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SUBJECT TO FINANCIAL ACCEPTANCE  
FOR TRANSFER

Declaration of Covenants and Restrictions of  
Shawnee Property Ownership

PLAT INST. NO. 1999-0165386



CHICAGO TITLE

**DECLARATION OF COVENANTS AND RESTRICTIONS OF  
SHAWNEE PROPERTY OWNERSHIP**

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CHICAGO TITLE

**DECLARATION OF COVENANTS AND RESTRICTIONS OF  
SHAWNEE PROPERTY OWNERSHIP**

THIS DECLARATION (hereinafter sometimes referred to as the Shawnee Declaration, Shawnee Subdivision Declaration or Subdivision Declaration) made this 13<sup>TH</sup> day of August, 1999, by Wellingshire Joint Venture consisting of Waterway Holdings, Inc. and R. N. Thompson Development Corporation having its principal place of business at 234 S. Franklin Road, Indianapolis, IN 46219; said joint venture hereinafter referred to as "DECLARANT OWNER" and BRUCE GUNSTRA BUILDERS, INC., an Indiana Corporation having its principal place of business at 8383 Craig Street, Suite #100, Indianapolis, IN 46250 (hereinafter referred to as "Declarant Builder"); Declarant Owner and Declarant Builder shall in the aggregate be referred to as Declarant unless otherwise noted.

THIS SUBDIVISION DECLARATION AND THE REAL ESTATE TO WHICH IT APPLIES IS ALSO SUBJECT TO MASTER DECLARATION FOR ALL OF THE SOUTHERN DUNES COMPLEX, DETAILED IN RECITAL C, WITH THE SUBDIVISION DECLARATION BEING SUBROGATED THE TERMS AND CONDITIONS OF THE MASTER DECLARATION.

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant Wellingshire Joint Venture is the sole owner in fee simple title to certain real estate located in Marion County, Indiana, more particularly described in the attached Exhibit "A", which is incorporated herein by reference (hereinafter referred to as "Tract" or "Shawnee Section 1 and Section 2").

Declarant Builder as hereinafter defined shall cease being the Declarant hereunder when the Declarant Builder is no longer the exclusive Builder of new Dwelling Units hereunder.

B. Declarant by execution of this Declaration assures that all properties which are conveyed by Declarant and which are a part of the Tract (as hereinafter defined in paragraph 1(s)) shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the Tract and be binding upon all parties having any right, title or interest in the Tract, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

C. Declarant Wellingshire Joint Venture has created and recorded in the Marion county Recorder's Office a Southern Dunes Master Declaration as Instrument No. 98-0228187 on December 23, 1998 making all of the real estate in the Southern Dunes Planned Community, which includes this Exhibit "A" real estate subject to all of the covenants, conditions and restrictions detailed in this Master Declaration. The Master Declaration specifically permits the formation of a Declaration for each Subdivision and further permits the delegation of maintenance and use of common areas to such subdivisions as prescribed thereunder or by the acts of the governing body under the Master Declaration.

IN THE EVENT OF ANY CONFLICT BETWEEN THE MASTER DECLARATION WHICH IS INCORPORATED HEREIN BY REFERENCE, AND THIS DECLARATION OF THE SHAWNEE SUBDIVISION (EXHIBIT "A" REAL ESTATE) THE TERMS OF THE MASTER DECLARATION SHALL BE CONTROLLING).

NOW, THEREFORE, Declarant hereby makes this Declaration and incorporates all of the Recitals as if set out in full herein.

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

- (a) "Applicable Date" means the date determined pursuant to Paragraph 11 of this Declaration.
- (b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.
- (c) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.
- (d) "Building" means any one of the potential twenty-four (24) separated structures depicted on the plat of Shawnee, each of which has five (5) or six (6) Dwelling Units.
- (e) "By-Laws" shall mean the By-Laws of the Corporation and shall provide for the election

of Directors and Officers and other governing officials of the Corporation. A copy of the By-Laws is incorporated herein by reference.

- (f) Common Area. The Common Area shall be determined by an examination of the Plat(s) of Shawnee (attached as Exhibit "B") with reference to Exhibit "A". The common area shall be all of Exhibit "A" less any dedicated right-of-way in the Exhibit "A" and shall also exclude each of the Lots within each Building as actually depicted in the Plat of recorded Section 1 and Section 2 of Shawnee Development.

The Common Areas made subject to this Declaration shall be all of the labeled Limited Common Areas as shown on the recorded plats for the Exhibit "A" real estate for the use of residents and their guests in the Shawnee development except for any patios and/or decks (if any), driveways to residences, and common areas between driveways which will be limited to the residents and their guests of the Dwelling Unit, served by such amenities.

The Master Declaration either by labeling realty within Shawnee as Limited Common Area, or by delegation in writing otherwise, may delegate the right and obligation to maintain said Limited Common Areas, subject to the revocation of such delegation "for cause" as herein detailed. Such revocation is viable notwithstanding the labeling of Limited Common Areas on recorded plats for the Exhibit "A" real estate and shall be at the option of the Master Declaration governing body.

The governing body of the Master Declaration shall establish performance standards for the care and maintenance of the Limited Common Areas and/or areas delegated to Corporation for such care and maintenance. "For cause" shall be failure to comply with such standards after written notice of 30 days detailing the nature of non-compliance thus affording the corporation the opportunity to cure within such time interval.



In the event of failure to cure the governing authority under the Master Declaration at its sole option, as evidenced in writing to the Corporation, may takeover all or part of the care and maintenance obligations herein of the Corporation and charge the Corporation for the cost thereof plus interest at the then prevailing print rate of interest of Bank One, or its successor plus 2% plus reasonable attorney fees in the event such services are needed for collection. This remedy is cumulative for any other remedies the Master Declaration recites and details as to the owners within the Shawnee Subdivision.

The following details the Common Areas that MAY trigger care and maintenance rights and obligations and therefore become common expense items either by being labeled Limited Common Areas on recorded plats or by other means of delegation permitted under the Master Declaration.

Private Streets (labeled Ingress and Egress Easements on Exhibit "B" and recorded Plats of Section 1 and Section 2)

All streets in the Shawnee development shall be private streets.

Pond

The retention pond depicted on Exhibit "B" is one of the ponds that may be necessary to address surface water concerns of the Southern Dunes Planned Community that is located within the Exhibit "A" realty with the size and location and time of construction and completion thereof to be determined by Declaration during the course of development of Shawnee. No set level of water is assured as to this pond.

Entrance Identification Sign

Declarant will construct an entrance identification wall sign plus accompanying landscaping with the possibility of lighting and irrigation therein and thereon on one or both sides of Portrait Drive entrance to the Shawnee development with the number of signs and location to be at the Declarant's sole discretion. Declarant shall commence this construction while the first Building of the development to be constructed and complete same as soon as practical thereafter.

(g) "Common Expenses" includes the following:

- Expenses for the administration of the Corporation that are directly or indirectly related thereto.

- The maintenance/repair obligations of this Corporation as hereafter detailed for the exterior of buildings.
  - The maintenance obligation of such of the above Common Areas within the Shawnee development specifically delegated to this Corporation by the governing body under the Master Declaration plus the maintenance and replacement of landscaping of the perimeter landscaping in Shawnee.
  - The cost of security services specifically for Shawnee if permitted under the Master Declaration and is adopted under the Shawnee Declaration.
  - The cost of street lights if permitted under the Master Declaration and adopted under the Shawnee Declaration.
  - Since there is only one meter for the entire Shawnee development this utility charge plus any repair and maintenance thereof shall be a common expense.
- (h) "Declarant Builder" or "Builder" is the party to whom Declarant owner has contractually obligated itself to exclusively convey Building(s) for the purpose of construction of a Building(s), exclusive of any other such Builder so long as the contract is viable, otherwise any successor Builder and shall retain the rights and obligations under the title Declarant Builder or Builder so long as such party maintains such exclusivity.
- (i) "Corporation" means Shawnee Homeowners Associations, Inc., its successors and assigns, a not-for-profit corporation, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 11 of this Declaration; such Corporation being more particularly described in Paragraph 11 of this Declaration.
- (j) "Declarant Owner" shall mean and refer to Wellingshire Joint Venture, and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of Declarant Owner hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Tract pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant Owner.
- (k) "Dwelling Unit" or "Unit" means one of the living units located upon a Lot within a given Building.

- (l) "Lot," means any plot of ground designated as such within a Building constructed or to be constructed, as Buildings are depicted on the recorded Final Plat of a Section 1 and/or Section 2 of Shawnee. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon, unless the context requires otherwise.
- (m) "Member" means a member of the Corporation.
- (n) "Mortgage" means the holder of a first mortgage lien on a Lot.
- (o) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.
- (p) "Conditional Plat" is one and the same as Exhibit "B" and consequently depicts a maximum of 24 Buildings of 4 to 6 Dwelling Units per Building and a maximum of 137 Dwelling Units. Notwithstanding any representation on Exhibit "B" Declarant reserves the right to place 4, 5 or 6 Units within any Building depicted so long as the aforesaid maximum for number of Buildings and Dwelling Units is not exceeded.
- (q) "Tract" means the real estate described in Paragraph A above as Section 1 and Section 2 of the Shawnee development and recorded in the office of the Recorder of Marion County, Indiana, all being subject to this Declaration as provided herein. In the aggregate the "Tract" may be labeled Shawnee or Shawnee development.
- (r) MASTER DECLARATION. REFERS TO THE DECLARATION OF THE SOUTHERN DUNES PLANNED COMMUNITY RECORDED IN THE MARION COUNTY RECORDERS OFFICE, ALONG WITH ITS BY-LAWS ON DECEMBER 23, 1998 AS INSTRUMENT #98-228187.
- (s) SHAWNEE DECLARATION. SHAWNEE SUBDIVISION DECLARATION OR SUBDIVISION DECLARATION. IN ALL INSTANCES INCLUDING THE WORDS "SUBDIVISION DECLARATION" IN THE MASTER DECLARATION SHALL REFER TO THIS PARTICULAR "SHAWNEE" SUBDIVISION AS THIS

SUBDIVISION IS NAMED ON THE RECORDED PLAT(S) OF THE EXHIBIT "A" REALTY.

2. **Declaration.** Declarant hereby expressly declares that the Tract shall be held, conveyed and transferred in accordance with the provisions of this Shawnee Declaration and the Master Declaration.

3. **Description of the Tract.** The Tract shall consist of Section 1 and Section 2 of Shawnee, which comprised of 137 Lots, together with the Common Area as illustrated in Exhibit "B" but as ultimately shown on the Final Plats thereof. The Common Area and the size of the Lots will be designated on said Final Plats. The legal description for each Lot in Shawnee shall be as follows:

Lot \_\_\_\_\_ in Section \_\_\_\_\_ located in Building No. \_\_\_\_\_ of Shawnee, a subdivision in Marion County, Indiana, as per plat thereof recorded \_\_\_\_\_, 19\_\_\_\_, as Instrument No. \_\_\_\_\_, in the office of the Recorder of Marion County, Indiana.

4. **Lots and Easements.** The boundaries of each Lot in Shawnee shall be as shown on the Final Plat of each Section; provided, however, in the event any vertical boundary line of any Dwelling Unit does not coincide with the actual Lot line because of inexactness of construction, settling after construction or for any other reasons, whether from the initial construction, subsequent reconstruction or otherwise, the boundary lines shall be deemed to be treated for purposes of occupancy, possession, maintenance, use and enjoyment, in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Lot in and to such base line outside the actual boundary line of the Lot.

5. **Limited Common Area.** Limited Common Area includes all the area designated as such on the recorded plats of the Tract (Exhibit "A" realty). WITHIN THE COMMON AREA DECLARANT RESERVES THE RIGHT, WITHOUT THE OBLIGATION, TO BUILD OR CAUSE TO BE BUILT RECREATIONAL FACILITIES OR TO APPROVE SAME IF THE CORPORATION ELECTS TO DO SO WITH THE PROVEN ABILITY TO SECURE FINANCING TO ACCOMPLISH SAME.

6. **Ownership of Limited Common Area.** The Declarant Owner on or before the applicable date shall convey title of the Limited Common Areas to the Corporation irrespective of when the

Corporation secures such ownership. The Corporation shall be responsible for the care and maintenance of the Limited Common Areas, with such Limited Common Areas to be held for the use and enjoyment of the Members of this Shawnee Corporation, all of whom shall have the right and easement of enjoyment in and to the Limited Common Area which right shall pass with title to each Lot, subject to the provisions of this Declaration and the Master Declaration, including but not limited to, the following:

- (a) The right of the Corporation to suspend any Member from the right to the use of recreational facility(s), if any, for any period during which any assessment against such Member's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Shawnee's Board's published rules and regulations.
- (b) The right of this Corporation or its Board of Directors to determine the time and manner of use of the Limited Common Areas and any facilities therein by the Members.
- (c) The right of the Corporation to adopt such rules and regulations regarding the Limited Common Area as it deems appropriate as provided in Paragraph 12, but subject to such rules and regulations and any amendments thereto being approved by the Southern Dunes HOA, Inc. (Southern Dunes Homeowners Association, Inc.).

7. Delegation of Use of the Limited Common Area.<sup>®</sup> Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Limited Common Area and facilities therein to members of his family, his tenants or contract purchasers who reside on any Lot.

8. Encroachments and Easements in the Limited Common Area. If by reason of inexactness of construction, settling after construction or for any other reasons, any Limited Common Area encroaches upon any Lot, an easement shall be deemed to exist and run to the Corporation for the maintenance, use and enjoyment of such Limited Common Area.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in any other Dwelling Units

or in the Limited Common Area and serving his Dwelling Unit.

9. **Patios (if any) and Parking Space.** The Owner of a Lot shall have an easement to and an exclusive right to use the driveways and sidewalks exclusively serving such Owner's Lot and non-exclusive right to use the sidewalks and driveways serving more than one Lot, whether or not such sidewalks or driveways are part of the Lot or located in the Limited Common Area. The Owner of a Lot shall have an easement to and the exclusive right to use the patios exclusively serving such Owner's Lot and located adjacent thereto whether or not such patio is part of the Lot or located in the Limited Common Area. Such right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title.

In the event that this Corporation, subject to the limitations of the Master Declaration in regard thereto, decides to liquidate, dissolve or transfer all or any part of the Limited Common Area to any public agency, the Corporation shall, prior to such action, convey to the Owner of each Lot the driveways and sidewalks which are designated for such Lot and the patios which are designated for such Lot under the terms of this Paragraph.

10. **Easement for Utilities and Public and Quasi-Public Vehicles.** All public and quasi-public vehicles including, but not limited to, police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the private streets and other Limited Common Areas in the Tract in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including, but not limited to, water, sewers, gas, telephone and electricity on the Tract; provided, however, nothing herein shall permit the installation of sewers, electric lines, water line or other utilities, except as initially designed and approved by Declarant Owner. By virtue of this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Tract and to affix and maintain electrical and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Dwelling Units. In the event any

utility furnishing service should request a specific easement by a separate recordable document, the title owner of the Limited Common Area involved shall have the right to grant such easement on such Tract, without conflicting with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement on the Tract.

An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Limited Common Area to perform its duties.

11. **Corporation; Membership; Voting; Functions.**

(a) **Membership in Corporation.** Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of this 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.

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

(i) **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 person 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.

(ii) **Class B.** Class B Members shall be Declarant Owner and Declarant Builder as Lot owners and all successors and assigns of the given 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 FIVE (5) VOTES FOR EACH LOT SHOWN ON (Exhibit "B") WHETHER OR NOT

A FINAL PLAT HAS BEEN FILED FOR SUCH 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 shall be the first to occur of:

- (i) THE DATE UPON WHICH THE WRITTEN RESIGNATION OF ALL OF THE CLASS B MEMBERS AS SUCH IS DELIVERED TO THE RESIDENT AGENT THIS CORPORATION;
  - (ii) THIRTY (30) DAYS AFTER THE DATE WHEN THE TOTAL VOTES OUTSTANDING IN THE CLASS A MEMBERSHIP EQUAL OR EXCEED THE TOTAL VOTES OUTSTANDING IN THE CLASS B MEMBERSHIP; OR
  - (iii) December 31, 2015.
- (c) **Functions.** The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Limited Common Areas and for the maintenance, repair and replacement of such exterior portions of the Dwelling Units as designated in this Declaration, to pay taxes assessed against and payable with respect to the Limited Common Area and to pay any other necessary expenses and costs in connection with the Limited Common Area, and to perform such other functions as may be designated for it to perform under this Declaration. ®

12. **Board of Directors.**

- (a) **Management.** The business and affairs of this 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 subparagraph (b) of this Paragraph 12.
- (b) **Initial Board of Directors.** The Initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: R. N. Thompson, Bruce Gunstra and David Compton (hereinafter referred to as the "Initial Board"), all of whom have been or shall be appointed



by Declarant Owner. Notwithstanding anything to the contrary contained in, or any other provisions of this Declaration, the Articles or the By-Laws (a) the Initial Board shall hold office until the Applicable Date or until removed by Declarant Owner who may remove said Board Member without cause, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant Owner, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type or juridical acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant Owner as such Owner's agent, attorney-in-fact and proxy, which shall be deemed an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant Owner determines, on all matters as to which members of the Corporation are entitled to vote under the Declaration, the Articles, the By-Laws or otherwise; provided, however, this right to vote granted to Declarant Owner shall not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging Common Area or merger/consolidation of the Corporation with another corporation. This appointment of Declarant Owner as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant Owner to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the 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).

- (c) 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.
- (d) Term of Office and Vacancy. Subject to the provisions of subparagraph (b) of this Paragraph 12, one (1) member 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, each member 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 member of the Board of Directors shall be elected for a three (3) year term, one for a two (2) year term, and one 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 subparagraph (b) of this Paragraph 12 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 subparagraph (e) of this Paragraph 12. The Director so filling a vacancy shall serve until 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.

(e) 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.

(f) 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 Tract, the management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners), and the maintenance, repair, upkeep and replacement of such exterior portions of the Dwelling Units as designated in this Declaration, and the collection and disbursement of regular and special assessments collected by the Corporation. The Board shall, on behalf of the Corporation, shall 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, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party upon ninety (90) days written notice to the other party. Any decision not to continue to employ a professional property management agent after such an agent has once been employed shall require the prior consenting vote of the Owners of at least sixty percent (60%) of the Members' vote. The Managing Agent shall assist the Board in carrying out its duties. The duties of the Board include, but are not limited to:

(i) protection and surveillance, 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;
- (ii) procuring of utilities in connection with the Limited Common Areas and for the Lots and Dwelling Units, including the single meter for the entire development, removal of garbage and waste, and snow removal from the Limited Common Area;
  - (iii) landscaping, painting, decorating, furnishing, maintenance and upkeep of the Limited Common Area, AND SUCH EXTERIOR PORTIONS OF THE DWELLING UNITS AS HEREINAFTER DESIGNATED IN THIS DECLARATION. Maintenance of lawns shall include but shall not be limited to the watering, fertilizing, mowing and replanting when necessary of the grass; and the care, fertilizing, trimming, removal and replacement of trees and shrubs planted by the Declarant Owner. It shall not include the care and maintenance of shrubs and trees which were not planted by Declarant Owner or Declarant Builder, flowers or other plants on any Lot;
  - (iv) surfacing, paving and maintaining of the private street and any off-street parking spaces constituting a part of the Limited Common Area;
  - (v) 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;
  - (vi) snow removal from the private street as shown on the recorded plats and if funding exists, for the removal of snow from driveways to the Dwelling Units if in the Board's sole determination the accumulation of snow justifies such removal;
  - (vii) assessment and collection from the Owners of each Owner's respective share of the Common Expenses assessed by the Shawnee Corporation;
  - (viii) 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;
  - (ix) 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;
  - (x) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagees of Owners, insurer or guarantor of a first mortgage at any time during normal business hours;
  - (xi) 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;

- (xii) paying taxes assessed against and payable with respect to the Limited Common Area and paying any other necessary expenses and costs in connection with the Common Area, including the utility water usage charge reflected on the single master meter for the Shawnee development; and
- (xiii) to furnish, upon request of any Mortgagee, insurer or guarantor of first mortgage, an audited or reviewed financial statement for the immediately preceding fiscal year.

(g) 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:

- (i) to employ a Managing Agent to assist the Board in performing its duties;
- (ii) 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;
- (iii) 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;
- (iv) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
- (v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (vi) to open and maintain a bank account or accounts in the name of the Corporation;
- (vii) 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 Tract and the Limited Common Area (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 or mailed to all Owners. Such rules and regulations and amendments thereto will not be effective until approved in writing by the Southern Dunes Homeowners Association, Inc.;
- (viii) to seek permission from the Southern Dunes Homeowners Association, Inc. for permits, licenses and easements over the Limited Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of Shawnee; and
- (ix) to enter the Dwelling Unit of any Owner in case of any emergency whether the

Owner is present at the time or not and in the case of non-emergency repairs to enter the Dwelling Unit provided the request is made in advance and is at a time reasonably convenient to the Owner.

- (h) Limitation on Board Action. 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 adjusted annual based on the cost of living index or equivalent inflationary index without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary.
- (i) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
  - (ii) 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.
- (i) 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.
- (j) Non-Liability of Corporation Directors, Officers or Committee Members. The Directors, Officers and Committee Members of this Corporation 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, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the named parties against any and all liability to any person, firm or corporation arising out of performing their assigned duties, unless any such performance shall have been made in bad faith. It is intended that the named parties shall have no personal liability with respect to any contract made by them on behalf of the Corporation.
- (k) Additional Indemnity of the Corporation's Directors, Officers and Members of the Architectural Review Board and other Committee Members. 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 one of the titled persons in this 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 relating to matters as to which it shall be adjudged in such action, suit or proceeding that such person is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such person 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 person was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against such a person, no such person 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 person named in the title hereof had actual knowledge of the falsity or incorrectness thereof, nor shall any such person be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend scheduled meetings.

- (l) **Bond.** The Board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation, and such other officers or directors of the Corporation that handle or are responsible for funds 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 (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be cancelled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

13. **Real Estate Taxes.** Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Tract, then each Owner shall pay his proportionate share of the real estate taxes assessed for the land, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Tract assessed as a whole, and shall pay his proportionate share of the real estate taxes assessed on the improvements on the Tract assessed as a whole based upon the ratio that the square footage of the improvements on his Lot bears to the square footage of improvements of all improved Lots. Any real estate taxes or other assessments which are chargeable against the Limited Common Area shall be paid by the Corporation and treated as a Common Expense.

14. **Utilities.** Each Owner shall pay for his own utilities, which are separately metered. Utilities, such as water, which are not separately metered, shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.

15. **Maintenance, Repairs and Replacements.** Maintenance, repairs, replacements and upkeep of the Limited Common Area shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.



In addition to maintenance in and upon the Limited Common Area, the Corporation shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces. Such exterior maintenance shall not include glass surfaces, screens and screen doors, door and window fixtures and other hardware, patios, and such other items as the Board of Directors may so designate (unless specifically designated in this Declaration as the Corporation's obligation) so long as such items of exception shall apply to all units equally. However, the Corporation shall be responsible for staining or painting of the outside surface of exterior doors and it shall also be responsible for painting or staining the outside or exterior surfaces of patio fences, if any. Each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon in a good, clean and sanitary condition and shall do all work thereon which is not required hereunder to be performed by the Corporation, including the interiors of patio areas and patio fences (if any). The Corporation shall not be responsible for repairing and maintaining any patio fences other than painting or staining the exterior unless the Board of Directors shall otherwise provide.

Notwithstanding any obligation or duty of the corporation to repair or maintain any Lot or the Limited Common Area, 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, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a 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.

If any Owner shall fail so to maintain and keep his property or any part thereof in a good, clean and sanitary condition, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such

cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

So long as the Tract is subject to this Declaration each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

**Preface.** The Architectural Review Board provided for herein shall be Step 1 in the approval process relative to the purposes (Subsection (b)) herein. This Board as part of Step 1 of this process shall make its recommendation to the Architectural Control body under the Master Declaration whose decision(s) according to the procedure outlined and to be followed under the Master Declaration shall be controlling (Step 2).

16. **Architectural Control.**

(a) **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. The Architectural Review Board shall be the Initial Board of Directors and whomever they appoint thereafter until the last Lot capable of being subjected to this Declaration is conveyed to a purchaser other than Builders purchasing to construct Dwelling Units on a Lot. The Architectural Review Board shall thereafter be appointed by the Board of Directors of the Corporation.

(b) **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 preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) **Conditions.** No improvements, alterations, repairs, change of colors, excavation, 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 Owner to Declarant Builder or by Declarant Builder to any 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 without the prior written approval of the Architectural Review Board.

(d) Procedures. In the event the Architectural Review board fails to approve, modify or disapprove in writing an application within fourteen (14) 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) has been given to it, a favorable recommendation will be deemed granted by the Architectural Review Board to the Architectural Control Group under the Master Declaration. The recommendation of the Architectural Review Board is not binding the Architectural Control Group under the Master Declaration, which may reverse or modify such recommendation. 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.

(e) Maintenance of Architectural Control. The Association may not waive or abandon the procedure for regulating and enforcing the architectural design or exterior appearance of the Dwelling Units nor for maintaining the exterior of the Dwelling Units or the Limited Common Area without the prior written approval of all Owners.

17. Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Dwelling Unit upon the Tract 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.

- (b) 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.
- (c) 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 maintained by any of the Owners who make use of such party wall, 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.
- (d) 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.
- (e) Right of 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.
- (f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph 17, 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 (10) days after written request therefor from another party the Board of Directors of the Corporation shall select an arbitrator for the refusing party.) The cost of the arbitrators shall be borne

equally by the parties.

**SPECIAL NOTE.** THE FOLLOWING ASSESSMENT PROCEDURE AND OBLIGATION ONLY CONCERNS THE SHAWNEE SUBDIVISION. **IN ADDITION THE MASTER DECLARATION ALSO PERMITS REGULAR AND SPECIAL ASSESSMENTS THE DETAILS OF WHICH SHOULD BE CONSULTED.**

18. **Assessments.**

(a) **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 servicing the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) **Proposed Annual Budget.** Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget in a manner that corresponds to the matters separately attributable to Regular Assessments for the current fiscal year estimating the total amount of the Common Expenses 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 Assessment 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, 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 sums assessed by the Corporation shall be established by

using generally accepted accounting principles applied on a consistent basis.

The annual budget may include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Limited Common Area and such exterior portion of the Dwelling Units as designated in this Declaration from the Regular Assessment, which replacement reserve fund (if established) shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Limited Common Area and such exterior portion of the Dwelling Units as designated in this Declaration shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana 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 herein 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.

(c) Regular Assessment.

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 Regular Assessment against each Lot. 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 Assessment shall be equal to the total amount of expenses attributable to Regular Assessment matters as 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 monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly 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 assessments quarterly, semi-annually or annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget. ®

- (i) 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 all payments thereafter during such fiscal year, 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
- (ii) 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, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment either quarterly, semi-annually or annually in advance, then the adjustments set forth under (i) or (ii) above

shall be made by a cash payment by, or refund to, the Owner by 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 who 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 Paragraph 20 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. Monthly 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.

- (d) Special Assessments. From time to time Common Expenses of an unusual or



extraordinary nature or not otherwise anticipated may arise. At such time and provided that such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, and further provided that the Declarant shall not be any Owner's agent, attorney-in-fact or proxy in this vote pursuant to the third sentence of Paragraph 12(b) of this Declaration, 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"). 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.

- (e) Regular Assessments Prior to the Applicable Date. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly, and notwithstanding any other provision contained in the Declaration, the Articles or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Paragraph 18.

The Corporation will enter into a management agreement with Declarant (or a corporation or other entity designed by Declarant) (hereinafter referred to as "Management Agent" or Managing Agent") in accordance with the provisions of Paragraph 13 of this

Declaration. So long as such management agreement (or similar agreement) remains in effect, the Regular Assessments shall be paid by Owners to Management Agent. DECLARANT SHALL GUARANTEE THAT UNTIL THE EARLIER OF (1) THE TERMINATION OF SAID MANAGEMENT AGREEMENT OR (2) 1 YEAR AFTER THE DATE OF RECORDATION OF THE DECLARATION, THE MONTHLY REGULAR ASSESSMENT SHALL NOT EXCEED \$\_\_\_\_\_ (THE "GUARANTEED CHARGE"). After this date (assuming that said management agreement or similar agreement is still in effect) and so long thereafter as said management agreement (or similar agreement) remains in effect and management Agent continues to perform such functions, Declarant guarantees that the monthly Regular Assessment shall not exceed the amount of the Guaranteed Charge plus a maximum of a twenty percent (20%) increase in the Guaranteed charge for each year. Such adjustments to the Guaranteed Charge (up to a twenty percent (20%) increase as determined by the Board) shall be made annually on January 1 of each year so long as said management agreement remains in effect and Management Agent continues to perform such functions. This adjustment may be cumulative i.e. "if only a 10% adjustment is made in a given year and adjustment of 30% can be made the next year. Such monthly charge shall during such guaranteed period entirely defray the Owner's obligation for his share of Common Expenses or shall be the Owner's entire Regular Assessment. Declarant shall be responsible for any operating deficit, in the Regular Assessment only, during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures shall be covered through Special Assessments, or, if sufficient, the replacement reserve fund, if any such fund exists.

That portion of the Regular Assessment collected by Declarant prior to the Applicable date applicable to any replacement reserve created shall be held by the Initial Board and if required, applied to the replacement of Limited Common Areas or those portions of Dwelling Units obligated to be repaired and replaced by the Corporation. To the extent that any such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

Payment of the Regular Assessment prior to the Applicable Date with respect to each Dwelling Unit (that is not owned by Declarant Owner or Declarant Builder) shall commence on the date of conveyance by Declarant Owner or Declarant Builder to an owner other than Declarant Builder. The first payment shall be payable on the date of conveyance prorated to the first day of the next calendar month next ensuing. Thereafter, payment of the Regular Assessment shall be paid the first day of each calendar month during the period prior to the Applicable Date. FOR EACH LOT DECLARANT OWNER/DECLARANT BUILDER OWNS AND WHICH HAS BEEN MADE SUBJECT TO THIS DECLARATION NEITHER SHALL BE LIABLE TO PAY THE REGULAR ASSESSMENT PRIOR TO THE APPLICABLE DATE (See Paragraph 11).

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 12 of this Declaration and to adhere to and abide by the same.

- (f) Initial Start-up Fund. Upon the closing of the initial conveyance of each Lot or Unit to an Owner other than a Builder, the purchaser of such Lot or Unit shall pay to the Corporation, in addition to any other amounts then owed or due to the Corporation, as a contribution to its start-up fund, an amount equal to one-sixth ( $1/6^{\text{th}}$ ) of the then current annual Base Assessment against such Lot or Unit, which payment shall be non-refundable and shall not be considered as an advance payment of any Assessment or other charge

owed the Corporation with respect to such Lot or Unit. In the event that the Builder fails to collect the start-up funds from the purchaser, the Builder shall be liable for payment of such funds.

The start-up fund shall be used by the Corporation for payment of, or reimbursement to, Declarant for advances to the Association and initial and set-up expenses of the Association. The entire Initial Start-Up Fund will be paid to the Declarant and the Declarant shall not be required to account for its use thereof.

- (g) Failure of Owner to Pay Assessments. No Owner (including Builder) may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expense or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area 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 person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may in its discretion accelerate the entire balance of unpaid assessments in such event the Owner and any occupant of the Lot and Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of customary late charges imposed by professional management companies 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 suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In actions 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 attorney's fees) and interest from the date such assessments were due until paid at the rate equal to the publicly announced prime interest rate then being charged by Bank One to its largest and best corporate customer (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 of Directors). The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage.

- (h) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot 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 a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment 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 from which it

arose).

19. **Mortgages.**

- (a) **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 and 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 at 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.

- (b) **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 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 Paragraph 19 hereof.

- (c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Limited Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Limited Common Area or to secure new hazard insurance for the Limited Common Area on the lapse of a policy. Any Mortgagee making such payment shall be owed immediately reimbursement by the Corporation.
- (d) Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation loss which affects a material portion of Shawnee or any Dwelling Unit. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.
- (e) Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

20. Insurance.

- (a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Dwelling Units and the Limited Common Area in an amount consonant with the full replacement value of the improvements which in whole or in part, comprise the Dwelling Units and Limited Common Area. If the Board of Directors can obtain such coverage for reasonable amounts they 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. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

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, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation as provided in the By-Laws shall specifically include protection for any insurance proceeds so received.

The interest of each damaged Owner in the trust fund of insurance proceeds as to Regular Assessment shall be the ratio of the direct damage of such Owner's damaged Dwelling Unit to the damages of all Dwelling Units and Limited Common Area directly damaged by any event insured under the said master casualty insurance policy.

Such master casualty insurance policy, and "all risk" coverage, 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) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Mortgagees and at least ten (10) days prior written notice to the Corporation.

Each Owner shall be solely responsible for loss or damage to the contents of his Dwelling Unit however caused (including, but not limited to, all floor, ceiling and wall covers and fixtures, betterments and improvements installed by him) and his personal



property stored elsewhere on the Tract and the Corporation shall have no liability to the Owner for loss or damage to the contents of any Dwelling Unit or any personal property stored elsewhere on the Tract. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

(b) Public Liability Insurance. The Corporation shall also purchase a comprehensive public liability insurance policies in such amount or amounts as the Board of Directors shall deem appropriate from time to time but not less than \$1,000,000 for each policy for bodily injury, including deaths of person and property damage arising out of a single occurrence covering its involvement relative to the Limited Common Areas. Such comprehensive public liability insurance policies shall cover the Corporation, the Board of Directors, any committee 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 Tract, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" 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. Such public liability insurance policy shall contain a provision that such policy shall not be cancelled or substantially modified without at least ten (10) days written notice to the Corporation.

(c) Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to, workmen's 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.

- (d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses allocated and payable from the funds of the Regular Assessment. 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 notice of meeting of the Corporation.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgage endorsement on the certificate of insurance or insurance policy 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 method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Limited Common Area. In the event of condemnation of all or any part of the Limited Common Area the Corporation, as the regulator of the use of the Limited Common Area, shall represent the Owners in any negotiation or settlement regarding such condemnation and loss of use. No Owners or any other party shall have priority over any rights of a mortgagee pursuant to its mortgage in

the case of distribution to such Owners of insurance proceeds or condemnation awards for losses to or a taking of Limited Common Area. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Indiana Not-For-Profit Corporation 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.

(e) Insurance by Owners. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

(f) Condemnation Awards. All proceeds payable as a result of condemnation for this Corporation and its Members right to use the Limited Common Areas shall be paid to the Corporation who shall act as trustee and hold such proceeds for the benefit of the individual Owners and Mortgagees. Such proceeds shall be distributed as provided above.

21. Casualty of Dwelling Units.

(a) Restoration of Dwelling Units.

(1) Damage to or destruction of any Dwelling Unit due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Corporation and the proceeds of insurance, if any, attributable to funds from Regular Assessment B shall be applied for that purpose.

(2) 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, the cost for restoring the damage and repairing and reconstructing the Dwelling Units so damaged or destroyed (or the costs thereof in excess of insurance proceeds

received, if any) shall be paid by the Owners of the Dwelling Units damaged in proportion to the ratio that damages to an Owner's Dwelling unit have to the total damage to all Dwelling Units that are damaged. Any such amounts payable by the Owners of damaged Dwelling Units shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

(3) For purposes of subparagraphs (1) and (2) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Dwelling Units to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

(4) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged property in 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. ®

(5) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against the Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Dwelling Units are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

(i) If the estimated cost of reconstruction and repair of the Dwelling Units is more than Twenty Thousand Dollars (\$20,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, sub-contractors, materialmen, the

architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs, as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of the construction fund remaining after payment of the sum so requested.

- (ii) Encroachments upon or in favor of Dwelling Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Dwelling Units were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Dwelling Units stand.
- (iii) In the event that there is any surplus of monies in the construction funds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums shall be distributed to the Owners of the Dwelling Units affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damaged Dwelling Units shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

- (b) Restoration of Limited Common Area. In the event of damage to or destruction of any of the Limited Common Area or improvements if any, thereon due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed from the funds of Regular Assessment. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event 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 of the Limited Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Limited Common Area 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 Limited Common Area 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.

22. **Covenants and Restrictions.** Reference is made to Article 17 of the Master Declaration entitled Covenants and Restrictions, which is set out in full for convenience but which may be amended as detailed in the Master Declaration. The Shawnee Corporation may also adopt additional rules and regulations or amend the following rules and regulations concerning the Shawnee Subdivision, its Lots, Dwelling Units and Limited Common Areas not in conflict with the Master Declarations, Covenants and Restrictions but only after such additional or amended covenants and restrictions have been submitted to and approved by the Southern Dunes Homeowners Association, Inc.

Section 17.1 The following covenants and restrictions<sup>®</sup> on the use and enjoyment of the Lots, Units and Common Area shall be in addition to any other covenants or restrictions contained herein and in the Plat Covenants, and all such covenants and restrictions re 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 of the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall be entitled to damages and reasonable attorney fees 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. No Owner shall permit anything to be done or kept in his Unit or on his Lot or on any of the Common Area which will result in a cancellation of insurance or increase in insurance to the Association or to any other Owner, 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 on any Lot, in any Unit, or elsewhere in the Community. Without limiting the scope of the term "Nuisance", it shall include anything which endangers life or health, or obstructs the reasonable, comfortable and peaceful use of property, or its value, as well as that which gives offense to the senses or violates the laws of decency. The Board of Directors' determination as to what specific circumstances constitute a nuisance shall be conclusive.

D. No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Unit or placed on the outside walls of any building, and no awning, canopy, shutter or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without prior consent of the Architectural Review Board.

E. No satellite receiving dish greater than one meter in diameter shall be erected or installed on any Lot or Unit, and satellite dishes of one meter in diameter or less require the prior approval of the Architectural Review Board and the Architectural Control Committee under the Master Declaration as to location and screening. Exposed antennae shall require these same approvals.

Height shall not exceed five (5) feet above roof peak.

F. No "for sale", "for rent", "garage sale" or other signs for any purpose shall be placed upon any common area or upon any Lot other than the Lot which is for sale, for rent or upon which the garage sale will be held, without the express consent of the Board. Any "for sale", "for rent", "garage sale" or other yard signs, whether placed on any lot or with the Board's consent placed in the common areas, shall be limited in size to what is commonly used in the residential real estate community, as determined by rules

established by the Board. No more than one sign may be placed on any Lot, without the prior consent of the Board. No banners or signs shall be hung from any home or elsewhere on any Lot for more than one week, without the prior consent of the Board.

G. 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 Area, 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 the Association shall not be liable for any injury or damage to persons or property, including the Common Area, cause by any pet. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time, including, without limitation, a restriction on the number of pets, the prohibition of particular species or breeds, and the prohibition of pets in particular areas of the Community. 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 Community within ten (10) days after written notice from the Board.

H. The Lots and Common Area shall be kept free and clear of rubbish, debris and other unsightly materials. No Owner or guest of an Owner, nor any builder, contractor or subcontractor shall litter or dispose of trash improperly anywhere within the Community.

I. No Dwelling Unit or Lot or any portion of the Common Area shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the Community, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants. Without limiting the generality of the foregoing, this Covenant shall include excessive noise from the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment, machines or vehicles, loud noises, excessive amounts of light, vibration, or unpleasant odors.

J. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any street or any part of the Common Areas or from neighboring properties.



K. No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except with the prior approval; of the Board. The Board may establish rules generally permitting such sales, or permitting such sales on a limited basis.

L. No water wells shall be drilled n any of the Lots, without prior approval of the Board, nor shall any septic tanks or other sewage disposal systems be installed on any of the Lots, without the approval of the Board and of the governing public health agency or other civil authority.

M. No person shall draw water or other materials from the lakes or other water retention ponds or add water, except for storm water drainage approved by the Declarant or by the Committee, or other materials, whether by dumping or otherwise, to the lakes and other water retention ponds without the prior approval of the Board as to quality and quantity of materials.

N. Except as may be specifically permitted by the Declarant in the Plat Covenants for one or more sections of the Southern Dunes Community, there shall be no docks on the lakes and no boating or swimming. Fishing may be permitted for owners of property adjoining a lake, however no owner or other person may trespass on the property of another or on the property of the golf course in order to fish and no person may fish from a public right of way, such as a street.

O. The Board may prohibit or limit parking on the streets<sup>5</sup> of residential subdivisions within the Community.

P. No industry, trade, o other commercial or religious activity, educational or otherwise, whether designed for profit, altruism or otherwise, shall be conducted, practiced or permitted upon any Lot or elsewhere within the Community, except within such rules and regulations as are established by the Board, and except that an Owner or resident may conduct business activities within a Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Real Estate; (c) the business activity does not involve persons coming onto the Real Estate who do not reside on the Real Estate or involve door-to-door solicitation of residents of the Real Estate; and (d) the

business activity is consistent with the residential character of the Real Estate and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined in the sole discretion of the Board.

Q. 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 Area 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 Area or the Limited Common Area.

R. No Lot may be used for growing crops, except within the size and location guidelines established by the Board. The Board shall have the right and authority to prohibit the growing of crops entirely.

S. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Board of Directors shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Corporation shall have a lien against the cleared Lot for the expense thereof.

T. The Common Areas shall be used and enjoyed only for the purposes of which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

U. No Owner may rent or lease his Dwelling Unit for transient or hotel purposes or for any purpose for a period of less than six months without the prior approval of the Board.

V. Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease, for a period of at least six months, which shall provide that the lease is subject to the provisions of this Declaration and any failure of the lessee to comply with the terms of this Declaration shall be a default under the lease.

W. No improvement which has partially or totally been destroyed by fire or otherwise shall be

allowed to remain in such state for more than three (3) months from the time of such destruction or damage, without approval from the Architectural Review Board and the Architectural Control Committee under the Master Declaration. Also, any improvement or addition to an existing structure shall be completed within three months from the time of commencement, except with the approval of the Committee.

**SPECIAL NOTE:** REFERENCE IS MADE TO THE MASTER DECLARATION RULES AND REGULATIONS AS AMENDED FOR ANY AMENDMENT TO THEIR RULES AND REGULATIONS SET OUT IN FULL ABOVE.

23. **Amendment of Declaration.**

(a) **Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

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

(ii) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) **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. Any proxy votes may be hand delivered or mailed if received in time for the actual vote.

(iv) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than fifty percent (50%) in the aggregate of all Owners; provided, that any such amendment shall require the prior written approval of the Declarant so long as the Declarant or any entity related to the Declarant owns any Lot or Dwelling Unit within and upon the Tract. In the event any 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 of the Association in accordance with the provisions of this Declaration.

(v) **Mortgagees' Vote on Special Amendments.** No amendments to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 601.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first

mortgagee's consent under the Freddie Mac Sellers' and Servicers' Guide, Vol. 1, Section 2103(d) without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of this Declaration.

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

- (b) By Declarant Owner. Declarant Owner has reserved certain rights to make any amendments to the Master Declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Declarant Owner which may impact upon the rights and obligation of Owners in the Shawnee Subdivision. It is incumbent on Owners to refer to the details in the Master Declaration concerning rights reserved and the possible consequences thereof ®
- (c) Recording. Each amendment to this Declaration shall be executed by Declarant Owner only in any case where Declarant Owner has the right to amend this Declaration without any further consent or approval, and otherwise by the President or Vice President and Secretary of the Association; provided that any amendment requiring the consent of Declarant Owner shall contain Declarant Owner's signed consent. All amendments shall be recorded in the office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.
- (d) Amendment Prior to the Applicable Date. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration

prior to the applicable Date without the consent and approval of Declarant Owner.

24. **Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time with a like requirement for the same documents concerning the Master Declaration and similar titled documents arising therefrom. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of both Declaration, both of the Articles of Incorporation, both of the By-Laws, and each entities 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 be binding on any person having at any time any interest or estate in a Lot or the Tract as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnership, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Tract in any manner shall be subject to all of the named documents applicable thereto as each may be amended or supplemented from time to time. ® 1

25. **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 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 its appurtenances or of the Common Area.

26. **Costs and Attorneys' Fees.** In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, 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 reasonable attorneys' fees incurred in connection with such default or failure.

27. **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 Area or by abandonment of his Lot.

28. **Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision 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 enforced to the greatest extent permitted by law.

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

30. **Interpretation.** The captions and titles of the various articles, section, subsections, 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, the undersigned has caused this Declaration to be executed the day and year first above written.

WELLINGSHIRE JOINT VENTURE  
CHICAGO TITLE

By: R. N. Thompson  
R. N. Thompson, President  
R. N. Thompson Development Corporation

By: Ken Giffin  
Ken Giffin, President  
Waterway Holdings, Inc.

"DECLARANT OWNER"

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public, in and for said County and State, personally appeared R. N. Thompson and Ken Giff in with the capacity of Partners in Wellingshire Joint Venture, who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of Shawnee Property Ownership" for and on behalf of said Joint Venture.

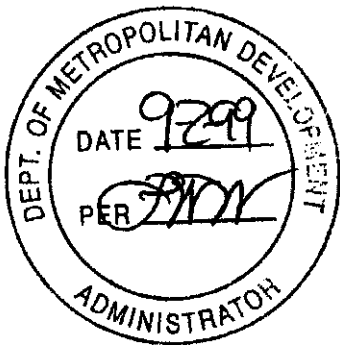
WITNESS my hand and Notarial Seal this 13th day of August, 1997.

[Signature]  
Notary Public

My Commission Expires:  
June 24, 2001

DAVID M. COMPTON  
(Printed)

County of Residence: HAMILTON



BRUCE GUNSTRA BUILDERS, INC.

By: [Signature]  
Bruce Gunstra, President  
Bruce Gunstra Builders, Inc.

"DECLARANT BUILDER"



STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public, in and for said County and State, personally appeared Bruce Gunstra, President of Bruce Gunstra Builders, Inc., who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of Shawnee Property Ownership" for and on behalf of said Bruce Gunstra Builders, Inc.

WITNESS my hand and Notarial Seal this 13th day of August, 1997.

[Signature]  
Notary Public

My Commission Expires:  
June 24, 2001

DAVID M. COMPTON  
(Printed)

County of Residence: HAMILTON



APPROVED THIS 1st  
DAY OF September 1997  
PERRY TOWNSHIP ASSESSOR  
John R. Garcia DRAFTSMAN

**LAND DESCRIPTION**

**The Townes at Wellingshire  
(a.k.a. Shawnee at Southern Dunes)**

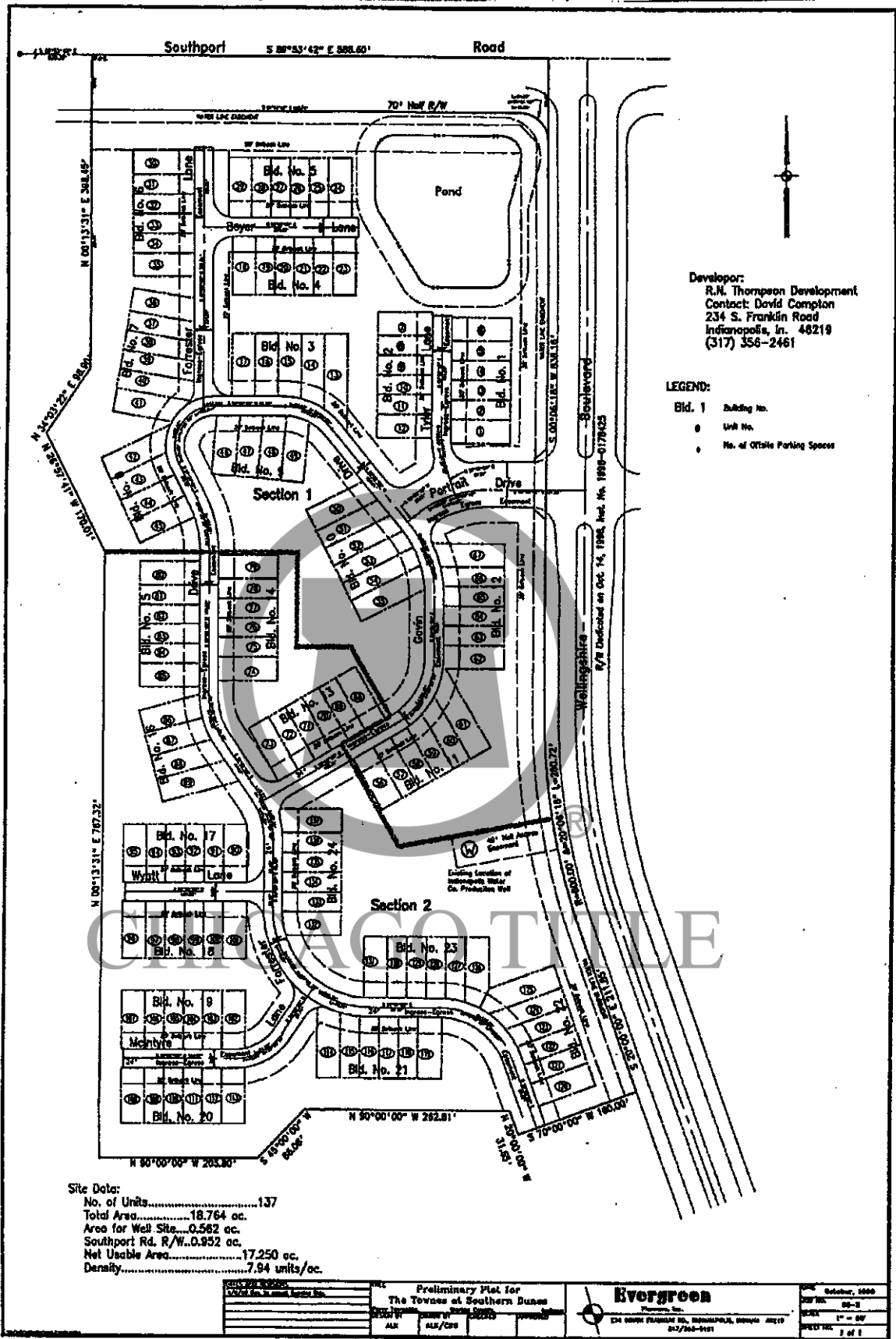
Part of the Northeast Quarter of Section 16, Township 14 North, Range 3 East of the Second Principal Meridian, Perry Township, Marion County, Indiana and being described as follows:

Commencing at the Northwest corner of said Northeast Quarter;  
thence South 89 degrees 53 minutes 42 seconds East (as assumed bearing) along the North line of said Northeast Quarter a distance of 820.39 feet to the POINT OF BEGINNING;  
thence continue South 89 degrees 53 minutes 42 seconds East along said North line 588.60 feet to the Westerly Right of Way line for Wellingshire Blvd. as described in the right of way dedication recorded on October 14, 1988 as Inst. No. 1998-0174825 in the Office of the Marion County Recorder, the following three (3) calls being along said Westerly right of way;  
thence South 00 degrees 06 minutes 18 seconds West 838.16 feet to a tangent curve to the left and from which the radius point bears South 89 degrees 53 minutes 42 seconds East;  
thence Southerly along said curve an arc distance of 280.72 feet to a point from which the radius point bears North 70 degrees 00 minutes 00 seconds East, said curve having a radius of 800.00 feet and being subtended by a chord of South 09 degrees 56 minutes 51 seconds East 279.28 feet;  
thence South 20 degrees 00 minutes 00 seconds East 211.85 feet;  
thence South 70 degrees 00 minutes 00 seconds West 160.00 feet;  
thence North 20 degrees 00 minutes 00 seconds West 31.65 feet;  
thence North 90 degrees 00 minutes 00 seconds West 262.81 feet;  
thence South 45 degrees 00 minutes 00 seconds West 86.08 feet;  
thence North 90 degrees 00 minutes 00 seconds West 205.80 feet;  
thence North 00 degrees 13 minutes 31 seconds East 767.32 feet;  
thence North 26 degrees 57 minutes 41 seconds West 170.01 feet;  
thence North 34 degrees 03 minutes 22 seconds East 98.90 feet;  
thence North 00 degrees 13 minutes 31 seconds East 398.45 feet to the point of beginning and containing 18.764 acres more or less.

Subject to the right of way for Southport Road and to all other legal easements and rights of way of record.

Exhibit "A"





Developer:  
 R.M. Thompson Development  
 Contact: David Compton  
 234 S. Franklin Road  
 Indianapolis, In. 46218  
 (317) 356-2461

LEGEND:  
 Bld. 1 Building No.  
 U Unit No.  
 P No. of Offsite Parking Spaces

Site Data:  
 No. of Units.....137  
 Total Area.....18.764 ac.  
 Area for Well Site.....0.562 ac.  
 Southport Rd. R/W.....0.932 ac.  
 Net Usable Area.....17.250 ac.  
 Density.....7.94 units/ac.

PRELIMINARY PLAN FOR THE TOWNES AT SOUTHERN DUNES 234 S. FRANKLIN RD., INDIANAPOLIS, INDIANA 46218 317/356-2461		Evergreen PLANNERS, INC. 234 SOUTH FRANKLIN RD., INDIANAPOLIS, INDIANA 46218 317/356-2461	DATE: October, 1999 SHEET NO.: 00-3 SCALE: 1" = 80' SHEET NO. 1 of 1
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Exhibit "B"



# CHICAGO TITLE

This Instrument Prepared by:  
Raymond Good, Esq., #7201-49  
SCHNORR, GOOD, SCAHILL & MAIER  
144 N. Delaware Street  
Indianapolis, IN 46204-2551  
(317) 264-3636

#1-Declaration/Blower Declaration 7-26-99







































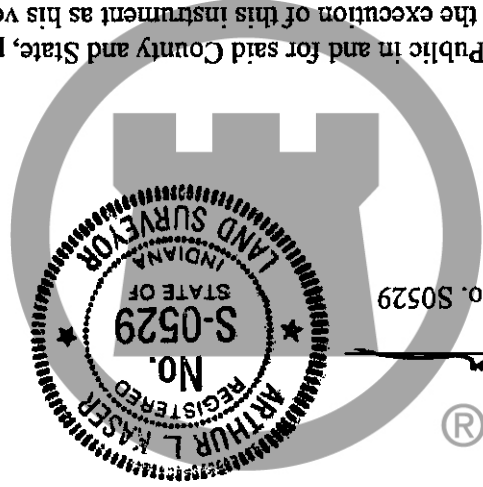
APPROVED THIS 24th DAY OF August 2004  
 PERRY TOWNSHIP ASSESSOR  
 GIS MANAGER

This Instrument Prepared By Arthur L. Kaser, L.S.  
 Evergreen Planners, LLC  
 234 S. Franklin Road  
 Indianapolis, In. 46219

Signature: Dina Marie Surber  
 Printed: Tina Marie Surber  
 Notary Resides in: Clinton County  
 My Commission Expires: 2-14-2007

WITNESS my hand and Notarial Seal this 17th day of March, 2004.  
 L. Kaser who acknowledged the execution of this instrument as his voluntary act and deed.  
 Before me, a Notary Public in and for said County and State, personally appeared Arthur

**APPROVAL OF CORRECTION**  
 METROPOLITAN DEVELOPMENT COMMISSION  
 PLAT COMMITTEE  
 DATE: 9-2-04  
 SUBMISSION ADMINISTRATOR



Arthur L. Kaser  
 Registered Land Surveyor No. S0529  
 State of Indiana )  
 Hamilton County )

WITNESS my hand and Registered Land Surveyor's Seal this 17th day of March, 2004  
 I the undersigned hereby certify that the above to be true and correct to the best of my knowledge and belief.  
 The purpose of this correction is to change the name of Forrester Drive to Forrester Lane so as to conform and agree with the continuation of this drive into the adjoining plat of The Townes at Wellingshure Section 1 (a.k.a. Shawnee at Southern Dunes, Section 1)

**Surveyor's Correction**  
**to the Plat of Shawnee at Southern Dunes, Section 2**  
**Inst. No. 2004-0141702**

MARTIN A. WOLACKS  
 544674 SEP 13 2004  
 SUBJECT TO RECORD MADE FOR TRANSFER