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DUPLICATE OF ORIGINAL INSTRUMENT FOR FINANCIAL RECORDS

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MARTHA A. WOMACKS
MARION COUNTY CLERK

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WHISPERING FALLS AT SOUTHERN DUNES

and the By-laws for the
WHISPERING FALLS HOMEOWNERS ASSOCIATION, INC.
An Indiana Non-Profit Corporation

This Declaration (hereinafter referred to as the "Declaration" or the "Whispering Falls Declaration") is made by R.N. Thompson Development Corporation, which shall hereinafter be referred to as "Developer" or as "Declarant" and by the Wellingshire Joint Venture (consisting of R.N. Thompson Development Corporation and Waterway Holdings, Inc.), owner of the real estate subjected to the rules, requirements and governance of this Declaration (the "Fee Owner"). Declarant is the contract purchaser of the real estate in Marion County, Indiana, which is more particularly described in "Exhibit A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Real Estate").

Declarant desires to provide for the preservation and enhancement of the value of property in the Whispering Falls at Southern Dunes Subdivision (hereinafter sometimes referred to simply as "Whispering Falls" or the "Whispering Falls subdivision") and its common areas, and, to this end, Declarant subjects the Real Estate to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, as provided in this Declaration, for the benefit of the Whispering Falls subdivision within the Southern Dunes Community and each owner of all or part thereof.

Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a non-profit corporation under the name "Whispering Falls Homeowners Association, Inc.", or a similar name (hereinafter sometimes referred to as the "Corporation" or the "Association"), which shall own, maintain and administer the common areas located within the Real Estate, maintain portions of the Lots as described herein, administer and enforce the covenants and restrictions contained in this Declaration, collect and disburse the funds of the Association, and promote the best interests of the community on behalf of the owners of the Real Estate.

This document shall be read and interpreted in conjunction with the Southern Dunes Master Declaration, recorded on December 23, 1998 as Instrument No. 1998-0228187 (hereinafter referred to as the "Master Declaration"). The Real Estate in this subdivision shall also be subject to the terms and provisions, and the covenants, restrictions and assessments, of the Southern Dunes Master Declaration.

Declarant hereby declares that the Real Estate, and any additional real estate which is hereafter made subject to this Declaration by supplemental declaration, is and shall be held, transferred, sold, encumbered, leased, used, improved and occupied subject to the provisions, covenants, restrictions, easements, assessments and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for the preservation and enhancement of the Real Estate and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Lots, homes and other improvements situated therein.

NOTICE 1: Prior to application for an improvement location permit from the appropriate governmental agency for the construction of a residence or other structure, site plans, landscaping plans and building plans shall have been approved in writing by the Whispering Falls New Construction Committee as defined in Article 10 of this Declaration. Such approval shall include but not be limited to: building design, color and location, private drives, tree preservation, and proposed landscaping and fencing, all in accordance with the requirements of the Whispering Falls Design Guidelines.

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NOTICE 2: The Southern Dunes community is located over a wellfield owned and operated by the Indianapolis Water Company ("IWC") as one of IWC's primary sources of water. As a result, there are substantial covenants contained in the Master Declaration imposed to prevent contamination of the soil and groundwater under this community. Those covenants, combined with other covenants, restrictions, servitudes, rights and easements imposed on IWC's behalf to protect this public water source affect the use of land in the community and prohibit certain uses that might be allowed on other property. Exhibit A to the Master Declaration contains a description of the IWC covenants, restrictions, servitudes, rights and easements designed to protect this water supply. The land of Southern Dunes is also subject to the provisions of the Wellfield Protection Zoning Ordinance of Marion County, Indiana, added to the Code of Indianapolis and Marion County (Vol. III, App. D), and thereafter amended under Metropolitan Development Commission Docket Nos. 95-AO-6, 13A and 13B; 96-AO-6, 97-AO-1 and 10; and 98-AO-3.

NOTICE 3: Also because the Southern Dunes community is located over a wellfield, there will be substantial variations in the water level of the lakes and water retention ponds throughout this community, including the primary Whispering Falls lake. Included within these variations will be occasions when the lakes and water retention ponds may be completely dry or have a very low water level. Also, there will be occasions when the water level will be higher than normal, decreasing the usable portion of an owner's yard or resulting in greater water pressure against the foundation and/or basement of a residence or other building. Neither the Declarant, the Fee Owner, Indianapolis Water Company, or the Association shall be liable to any owner, occupant or other person or entity within the community for excessive water levels, for flooding, or for inadequate water levels or the absence of water in the lakes and water retention ponds throughout the Southern Dunes community.

ARTICLE I

DECLARATION OF RESTRICTIONS AND STATEMENT OF PROPERTY RIGHTS, MEMBERSHIP, FUNCTIONS OF THE CORPORATION, DEFINITIONS

SECTION 1.1 Declaration. Declarant hereby expressly declares that the Real Estate shall be held, transferred and occupied subject to these Restrictions. The Owners of any Lot which is subject to this Declaration, and all other Persons: (i) by acceptance of a deed from Declarant, or any successor owner of any Lot or any Dwelling Unit, conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot or any Dwelling Unit, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each restriction and agreement contained in this Declaration, in the Master Declaration, and in the Plat Covenants for the Real Estate. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of Declarant, the Architectural Control Committee (hereinafter sometimes referred to as the "Committee") and of the Corporation with respect to these restrictions. Each Owner--for itself and its heirs, personal representatives, successors and assigns--covenants to the Declarant, the Architectural Control Committee, the Association, and the other Owners and subsequent Owners of each of the Lots affected by these Restrictions, and agrees to keep, observe and comply with the terms and provisions of this Declaration.

SECTION 1.2 Property Rights. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Areas, subject to:

- (a) this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association;
- (b) the Master Declaration recorded for the Southern Dunes Community as Instrument No. 1998-0228187 and the property rights reserved under Section 1.2 thereof and under any other applicable provisions of the Master Declaration, as amended from time to time; and
- (c) the Plat Covenants for each Subdivision.

SECTION 1.3 Functions. The Corporation has been formed for the purpose of maintaining the value and appearance of the Whispering Falls subdivision; providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Areas; providing for maintenance of individual lots as provided in Article 9; enforcement of Architectural Design and Environmental Control within the community and of the Covenants for the mutual benefit of all Owners; to pay taxes assessed against and payable with respect to the Common Areas; to pay any other necessary expenses and costs in connection with the Association; and to perform such other functions as may be designated under this Declaration.

SECTION 1.4 Membership in Corporation. Each Owner of a Lot shall, automatically upon becoming an Owner, be and become a Member of the Association and shall remain a Member until such time as such ownership ceases. Membership shall terminate when such Owner ceases to be an Owner and will be transferred to the new Owner of such Lot. Each Owner of a Lot shall also be a member of the Southern Dunes Homeowners Association.

SECTION 1.5 Definitions. The definitions applicable to this Declaration are as follows:

A. "Architectural Control Committee" or "Committee" means the Architectural Design and Environmental Control Committee of the Whispering Falls subdivision as defined and described in Article X of this Declaration. The Whispering Falls subdivision will have its own Architectural Control Committee but may at some point become a subcommittee of the Southern Dunes Architectural Control Committee under Section 10.9 of the Master Declaration.

B. "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Whispering Falls Homeowners Association, Inc., as hereinafter defined.

C. "Common Area" means the ground designated as a "Block" or as "Common Area" upon the Final Plat of the Whispering Falls subdivision and each section thereof. The Common Areas shall be subject to easements for drainage and utilities, as further described and defined herein, in the Plat Covenants, and in the Master Declaration. Some Common Area within the Subdivision may be maintained by the Association and some Common Area may be maintained by the Southern Dunes Homeowners Association or by the owner of the golf course. In the event that there is any confusion or ambiguity in the plats and other recorded documents regarding responsibility for maintenance and other common expenses, the Declarant shall decide the dispute; and if the Declarant no longer exists, the owner of the golf course shall decide the dispute if the golf course is involved, and otherwise the dispute shall be decided by the Whispering Falls Board of Directors. Except where the context clearly indicates otherwise, the term Common Area shall be interpreted to include the Limited Common Areas.

D. "Common Expense" means expenses for administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas, maintenance of the Lots, and all sums lawfully assessed against the Members of the Association. Common Expenses shall include, but not be limited to:

- 1) All expenses of landscaping and maintaining the individual lots as defined herein;
- 2) All expenses of maintaining any common areas belonging to the Association or the Subdivision, including the lake;
- 3) All administrative costs of the Whispering Falls Homeowners Association, including direct costs, overhead, and professional management fees;

- 4) Costs of enforcing the rules and regulations governing the Community, including this Subdivision Declaration, the Plat Covenants, and rules and regulations established by the Whispering Falls Homeowners Association; and
- 5) Reasonable allowances for shortfall of funds arising from late payment or non-payment of assessments, for general overruns in budget categories, and for miscellaneous expenses not budgeted under any specific category.

E. "Corporation" means the Whispering Falls Homeowners Association, Inc., a non-profit corporation, its successors and assigns, whose members shall be the Owners of Lots in Whispering Falls at Southern Dunes. The terms "Corporation" and "Association" may be used interchangeably in this Declaration to refer to the Whispering Falls Homeowners Association, Inc.

F. "Declarant" means R.N. Thompson Development Corporation, or its successors and assigns, as developer of the Southern Dunes Community, including Whispering Falls. The terms "Declarant" and "Developer" may be used interchangeably.

G. "Fee Owner" means the Wellingshire Joint Venture, a joint venture between Waterway Holdings, Inc., a wholly owned subsidiary of IWC Resources Corp., and R.N. Thompson Development Corporation.

H. "Limited Common Area" means an area marked on the plats, or defined elsewhere in the governing documents, as a common area reserved or restricted for use by certain owners within Whispering Falls.

- I. "Lot" means each Lot of a recorded plat for Whispering Falls at Southern Dunes.

ARTICLE II. OWNERSHIP AND USE OF THE COMMON AREAS

SECTION 2.1 Ownership. The Common Area shall be owned by the Corporation and shall be held for the use and enjoyment of the Members, which right shall pass with title to every Lot, subject to the provisions of this Declaration. The Developer may retain title to the Common Area until its sale of the last Lot or of the last Unit in the Southern Dunes Community, however the responsibility and expense of maintenance shall pass to the Association upon the sale of the first Lot or of the first Unit in the Community.

SECTION 2.2 Limited Common Areas. The Declarant shall have the right to create Limited Common Areas for the use and benefit of individual owners or areas within the Whispering Falls Community, if Declarant determines, in its sole discretion, that individual amenities should be available only to portions of the Community. The expenses of establishing and maintaining the limited common areas shall be solely the expense of the individual owners benefitting from the limited common areas.

SECTION 2.3 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, public works, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the Common Areas, Limited Common Areas, and the designated easements within the Community in the performance of their duties. All such easements for public and quasi public vehicles shall be subject to reasonable and non-discriminatory safety rules established by the Association.

SECTION 2.4 Easement for Association. An easement is also granted to the Corporation, its officers, agents and employees; to the Southern Dunes Homeowners Association and its officers, agents and employees; and to any Managing Agent selected by the Corporation to enter in or to cross over the Common Areas, Limited Common Areas, and Easements to perform its duties.

SECTION 2.5 Non-Liability of Declarant. Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot or erosion of a Lot. Such drainage and erosion control shall be the responsibility of the builder of the Residence upon such lot and, with regard to the common areas and easements, of the Homeowners Association. An Owner, by acceptance of

a deed to a Lot, and the Whispering Falls at Southern Dunes Homeowners Association shall each be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with the erosion of or drainage on, over and under the Lot.

Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

ARTICLE III. CLASSES OF MEMBERSHIP

SECTION 3.1 Voting Rights. The Corporation shall have two (2) classes of membership. Class A members shall be all Owners of Lots in Whispering Falls at Southern Dunes other than the Declarant. The Declarant shall be a Class B Owner of each Lot titled in its name.

SECTION 3.2 Class A Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner. When more than one person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall cumulatively have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine. No vote may be divided.

SECTION 3.3 Class B Member. The Declarant, and its successors and assigns as Developer of the Community, shall be the only Class B Member of the Association. The Class B Member shall have five (5) votes for each Lot planned within Whispering Falls at Southern Dunes designated on the preliminary layout attached as Exhibit "B", and any additions or revisions thereto prior to the Authority Transfer Date, of which it is the Owner.

ARTICLE IV. INITIAL MANAGEMENT AND CONTROL BY DEVELOPER

SECTION 4.1 Definition of "Authority Transfer Date". Class B membership shall terminate and become converted to Class A membership (the "Authority Transfer Date"), upon the happening of the earliest of the following:

- (a) when the total of all Class A votes exceed the total of all Class B votes; or
- (b) January 31, 2020; or
- (c) when, in its discretion, the Declarant so determines and provides sixty days notice to the membership.

SECTION 4.2 Prior to the Authority Transfer Date. Prior to the Authority Transfer Date as defined above, the Declarant shall appoint all members to the Board of Directors of the Corporation and shall have full authority to establish rules and regulations for the Corporation and for the Community. Directors appointed by the Declarant shall serve at the will of the Declarant and shall be considered Owners of the Corporation only for the purpose of serving on the Board.

The Board of Directors, prior to the Authority Transfer Date, shall not be required to hold Meetings, and if Meetings are held, they shall not be required to be held in public, and notice to other Owners shall not be required. In addition, prior to the Authority Transfer Date, the Board of Directors shall not be required to seek homeowner approval of the budget or the annual assessments.

SECTION 4.3 Assessments. Prior to the Authority Transfer Date, the Declarant shall establish the amount and payment terms of Assessments. The Assessments, including management fees and contributions towards the replacement reserve fund, shall not exceed Two Hundred Fifty Dollars (\$250.00) per month in the first year after this Declaration is filed, with increases of not more than ten percent (10%)

per year (cumulatively) thereafter. **HOWEVER, THIS LIMITATION IS ONLY FOR THE SUBDIVISION ASSESSMENT AND COMMUNITY ASSESSMENTS WILL ALSO BE IMPOSED.**

SECTION 4.4 Declarant's Obligation to Pay Assessments. Prior to the Authority Transfer Date, the Declarant shall not be obligated to pay any management fee, contribution towards the replacement reserve fund for the Corporation, or any assessment of any kind or nature, as further defined in Section 11.3.

SECTION 4.5 Builder's Obligations. The Declarant shall have the authority to require any person or company building a home on any Lot to escrow an amount up to five percent (5%) of the anticipated construction cost to assure proper completion of construction, regular and continual clean up of construction debris and the construction site, and periodic street cleaning of the Community. If the builder has placed an escrow with the Declarant under the Master Declaration, it shall not also be required to place an escrow under this Declaration.

SECTION 4.6 The Architectural Control Committee. Until thirty days after the Developer has approved the initial home construction plans for the last Lot in Whispering Falls, the Declarant shall have the right to appoint all members of the Architectural Control Committee. However, the Declarant may elect, from time to time, to transfer authority for post-initial construction architectural control to the homeowners (by appointing a subcommittee of homeowners to evaluate post-initial construction applications) prior to this time.

SECTION 4.7 Initial Management. Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas and to perform the functions of the Corporation until the Authority Transfer Date. Declarant may, at its option, engage the services of a Managing Agent, including a Managing Agent affiliated with Declarant, to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services.

ARTICLE V. OWNERS MEETINGS

SECTION 5.1 Annual Meeting. The annual meeting of the Whispering Falls Homeowners Association, Inc. shall be held at such date and time as the Board of Directors shall determine, beginning on the first annual meeting date after the Authority Transfer Date, for the purpose of electing directors, approving an Annual Budget and Regular Assessment and for the transaction of such other business as may come before the meeting. Prior to the Authority Transfer Date, the Board of Directors shall not be required to hold annual or other meetings with the Owners.

SECTION 5.2 Special Meetings. Special meetings of the Owners may be called for any legal purpose by the President or by the Board of Directors, and shall be called by the President, after the Authority Transfer Date, at the request of at least ten percent (10%) of the Owners.

SECTION 5.3 Place of Meeting. The Board of Directors shall designate the place of the meeting. The Board may designate that any meeting of Owners take place at any suitable location within five (5) miles of the Community.

SECTION 5.4 Notice of Meeting. Written notice, stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered to each Owner not less than ten (10) days before the date of the meeting, either personally or by mail, by or at the direction of the President. Unless an Owner provides the Secretary of the Corporation with written instructions to the contrary, notice may be sent or delivered to the address of the Lot. Notice

contained in a newsletter or other general correspondence shall meet the notice requirement of this section if it is sent or delivered to each Owner as provided herein.

SECTION 5.5 Quorum. Twenty percent (20%) of the Owners, represented in person or by proxy, shall constitute a quorum at a meeting of Owners. In the event that a quorum is not present, the meeting may be adjourned to another date and time, with or without further notice, as determined by the Board.

SECTION 5.6 Proxies. At all meetings of Owners, an Owner may vote in person or by written proxy, executed by the Owner or by a duly authorized attorney-in-fact. Such proxy shall be filed with the secretary of the corporation before or at the time of the meeting. Every proxy shall be specific for an Annual or Special Meeting of Owners, or its adjourned date, unless otherwise provided in the proxy.

SECTION 5.7 Voting. Each Lot shall be entitled to one vote upon each matter submitted to a vote at a meeting of Owners.

SECTION 5.8 Cumulative Voting. Cumulative voting shall not be permitted. Each Owner may only cast one vote for any candidate for any Office, even though multiple positions are open for such Office.

SECTION 5.9 Voting by Mail-In Ballot. The Board may determine that one or more issues be voted upon by mail-in ballot, either in conjunction with an Annual or Special Meeting or as a substitute for the holding of a Meeting. In the event that the Board elects to permit mail-in ballots, ballots shall be mailed or delivered to each Owner at least 14 days prior to the deadline for voting and a majority of all Owners must vote in order for the vote to count.

If a majority vote has not been achieved by the deadline, the Board of Directors or persons designated by the Board may contact additional Owners at their choosing until a majority vote has been achieved. However, if a majority vote has been achieved by the deadline, no votes received after the stated deadline may be counted.

SECTION 5.10 Qualification of Directors. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot may be represented on the Board of Directors by more than one person at a time and except that the Declarant may have multiple representatives serving on the Board of Directors.

ARTICLE VI. BOARD OF DIRECTORS

SECTION 6.1 General Powers. The business and affairs of the corporation shall be managed by its Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he or she is an Owner as defined herein.

SECTION 6.2 Number, Tenure and Qualifications. The initial number of directors of the corporation shall be three (3). The corporation may have not less than three nor more than seven directors. After the Authority Transfer Date, each director shall hold office until the next annual meeting of Owners and until his or her successor shall have been elected and qualified. Any increase or decrease in the number of Directors shall be approved by the Owners.

SECTION 6.3 Regular Meetings. The Board of Directors may provide, by resolution, the time and place for the holding of regular meetings to be held without notice, so long as the first such meeting is with notice, and the notice informs all directors of the resolution.

SECTION 6.4 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or a majority of the directors. The person calling the special meeting may

fix the time for holding such meeting of the Board of Directors, and, unless consented to by all Directors, the special meeting shall be held within five miles of the Southern Dunes Community.

SECTION 6.5 Notice. Notice of any special meeting shall be given at least three days in advance by written notice delivered personally, by telegram or by other electronic means, or at least seven days in advance if notice is mailed. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

SECTION 6.6 Quorum. At least fifty percent (50%) of the number of directors eligible to attend and vote shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

SECTION 6.7 Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 6.8 Action Without a Meeting. Any action that may be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing setting forth the action to be taken shall be signed by at least two thirds of the Directors.

SECTION 6.9 Term of Office and Vacancy. Each member of the Board of Directors shall be elected for a term of two (2) years, which terms shall be staggered so that the terms of approximately one half (1/2) of the members of the Board shall expire annually. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Unless a Director is removed by the Owners under Section 6.10, any vacancy occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board. The Director filling a vacancy shall serve until the next annual meeting of the Owners and until his successor is elected and qualified.

SECTION 6.10 Removal of Directors. A Director may be removed with or without cause by a majority vote of the Owners, at a meeting duly called for such purpose. In such case, his successor shall be elected at the same meeting, to serve until the next annual meeting.

SECTION 6.11 Duties of the Board of Directors. The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, the management, maintenance, repair, upkeep and replacement of the Common Area and the Limited Common Area and the collection and disbursement of the Common Expenses. The Board shall also maintain, through employees, contractors or agents, all landscaping throughout the Whispering Falls subdivision.

The Board shall, on behalf of the Corporation, employ a reputable and recognized professional property management company (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The management agreement may be for a term of three (3) years or less and shall terminate upon ninety (90) days written notice by either party. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

SECTION 6.12 Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish their duties. These powers include, but are not limited to, the power:

- (a) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations (in addition to those set forth in this Declaration and in the Master Declaration) with respect to use, occupancy, operation and enjoyment of the Common Area 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

and provided that no rule shall conflict with any rule established by the Southern Dunes Community;

(b) to grant permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of Southern Dunes; and

(c) to regulate all other properties which are subject to this Declaration.

SECTION 6.13 Limitation on Board Action. The authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$10,000.00, which sum shall be increased annually by the increase, if any, in the Consumer Price Index (CPI) or its successor index, without obtaining the prior approval of the Owners, except that in the following cases such approval shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(b) contracts and expenditures expressly approved by the Owners in the annual budget or funded in the replacement reserve fund; and

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

SECTION 6.14 Compensation. No Director shall receive any compensation for services without the express approval of the Owners.

SECTION 6.15 Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify, hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of actions or contracts by the Board on behalf of the Corporation, unless any such action or contract shall have been made in bad faith, or as the result of willful misconduct or gross negligence.

SECTION 6.16 Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorney's 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 to matters in which it shall be adjudged in such action, suit or proceeding that such Director is liable for willful misconduct, bad faith or gross negligence in the performance of his or her duties. The Corporation shall also reimburse any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of willful misconduct, gross negligence or bad faith. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her 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 or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service, unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors.

SECTION 6.17 Non-Liability of Officers and Committee Members. The provisions of Sections 6.15 and 6.16 shall also apply to all Officers and Committee Members.

SECTION 6.18 Bond. The Board of Directors shall provide blanket fidelity bonds for the Managing Agent, 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 one fourth of the aggregate annual assessments on all Lots and 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 thirty (30) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

ARTICLE VII. OFFICERS

SECTION 7.1 Number. The officers of the corporation shall be a President, a Secretary and a Treasurer, each of whom shall be elected by the Board of Directors. The corporation may also have one or more Vice Presidents. The President, Vice Presidents, Secretary and Treasurer shall all be members of the Board. Such other officers and assistant officers, who need not be Directors, may be elected or appointed by the Board of Directors.

SECTION 7.2 Election and Term of Office. The officers of the corporation shall be elected annually by the Board of Directors, after the Authority Transfer Date, at the first meeting of the Board held after each annual meeting of the Owners. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as conveniently possible. Each officer shall hold office until a successor shall have been duly elected and qualified or until their death, resignation or removal as hereinafter provided.

SECTION 7.3 Removal. Any officer or agent may be removed by the Board of Directors whenever, in its judgment, the best interests of the corporation will be served thereby.

SECTION 7.4 President. The President shall be the principal executive officer of the corporation and, subject to the control of the Board of Directors, shall supervise and direct all of the business and affairs of the corporation. The President shall, when present, preside at all meetings of the Owners and of the Board of Directors. The President shall, in general, perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

SECTION 7.5 Vice President. Vice Presidents of the Corporation shall fulfill such duties as the Board of Directors or the President shall direct. A Vice President shall not serve in the capacity of the President, other than presiding at a duly called meeting at which the President is absent, unless the President so directs in writing.

SECTION 7.6 Secretary. The Secretary shall: (a) keep the minutes of the proceedings of the Owners and of the Board of Directors in the corporate minute book; (b) see that all notices are duly given in accordance with the provisions herein or as required by law; (c) be custodian of the corporate records; (d) keep a register of the post office address of each Owner, as furnished by the Owner and of each Mortgagee, as furnished by the Owner or Mortgagee; and (e) in general, perform all duties incident to the

office of Secretary and such other duties as may be assigned by the President or by the Board of Directors.

SECTION 7.7 Treasurer. The Treasurer shall: (a) have charge and custody of, and be responsible for, all funds of the corporation; (b) receive and give receipts for monies due and payable to the corporation and deposit all such monies in the name of the corporation in such banks, trust companies or other depositories as shall be selected by the Board of Directors; and (c) in general, perform all of the duties incident to the office of Treasurer and such other duties as are assigned by the President or by the Board of Directors.

SECTION 7.8 Delegation of Duties. The duties of the Secretary and the Treasurer and the ministerial functions of any other officer or committee member may be delegated to the Managing Agent of the Association, so long as the responsible officer or committee member is regularly advised of the actions taken and generally supervises the actions taken by the Managing Agent on their behalf.

ARTICLE VIII. CONTRACTS, LOANS, CHECKS AND DEPOSITS

SECTION 8.1 Contracts. The Board of Directors may authorize any officer or officers, managing agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

SECTION 8.2 Loans. No loans shall be contracted on behalf of the corporation and no indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

SECTION 8.3 Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

SECTION 8.4 Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time, in interest bearing or non-interest bearing accounts, to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select. Funds of the corporation may also be invested in government obligations or other commercial paper rated AAA or its equivalent. Funds deposits or investments shall not be committed for a period of more than one year.

ARTICLE IX. TAXES, MAINTENANCE OF COMMON AREAS, MAINTENANCE OF INDIVIDUAL LOTS, MAINTENANCE AND USE OF BOAT DOCKS

SECTION 9.1 Real Estate Taxes. Real estate taxes for individual lots are to be separately assessed and taxed to each Lot, and paid by the title owner thereof. Any real estate taxes or other assessments which are separately assessed against the Common Area shall be paid by the Corporation and treated as a Common Expense.

SECTION 9.2 Maintenance, Repairs and Replacements to the Common Areas. Maintenance, repairs, replacements and upkeep of the 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. Maintenance, repairs, replacements and upkeep of any 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 for the lots benefitted by such limited common area.

SECTION 9.3 Maintenance of Individual Lots by the Owner. Each owner shall, at their own expense, be responsible for maintaining their house and lot (including their driveway, sidewalk, and any

deck) in a good, clean and sanitary condition, with an exterior appearance up to the general standards of the Whispering Falls community. If any Owner shall fail to maintain and keep his property or any part thereof in a good, clean and sanitary condition, with an exterior appearance up to the general standards of the Whispering Falls community, the Corporation may perform any work necessary and charge the Owner thereof for such cost, which shall be immediately due, secured by the Corporation's lien on the Owner's property, and otherwise collectable as an assessment pursuant to Section 11.9 of this Declaration.

All wood, hardiplank, composite or other siding, as approved by the Committee, and all fences and decks must be constructed and installed by professionals approved by the Architectural Control Committee and must be regularly maintained by the homeowner. All colors of stain or paint must be within the range of colors approved by the Committee. All exterior surfaces must be primed and re-painted or re-stained at least every five years, except that an Owner may apply to the Committee and receive up to three (3) two year extensions of this requirement, if the Owner can demonstrate to the Committee that the wood surface is still in good and attractive condition and repair. Any painted brick surface must be repainted at least every ten years, except that an Owner may apply to the Committee and receive up to three (3) two year extensions of this requirement, if the Owner can demonstrate that the brick surfaces are still in good and attractive condition and repair. Any iron surface must be repaired or replaced if it becomes rusty or otherwise becomes unattractive or in disrepair. Notwithstanding any time period provided herein, any surface must be replaced if it cracks, peels, fades or otherwise becomes unattractive or in disrepair. The Architectural Control Committee may establish additional maintenance requirements which maintain the appearance of the community and the value of individual homes within the community.

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 permitted herein.

9.3.1 Maintenance of Individual Lots. The Whispering Falls Homeowners Association will be responsible for many aspects, but not all, of the maintenance of individual lots and yards. The Homeowners Association will: (1) mow and fertilize the grass; (2) cut out or edge flower beds and apply annual pre-emergent and mulch to flower beds; (3) open, close and annual back flow testing of irrigation systems; (4) fertilize and trim trees and shrubs; and (5) conduct spring clean up and fall leaf removal.

The Homeowners Association will not be responsible for: (1) installation or repair of irrigation systems, or (2) disease, infestation or other extraordinary loss of grass, trees, shrubs or soil that is exclusive to a lot and is inconsistent with the maintenance of other lots. These maintenance items will remain the responsibility of the individual Owners.

Owners of Lots will not be permitted to install any extensive plantings, or otherwise alter or change the landscaping beds on their lot, or in any of the common areas, without the prior written consent of the Architectural Control Committee. Further, the Homeowners Association may assess an additional charge to an Owner whose lot contains improvements which increase or impede the maintenance services provided by the Homeowners Association.

9.3.2 Snow Removal. The Homeowners Association shall provide snow removal for individual driveways, sidewalks, and for front walks up to the front door of the home, subject to the conditions that: (1) special assessments may be required to pay for unusual snow removal costs; (2) snow removal shall be contracted for based upon specifications determined by the Association, including a minimum depth of snow before removal is undertaken and an established width of passageways to be cleared; and (3) snow removal is undertaken on a best efforts basis, and that neither the Declarant or the Homeowners Association shall be responsible for any loss, injury or damage resulting from any delay or other

inadequacy of snow removal.

SECTION 9.4 Damage to or Abuse of Common Areas and other Areas Maintained by the Association. If, due to the willful, intentional or negligent acts or omissions of an Owner, or of a member of the Owner's family, or of a guest, tenant, invitee or other occupant or visitor for whom the Owner is legally responsible, damage is caused to Common Areas, Limited Common Areas, or to portions of Lots or land maintained by the Association, or if additional maintenance or repairs are required as a result of such acts, the Owner shall be required to pay for such damage or additional expense. Upon demand by the Board, the cost of such repairs shall be immediately due and payable, secured by the Corporation's lien on the Owner's property, and otherwise collectable as an assessment pursuant to Section 11.9 of this Declaration.

SECTION 9.5 Docks and Boats. The Developer may, but shall not be required to, install docks on the lake which shall be owned and maintained by the Association for the benefit of owners of individual Lots abutting the lake (the term "abutting the lake" shall mean a lot which abuts the block or common area in which the lake is located). Motorized boats shall be limited to 9.9 horsepower. All boats using the lake shall be titled and registered to the owner of a Lot abutting the lake, and used by such Lot owner. The Developer may, in its sole discretion, limit the number of docks, to prevent or reduce crowding on or around the lake. No owner may have more than one boat on the lake and no owner may have more than one dock.

Persons acquiring use of a dock shall be issued a Certificate of Perpetual Right of Use. The fee for issuance of this Certificate shall be paid to the Developer, and the Certificate shall be transferable to successor owners of such Lot, or to other owners of Lots abutting the Whispering Falls lake, in accordance with rules established by the Whispering Falls Homeowners Association. The owner of each Certificate shall pay an annual fee to the Association, to cover maintenance of the docks, and may be required to pay special assessments from time to time, as required for maintenance and repair, budget shortfalls, and other expenses associated with the docks.

SECTION 9.6 The Whispering Falls Lake. The sidewalk around the lake, and the ground between the sidewalk and the lake shall be common area, available for use by all owners of Whispering Falls lots. Lake treatment and care of the banks around the lake shall be a Common Expense.

The Developer may, but shall not be required to, install a common pier, which shall be available for use by all owners of Lots in Whispering Falls. The Whispering Falls Homeowners Association may establish rules limiting, regulating, or prohibiting swimming and ice skating on the lake, and it may also establish rules limiting or regulating fishing from the common pier or from the bank around the lake.

The following rules shall apply to use of the lake, and to use of boats and boat docks:

- (a) Other rules and regulations may include, but shall not be limited to, policies regarding guests, limitations on hours of operation, and noise limitations.
- (b) The Developer's installation of a pier or of any dock may in no way be construed as a guarantee, warranty or representation that the water levels in the lake will remain constant or will remain adequate for boating, fishing or other water activities. At times, there may be inadequate water at any point of the lake where the boat docks are located.
- (c) Neither the Developer nor the Association shall have any liability for any boat nor shall the Developer have any liability for the installation, maintenance or use of any dock.
- (d) Every boat owner shall maintain adequate insurance upon their own boat and boat usage, and shall hold both the Developer and the Association harmless from any liability for damage to the boat, to other property, or to persons arising out of the storage or usage of boats or of the docks.

(e) Usage of lake shall be at the individual's risk. Neither the Developer nor the Association shall be responsible for damage or injury arising from the use of the lake, the pier, the docks, the use of any boats, or from any other usage of the lakes within Whispering Falls or the Southern Dunes community.

SECTION 9.7 Security. The Association may, but shall not be obligated to, maintain or support certain activities, including security gates, within Whispering Falls designed to make the community safer than it otherwise might be. Neither the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within Whispering Falls, however, and neither the Association, the Declarant, nor any Successor Declarant shall be held liable for any loss or damage by reason or failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and Occupants of any Lot, and tenants, guests and invitees of any Owner, as applicable, acknowledge that the Association and its Board of Directors, the Declarant, or any Successor Declarant and the Committee do not represent or warrant that any security system will be installed, or that any security system which is implemented or installed by the Declarant or the Board will be effective in any or all situations. All Owners and Occupants of any Lot, and tenants, guests and invitees of any Owner hereby release the Declarant and the Board from any liability for security efforts or for failure to implement security in the Community.

ARTICLE X. ARCHITECTURAL CONTROL

SECTION 10.1 Purposes. The Whispering Falls Architectural Control Committee (also referred to herein as the "Committee") shall regulate the external design, appearance, use of any Lot and the location and appearance of improvements (both permanent and temporary) on the Real Estate in such manner as to preserve and enhance values and to achieve and maintain a harmonious relationship of architectural design, structural improvements, landscaping, and the overall appearance of this community.

SECTION 10.2 Architectural Control Guidelines. The Board of Directors shall have the authority to establish, amend and revoke Architectural Control Guidelines for the Whispering Falls Community and the Whispering Falls Homeowners Association, which shall be binding upon all Owners and all others who in any way use, occupy or benefit from the Community, or any part thereof. The Architectural Control Guidelines shall not be inconsistent with any covenant in this Declaration or in the Plat Covenants and shall not be retroactively applied. Whispering Falls shall have a separate Architectural Control Committee from the general Southern Dunes Community, and its Architectural Control Guidelines may be different from other subdivisions within the Southern Dunes Community. The initial Architectural Control Guidelines, if attached hereto, are for convenience only and are not incorporated herein. The Architectural Control Guidelines may be enforced by the Architectural Control Committee or by the Board of Directors.

The Architectural Guidelines shall be established and amended by the Declarant, in its sole discretion, prior to the Authority Transfer Date. After the Authority Transfer Date, any amendments to the Architectural Guidelines shall be approved by a two thirds majority vote of the Owners present at any meeting at which a quorum of such owners is present or by mail in vote, as provided in Article 6 hereof. All affected owners shall receive notice of any amendments to the Architectural Guidelines within a reasonable time after their enactment.

SECTION 10.3 New Construction Committee. The New Construction Committee shall consist of one or more persons appointed by the Developer to review, and approve or reject, all plans for new construction of residences constructed on any Lot, and any other structures, including, but not limited to,

site plans, blueprints, specifications of materials, exterior colors, soil and natural landscaping preservation plans, landscape plans, and utility plans for all new construction within the Whispering Falls Community. The New Construction Committee shall have authority over any changes during initial construction of a new residence, prior to initial occupancy, and the Architectural Control Committee shall have authority over any changes after initial occupancy of the residence.

After the completion of initial construction of a residence on each lot and the construction of all Units planned within the Whispering Falls Community or at such earlier date as the Developer, in its sole discretion shall determine, the Developer shall assign the New Construction review responsibilities to the Architectural Control Committee.

The New Construction Committee may, but shall not be required to, retain architects, contractors, and other construction and development planning experts, to assist it in performing its duties hereunder and the Committee may impose an application fee for new construction applications to defer the costs of retaining such experts.

SECTION 10.4 Architectural Design and Environmental Control. Subsequent to approval of new construction by the New Construction Committee and completion of new construction pursuant to the approval, no additional structure or improvement -- including but not limited to accessory structures, landscaping, fences, walls, mounds, ponds, pools, satellite dishes, antenna, patios, basketball goals and other structures or equipment for sports and recreation, and sculptures or other prominent decorative items -- whether permanent or temporary, shall be erected, placed or altered on any Lot or parcel in this Community until the building plans, specifications and plot plan showing the location, materials, and appearance of the planned improvement, including the exterior colors, have been submitted to and approved by the Architectural Control Committee, regarding conformity and harmony of external design, topography, and finished ground elevations.

The destruction of trees and vegetation and any other such matter as may affect the appearance, environment and ecology of this Community must also be approved in advance by the Committee.

The Architectural Control Committee may, but shall not be required to, retain architects, contractors, and other construction and development planning experts, to assist it in performing its duties hereunder, and the Committee may impose an application fee for architectural approval applications to defer the costs of retaining such experts.

SECTION 10.5 Composition of the Committee. The Architectural Control Committee will be composed of at least three members. All members of the Committee, including replacement members, will be appointed by and will serve at the will of the Declarant, until the first to occur of the following:

- (a) Thirty days after the Developer has approved the initial home construction plans for the last Lot in Whispering Falls, as established in Exhibits "A" and "B"; or
- (b) Thirty days after Declarant notifies the Owners of its intention to transfer authority for Architectural Control to the Owners.

Within thirty days after the Declarant provides notice to the Owners to appoint Directors and take over control of the Committee, the Board of Directors of the Whispering Falls Homeowners Association, Inc. shall appoint three or more Owners to serve on the Committee.

UNTIL SUCH TIME, THE DECLARANT SHALL HAVE COMPLETE AUTHORITY AND CONTROL OVER ARCHITECTURAL AND ENVIRONMENTAL DESIGN. During the time that the Declarant has Architectural Control, a majority of the Committee members may designate one or more representatives to evaluate and approve specific applications, so that the Committee is not required to meet to review each application.

SECTION 10.6 Written Approval. The Committee's approval or disapproval of any properly

submitted application shall be in writing. In the event that written approval is not sent by the Committee within thirty (30) days from the date of submission of a completed application and any additional documentation requested by the Committee, and so long as the request is not prohibited by the Plat Covenants, this Declaration or the Architectural Control Guidelines which are then in effect, it shall be deemed that the Committee has approved the presented plan.

SECTION 10.7 Additional Approvals. Under no circumstances shall approval of the Architectural Control Committee be deemed to replace any required governmental approval or be deemed to constitute a representation or assurance by the Committee that the planned structure or improvement meets the requirements of any law, regulation or ordinance or meets any structural or safety requirement or standard.

SECTION 10.8 Alterations Without Approval. The Architectural Control Committee and/or the Board of Directors shall have the right and authority to require the removal of any improvement which has been made without receiving the approval of the Committee or which is substantially different in appearance, size, color, materials, location or otherwise, from what was approved by the Committee, including injunctive relief, and recovery of costs of removal, damages, reasonable attorney fees, and costs.

SECTION 10.9 Exercise of Discretion. Declarant intends that the members of the Architectural Control Committee exercise discretion in the performance of their duties consistent with the provisions of this Article, and every Owner, by the purchase of a Lot, shall be conclusively presumed to have consented to the exercise of discretion by such members. In a judicial proceeding challenging a determination by the Architectural Control Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Control Committee is raised as a defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse in discretion.

SECTION 10.10 Miscellaneous Provisions.

A. The Committee's approval of, or failure to object to, a requested improvement for one Lot shall not prevent it from objecting to a similar improvement for another Lot in the Community, if it deems, in its sole discretion, that the requested improvement would be detrimental to the Community or the other Owners.

B. Neither the members of the Committee nor their designated representatives will be entitled to any compensation for services performed on behalf of the Committee.

C. After the Declarant has transferred authority for all Architectural Control to the Owners, a decision of the Architectural Review Committee may be appealed to the Board of Directors by the Applicant or by an adjoining Owner, which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.

D. After the Declarant has transferred authority for all Architectural Control to the Owners, members of the Architectural Control Committee shall be appointed to serve a two year term and may serve no more than six years within any ten year period.

E. After the Declarant has transferred authority for all Architectural Control to the Owners, any member of the Architectural Control Committee may be removed by the Board of Directors with or without cause by a majority vote at a meeting duly called for such purpose. Prior to the date that the Declarant has transferred authority for all Architectural Control to the Owners, the Declarant may remove any member of the Architectural Control Committee with or without cause.

F. Members of the Architectural Control Committee have the right to inspect work being performed (at reasonable times with reasonable advanced notice) to insure compliance with these Restrictions and applicable regulations.

ARTICLE XI. ASSESSMENTS

SECTION 11.1 Annual Accounting. After the Authority Transfer Date, a financial statement and annual report of the Corporation shall be prepared annually, after the close of each fiscal year and prior to the date of the next annual meeting, by a certified public accountant or CPA firm then servicing the Corporation, which shall show all income and receipts and all expenses incurred and paid during the preceding fiscal year. This financial statement and annual report shall be in the form of a compilation, prepared under the direction of the Board and distributed to each Owner prior to the next Annual Meeting. Any Owner or group of Owners shall, at their sole expense, be entitled to an audited accounting by the certified public accountant or CPA firm then servicing the Association, by paying the Association for the cost of the audit (as estimated by the accountant) in advance of the start of the audit.

SECTION 11.2 Proposed Annual Budget After the Authority Transfer Date. The Board of Directors shall submit a proposed Annual Budget and Regular Assessment, estimating the total amount of the Common Expenses for the upcoming fiscal year, to each Owner in conjunction with the Association's annual meeting. Once an Annual Budget is adopted, it shall be the basis for the Regular Assessment for the upcoming fiscal year.

The Annual Budget shall consider the cost of landscaping and grounds maintenance, administration of the Association and other necessary and proper expenses of the Association. The Annual Budget shall include an amount for the Replacement Reserve Fund for capital expenditures and replacement and repair of the Common Areas, and it may include an amount for general operating reserves.

A separate Annual Budget shall be established for the boat docks, including maintenance, any property taxes related to the docks (if such taxes can be separated from the overall tax bill to the Association), and reserves for general operating and future replacement of the docks. Each holder of a Certificate of Perpetual Right of Use shall be required to pay all regular and special assessments related to the docks, whether or not they currently own a boat or use their dock.

An Annual Budget and Regular Assessment shall be approved and adopted at each Annual Meeting of the Owners. If the Owners have not approved an annual budget, whether or not due to failure or delay of the Board of Directors, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon up to one hundred and twenty five percent (125%) of such last approved budget, as a temporary budget.

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.

SECTION 11.3 Proposed Annual Budget Prior to the Authority Transfer Date. Prior to the Authority Transfer Date, the Declarant shall establish the amount and payment terms of Assessments based upon the same items of expense and considerations as provided in Section 11.2 above. The Regular Assessments, including management fees and contributions towards the replacement reserve fund, shall not exceed Two Hundred Fifty Dollars (\$250.00) per month in the first year after this Declaration is filed, with increases of not more than ten percent (10%) per year (cumulatively) thereafter. **HOWEVER, THIS LIMITATION IS ONLY FOR THE SUBDIVISION ASSESSMENT AND SOUTHERN DUNES ASSESSMENTS WILL ALSO BE IMPOSED.**

Prior to the Authority Transfer Date, the Declarant shall not be obligated to pay any management fee, contribution towards the replacement reserve fund for the Corporation, or any assessment of any kind or nature.

Prior to the Authority Transfer Date, Declarant will cover any shortfall in the Annual Budget for lawn care, landscaping, utilities, common area maintenance, and legal, accounting and management fees. Shortfall shall not be considered by category, rather it shall be considered only in the totality of the annual budget. Excluded from this guarantee are expenses of the entire Southern Dunes Community, obligations of any builder, and major physical alterations or other unusual expenditures (including, but not limited to, unusual costs for removal or other treatment of snow and ice) not ordinarily anticipated in normal maintenance operations. This guarantee also does not prohibit the Declarant from using Association reserves for such expenditures or from imposing a Special Assessment for such expenditures.

Prior to the Authority Transfer Date, neither the Declarant nor the Association shall be required to send a financial statement and annual report of the Corporation to each Owner, however the records of the Corporation shall be available for review by Owners during regular business hours, upon reasonable advanced notice.

At the time that Declarant transfers authority to the owners, Declarant shall have no liability for turning over any money to the Association, provided that all funds collected from owners have been used for purposes permitted by this Article.

SECTION 11.4 Regular Assessments. The Annual Budget shall contain a proposed Regular Assessment against each Lot. The Regular Assessment shall be the same amount for each similar Lot, except for differences in the services to which a Lot is entitled, including any expenses for maintenance of Limited Common Areas, and, for dock certificate owners, the annual dock assessment. An owner having more than one Lot will be responsible for the assessment on each Lot. Following the adoption of the Annual Budget, each Owner shall be given written notice of the assessment (herein called the "Regular Assessment").

In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, following adoption of the final Annual Budget by the Owners which results in a different Regular Assessment, a revised statement shall be sent to each Owner indicating the additional amount owed or the credit for the next Regular Assessment.

The Regular Assessment against each Lot shall be paid to the Board in advance, in four quarterly installments on or before the first day of March, June, September and December, or as otherwise determined by the Board. The Board may elect to allow payment of assessments monthly, semi-annually or annually, in advance, and may (but shall not be required to) permit a discount for any Owner paying semi-annually or annually.

The Regular Assessment for the current fiscal year shall become a lien on each Lot as of the first day of the Corporation's fiscal year, even though based upon a Temporary Budget. If an Owner has paid an assessment based upon a Temporary Budget, and conveys or transfers his Lot before the Annual Budget and Regular Assessment are determined, both the Owner and the successor Owner shall be jointly and severally liable for any balance owed for the Regular Assessment.

SECTION 11.5 Special Assessments. Special Assessments may become necessary as a result of Common Expenses of an unusual or extraordinary nature or which were not otherwise anticipated, the failure of the Association to collect Assessments, or for other reasons.

The Board of Directors, with approval of a majority of the Owners at any Regular or Special Meeting of the Owners or by mail-in ballot, shall have the right, power and authority to impose special assessments, upon each Lot in equal shares (herein called "Special Assessment"), which shall become a lien on each Lot. For Special Assessments attributable to Limited Common Areas or providing services only to a portion of the subdivision, or Special Assessments for the boat docks, the Special Assessment shall be approved by and imposed upon only such Owners.

Section 11.6 Initial Start-Up Fund. Upon the closing of the initial conveyance of each Lot to an Owner other than a Builder, the Declarant, at its sole discretion, may charge the purchaser of such Lot, in addition to any amounts then owed or due to the Corporation, an amount equal to one-sixth (1/6th) of the then current annual Base Assessment against such Lot, 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. The start-up fund shall be used by the Declarant for 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.

SECTION 11.7 Reserves. As a part of any Regular or Special Assessment, the Association may collect funds for a reserve for future expenses. These reserves may be collected for reasonably anticipated expenses plus a reasonable amount may be collected for unanticipated expenses. Reserve funds shall be accounted for separately by the Board, and may be used by the Board of Directors for any Common Expense for which it does not otherwise have funds and which are not designated for another specific purpose or expenditure.

SECTION 11.8 Failure of Owner to Pay Assessments. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. If any Owner shall fail, refuse or neglect to pay any Regular Assessment or Special Assessment when due, a late charge of ten percent (10%) of the unpaid assessment amount shall be added to the balance owed, plus interest of one and three fourths percent (1 3/4%) per month beginning thirty (30) days after the date due, and the following additional provisions shall apply:

- (a) The balance of installments for the current fiscal year shall become immediately due;
- (b) A lien for any and all unpaid assessments on the Owner's Lot 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;
- (c) The Board may bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same;
- (d) The Association may recover costs of collection (including fees charged by the Managing Agent) and attorney fees in addition to any other amounts due;
- (e) Where the Owner constitutes more than one person, the liability of such persons shall be joint and several;
- (f) The Owner and any adult occupant of the Lot shall be jointly and severally liable for the payment; and
- (g) The Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect any rentals for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments.

SECTION 11.9 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer (prorated to the date of sale or transfer). No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof nor relieve the unit owner from personal liability for any prior assessments.

SECTION 11.10 Subordination of Subdivision Liens to the Southern Dunes Community Lien. Any lien assessed by the Corporation shall be subordinate to any lien of the Southern Dunes Homeowners Association.

ARTICLE XII. MORTGAGEES

SECTION 12.1 Notice to Corporation. Any Mortgagee who places a first mortgage lien upon an Owner's Lot, or the Owner, may notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and its address shall be maintained by the Secretary. Any notice required to be given to the Mortgagee pursuant to the terms of this Declaration shall be deemed effectively given if mailed to such Mortgagee at such address. 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 shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, and no Mortgagee may be entitled to vote any proxy granted to such Mortgagee in connection with the mortgage. The Association may charge an additional assessment to any Owner whose Mortgagee requests notice, to cover the administrative costs of providing notices to the Mortgagee.

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 obligation of such borrower under this Declaration which is not cured within sixty (60) days.

SECTION 12.2 Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Article XI hereof.

SECTION 12.3 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 Common Area which are in default and, (2) to pay any overdue premiums on hazard insurance for the Association or to secure new hazard insurance for the Association on the lapse of a policy. Any Mortgagee making such payment shall be immediately owed reimbursement by the Corporation.

SECTION 12.4 Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation loss which affects a material portion of the Southern Dunes Community, the Whispering Falls subdivision, or any Lot upon which the Mortgagee has an interest. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.

SECTION 12.5 Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer of a first mortgage shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

ARTICLE XIII. INSURANCE

SECTION 13.1 Casualty Insurance. The Corporation shall purchase a casualty insurance policy affording fire and extended coverage, insuring the Corporation's improvements within the Common Areas, Limited Common Areas and Easements for the full replacement value of the improvements. If the Board of Directors can obtain such coverage for reasonable amounts, they shall also obtain "all risk"

coverage. Such policy shall (to the extent obtainable) contain provisions that the insurer waives its right to subrogation against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests.

Each Owner shall otherwise be solely responsible for loss or damage to his Lot, the contents of his Dwelling Unit, however caused, and his personal property stored elsewhere on the Real Estate. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

SECTION 13.2 Public Liability Insurance. The Corporation shall also purchase a comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but not less than \$2,000,000, arising out of a single occurrence, for bodily injury or death and for property damage. Such policy shall cover the Corporation, the Board of Directors, any committee or division of the Corporation or Board, any Managing Agent, and all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Community. 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.

SECTION 13.3 Other Insurance. The Corporation shall obtain any other insurance required by law and may purchase such other insurance as the Board of Directors from time to time deems 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 shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation.

SECTION 13.4 General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. If available, the policies shall contain an endorsement that it shall not be terminated or substantially modified without at least ten days prior written notice to Mortgagees and to the Corporation. Written notice of any insurance obtained by the Corporation and of any subsequent changes or termination thereof shall be promptly furnished by the Board to each Owner or mortgagee whose interest may be affected thereby. Except as otherwise provided in Article XII, notice required under this section shall be sufficient if it is published as a part of a general newsletter and mailed or delivered within sixty days.

The Board of Directors shall be responsible for reviewing, at least every three years, the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above.

All proceeds payable as a result of casualty losses sustained which are covered by insurance shall be paid to the Association, as the insurance trustee for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Board of Directors, in accordance with the provisions of this Declaration. Each Owner shall be deemed to have delegated to the Board of Directors his or her right to adjust with the insurance companies all losses under the policies purchased by the Corporation.

SECTION 13.5 Insurance by Owners. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

ARTICLE XIV. LOSS TO COMMON AREAS

SECTION 14.1 Restoration of Common Area. In the event of damage to or destruction of any portions of the Common Area, Limited Common Area or Easements due to fire or any other casualty or

disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction, and the balance shall be paid first from the reserve account and second, as a Common Expense.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the 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.

In the event of destruction of at least half of the Common Area, or at least half of the Community, the Board of Directors may elect not to repair or reconstruct the Common Area and may apply the proceeds of insurance to other purposes consistent with this Declaration and with the Articles of Incorporation of the Association.

ARTICLE XV. COVENANTS AND RESTRICTIONS

SECTION 15.1 The following covenants and restrictions on the use and enjoyment of the Lots 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 are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future owners 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 house or in the windows 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 the prior consent of the Architectural Review Committee.

E. No satellite receiving dish greater than one meter in diameter shall be erected or installed on any Lot. No antennae shall exceed twelve (12) feet above roof peak. No lot shall have more than one satellite dish and one antenna without the prior approval of the Architectural Control Committee, and, to the extent that acceptable reception may be obtained, any satellite dish or antenna shall be attached to the house and installed on the back of the house. The Design Guidelines may impose requirements (which do not impair reception or significantly increase costs) for painting or screening of satellite dishes and antennae, location, and other restrictions on antennae and satellite dishes.

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, caused 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 the 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 voices, 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 on 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, and no person shall add 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. The Board may prohibit or limit parking on the streets of residential subdivisions within the Community.

P. No industry, trade, or 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, or their enjoyment of their property, as may be determined in the sole discretion of the Board.

Q. All Owners, and members of their families, their guests, 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 for 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 months from the time of such destruction or damage, without approval from the Committee. Any improvement or addition to an existing structure shall be completed within three months from the time of commencement, except with the Committee's approval.

SECTION 15.2 Special Covenants Relating to the Well Field. Attached hereto as Exhibit "C" is the Special Warranty Deed from Waterway Holdings, Inc. to the Wellingshire Joint Venture. All of the covenants contained in this Deed are specifically incorporated herein. In addition, well heads and an underground well system, owned by IWC Resources Corp. will exist throughout the community. IWC Resources Corp. has been, or will be, granted exclusive easements surrounding the well heads, to protect them from damage or tampering.

ARTICLE XVI. AMENDMENT OF DECLARATION

SECTION 16.1 General Amendments. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

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

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

C. **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws herein.

D. **Adoption.** Any proposed amendment to Articles 5, 6, 7 and 8 of this Declaration must be approved by a vote of not less than fifty percent (50%) in the aggregate of the votes of all Owners. Any proposed amendment to any other portion of this Declaration must be approved by a vote of not less than seventy percent (70%) in the aggregate of the votes of all Owners. In the event any Lot is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner, if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

SECTION 16.2 Special Amendments. No amendment to this Declaration shall be adopted which changes: (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same; or (2) the provisions of this Declaration with respect to casualty insurance or fidelity bonds to be maintained by the Corporation; or (3) the provisions of this Declaration with respect to reconstruction or repair of the Common Area in the event of fire or any other casualty or disaster; or (4) the provisions of this Declaration establishing the Architectural Review Committee and providing for its functions; or (5) the provisions of this Declaration with respect to the commencement of assessments on any Lot, without, in each and any of such circumstances, the approval of at least seventy percent (70%) of all Owners and at least seventy percent (70%) of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.

SECTION 16.3 Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements, or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

SECTION 16.4 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.

SECTION 16.5 Recording. Each amendment to the Declaration shall be executed by any two officers of the Corporation and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

SECTION 16.6 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.

ARTICLE XVII. MISCELLANEOUS PROVISIONS

SECTION 17.1 Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of any Lot shall be subject to and shall comply with the provisions of this Declaration, the Plat Covenants, the Articles of Incorporation, the provisions of the Master Declaration, and the rules and regulations as adopted by the Board of Directors (and by the Board of Directors of the Master Association) as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that such provisions are accepted and agreed to by such Owner, tenant or occupant. All such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest in a Lot or the Real Estate as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons or other legal entities who may occupy, use, enjoy or control a Lot or any part of the Real Estate shall be subject to this Declaration, the Articles of Incorporation, the Master Declaration, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

SECTION 17.3 Association's Right to Purchase Lots. The Association shall have the right to purchase Lots, either from the Declarant or from any Builder, Owner, or foreclosure, sheriff's or tax sale. The Association may use reserve funds, regular budget funds, or a special assessment in order to do so.

SECTION 17.4 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. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or of the Common Area.

SECTION 17.5 Costs and Attorney's 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 Plat Covenants, the Master Declaration, the Articles of Incorporation, or the rules and regulations adopted pursuant to this Declaration, as each may be amended from time to time, the Corporation or the Declarant shall be entitled to recover its reasonable attorney's fees and costs incurred in connection with such default or failure.

SECTION 17.6 Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses, whether by Regular Assessment or by Special Assessment, by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot.

SECTION 17.7 Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles of Incorporation, or the Rules and Regulations adopted by the Board, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles of Incorporation, the Master Declaration, the Plat Covenants or the Rules and Regulations, and each shall be enforced to the greatest extent permitted by law.

Exhibits:

- "A" Legal Description of Whispering Falls at Southern Dunes
- "B" Preliminary Layout of Whispering Falls at Southern Dunes
- "C" Special Warranty Deed from Waterway Holdings, Inc. to the Wellingshire Joint Venture

This Instrument was prepared by William T. Rosenbaum, Attorney at Law,
5875 Castle Creek Parkway, #285, Indianapolis, Indiana 46250 (317) 577-5176

March 27, 2006

Whispering Falls at Southern Dunes
Legal Description

Part of the Northeast Quarter of Section 20 and part of the Northwest Quarter of Section 21, 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 the Northwest Quarter of the Northwest Quarter of said Section 21;

thence North 89 degrees 46 minutes 37 seconds East (an assumed bearing) along the North line of said Northwest Quarter a distance of 374.91 feet to the POINT OF BEGINNING;

thence continue North 89 degrees 46 minutes 37 seconds East along said North line 292.95 feet;

thence South 00 degrees 13 minutes 23 seconds East 228.97 feet;

thence South 26 degrees 44 minutes 33 seconds West 134.59 feet;

thence South 00 degrees 10 minutes 48 seconds East 200.86 feet;

thence South 15 degrees 00 minutes 00 seconds East 1002.43 feet;

thence South 06 degrees 07 minutes 57 seconds East 150.52 feet;

thence South 15 degrees 13 minutes 33 seconds West 226.56 feet;

thence South 38 degrees 56 minutes 51 seconds West 186.70 feet;

thence South 52 degrees 36 minutes 04 seconds West 265.34 feet;

thence South 63 degrees 45 minutes 03 seconds West 329.75 feet;

thence South 62 degrees 43 minutes 39 seconds West 60.32 feet;

thence South 71 degrees 14 minutes 22 seconds West 650.47 feet;

thence North 86 degrees 37 minutes 10 seconds West 161.91 feet;

thence North 69 degrees 45 minutes 36 seconds West 161.91 feet;

thence North 47 degrees 32 minutes 19 seconds West 161.91 feet;

thence North 30 degrees 40 minutes 46 seconds West 161.91 feet;

thence North 08 degrees 27 minutes 29 seconds West 81.28 feet;

thence North 05 degrees 07 minutes 24 seconds West 80.07 feet;

thence North 02 degrees 00 minutes 00 seconds East 1039.45 feet;

thence North 14 degrees 41 minutes 06 seconds East 153.64 feet;

thence North 35 degrees 27 minutes 53 seconds East 230.85 feet;

thence North 59 degrees 27 minutes 31 seconds East 230.58 feet;

thence North 80 degrees 00 minutes 00 seconds East 863.85 feet;

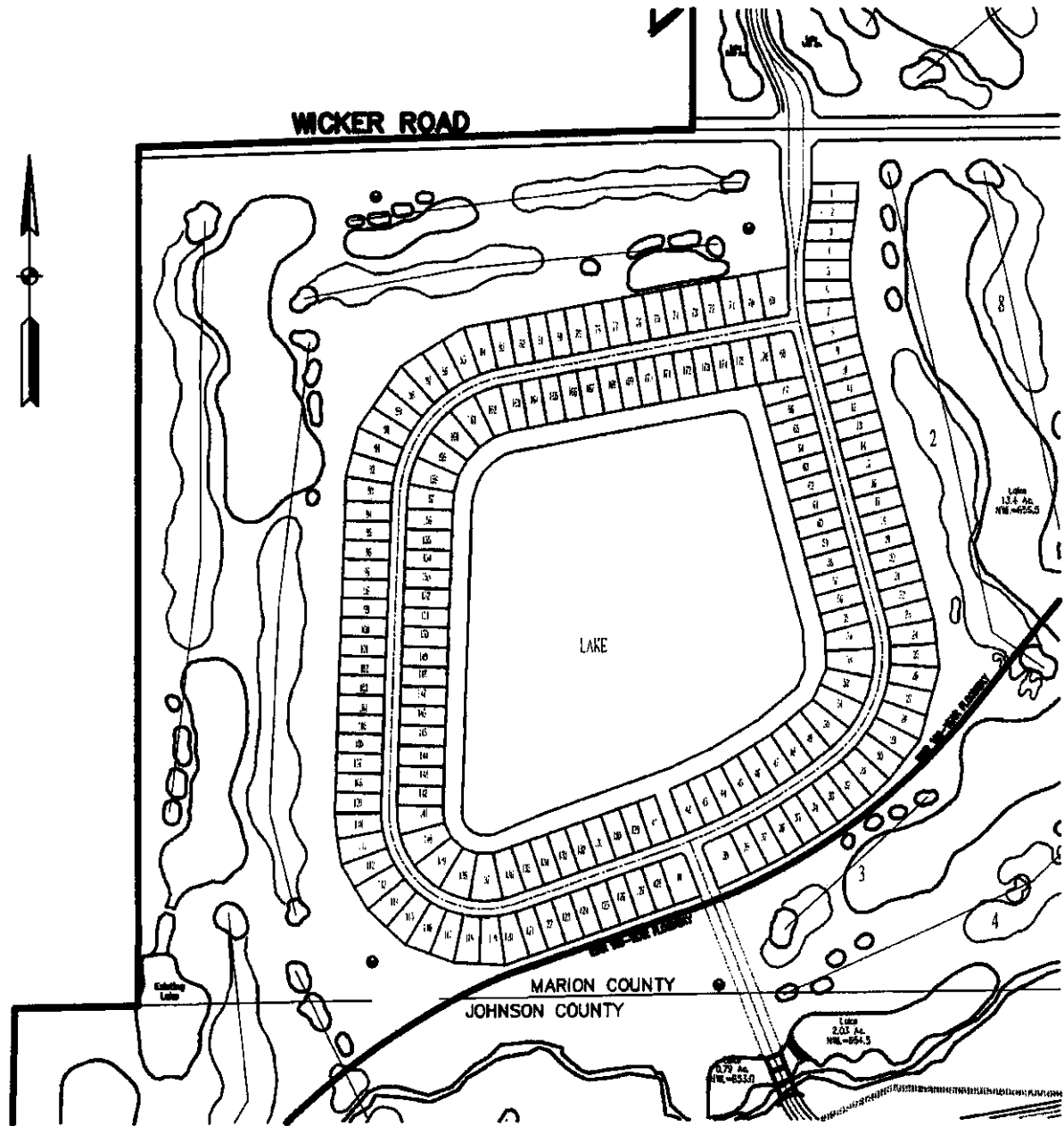
thence North 00 degrees 13 minutes 23 seconds West 195.00 feet;

thence North 89 degrees 46 minutes 37 seconds East 122.50 feet;

thence North 00 degrees 13 minutes 23 seconds West 262.08 feet to the Point of Beginning and containing 76.37 acres more or less.

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

Exhibit "A"



Whispering Falls at Southern Dunes

Exhibit "B"

MARION COUNTY RECORDER

156451 DEC 11 88

18

SPECIAL WARRANTY DEED

SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

THIS INDENTURE WITNESSES that Waterway Holdings, Inc. ("Waterway"), a corporation organized and existing under the laws of the State of Indiana, CONVEYS AND WARRANTS to Wellingshire Joint Venture, its successors and assigns ("Wellingshire"), an Indiana general partnership, for the sum of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, the real estate described on Exhibit A hereto, which real estate lies over the aquifer of Indianapolis Water Company's South Well Field ("Aquifer"). The real estate conveyed ("South Well Field Land") is subject to:

1. the liens for taxes payable in 1999, and thereafter; and
2. all other easements, rights-of-way, restrictions, covenants and encumbrances of record.

Waterway further reserves to Indianapolis Water Company ("IWC"), and the South Well Field Land is hereby made subject to, the following covenants, restrictions, rights, easements and servitudes, all of which shall run with the South Well Field Land and shall be binding upon and inure to the benefit of Wellingshire and IWC and their successors and assigns:

1. Title to the South Well Field Land shall include only the surface of the South Well Field Land and the air above. Wellingshire shall have no rights with respect to water below

12/11/98 11:11AM JOAN N. ROHERIL MARION CTY RECORDER MEM 44.00 PAGES: 18

1 Inst # 1998-0220111
Exhibit "C"

the surface of the South Well Field Land. IWC shall have the right at any time and from time to time to pump, remove, own and dispose of water from the Aquifer and, for that purpose, to install on and in the South Well Field Land and thereafter operate, maintain, repair and replace, at its election, production and observation wells, lines, equipment and other facilities deemed necessary or appropriate by IWC for such pumping and removal of water from the Aquifer for delivery to its system or for the observation of ground water located in or about the South Well Field Land (such wells and related facilities being referred to hereinafter collectively as the "Wells").

2. IWC shall have an easement of reasonable ingress and egress at all times for vehicles and pedestrians upon, across and through the South Well Field Land, in order to provide ready access to the Wells for its personnel, materials and equipment. Around each of the Wells that IWC develops there shall also be a wellhead protection zone for a distance of one hundred (100) feet in all directions from the wellhead on the property. There shall be no construction permitted in any such wellhead protection zone, including, but not limited to, the construction of any golf green or fairway or other facility.

3. The South Well Field Land shall not be used by Wellingshire for any industrial, commercial or other business purpose of a type which stores, uses, produces or otherwise

permits to be located on the premises noxious materials or materials which might cause contamination or pollution of the Aquifer or interfere with proper use, functioning or maintenance of the Wells. No waste, oil or other deleterious materials shall be discharged, and no trash, garbage or debris shall be dumped in or upon, the South Well Field Land or the Aquifer. Nor shall any septic or waste disposal system be installed which discharges any effluent or substance of any kind into, under or upon the South Well Field Land. No wells shall be installed by Wellingshire in or on the South Well Field Land. The South Well Field Land shall not be used in any manner which causes or might cause contamination or pollution of the Aquifer or interfere with proper operation, functioning, or maintenance of the Wells. No fertilizers, pesticides, agrichemicals, or other substance may be applied to growing crops, lawns, gardens, or other landscaping which has not been approved by IWC and Purdue University or the Office of the Indiana State Chemist, for application in, on, or near a wellfield. The South Well Field Land shall not be excavated or mined without the written approval of IWC. Such approval will be considered only after the submission of a plan which provides for the protection and preservation of the Wells and the Aquifer. If the South Well Field Land is excavated or mined and a lake or inundated area results, IWC shall own the water in such lake or inundated area and may withdraw water therefrom without regard to the water

level of the lake or inundated area. Neither Wellingshire nor any subsequent owner of the South Well Field Land shall have rights of any character with respect to the water level of the Aquifer, lake or lakes, retention ponds, or an inundated area on the South Well Field Land. It is understood that the water level in the Aquifer, lake or lakes, retention ponds, and inundated areas will fluctuate and there will be times when such water level may be higher or lower than normal, affecting nearby land, including the South Well Field Land.

4. If Wellingshire violates or causes or permits any condition to exist in violation of any of the provisions hereof, after reasonable notice, IWC may, in addition to its other remedies at law or in equity, enter upon the South Well Field Land and correct or eliminate such violation or condition and recover the cost thereof from Wellingshire.

5. IWC has committed to use reasonable care and good workmanship in the exercise of any of its rights described herein. If, however, the South Well Field Land is damaged by action of IWC, IWC will, to the extent it deems reasonably possible, repair and restore the property of Wellingshire to its previous condition, and this shall be IWC's sole obligation and Wellingshire's sole remedy arising out of any damage caused by IWC.

6. IWC has the right to release or modify in any manner not more burdensome to Wellingshire all or any part of the

covenants, restrictions, easements and servitudes that are described herein, without the consent of any other party. The release or modification of all or any part of said covenants, restrictions, easements and servitudes with respect to any part of the South Well Field Land shall not affect the validity or enforceability of any of said covenants, restrictions, easements and servitudes with respect to any other part of the South Well Field Land, and a failure to enforce the same shall not constitute a waiver thereof. Any consent that may be given by IWC to actions that would violate said covenants, restrictions, easements and servitudes must be in writing, signed by the IWC President or a Vice President thereof.

7. Wellingshire shall be responsible for all taxes and assessments imposed with respect to the South Well Field Land.

8. The undersigned person executing this deed on behalf of Waterway represents and certifies that he is a duly elected officer of Waterway and is authorized to execute and deliver this deed on Waterway's behalf; and that all necessary corporate action for the execution and delivery of this deed has been taken.

No Indiana gross income tax is deemed due on this transfer.

IN WITNESS WHEREOF, Waterway Holdings, Inc. has caused this Special Warranty Deed to be executed this 10th day of December, 1998.

Waterway Holdings, Inc.

By: Kenneth N. Giffin

Printed Kenneth N. Giffin

Title PRESIDENT

STATE OF INDIANA)
COUNTY OF Marion) SS:

Before me the undersigned, a Notary Public in and for the State of Indiana, personally appeared Kenneth N. Giffin, to me known and to me known to be the President of Waterway Holdings, Inc., an Indiana corporation, who acknowledged his execution of the foregoing instrument for and on behalf of said corporation.

Witness my hand and Notarial Seal this 10th day of December, 1998.

Wanda Wooldridge
Notary Public Signature

Wanda Wooldridge
Printed

I am a resident of Johnson County, Indiana.

My commission expires 9-7-06

This instrument was prepared by Fred Schlegel, Attorney at Law
Baker & Daniels, 300 North Meridian Street, Indianapolis, Indiana 46204

SEND TAX STATEMENTS TO :

R.N. THOMPSON DEVELOPMENT
234 S. FRANKLIN RD.
INDIANAPOLIS, IN. 46219

Description of the Grube Tract

Parcel B

Part of the Southwest quarter of Section 10, Township 14 North, Range 1 East of the Second Principal Meridian described as follows:

Beginning on the North line of the said quarter Section 507.53 feet West of the Northeast corner thereof; thence South 00 degrees 03 minutes 11 seconds West 1287.79 feet; thence North 88 degrees 38 minutes 56 seconds East 507.53 feet to the East line of the said quarter Section; thence South 00 degrees 03 minutes 11 seconds West on and along the said East line 413.29 feet to the centerline of Little Buck Creek; thence South 85 degrees 03 minutes 11 seconds West on and along the said centerline 533.00 feet; thence North 81 degrees 11 minutes 49 seconds West on and along the said centerline 165.00 feet; thence South 00 degrees 03 minutes 11 seconds West 959.60 feet to the South line of the said quarter Section; thence South 88 degrees 34 minutes 16 seconds West on and along the said centerline 1240.65 feet; thence North 00 degrees 03 minutes 34 seconds West 2666.58 feet to the North line of the said quarter Section; thence North 88 degrees 38 minutes 56 seconds East on and along the said North line 1432.57 feet to the Point of Beginning containing 88.441 acres more or less, subject to all legal rights-of-way and easements.

Description of the Dura Tract

Parcel C

Part of the Northwest Quarter of Section 15, Township 14 North, Range 3 East, of the Second Principal Meridian, Perry Township, Marion County, Indiana, described as follows:

Commencing at the Northwest corner of said quarter section said point being in the center of Southport Road; thence North 89 degrees 49 minutes 16 seconds East (assumed bearing) along the North line and the center of said road 642.00 feet to the Point of Beginning; thence continuing North 89 degrees 49 minutes 16 seconds East along last said North line 303.64 feet to the Northwest corner of Tract 1 as described in a certain survey prepared by Franklin Engineering Company dated July 25, 1980, and certified by Daniel L. Murray (Ind. Reg. Land Surveyor No. S0098) said point marked by a Railroad spike found this survey; thence South 01 degree 17 minutes 14 seconds West along the West line of said Tract 1445.46 feet to the Southwest corner of said Tract, said point marked by an iron pin set this survey; thence South 37 degrees 52 minutes 04 seconds West 765.23 feet to a point which is North 37 degrees 52 minutes 04 seconds East 799.29 feet from the Southwest corner of said Northwest quarter, said point marked by an iron pin set this survey; thence North 87 degrees 45 minutes 13 seconds West 479.55 feet to a point on the West line of said Northwest quarter 649.00 feet North of the Southwest corner of said Northwest quarter, said point being in the center of old Belmont Street, said point marked by an iron pin set this survey; thence North 01 degree 00 minutes 36 seconds East along said West line and the center of said Belmont Street 236.12 feet to a point on the East right-of-way line of State Road 37 as located per the plans of the Indiana State Highway Commission for Project "F" No. 090(27) dated 1963, said right-of-way being a Limited Access Right-of-Way per said plans and being on a curve to the left from which the radius point is North 71 degrees 08 minutes 15 seconds West 4384.20 feet said point marked by an iron pin set this survey; thence along said curve and right-of-way whose delta is 17 degrees 28 minutes 59 seconds and chord bears North 10 degrees 07 minutes 15 seconds East 1332.59 feet an arc length of 1337.70 feet to the Point of Tangency of said curve from which the radius point is North 88 degrees 37 minutes 14 seconds West 4304.20 feet, said point marked by an iron pin set this survey; thence North 01 degree 22 minutes 46 seconds East tangent to last said curve and along said right-of-way 406.40 feet to a right-of-way break per said plans, said point marked by an iron pin set this survey; thence North 39 degrees 55 minutes 34 seconds East along said right-of-way 28.21 feet to a point marked by an iron pin set this survey; thence South 01 degree 00 minutes 36 seconds West, parallel to the West line of said Northwest quarter 162.38 feet to a point marked by an iron pin set this survey; thence North 89 degrees 49 minutes 16 seconds East 410.60 feet to a point marked by an iron pin set this survey; thence North 01 degree 00 minutes 36 seconds East parallel to said West line 214.70 feet to a point on the North line of said Northwest quarter, said point also being in the center of Southport Road, said point marked by a Railroad spike found this survey and being the Point of Beginning.

Also, an ingress-egress easement for access to Belmont Street described as follows:

Part of the Northwest Quarter of Section 15, Township 14 North, Range 3 East, of the Second Principal Meridian, Perry Township, Marion County, Indiana, described as follows:

Beginning at a point on the West line of said Northwest quarter 440.60 feet North of the Southwest corner of said Northwest quarter, said point being in the center of old Belmont Street; thence North 01 degree 00 minutes 36 seconds East along said West line and said Belmont Street 209.28 feet to the Southwest corner of above described 32.343 acre parcel; thence South 87 degrees 45 minutes 13 seconds East along the South line of said parcel 50.01 feet to a point 50 feet East of said West line; thence South 01 degree 00 minutes 36 seconds West parallel to said West line 98.26 feet; thence South 13 degrees 14 minutes 02 seconds West 113.89 feet to a point 25.00 feet East of said West line; thence North 87 degrees 44 minutes 38 seconds West 25.00 feet to the Point of Beginning.

DESCRIPTION OF THE RASLOW TRACT

Parcel D

The Southwest Quarter of Section 16, Township 14 North, Range 3 East; a part of the Southeast Quarter of Section 16, of said Township and Range; a part of the West Half of the Northeast Quarter of Section 21, of said Township and Range; a part of the Northwest Quarter of Section 21 of said township and range; and the East half of the Northeast Quarter of the Northeast Quarter of Section 20 of said Township and Range, and all in Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast Corner of the Southeast Quarter of said Section 16, marked by a P.K. nail as shown on the corner ties in the Marion County Surveyor's Office; thence North 89 degrees 56 minutes 21 seconds West (assumed bearing) 120.11 feet on the North line of said Southeast Quarter to a P.K. nail in the center of Belmont Avenue; the next (7) calls are on the centerline of Belmont Avenue; (1) thence South 41 degrees 44 minutes 05 seconds West 265.37 feet to a P.K. nail; (2) thence South 48 degrees 36 minutes 43 seconds West 404.75 feet to a P.K. nail; (3) thence South 33 degrees 35 minutes 13 seconds West 245.00 feet to a P.K. nail; (4) thence South 25 degrees 48 minutes 13 seconds West 1,282.60 feet to a P.K. nail; (5) thence South 57 degrees 13 minutes 17 seconds East 83.05 feet to a P.K. nail; (6) thence South 20 degrees 46 minutes 43 minutes West 329.50 feet to a P.K. nail; (7) thence South 0 degrees 09 minutes 13 seconds West 469.45 feet to a P.K. nail at the Northeast corner of the West Half of the Northeast Quarter of said Section 21, as shown on said corner ties; thence South 0 degrees 05 minutes 59 seconds East 871.25 feet on the East line of said West Half to a P.K. nail; thence South 89 degrees 32 minutes 38 seconds West 289.43 feet to a 4 inch square concrete post in the East right-of-way access control line of State Road 37; thence South 89 degrees 32 minutes 38 seconds West 174.10 feet to a 4 inch concrete post in the West right-of-way access control line of State Road 37; thence South 89 degrees 32 minutes 38 seconds West 868.08 feet to a 4 inch square concrete post in the West line of said West Half, said concrete post being South 0 degrees 05 minutes 00 seconds West 871.25 feet from the Northwest corner of said West Half; thence South 89 degrees 52 minutes 15 seconds West 588.47 feet, parallel with the North line of the East Half of the Northwest Quarter of said Section 21, to a 6 inch concrete post marked WC; thence South 0 degrees 01 minute 30 seconds West 290.75 feet, parallel with the West line of said East Half of said Northwest Quarter to a 6 inch square concrete post marked WC; thence South 89 degrees 52 minutes 15 seconds West 228.26 feet, parallel with the North line of said East Half, to a 6 inch square concrete post marked WC; thence South 0 degrees 01 minute 30 seconds West 1,508.07 feet, parallel with the West line of said East Half, to a P.K. nail in the South line of said East Half; thence South 89 degrees 32 minutes 10 seconds West 518.47 feet to a P.K. nail at the Southwest corner of said East Half of said Northwest Quarter as shown on said corner ties; thence South 89 degrees 36 minutes 10 seconds West 1,207.07 feet on the South line of the West Half of the Northwest Quarter of said Section 21 to a P.K. nail which lies North 89 degrees 36 minutes 10 seconds East 125.20 feet from the Southwest corner of said West Half; thence North 0 degrees 03 minutes 26 seconds West 405.07 feet, parallel with the West line of said West Half, to a 4 inch square concrete post on the South bank of Orma Ditch (a 3/8 inch rebar with cap lies on the North bank of said ditch, North 0 degrees 03 minutes 26 seconds West 15.00 feet from said 4 inch concrete post); thence South 47 degrees 40 minutes 09 seconds West 169.20 feet to a point (a 3/8 inch rebar lies on the North bank of said ditch, North 0 degrees 03 minutes 26 seconds West 15.00 feet from said point) said point being on the West line of said West Half; and North 0 degrees 03 minutes 26 seconds West 292.00 feet from the Southwest corner of said West Half said corner being marked with a steel rod as shown on said corner ties; thence North 0 degrees 03 minutes West 1,047.66 feet on the West line of said West Half to a 6 inch square concrete post at the Southeast corner of the East Half of the Northeast Quarter of said Section 20; thence South 89 degrees 14 minutes 54 seconds West 675.59 feet on the South line of said East Half Quarter Quarter to a 1/2 inch galvanized pipe at the Southwest corner thereof; thence North 0 degrees 14 minutes 09 seconds West 1,337.67 feet on the West line of said East Half Quarter Quarter to a 1 1/4 inch galvanized pipe at the Northwest corner thereof; thence North 88 degrees 05 minutes 24 seconds East 675.61 feet to a Harrison monument in the flow line of Orma Ditch, as shown on said corner ties, at the Northeast corner of the Northeast Quarter of said Section 20, which monument is also the Southwest corner of the Southwest Quarter of said Section 16; thence North 0 degrees 01 minute 51 seconds West 2,669.10 feet on the West line of said Southwest Quarter to a 6 inch square concrete post marked WC at the Northwest corner of said Quarter; thence South 89 degrees 56 minutes 21 seconds East 2,673.83 feet on the North line of said Quarter to a 6 inch square concrete post marked WC at the Northwest corner of said Quarter; thence South 89 degrees 56 minutes 21 seconds East 2,069.50 feet on the North line of the Southeast Quarter of said Section 16 to a 4 inch square concrete post in the West right-of-way access control line of State Road 37; thence South 89 degrees 56 minutes 21 seconds East 203.17 feet on the North line of said Quarter to a 4 inch square concrete post in the East right-of-way access control line of State Road 37; thence South 89 degrees 56 minutes 21 seconds East 278.24 feet on said North line of said Quarter to the point of Beginning.

Excepting herefrom all real estate described herein that lies east of State Road 37.

Description of the Oren Sutton Tract

Parcel E

Part of the Southeast Quarter of Section 20 Township 14 North, Range 3 East in Marion County, Indiana, described as follows:

Commencing at the Northeast corner of said Southeast Quarter thence South 89 degrees 59 minutes 57 seconds West 443.52 feet to the point of beginning of this description; thence South 1 degree 26 minutes 28 seconds West 2664.01 feet to the South line of said quarter section; thence North 89 degrees 26 minutes 19 seconds West along said South line 1,171.0 feet; thence North 1 degree 26 minutes 46 seconds East 2,652.55 feet to the North line of said Quarter Section; thence North 89 degrees 59 minutes 57 seconds East 1,171.37 feet to the point of beginning.

Exhibit "C"

Description of the Deborah Tomey Tract

Parcel D^c

A part of the Northeast Quarter of the Northeast Quarter of Section 20, Township 14 North Range 3 East, more particularly described as follows:

Beginning at the Northeast corner of said Section, marked by a Harrison Monument per Course Surveyor's ties, said point also being in the flow line of the Orme Ditch; thence South 6 degrees 05 minutes 24 seconds West 679.65 feet (measured) along said Section line to an 1/4" iron pipe as described in Instrument #89-94816, said point also being the point of beginning of this description; thence South 00 degrees 14 minutes 46 seconds East 522.13 feet to an 1/2" Rebar set; thence South 89 degrees 58 minutes 08 seconds West 660.14 feet to an 1/2" Rebar set, said point also being on the 1/4 Section line; thence North 00 degrees 06 minutes 10 seconds West 500.51 feet along said 1/4 Section line to a 5/8" Rebar set, said point also being on the North line of said Section; thence North 88 degrees 05 minutes 24 seconds East 659.15 feet along said Section line to the point of beginning.

Exhibit "C"

Description of the James Sutton Tract

Parcel E

Part of the Southeast Quarter of Section 20 and part of the Southwest Quarter of Section 21 all in Township 14 North, Range 3 East in Marion County, Indiana, described as follows:

Beginning at the Northwest corner of the Southwest Quarter of said Section 21; thence South 88 degrees 51 minutes 34 seconds East along the North line of said Southwest Quarter of said Section 21, 343.20 feet; thence South 1 degree 26 minutes 21 seconds West 2,667.44 feet to the South line of the Southwest quarter of said Section 21; thence North 89 degrees 0 minutes 42 seconds West 343.20 feet to the Southwest corner of said Southwest corner of said Southwest Quarter of said Section 21; thence North 89 degrees 26 minutes 19 seconds West along the South line of the Southeast Quarter of said Section 20, 443.52 feet; thence North 1 degree 26 minutes 28 seconds East 2,664.01 feet to the North line of said Southeast Quarter of Section 20; thence South 89 degrees 59 minutes 57 seconds East along said North line 443.52 feet to the Northeast corner of the Southeast Quarter of aforesaid Section 20 and to the point of beginning of this description.

Exhibit "C"

Description of Jim Sutton Tract

Parcel H

Parcel # 5005030359

Part of the East 1/2 of the Southwest 1/4 and part of the West 1/2 of the West 1/2 of the Southeast 1/4 of Section 21, Township 14, Range 3 in Marion County, Indiana, Beginning 805.65 feet South of the Northwest corner of the Northeast 1/4 of the Southwest 1/4 thence South 799.58 feet, thence east 989.48 feet, thence Northeast irregularly along the center line of Pleasant Run Creek a distance of 1195.95 feet, thence west 1603.71 feet to the point of beginning, containing approximately 21.44 acres.

Parcel # 5005005103

Part of the South 1/2 of Section 21, Township 14, Range 3, in Marion County, Indiana, beginning 326 feet East of the Northwest corner of the Southwest 1/4, thence East 1010 feet, thence South 1607.11 feet, thence East 1866.37 feet, thence Southwest irregularly 1035.46 feet, thence Northwest 50 feet, thence southwest 202.03 feet, thence west 1212.46, thence North 2657.2 feet to the point of beginning. Containing approximately 97.31 Acres.

Parcel # 5005028857

Part of the Northwest 1/4 of the Southeast 1/4 and part of the Southwest 1/4 of the Southeast 1/4 of Section 21, Township 14, Range 3, in Marion County, Indiana, having approximate dimensions a of 25' x 408.25', plus or minus. Containing approximately 0.234 acres.

Description of M. Sutton Tract

Parcel J

Tract I:

The South Half of the Northeast Quarter of Section 16, Township 14 North of Range 3 East, except the following described 2 parcels:

A part of the Southeast Quarter of the Northeast Quarter of Section 16, Township 14 North, Range 3 East, Marion County, Indiana, described as follows:

Commencing at the Southeast corner of said Quarter Quarter Section, thence North 599 1/2 feet along the East line of said Quarter Quarter Section to the point of beginning of this description, thence deflecting to the left 90 degrees 13 1/2 feet, thence North 51 degrees 59 minutes West 88.5 feet; thence Northeasterly 247.2 feet along an arc to the left and having a radius of 4,384.2 feet and subtended by a long chord having a bearing of North 19 degrees 12 minutes East and a length of 247.0 feet to said East line of said Quarter Quarter Section, thence South 298.2 feet along said East line to the point of beginning.

Also, a part of the Southeast Quarter of the Northeast Quarter of Section 16, Township 14 North, Range 3 East, Marion County, Indiana, described as follows:

Beginning at the Southeast corner of said Quarter Quarter Section, thence West 398 feet, thence Northeasterly 518.3 feet along an arc to the left and having a radius of 4,384.2 feet and subtended by a long chord having a bearing of North 26 degrees 47 minutes East and a length of 518.1 feet, thence North 80 degrees 25 minutes East 79.2 feet, thence South 18 degrees 26 minutes East 199.5 feet, thence East 20 1/2 feet to the East line of said Quarter Quarter Section, thence deflecting to the right 90 degrees and a distance South 289.5 feet along said line to the point of beginning.

Tract II:

A part of the Northwest Quarter of the Northeast Quarter of Section 16, Township 14 North, Range 3 East, more particularly bounded and described as follows:

Beginning at the Northwest corner of the Northeast Quarter, of said Section 16 and running thence East along the North line of said Section 16 for a distance of Eight Hundred Twenty-five and Thirty-nine Hundredths (825.39) feet to a point; thence South, parallel with the West line of said Section 16, for a distance of Thirteen Hundred Thirty-six (1336) feet to the South line of the North Half of the Northeast Quarter of said Section 16, thence West along the said South line for a distance of Eight Hundred Twenty-five and Thirty-nine Hundredths (825.39) feet to the West line of said Section 16, thence North along said West line for a distance of Ninety-eight and Twenty-eight Hundredths (98.28) feet, thence East parallel with the North line of said Section 16, for a distance of Eighty eight (88) feet; thence North, parallel with the West line of said Section 16, for a distance of One Hundred Fifty-six (156) feet, thence West parallel with the North line of said Section 16, for a distance of Eighty-eight (88) feet to the West line of said Section 16; thence North along said West line for a distance of Ten Hundred Eighty-one and Seventy-two Hundredths (1081.72) feet to the place of beginning.

Tract III:

A part of the Northwest Quarter of the Northeast Quarter of Section 16, Township 14 North, Range 3 East, more particularly described as follows:

Beginning at a point in the North line of the Northeast Quarter of Section 16, Township 14 North, Range 3 East, which point is distant Eight Hundred Twenty five and Thirty-nine Hundredths (825.39) feet East from the Northwest corner of said Northeast Quarter, and being also the Northeast corner of the tract of Twenty-five (25) acres conveyed to Lewis E. Sutton by deed of Jessie S. Wishard, dated May 5, 1929, and recorded in Land Record 85 at page 451 of the records of the Recorder's Office, running thence South along the East line of said Twenty-five (25) acre tract for a distance of Thirteen Hundred Thirty six (1336) feet to the South line of the North Half of the said Northeast Quarter of said Section 16, thence East along said South line for a distance of Four Hundred Eighty-nine and Seven Hundredths (489.07) feet to a point, thence North, parallel with the East line of said Twenty-five (25) acre tract, for a distance of Thirteen Hundred Thirty six (1336) feet to the North line of said Northeast Quarter of Section 16, and thence West along said North line for a distance of Four Hundred Eighty-nine and Seven Hundredths (489.07) feet to the place of beginning.

Subject to covenants, restrictions and easements of record, subject also to easements and rights of way.

Exhibit "C"

Description of Murphy Tract

Parcel K

Forty -One (41) acres of even width off the entire East side of the North Half of the Northeast Quarter of Section 16, Township 14 North, Range 3 East, in Marion County, State of Indiana.

Exhibit "C"

Description of Hapgood Tract

Parcel N

Part of the South half of the Southwest Quarter of Section 9, Township 14 North, Range 3 East, Marion County, Indiana, being more particularly described as follows:

Beginning at the Southeast corner of said quarter section, thence in a northwesterly direction, 513.97 feet along the centerline of Southport Road, thence West along said centerline parallel to the South line of said section, 1835.2 feet, thence in a southwesterly direction along said centerline 428.9 feet, thence South 60 feet, thence East along the South line of said section 2,680 feet to the point of beginning, containing 12.5 acres, more or less.

Also, the Northwest Quarter of Section numbered Sixteen (16) in Township (14) North of Range three (3) East containing 160 acres, more or less, more particularly described as follows:

Beginning at the Southeast corner of said quarter section, thence north along the centerline of said section 2680 feet, thence West along the North line of said section 2680 feet, thence South along the West line of said section 2662 feet, thence East 2688 feet along the centerline of said section to the point of beginning.

Desc. of American Aggregates Tract

The East half of the Northeast quarter of Section 17, Township 14 North, Range 3 East of the second principal meridian in Marion County, Indiana, containing 80 acres more or less, subject to any legal highways or right-of-way.

The North half of the Southeast quarter of Section 17, Township 14 North, Range 3 East of the second principal meridian in Marion County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of said half quarter section, thence North 87 degrees 26 minutes 48 seconds East on and along the North line of said half quarter section for a distance of 2630.747 feet to the Northeast corner of said half quarter section; thence South 00 degrees 33 minutes 11 seconds East on and along the East line of said half quarter section for a distance of 1338.265 feet to the Southeast corner of said half quarter section; thence South 87 degrees 45 minutes 33 seconds West on and along the South line of said half quarter section for a distance of 2643.098 feet to the Southwest corner of said half quarter section; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) on and along the West line of said half quarter section for a distance of 1324.350 feet to the point of beginning, containing 80.539 acres, more or less, subject, however, to any and all legal highways and rights-of-way.

Excepting therefrom that which was previously conveyed:

The Northeast Quarter of the Northeast Quarter of Section 17, Township 14 North, Range 3 East, Marion County, Indiana, being a part of the land of Buck Creek Farms, Incorporated (as located in Instrument number 95-35811, office of the Marion County Recorder), described as follows:

Beginning at the Northeast corner of said Quarter Section; thence South 00 degrees 09 minutes 16 seconds West (all bearings recited in this description are referenced from State Plane Coordinates, North American Datum, 1983) along the east line of said Quarter Section 1334.53 feet to a 4 inch by 4 inch limestone monument, being the southeast corner of the northeast quarter of said northeast quarter section; thence South 88 degrees 06 minutes 37 seconds West along the south line of said quarter-quarter section 1336.61 feet to a 4 inch by 4 inch limestone monument, being the southwest corner of said quarter-quarter section; thence North 00 degrees 11 minutes 30 seconds East along said west line 1338.81 feet to the northwest corner of said quarter-quarter section; thence North 88 degrees 17 minutes 34 seconds East along said north line 1335.59 feet to the Point of Beginning. Containing 40.974 acres, more or less.

MARTHA A. WOMACKS
MARION COUNTY AUDITOR

626142 APR -5 08

PLAT INFORMATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

PLAT
Cross Reference: 2006-0046711

10

PLAT COVENANTS WHISPERING FALLS AT SOUTHERN DUNES SECTION 1

This instrument, executed by R.N. THOMPSON DEVELOPMENT CORPORATION, which shall hereinafter be referred to as "Developer" or as "Declarant" and by the Wellingshire Joint Venture (consisting of R.N. Thompson Development Corporation and Waterway Holdings, Inc.), the "Fee Owner", hereby establishes plat covenants, conditions, and restrictions for the real estate to be known as Whispering Falls at Southern Dunes, Section 1, which real estate is described in Exhibit 1 hereto. Whispering Falls at Southern Dunes, Section 1 shall consist of Lots 1 through 69, a total of 69 Lots, plus Blocks "A", "B", "C" and "D".

In order to provide adequate protection to all present and future owners of lots in this subdivision, the following covenants, restrictions and limitations, in addition to those set forth in the Declaration of Covenants, Conditions and Restrictions for Southern Dunes which was recorded on December 23, 1998 as Instrument No. 1998-0228187 in the Office of the Recorder of Marion County (the "Master Declaration"), and those set forth in the Declaration of Covenants, Conditions and Restrictions for Whispering Falls at Southern Dunes (the "Whispering Falls Declaration"), which was recorded on _____, 2006 as Instrument No. 2006-_____ in the Office of the Recorder of Marion County, are hereby imposed upon and shall run with the land included in this subdivision and shall be binding upon the Developer and anyone at any time owning or using any part or portion of such land.

NOTICE: Reference should be made to each of the three notices contained in the Southern Dunes Master Declaration, which contain important information and disclosures regarding the Architectural Control requirements of this Community and Wellfield Protection in favor of Indianapolis Water, the water utility of the City of Indianapolis.

1. **EASEMENTS.** Lots are subject to the following Drainage Easements, Utility Easements, Sewer Easements, and Landscape Easements, either separately or in combination, as shown on the Plat, which easements are reserved for the use of the Declarant, the Whispering Falls Homeowners Association (hereinafter referred to as the "Association"), the Southern Dunes Homeowners Association, public or private utility companies and governmental agencies, as follows:

"Drainage Easements" are created as shown on the Plat to provide paths and courses for area and local storm drainage, either over land or in adequate underground conduit, to serve the needs of the subdivision and adjoining ground and/or the public or private drainage system. Under no circumstances shall drainage easements be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict the water flow in any manner, without the prior approval of the Architectural Control Committee and the governmental authority having jurisdiction over drainage. Drainage easements are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by Declarant, its successors or assigns.

"Utility Easements" are hereby created as shown on the Plat for the use of public or private utility companies and cable television companies, not including transportation companies, for the installation of poles, pipes, mains, ducts and cable or other related utility structures, as well as for the uses specified for sewer easements. No above ground utilities may be installed without the prior written consent of the Architectural Control Committee.

"Sewer Easements" are hereby created as shown on the Plat for the use of the Utility, public or private, having jurisdiction over the sanitary waste disposal system serving Southern Dunes. Sewer Easements shall only be used to construct, operate, inspect, maintain, reconstruct and remove mains, ducts, or other related utility structures of sanitary sewers that are a part of said system. Sanitary sewer manholes shall not be placed under or within one foot horizontal distance of pavement, including driveways or sidewalks. Sewer Easements are a part of the Utility Easements.

"Landscape Easements" are hereby reserved and created over and across Lots (without specific designation or reservation on the Plat), and throughout the entire Whispering Falls at Southern Dunes subdivision, within which landscaping, earth mounds, screening material, fencing, walls, neighborhood and community identification signs, directories, lighting, irrigation systems and other improvements may be constructed and maintained by the Developer or the Association to provide landscape design continuity and ensure attractive and aesthetically pleasing areas throughout the Subdivision. It is the plan and design of this Subdivision that much of the landscaping be undertaken by the Association, as a common expense, as further described under paragraphs 13 and 14 of these Plat Covenants. Within landscape easements, the Developer and the Association shall have the right to install, inspect, maintain, reconstruct and remove such landscape improvements as described herein. Owners of Lots shall have the right to fully use and enjoy their own Lot, except for such use as may impair, impede, or interfere with the exercise by the Developer or Association of the landscaping and other rights granted herein. Owners of Lots shall not construct, nor permit to be constructed, any structure or obstruction on or over any part of a Lot or interfere with the Developer's or Association's ability to use or gain access to the Lot for purposes permitted by this Landscape Easement, without the prior written approval of the Developer or the Association.

"Maintenance Easements" are created to provide means of access for public utility companies, governmental agencies and the Association to various areas of the subdivision (including, without limitation, the lakes or ponds shown on the within plat and on the Development Plan for Southern Dunes) to permit said parties to perform their respective responsibilities and to install, maintain and service their respective installations. Maintenance shall be conducted and completed in a workmanlike manner. Any damage done to private or common property shall be repaired at the expense of the user of the Maintenance Easement, if other than the Declarant. Maintenance Easements exist throughout the subdivision without specific designation or reservation on the Plat.

The delineation of the Drainage Easement and Utility Easement areas on this plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this paragraph. **No permanent structures shall be erected or maintained upon Drainage, Utility or Sewer Easements by any Owner without the prior approval of the Architectural Control Committee.** The owners of Lots in this Subdivision shall take and hold title to the Lots subject to the Easements herein created and reserved.

The Developer and/or Builder(s) approved by the Developer shall retain the right to display marketing and promotional signs within this subdivision until the sale of the last lot in the Southern

Dunes Community (including Sections not yet platted) owned by either the Developer or the Builder(s).

The owners of lots in this subdivision shall take and hold title to their lots subject to all of the foregoing Easements, to the rights of the public utility companies, governmental agencies, the Developer, the Association and others therein (which rights also include the right of ingress and egress in, along, across and through said Easements), to the jurisdiction of the proper authorities, and to the covenants herein granted and reserved.

2. DRAINAGE PLAN. No owner of any Lot or parcel of land within this plat may violate the provisions of the drainage plan approved for this subdivision by the Metropolitan Development Commission for Indianapolis, Marion County, Indiana and the requirements of all drainage permits for this plat issued by said Department.

No Owner of any Lot in this Subdivision, on which any part of an open storm drainage ditch or swale is situated, may take any action which will or could obstruct any drainage easement or cause such easement to fall into disrepair.

3. DEDICATION OF STREETS. The rights-of-way of the streets as shown on this plat (other than those designated as being private streets), if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way, subject however to a reservation of ingress-egress for the maintenance to medians in the subdivision and also subject to an easement for utility services as provided in paragraph 1 of these Plat Covenants. Further, any streets which are identified on the Plat as "private" shall not be dedicated to the public.

4. BUILDING LOCATION. Building set back lines are as depicted on the plat. No building or structure shall be erected or maintained between said set back lines and the front or rear lot line (as the case may be) of said Lot. There shall not be a side yard set back requirement for any individual lot, however there shall be an aggregate side yard set back of not less than ten feet (10') between homes. Where two or more contiguous lots are used as a site for a single dwelling, this side yard restriction shall apply to the combined lots as if they were a single lot.

5. MINIMUM LIVING AREA. No residence constructed on a lot herein shall have less than 1,000 square feet of finished and livable floor area in aggregate for a one story residence or less than 1,400 square feet in the aggregate for a multi-floor residence, excluding garages and open porches.

6. DRIVEWAYS. Each driveway in this Subdivision shall be of concrete or asphalt material, and no additional parking shall be permitted on a Lot other than the existing driveway. No Lot may have a driveway on more than one street.

7. RESIDENTIAL USE ONLY. All Lots in this Subdivision shall be used solely for residential purposes except for residences used as model homes during the sale and development of this Subdivision. No business buildings shall be erected on said Lots, and no business may be conducted on any part thereof, other than home occupations approved by the Southern Dunes Board. No residence shall be erected, altered, placed or permitted to remain on any Lot herein, other than one detached single-family residence not to exceed two and one-half stories in height.

No trailer, shack, tent, boat, garage or outbuilding may be used at any time as a residence, temporary or permanent; nor may any structure of a temporary character be used as a residence. With the consent of the Declarant, a builder may have a temporary structure during the construction of a residential building on the property, which temporary construction building or trailer shall be promptly removed upon completion of construction of the building.

8. LIMITATION ON VEHICLES. No inoperative or unlicensed vehicle shall be parked or repaired anywhere within the Subdivision, including on any Lot or on the driveway thereof. No camper, trailer, mobile home, boat, truck or school bus may be parked in the Subdivision, including on any Lot or on the driveway thereof, except:

a. Personal automobiles, vans and pick-up trucks (not larger than 3/4 ton) may, subject to rules and regulations to be established in the Master Declaration or by the Southern Dunes Board of Directors, be parked on a private driveway, and

b. A camper, trailer, mobile home, or boat may be stored in an enclosed attached garage of average residential proportions, and

c. The Southern Dunes Board of Directors may establish rules prohibiting or regulating parking on the public streets within the Subdivision.

9. LIMITATIONS REGARDING TRASH. Garbage and trash shall be kept in approved containers, kept in a clean and sanitary condition, and kept in a location which is not visible from the street, except on collection day or the evening before collection day. No Lot shall be used or maintained as a dumping ground for rubbish or other waste materials and trash shall be regularly removed from the Property.

10. ARCHITECTURAL DESIGN AND ENVIRONMENTAL CONTROL. No structure or improvement -- including but not limited to residences, accessory structures, landscaping, fences, walls, mounds, ponds, pools, satellite dishes, antenna, patios, basketball goals and other permanent structures for sports and recreation -- shall be erected, placed or altered on any Lot in this Community until the building plans, specifications and plot plan showing the location, materials, and appearance of the planned improvement have been submitted to and approved by the Architectural Control Committee (hereinafter referred to as the "Committee"), regarding conformity and harmony of external design, topography, and finished ground elevations.

The provisions of Article X of the Whispering Falls Declaration shall be followed and complied with by every owner, builder, contractor and any other person or entity residing in this subdivision or making any improvement to any lot or structure within this subdivision.

11. FENCE LIMITATION. No fence, wall, hedge, shrub or planting which obstructs sight lines at elevations between two (2) and nine (9) feet above the street, shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement. No tree

shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of the sight line.

The Design Guidelines may establish special restrictions regarding fences and landscaping for Lots adjacent to, or visible from, the lakes or the golf course.

12. LANDSCAPE EASEMENTS - PRO RATA MAINTENANCE OBLIGATION. If, for any reason, the Southern Dunes Homeowners Association or the Whispering Falls Homeowners Association (for Whispering Falls at Southern Dunes) would cease to exist or cease to function, the areas designated on the plat as Blocks, landscape easements or landscape and utility easements shall be maintained by the title owner of the Lot upon which the easement exists. Whoever has the maintenance responsibility herein detailed shall have the right of contribution to the extent of money so expended (including reasonable costs for administration), from each Lot owner on an equal proratable basis for all Lots in all of the sections of this Subdivision. Each Lot owner's obligation shall mature thirty (30) days after date of receipt of notice of his obligation and shall draw interest at twelve percent (12%) per annum after the obligation matures with reasonable attorney fees if such services are required to secure payment.

13. INITIAL LANDSCAPING REQUIREMENTS. Each residence will have a minimum landscape package to be approved in advance by the Architectural Control Committee, to be installed by the builder of the residence. At a minimum, initial landscaping will include two trees having a 2 inch caliper measured 12 inches from the root ball. All landscaping materials will be selected from the "Recommended Tree and Shrub List for Marion County", unless specific approval is obtained from the Architectural Control Committee. In the event that the builder fails to complete the approved landscape plan, it will be installed by the Homeowners Association and its cost therefore will be charged to the homeowner and collectable as an assessment under the terms of the Declaration.

14. LANDSCAPING AND GROUNDS MAINTENANCE. As provided in Article 9 of the Whispering Falls Declaration, portions of the landscaping and grounds maintenance of individual Lots shall be the responsibility of the Association, and the cost of such landscaping and grounds maintenance shall be a common expense of the Association. No Owner or occupant of a Lot shall be permitted to plant trees or shrubbery; fertilize trees, shrubbery or grass; dig flower or planting beds of any nature; remove existing plantings or lawn; or otherwise alter the landscaping and grounds of his or her own Lot or of any common area of the subdivision without the prior consent of the Whispering Falls Homeowners Association. The Association shall have the sole right and responsibility of establishing and maintaining the landscaping and grounds of the subdivision, which right and responsibility may be delegated to the developer or to individual builders as a part of initial construction of the subdivision or of Lots thereon. In the event that any Owner of any Lot, or any other person, interferes with the Association's right to control the landscaping and grounds maintenance of the subdivision, any damages or costs to repair or return the landscaping to its prior condition resulting therefrom shall be chargeable to such person, including costs and attorney fees and shall be a lien against their lot.

15. MISCELLANEOUS PROVISIONS.

a. Each residence shall have one mailbox, standardized in size, appearance and color, according to

the Design Guides, and maintained in good condition at all times. The size, design and color shall be specified by the Declarant and shall be purchased, installed and maintained by the Homeowner.

b. Each residence shall have at least one coach light attached and hard wired to the garage and/or the front entry of the house which is illuminated by a photo cell, as set forth in the Design Guidelines.

c. Except as may be permitted by the Committee, window air conditioning units may not be installed on any lot.

d. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Committee.

e. No satellite receiving dish greater than one meter in diameter shall be erected or installed on any Lot. No antennae shall exceed twelve (12) feet above roof peak. No lot shall have more than one satellite dish and one antenna without the prior approval of the Architectural Control Committee, and, to the extent that acceptable reception may be obtained, any satellite dish or antenna shall be attached to the house and installed on the back of the house. The Design Guidelines may impose requirements (which do not impair reception or significantly increase costs) for painting or screening of satellite dishes and antennae, location, and other restrictions on antennae and satellite dishes.

f. No fuel storage tanks shall be permitted on the Property, except during the initial construction of any home, and then only with the express written consent of the Developer.

g. Sump pumps serving individual residences on lots shall not outfall or empty onto grass swales between lots, but only into major drainage swales or storm structures included in the storm drainage system for the subdivision.

h. The discharge of firearms within Southern Dunes, except for the protection of an individual from personal attack or injury, is prohibited. The term "firearms" includes bows and arrows, slingshots, "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this Section.

16. SWIMMING POOLS, HOT TUBS AND OTHER STRUCTURES. No above ground swimming pools shall be erected, constructed or installed on any Lot. Below ground pools, hot tubs, spas, jacuzzis or similar water recreational facilities, may be installed with prior approval of the Committee. The Committee may consider lot size and available room on the lot for such facilities as one of its considerations. The Committee may impose a fencing requirement for such facilities which is greater than what is required by governmental entities.

Any attached garage, tool shed, storage building or any other attached building erected or used as an accessory to a residence shall be of a permanent type of construction and shall conform to the general architecture and appearance of such residence.

Detached garages, tool sheds or minibarns may not be erected on any Lot. Other detached structures, including enclosures for approved swimming pools, hot tubs or spas and enclosures for pets, shall be limited (or prohibited) as determined by the Committee, and plans shall be submitted to the Committee for approval prior to construction. The Master Declaration contains additional provisions relating to such structures.

17. MAINTENANCE. It shall be the duty of each owner in the subdivision to maintain the house and any additional structures on their lot and, except for the landscape maintenance to be performed by the Association, to otherwise maintain their Lot. In the event the owner of any lot fails to do so in a manner satisfactory to the Association, the Association shall have the right (but not the obligation) through its agents and employees, to enter upon said lot and to repair, maintain and restore the lot and/or the exterior of the improvements erected thereon. The cost of such exterior maintenance shall be and constitute a special assessment against such lot and the owner thereof, to be assessed, collected and enforced as provided in the Whispering Falls at Southern Dunes Declaration.

18. DURATION OF COVENANTS. These covenants and restrictions shall run with the land and shall be binding upon all persons or entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons or entities claiming under them, until twenty (20) years after the date of recording hereof. After said 20 years, these covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by a vote of at least seventy percent (70%) of the then owners of the Lots in the Whispering Falls at Southern Dunes Subdivision, it is agreed that said covenants and restrictions shall terminate in whole or in part; provided, however, that no termination of said covenants and restrictions shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

Lot owners may amend these covenants in whole or in part by an affirmative vote of seventy percent (70%) of the Lot Owners. No amendment to these covenants may be made without Developer's approval and consent, until the Developer has sold all of the lots in any section of this Subdivision. Any amendment or termination shall be evidenced by a written instrument, signed and acknowledged by the Lot owner or owners concurring therein, which instrument shall set forth facts sufficient to indicate compliance with this paragraph and shall be recorded in the office of the Recorder of Marion County, Indiana.

19. ENFORCEMENT. Violation or threatened violation of these covenants and restrictions shall be grounds for an action by Developer, any person or entity having any right, title or interest in the Real Estate (or any part thereof), or any person or entity having any right, title or interest in a Lot in the Subdivision and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief, and the recovery of costs and attorneys' fees incurred by any party successfully enforcing these covenants and restrictions; provided, however, that the Developer shall not be liable for damages of any kind to any person for failing to enforce or carry out such covenants or restrictions.

20. **SEVERABILITY.** Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions.

21. **METROPOLITAN DEVELOPMENT COMMISSION.** The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority, to enforce any covenants, commitments, restrictions or other limitations contained in this plat other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the subdivision control ordinance, as amended, or any conditions attached to approval of this plat by the Plat Committee.

22. **DECLARATION.** A Declaration of Covenants and Restrictions for the entire Southern Dunes Community and establishing the rights and obligations of the Southern Dunes Homeowners Association, Inc. (Master Declaration) was recorded on December 23, 1998 as Instrument No. 1998-0228187, and a separate Declaration of Covenants and Restrictions for Whispering Falls at Southern Dunes, establishing the rights and obligations of the Whispering Falls Homeowners Association, Inc. (Whispering Falls Declaration) was recorded on _____, 2006 in the office of the Recorder of Marion County, Indiana as Instrument No. 2006-_____. Every Owner of a Lot in Whispering Falls at Southern Dunes will automatically be and become a member of the Southern Dunes Homeowners Association and of the Whispering Falls Homeowners Association. Every Owner will be required to pay all duly established annual and special assessments, including temporary assessments in the event that the annual assessment is not timely established, for each Association. All unpaid assessments will become a lien on the Owner's Lot, which may be foreclosed pursuant to the procedures established in each respective Declaration. No Owner may exempt himself or herself from the obligation to pay assessments by abandoning the Lot, the common areas or otherwise.

In the event that either Declaration is invalidated for any reason, every Owner nevertheless assumes a responsibility for a pro-rata portion of all common expenses, including maintenance, taxes, insurance, legal, accounting, management fees, and reserves for replacements and contingencies as a member of the Homeowners Association, for regular annual assessments and for special assessments, and a lien shall attach upon the Lot owned by an Owner for such assessments. Further, an Owner who fails or refuses to pay such common expenses and assessments on a timely basis shall incur a late charge determined by the Board (the Southern Dunes Board or the Whispering Falls Board, as the case may be) of up to ten percent of the unpaid assessment plus interest of one and one half percent per month beginning thirty days after the date due, plus costs and attorney fees incurred in collection.

Whispering Waters at Southern Dunes, Section 1
Legal Description

Part of the Northeast Quarter of Section 20 and part of the Northwest Quarter of Section 21, 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 the Northwest Quarter of the Northwest Quarter of said Section 21;

thence North 89 degrees 46 minutes 37 seconds East (an assumed bearing) along the North line of said Northwest Quarter a distance of 374.91 feet to the POINT OF BEGINNING;

thence continue North 89 degrees 46 minutes 37 seconds East along said North line 292.95 feet;

thence South 00 degrees 13 minutes 23 seconds East 228.97 feet;
thence South 26 degrees 44 minutes 33 seconds West 134.59 feet;
thence South 00 degrees 10 minutes 48 seconds East 200.86 feet;
thence South 15 degrees 00 minutes 00 seconds East 1002.43 feet;
thence South 06 degrees 07 minutes 57 seconds East 150.52 feet;
thence South 15 degrees 13 minutes 33 seconds West 226.56 feet;
thence South 38 degrees 56 minutes 51 seconds West 186.70 feet;
thence South 52 degrees 36 minutes 04 seconds West 265.34 feet;
thence South 63 degrees 45 minutes 03 seconds West 329.75 feet;
thence South 62 degrees 43 minutes 39 seconds West 60.32 feet;
thence South 71 degrees 14 minutes 22 seconds West 86.60 feet;
thence North 18 degrees 45 minutes 38 seconds West 145.00 feet;
thence South 71 degrees 14 minutes 22 seconds West 7.95 feet;
thence North 18 degrees 45 minutes 38 seconds West 259.00 feet;
thence North 12 degrees 55 minutes 36 seconds East 1232.46 feet;
thence North 80 degrees 00 minutes 00 seconds East 185.00 feet;
thence North 10 degrees 00 minutes 00 seconds West 340.00 feet;
thence South 80 degrees 00 minutes 00 seconds West 72.63 feet;
thence North 00 degrees 13 minutes 23 seconds West 195.00 feet;
thence North 89 degrees 46 minutes 37 seconds East 122.50 feet;
thence North 00 degrees 13 minutes 23 seconds West 262.08 feet to the Point of Beginning and containing 29.862 acres more or less.

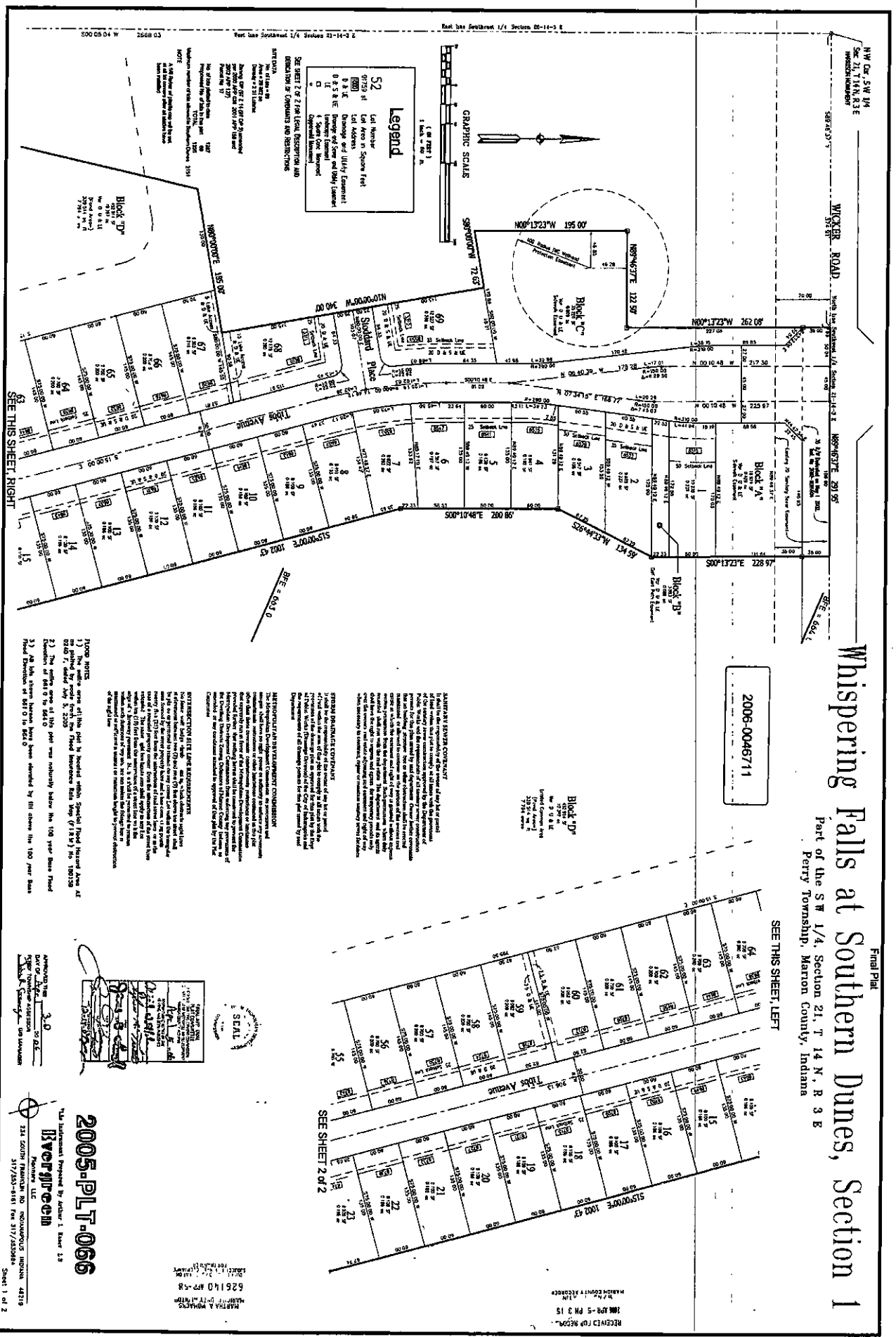
Subject to the right of way for Wicker Road and to all other legal easements and rights of way of record.

Exhibit 1

Whispering Falls at Southern Dunes, Section 1

Part of the S W 1/4, Section 21, T 14 N, R 3 E
Perry Township, Marion County, Indiana

2006-0046711



Legend

52 Lot Number
9729 st Lot Address
0 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000

NOTES

- 1) The area of this plat is located within Special Flood Hazard Zone of 02407, under Act No. 2205.
- 2) The entire area of this plat was not shown on the 100 year Base Flood Flood Division of 0210 is 0240.
- 3) All lots of 0210 have been awarded by the owner the 100 year Base Flood Division of 0210 is 0240.

APPROVED: *[Signature]*
DATE: 05/05/06
BY: *[Signature]*
COUNTY CLERK
MARION COUNTY, INDIANA

2005-PLT-066
This Instrument Prepared by Arthur T. Kiser, L.S.
BY: **IVYTRIPCO**
PREPARED BY: IVYTRIPCO, INC.
317-255-4161 Fax 317-255-0884
Sheet 1 of 2

RECEIVED TWP RECORD
100 APR - 5 PM 3 15
MARION COUNTY RECORDER
MARION COUNTY, INDIANA

2006-0046711

SHEET 1 of 2

Whispering Falls at Southern Dunes, Section 1

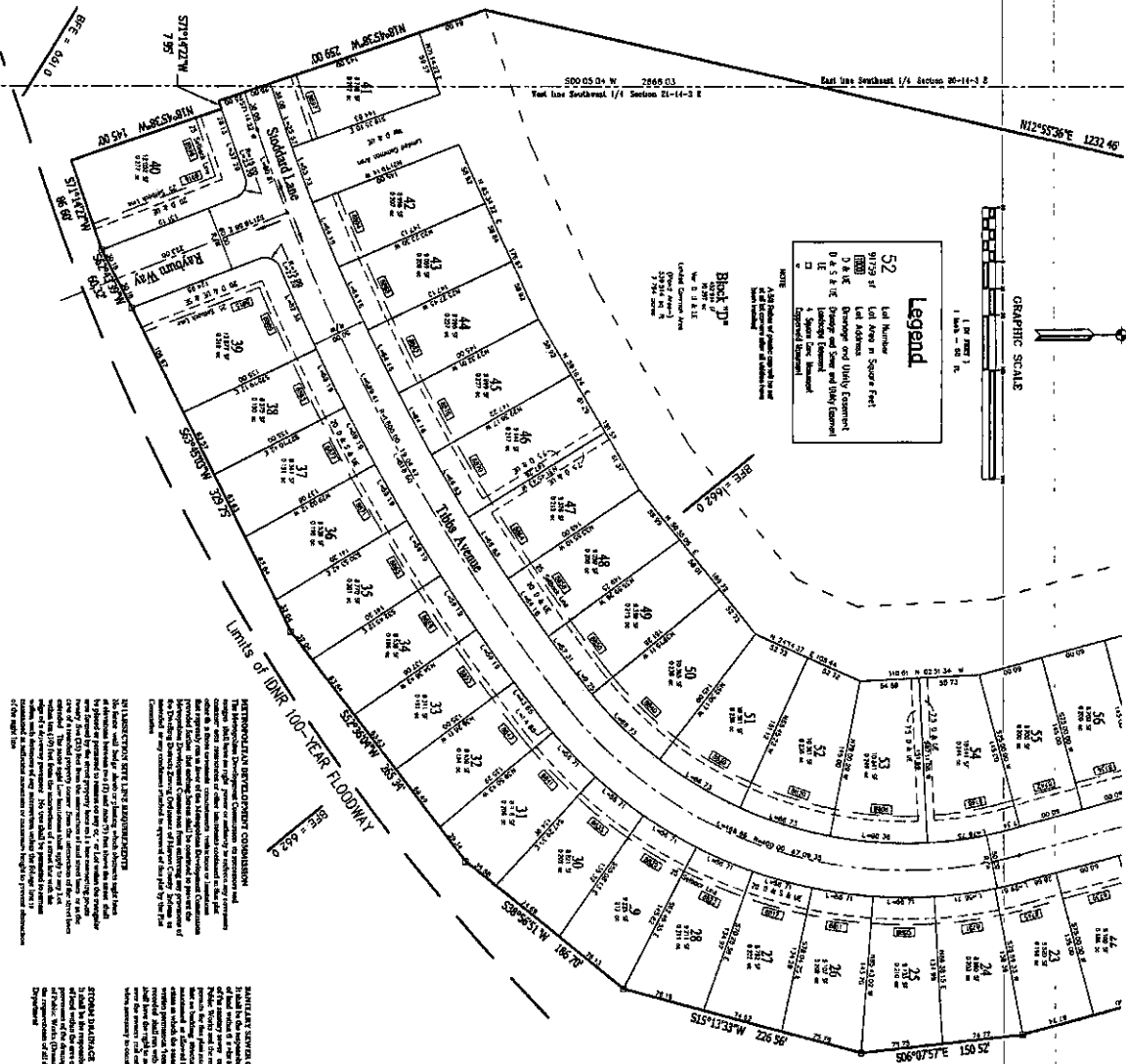
Part of the SW 1/4, Section 21, T 14 N, R 3 E
Perry Township, Marion County, Indiana

GRAPHIC SCALE
1 inch = 50 feet

Legend

- 52 Lot Number
- 91799 sq. ft. Lot Area in Square Feet
- 3 A & K Boundary over Utility Easement
- 0.5 A & K Boundary over Owner and Utility Easement
- 3 Square Feet Reserved
- 3 Reserved Boundary

Block 77
Map 238 of 23
Twp. 14 N, R. 3 E, S. 23 E
Marion County, Indiana
(Other Areas)
238 of 23
238 of 23



METROPOLITAN DEVELOPMENT COMMISSION
The Metropolitan Development Commission is composed of representatives from the City of Indianapolis, the County of Marion, and the State of Indiana. The Commission is authorized to review and approve all subdivision maps and plats filed for record in Marion County, Indiana. The Commission's decisions are final and binding on all parties involved in the subdivision process.

STATEMENT OF WORK
The purpose of this statement is to define the scope of work for the preparation and recording of this plat. The work includes the preparation of a detailed plat showing lot boundaries, areas, and easements, and the recording of the plat with the appropriate government agencies.

LEGAL DESCRIPTION
This plat is a subdivision of the SW 1/4 of Section 21, Township 14 North, Range 3 East, Marion County, Indiana. The total area of the subdivision is 91,799 square feet.

2005-PLT-066
This instrument prepared by Arthur L. Bauer, L.S.
livergreen
Perry, LLC
234 SOUTH TREMONT RD. INDIANAPOLIS, INDIANA 46211
317/355-9451 fax 317/358-8844 Sheet 2 of 2



ARTHUR L. BAUER, L.S.
Required Seal Expires on 2009



STATE OF INDIANA)
COUNTY OF MARION)
I, Arthur L. Bauer, L.S., do hereby certify that the foregoing is a true and correct copy of the original plat as recorded in the office of the County Clerk of Marion County, Indiana, on this 1st day of August, 2006.

By: *Arthur L. Bauer*
Arthur L. Bauer, L.S.
Surveyor

By: *Mark S. Surber*
Mark S. Surber
206 Chestnut Street, Suite 200
206 Chestnut Street, Suite 200
Marion County, Indiana

By: *Mark S. Surber*
Mark S. Surber
206 Chestnut Street, Suite 200
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Marion County, Indiana

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