protection, maintenance, and replacement of the Common Properties including items deemed Common Properties for maintenance only as provided for in the Declaration;
- (j) Maintenance, repairs, replacement and upkeep of the exterior of each Dwelling Unit as is more fully set forth in Article VII, Section 2(2)(i) of the Declaration;

(k) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the Common Properties owned by or maintained by the Association. All records and vouchers shall be available for examination and copying by a Member at any time during normal business hours. All cost incurred for such copying shall be paid by the Member requesting such copies;

(l) Performing such other duties as may be reasonably inferred from the provisions of the Declaration or these By-Laws;

Section 4.06. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of its duties. These powers include, but are not limited to, the power:

~~(a) To employ a managing agent or a real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties;~~

(b) To purchase, lease, or otherwise obtain for the benefit of the Members and the Association such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

(c) To procure for the benefit of Members and the Association fire and extended coverage insurance for the Common Properties to the full insurable value thereof, public liability and property damage insurance, workers compensation insurance (if necessary), and such other insurance as is necessary in the opinion of the Board of Directors;

(d) To employ legal counsel, architects, engineers, contractors, accountants, and others as, in the judgment of the Board of Directors, may be necessary or desirable in connection with the business and affairs of the Association;

(e) To include the costs of all of the above and foregoing as expenses of the Association;

(f) To open and maintain a bank account or accounts in the name of the Association;

(g) To appoint from among the Members an Architectural Review Committee consisting of not less than three (3) and not more than five (5) members who shall serve until a vacancy occurs by resignation or as the result of loss of status as a member of the Association. This Committee shall be composed of Members of the Association and report their recommendation to the Board of Directors;

(h) To adopt, revise, amend, and alter from time to time, reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Real Estate and Common Properties and to fix and impose penalties for the violation of such rules and regulations;

(i) To constitute, appoint, and establish such committees as the Board deems necessary to aid in operating and managing the Association.

Section 4.07. Compensation. No Director shall receive any compensation for his or her services.

Section 4.08. Annual Meeting. The annual meeting of the Board of Directors shall be held immediately following the annual meeting of the Members at the place where such meeting of the Members was held. This meeting shall be held for the purpose of electing or reelecting officers of the Association and consideration of any other business that may be brought before the meeting. No notice shall be necessary for the holding of this annual meeting.

Section 4.09 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. The Secretary shall give notice of the regular meetings of the Board to each Director personally or by United States Mail at least five (5) days prior to the date of such meeting.

Section 4.10. Special Meetings. Special meetings of the Board may be called by the President or any three (3) members of the Board. Persons calling such meeting shall give written notice thereof to the Secretary who shall give written notice either personally or by mail at least three (3) days prior to the date of such special meeting. Notice of the meeting shall contain a statement of the purpose for which the meeting was called. Such meeting shall be held at such place and at such time as shall be designated in the notice.

Section 4.11. Waiver of Notice. Before any meeting of the Board, any Director may in writing waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall, as to such Director, constitute waiver of notice of the time, place and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required any business may be transacted at such meeting.

Section 4.12. Quorum. A majority of the entire Board of Directors shall be necessary to constitute a quorum for the transaction of any business and the action of a majority of the Directors present at any meeting at which a quorum is present shall be the decision of the Board of Directors unless the decision of a greater number is required by law, the Declaration, the Articles of Incorporation, or these By-Laws.

Section 4.13. Bond. The Board of Directors shall require the Treasurer and such other officers as the Board deems necessary to give bond, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as deemed appropriate and consistent with the Declaration by the Board of Directors.

ARTICLE V

Officers

Section 5.01. Officers of the Association. The principal officers of the Association shall be the President, Vice President, Secretary, and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary.

Section 5.02. Election of Officers. The officers of the Association shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmative vote of a majority of all members of the Board, any member may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 5.03. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board, and shall have and discharge all the general powers and duties usually vested in the office of president or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including but not limited to the power to appoint committees from among the Members as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

Section 5.04. The Vice President. The Vice President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice-President shall also perform such other duties as these By-laws may prescribe or as shall, from time to time, be imposed upon him or her by the Board or by the President.

Section 5.05. The Secretary. The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings, shall perform all other duties incidental to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed, or delivered in accordance with the provisions of these By-Laws.

Section 5.06. The Treasurer. The Board shall elect from among the Directors a Treasurer who shall maintain a ~~correct and complete record of account showing accurately at all times the financial condition of the~~ Association and such other duties incidental to the office of Treasurer. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Association. The Treasurer shall immediately deposit all funds of the Association coming into his hands into some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name of the Association.

Section 5.07. Assistant Officers. The Board of Directors may, from time to time, designate and elect from among the Members an Assistant Secretary and Assistant Treasurer who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board of Directors may prescribe.

Section 5.08. Delegation of Authority. In the case of the absence of any officer of the Association, or for any other reason that the Board may deem sufficient, the Board may delegate the powers or duties of such officer to any other officer or to any Director, for the time being, provided a majority of the entire Board concurs therein.

ARTICLE VI

Dues and Assessments

Section 6.01. Dues and Assessments.

(a) Annual Accounting. After the close of calendar year and prior to the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnished to each Member a financial statement showing receipts and expenditures incurred and paid during the preceding calendar year.

(b) Annual Budget and Assessments. Annually, before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a budget for the ensuing calendar year estimating the total amount of the expenses for the ensuing year and furnishing a copy of such budget to each Member. The Board of Directors shall, based upon such budget and subject to the recorded Declaration, determine the annual assessment to be paid by each Member for the ensuing calendar year. Payment of such assessment shall be made to the Board of Directors or such other person as directed by the Board of Directors. Such annual assessment shall be payable at such time or times as the Board determines in accordance with the terms of the Declaration.

All assessments mentioned herein are exclusive of any taxes imposed by the federal, state, or other governmental bodies and agencies.

(c) Special Assessments. The Board of Directors shall have the power to levy special assessments in accordance with the terms of the recorded Declaration.

ARTICLE VII

Contracts, Checks, Notes, Etc.

Section 7.01. All contracts and agreements entered into by the Association and all checks, drafts, bills of exchanges, and orders for the payment of money shall, in the conduct of the ordinary course of business of the Association unless otherwise required by law, be signed by the President or, in his absence, the Treasurer. However, the Board of Directors may authorize the Managing Agent (if any) to sign, on behalf of the Association, these contracts, checks, drafts, bills of exchange, and orders for the payment of money. Any one of the documents heretofore mentioned in this Section for use outside the ordinary course of the Association shall ~~be executed by and require signature of both the President and Secretary.~~

ARTICLE VIII

Amendments

Section 8.01. The power to make, alter, amend, or repeal these By-Laws vested in the Board of Directors of the Association but such action shall be taken only at a meeting of such Board specifically called for such purpose. The affirmative vote of the majority of all the Directors shall be necessary to effect any such changes in these By-Laws, unless otherwise provided in the Articles or these By-Laws.

THEREAFTER, UPON MOTION DULY MADE, THE Chairman of the Board of Directors called for a vote upon the above described Resolution, and the Resolution received 7 votes for approval, and 0 votes for disapproval.

NOW THEREFORE, the Board of Directors of Golden Oaks Homeowners Assn. Inc. finds that pursuant to the vote of the Board of Directors cast at the specially called Board Meeting on the 18th of June 2002, the By-Laws of Golden Oaks Homeowners Assn. Inc. have been amended in the manner set forth immediately above and that said amendments shall be immediately incorporated into the body of said By-Laws having the effective date of 18th June 2002.

ATTESTED:

Golden Oaks Homeowners Assn. Inc. President *Donald A. Abbit*
Donald Abbit
Golden Oaks Homeowners Assn. Inc. Secretary *Max I. Briggs*
Max I. Briggs

STATE OF INDIANA

COUNTY OF MARION

Before me, a Notary Public in and for said County and State, personally appeared Donald Abbitt and Max I. Briggs, the President and Secretary, respectively, of Golden Oaks Home Owners Association Inc., an Indiana Corporation, and acknowledged the execution of the above and foregoing instrument for and on behalf of said corporation for the purposes and uses therein set forth.

WITNESS my hand and Notarial Seal this 28 day of June 2002.

Deborah J. Coaksoe

Printed

Deborah J. Coaksoe
Notary Public

Hamilton
County

My Commission Expires: 2/15/07

Deborah J. Coaksoe, Notary Public

County of Residence: Hamilton

Commission Expires: February 15, 2007