

# ARLINGTON PARK

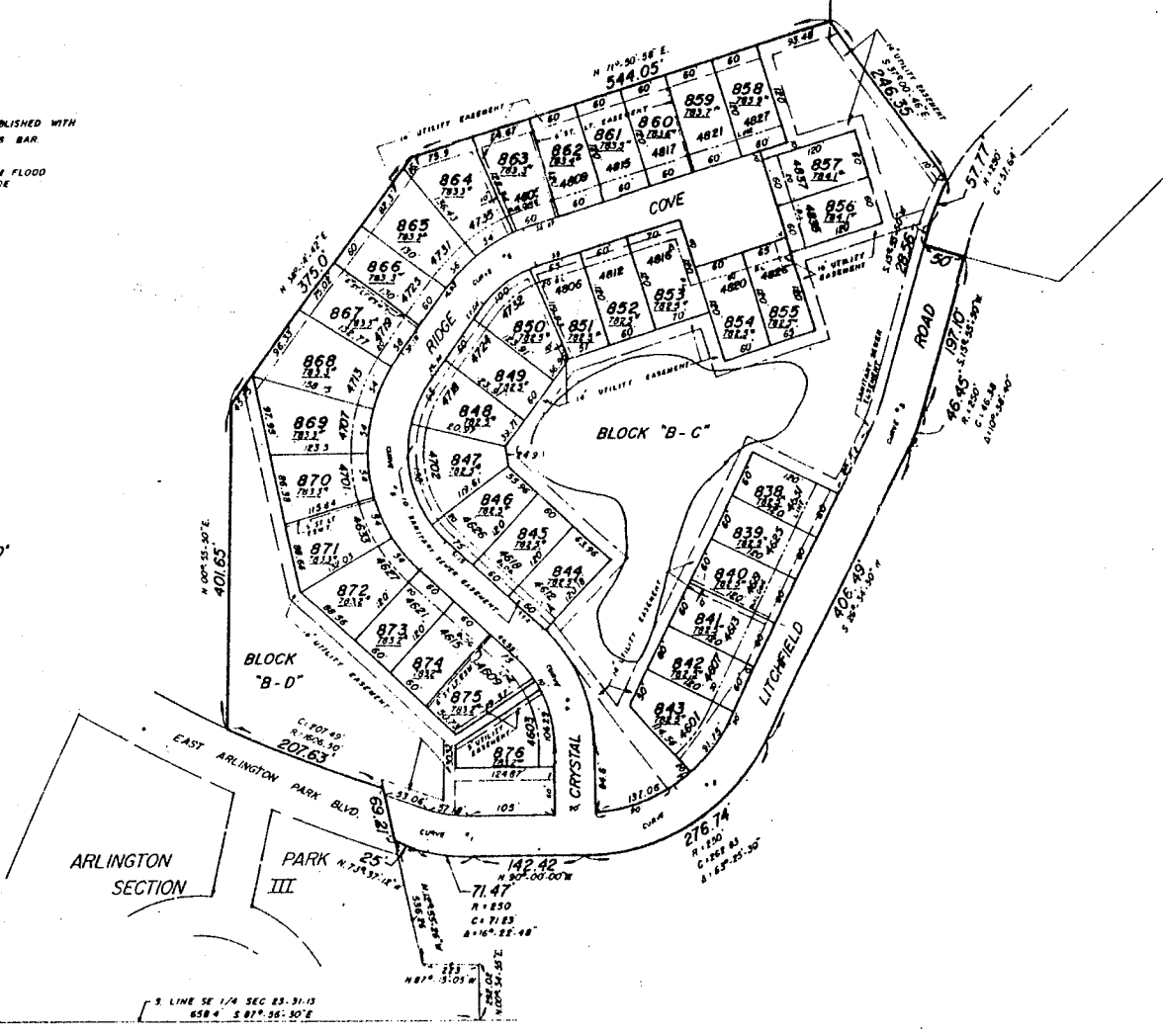
## SECTION XV

PART OF SECTION 23, TOWNSHIP 31 NORTH,  
RANGE 13 EAST, ALLEN COUNTY, INDIANA.

1:37  
1985 JUN 12 PM 1:15  
ALLEN COUNTY RECORDER  
*W. J. ...*  
ARLINGTON PARK  
SECTION XIV

ARLINGTON PARK  
GOLF COURSE

ALL LOT CORNERS ESTABLISHED WITH  
1/2" BY 12" REINFORCING BAR  
782.2' DENOTES MINIMUM FLOOD  
PROTECTION GRADE

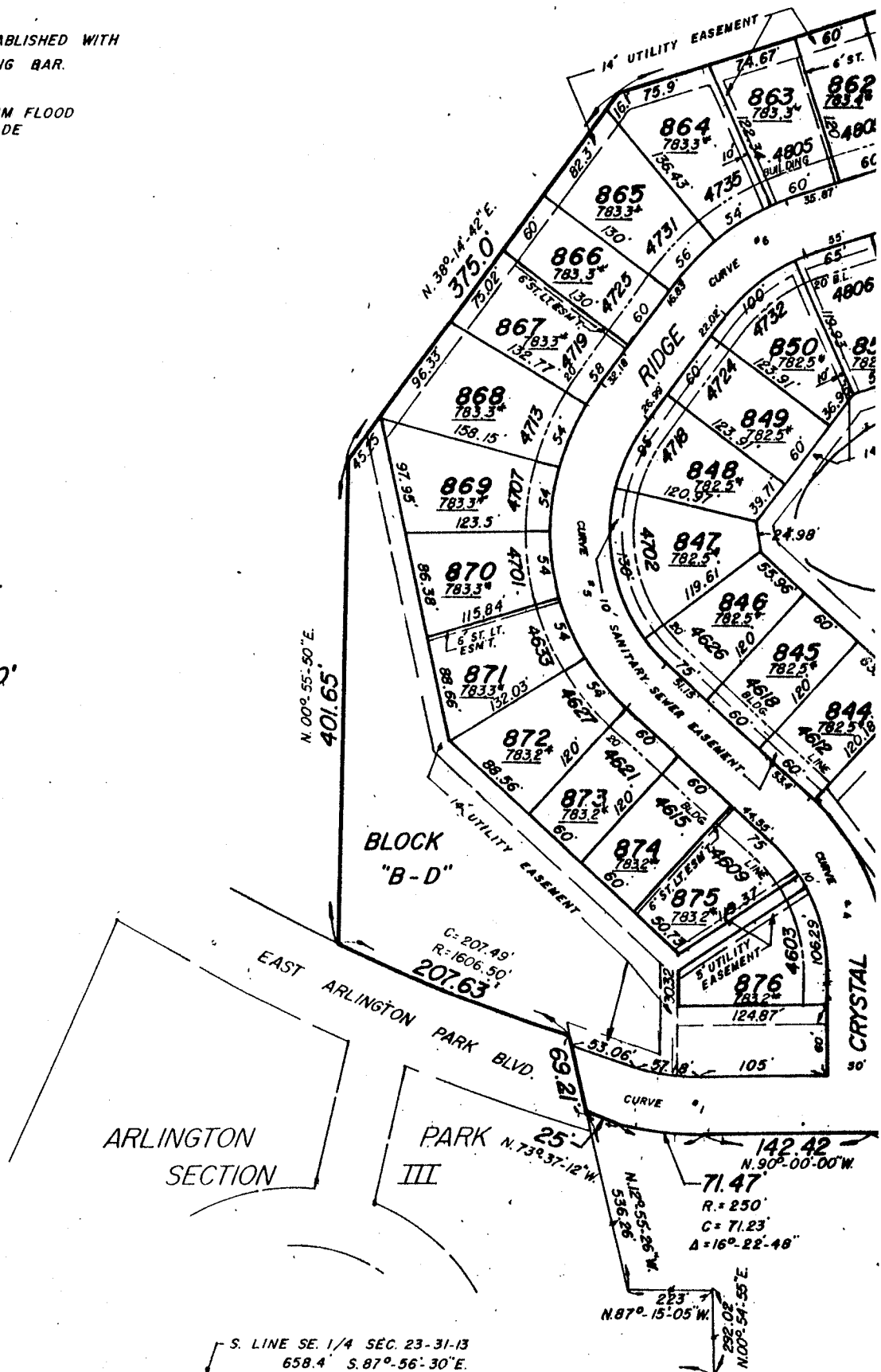


Abstractor's Note: For enlargement of the above Plat  
see the next three pages.

ARLING  
SEC7

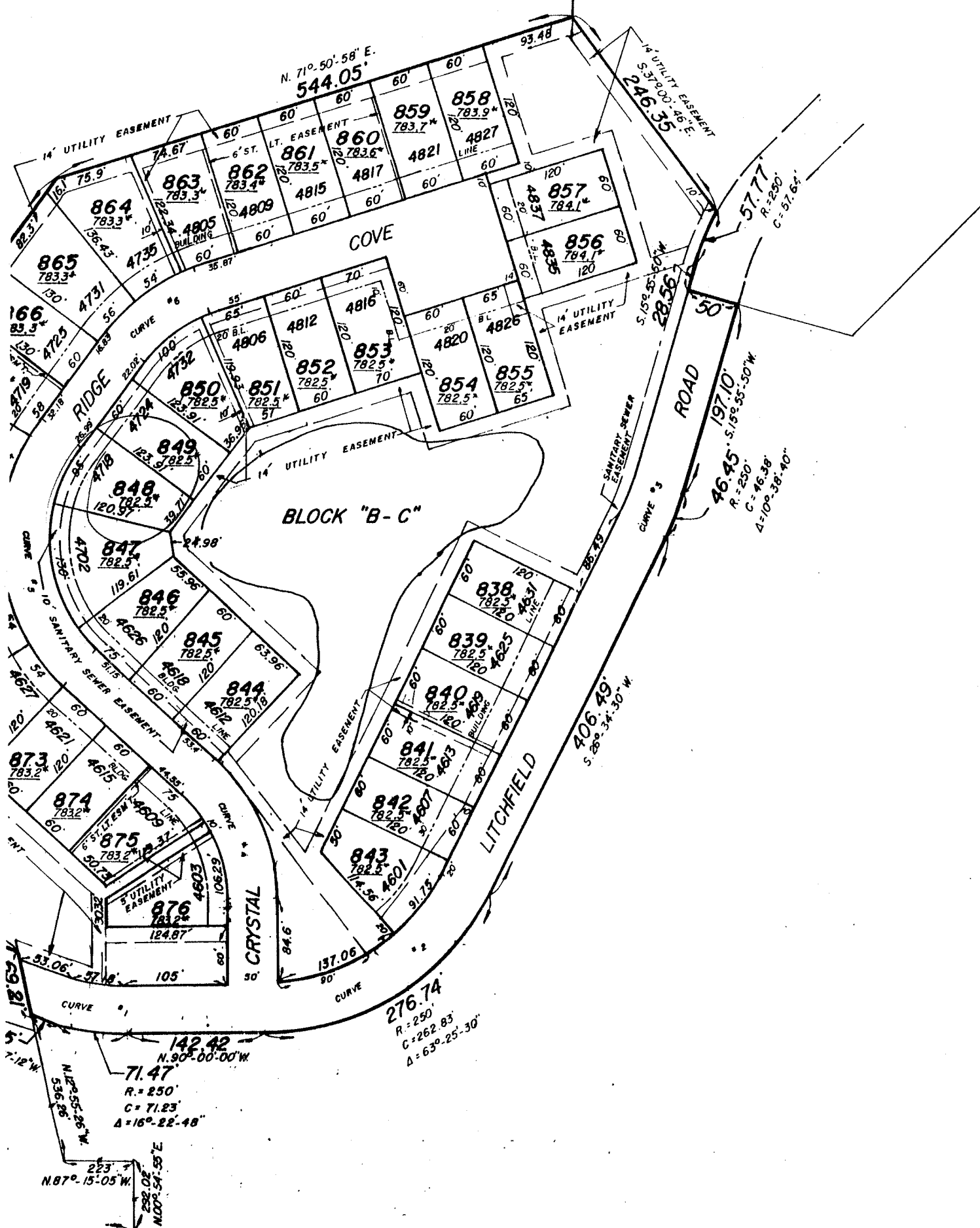


ALL LOT CORNERS ESTABLISHED WITH  
1/2" BY 12" REINFORCING BAR.



SW. COR. SE. 1/4  
SEC. 23, T. 31 N, R. 13 E.  
ALLEN CO, IN.

ARLINGTON PARK  
SECTION XIV



87-030055

AMENDMENTS TO  
DEDICATION, PROTECTIVE COVENANTS, RESTRICTIONS,  
LIMITATIONS, EASEMENTS AND APPROVALS APPENDED TO  
AND MADE A PART OF THE DEDICATION OF THE PLAT OF  
ARLINGTON PARK, SECTION XV,  
A SUBDIVISION IN ST. JOSEPH TOWNSHIP, ALLEN COUNTY, INDIANA

The undersigned, Oak Borough Development Corp., an Indiana corporation (the "Developer"), being the developer of Arlington Park, Section XV, a Subdivision in St. Joseph Township, Allen County, Indiana, according to the recorded plat thereof, and desiring to amend the Protective Covenants, Restrictions and Limitations filed with the Allen County Recorder's office on June 12, 1985\* a copy of which is attached hereto as Exhibit "A" (the "Covenants") in order to promote harmony of external design and location in relation to surrounding structures and eliminate certain ambiguous language in said Covenants, do hereby amend said Covenants, pursuant to paragraph twenty-six (26) of said Covenants in the following manner:

1. Subparagraph "c" of paragraph twenty (20) shall be amended as follows:

"c. Collection. Such Maintenance Fund and Club Operating Fund assessments, together with interest thereon and costs of collection as hereafter provided, shall be a lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection, shall also be the personal obligation of the person or persons who was/are the Owner of such property at the time when the assessment fell due. The obligation of the assessment is upon the Owner of the property and is not transferred, even though the Owner may have transferred the membership and voting rights in Arlington Park Association, as hereinbefore provided. If the assessments are not paid on the due date, then such assessments shall be a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. However, the personal obligation of the then Owner shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid within sixty (60) days

DULY ENTERED FOR TAX

JUN 11 1987

*Josiah K. Bloom*  
AUDITOR OF ALLEN CO.

87 JUN 11 PM 3:00  
ALLEN COUNTY RECORDER  
*James E. Blum*

\* Plat Book 46, pgs 119-125

INSTRUMENT V 4381

2. Except as otherwise amended herein all other terms and conditions of said Covenants are hereby restated in their entirety and shall remain in full force and effect.

OAK BOROUGH DEVELOPMENT CORP.

By: Roger L. Delagrang  
Roger L. Delagrang  
Vice President

Before me, the undersigned, a Notary Public in and for said County and State, this 22nd day of May, 1987, personally appeared Roger L. Delagrance ~~and~~ ~~xxxxxxxxxxxxxxxx~~ Vice President of Oak Borough Development Corp., the corporation which executed the foregoing instrument, signed the same and acknowledged to me that he did so sign the same in the name and on behalf of said corporation as such officer; that the same is his free act and deed as such officer and the free and corporate act and deed of said corporation; and that he was duly authorized thereunto by the Board of Directors of said corporation.

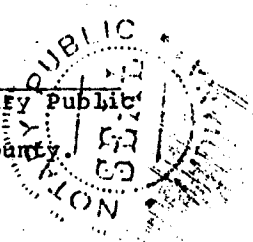
official seal the date above written.

Karen L. Wells

Notary Public

A resident of Allen County

My Commission Expires:  
August 7, 1989



90-021387

AMENDMENTS TO  
DEDICATION, PROTECTIVE COVENANTS, RESTRICTIONS,  
LIMITATIONS, AND APPROVALS APPENDED TO  
AND MADE A PART OF THE DEDICATION OF THE PLAT OF  
ARLINGTON PARK, SECTION XV,  
A SUBDIVISION IN ST. JOSEPH TOWNSHIP, ALLEN COUNTY, INDIANA

The undersigned, being the owners of not less than sixty-six and two-thirds (66 2/3%) percent of the membership of Brittany Village Association, Inc., located in Section XV of Arlington Park, a subdivision in St. Joseph Township, Allen County, Indiana, according to the recorded plat thereof, herewith by this signed, written instrument amend the Protective Covenants, Restrictions and Limitations filed with the Allen County Recorder's Office on June 12, 1985, in Plat Book 46, pages 119-125, as Document Number 85-014865, (the "Covenants") (amended by a document recorded in the Office of the Allen County Recorder on June 11, 1987 as Document Number 87-030055) do hereby amend said Covenants, pursuant to paragraph 26 of said Covenants in the following manner:

1. Sub-paragraph "a. Membership." of Paragraph 21, shall be amended by removing the words "which is subject to assessment", beginning in line 1 of that sub-paragraph and thereby is amended to read as follows:

"a. Membership. Every Owner of a Lot shall be a member of the Corporation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment, and shall be subject to the By-Laws of the Corporation."

2. Sub-paragraph "f. Uniform Rate of Assessment." and Sub-paragraph "g. Date of Commencement of Assessments; Due Dates.", both of Paragraph 22, so as to add annual and special assessments for lots in Section XV of Arlington Park (Brittany Village) which have not been issued a Certificate of Occupancy for a completed dwelling, are amended as follows:

"f. Uniform Rate of Assessment. Both annual and special assessments for Class "A" members owning lots where there has been issued a Certificate of Occupancy for a completed dwelling on said lot must be fixed at a uniform rate for all such lots and may be collected on a monthly, quarterly or yearly basis, in advance, as determined by the Board and where necessary, with the applicable consent of the members."

Both annual and special assessments for Class "A" members owning lots for which no Certificate of

90 MAY 31 AM 8:03  
ALLEN COUNTY RECORDER  
*Donna E. Smith*

Occupancy for a completed dwelling has been issued must be fixed at a uniform rate for all such lots at sixty-six and two-thirds percent (66 2/3%) of the annual and special assessment respectively for each lot where there has been issued a Certificate of Occupancy for a completed dwelling and may be collected in advance on a monthly, quarterly or yearly basis, as determined by the Board and where necessary, with the applicable consent of the members."

"g. Date of Commencement of Assessments; Due Dates.

The monthly assessments provided for herein shall commence as to each lot for which there has been an issuance of a Certificate of Occupancy for a completed dwelling, on the first of the following dates: (1) the date of issuance of a Certificate of Occupancy for a completed dwelling on said lot; or (2) the date of payment of the final construction draw with respect to a dwelling constructed on said lot, disregarding any monies retained in escrow from such final draw. The monthly assessment provided for herein shall commence July 1, 1990, as to each lot where no issuance of a Certificate of Occupancy for a completed dwelling has been issued. The Board of Directors shall fix the amount of the assessment against each lot not later than June 1 of each year, to be effective for one (1) year. Written notice of the assessment shall be sent to every Owner subject thereto. Assessments shall be due and payable quarterly on the 1st day July and October of each year, and on the 1st day of January and April of the following year. The Corporation shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Corporation setting forth whether the assessments on a specified lot have been paid as of a particular date.

3. Except as otherwise amended above all other terms and conditions of said Covenants are hereby restated in their entirety, as amended prior to this Amendment and shall remain in full force and effect.

IN WITNESS WHEREOF, the following being members of the Brittany Village Association, Inc., and being not less than sixty-six and two-thirds (66 2/3%) percent of the membership of Brittany Village Association, Inc., herewith alter and amend the Dedication, Protective Covenants, Restrictions, and Limitations of the Dedication of the Plat of Arlington Park, Section XV, and prior Amendments thereto as above noted, subject to the required approval of the Allen County Plan Commission.



Oak Borough Development Corp., an Indiana Corporation, being the developer of Arlington Park, Section XV, a subdivision in St. Joe Township, Allen County, Indiana, and being a member of the Brittany Village Association, Inc., and said Oak Borough Development Corp., being a Class B member entitled to vote 78 votes in corporate matters in the Brittany Village Association, Inc., less that number of votes which Class A members are entitled to exercise, the resulting votes of Oak Borough Development Corp., thus being as of this date 44 votes herewith by this written instrument votes all of its membership votes in favor of the Amendment of the Dedication, Protective Covenants, Restrictions and Limitations as noted above.

Dated: 5/16/90

OAK BOROUGH DEVELOPMENT CORP.

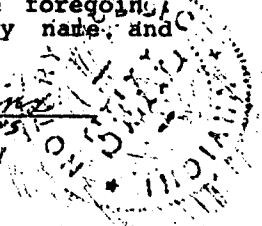
BY: Jeffery A. Gilmore  
Its President,

STATE OF INDIANA )  
COUNTY OF ALLEN ) SS:

Before me, the undersigned, a Notary Public in and for said County and State, this 16TH day of MAY, 1990, personally appeared Oak Borough Development Corp., by JEFFERY A. GILMORE, its President and acknowledged the execution of the foregoing. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:  
SEPTEMBER 18, 1992

Carol Y. Collins  
Notary Public Carol Y. Collins  
Resident of Allen County



#990092507 Page1

AUDITOR'S OFFICE  
Duly entered for taxation. Subject  
to final acceptance for transfer.

Doc. No.	990092507
Receipt No.	36856
DCFD	3.00
MISL	32.00
MISL	1.00
Total	36.00

DEC 21 1999

AMENDMENTS TO PARAGRAPH 16  
AND APPROVALS APPENDED TO AND MADE A PART  
OF THE AMENDMENTS TO THE PLAT OF  
ARLINGTON PARK, SECTION XV,  
A SUBDIVISION IN ST. JOSEPH TOWNSHIP, ALLEN COUNTY, INDIANA

RECORDED  
12/21/1999 16:04:57  
RECORDER  
PATRICIA J. CRICK  
ALLEN COUNTY, IN

The undersigned being the owners of not less than sixty-six and two-thirds percent (66 2/3%) of the membership of Brittany Village Association, Inc., located in Section XV of Arlington Park, a subdivision in St. Joseph Township, Allen County, Indiana, according to the recorded plat thereof, herewith by this signed, written instrument amend the Protective Covenants, Restrictions and Limitations filed with the Allen County Recorder's Office on June 12, 1985, in Plat Book 46, pages 119-125, as Document Number 85-014865, (the "Covenants") (amended by a document recorded in the Office of the Allen County Recorder on June 11, 1987, as Document Number 87-030055, and further amended by a document recorded in the Office of the Recorder of Allen County on the 31st day of May, 1990, as Document Number 90-21387) do hereby amend the Covenants pursuant to paragraph 26 of said Covenants, by amending sub-paragraph 16a and adding sub-paragraphs 16c & d. Sub-paragraph 16b is unchanged.

The entire text of paragraph 16 should be as follows:

16. Maintenance of Building Exteriors and Landscaping

a. The Corporation will maintain by repair or replacement the siding and exterior of original windows or replacements thereof for each dwelling. The frequency and manner of performance of this maintenance shall be determined solely by the Board of Directors of the Corporation, as will the grade, color, style, kind and quality of items used in this repair and/or replacement. The dwelling exteriors will be painted or stained and caulked as determined by the corporation. Original window frames,

FALAN WHITMORE BCK

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36  
MR

and original skylights will be repaired or replaced, as will gutters and down spouts, as determined by the Corporation.

Snow will be removed from driveways, front entrances and front entrance walks by the Corporation. (Snow removal from public walks and streets is to be done by the Arlington Park Association, Inc.). Lawns are to be mowed and fertilized by the Corporation and original lawn irrigation systems and their replacements, will be regulated and maintained by the Corporation.

b. Except to the extent of the Corporation's responsibilities for maintenance and repair, as above provided, each Owner shall, at his sole cost and expense, maintain and repair his Lot and the improvements situated thereon, keeping the same in good condition and repair, including those items specifically excluded from the Corporation's responsibilities and any other maintenance and repair responsibilities not expressly included among such responsibilities, as set forth above. In the event that any Owner shall fail to maintain and repair his Lot and the improvements thereon as required hereunder, the Corporation, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon; and each Owner (by acceptance of a deed for his Lot) hereby covenants and agrees to repay to the Corporation the cost thereof immediately upon demand. Such costs incurred and demanded by the Corporation, together with interest, costs and reasonable attorney's fees, shall have the same status as both a continuing lien on the Lot and improvements and the personal obligation of the Owner as an assessment made under Section 22 hereof, and the failure of any such Owner to pay the same shall carry with it the same

consequences as the failure to pay such an assessment when due.

c. The owner, by virtue of a & b above, is responsible for maintenance, repair and/or replacement of:

- (1) All landscaping, including mulching, edging and trimming of shrubs, bushes and trees and replacement of dead or overgrown items;
- (2) Doors and hardware; garage door, hardware and accessories;
- (3) Roofing and shingles, subject to the requirement that the grade, color and style be approved by a standing committee appointed by the Board of Directors as set forth in "d" below;
- (4) Driveways;
- (5) Walks;
- (6) Yard light, exterior lights and bulbs;
- (7) Screened-in porches, decks;
- (8) Window washing and all window glass replacement;
- (9) Inside dwelling maintenance;
- (10) Damage from Acts of God;
- (11) Any other maintenance and repair not expressly included as the Corporation's responsibilities under 16a above.

d. For consistency in the grade, color and style of shingles throughout Brittany Village, the Board of Directors of the Brittany Village Association, Inc., shall appoint a two-member committee to review and approve the grade, color and style of shingles to be used hereafter in Brittany Village. Owners of dwellings in Brittany Village shall submit information as to the grade, color and style of shingles and gain approval prior to any

replacement of shingles. This information shall be submitted in writing with written documentation from the manufacturer or supplier to the committee. The committee may ask for clarification or additional information and samples of the shingles. Requests for clarifications, additional information and/or samples shall be in writing to the dwelling owner and forwarded within 10 days of the request for approval by the dwelling owner. When no request for additional information is made or not timely made, the committee shall approve or disapprove the request within 15 days or, when additional information or samples are timely requested, the committee shall approve or disapprove within 10 days from the date all items requested are submitted to the committee by the dwelling owner. Should the committee fail to approve or disapprove within the above time periods, the request will be deemed to have been approved.

Replacing shingles without approval of the committee shall subject the dwelling owner to a Right of Action by the Board of Directors or by no less than three dwelling owners in Brittany Village for an injunction and/or removal of the shingles, for cost of the action and for the reasonable attorney fees of the Association or the three or more dwelling owners prosecuting this action.

Except as otherwise amended above, all other terms and conditions of the Covenants are hereby restated in their entirety, as amended prior to this Amendment and shall remain in full force and effect.

IN WITNESS WHEREOF, the following being members of the Brittany Village Association, Inc., and being not less than sixty-six and two-thirds percent (66 2/3%) of the membership of Brittany Village Association, Inc., herewith alter and amend the Protective Covenants, Restrictions and Limitations of the Dedication of the

Plat of Arlington Park, Section XV, and prior amendments thereto as above noted, subject to the required approval of the Fort Wayne City Plan Commission.

ARLINGTON PARK, SECTION XV

OAK BOROUGH DEVELOPMENT CORP., an Indiana corporation, by JEFFREY A. GILMORE, its President, and JOE W. SHIPLEY, its Secretary, does hereby declare that it is the Owner of the real estate situated in Allen County, Indiana, and described in Exhibit "A" attached hereto and made a part hereof, and does hereby cause the real estate above described to be platted into lots, streets, pedestrian right-of-ways, common areas and easements in accordance with the plan and plat appended hereto and made a part thereof, to be known as

ARLINGTON PARK, SECTION XV

a subdivision in Allen County, Indiana (the "Addition"). The Lots in said Addition are numbered from 838 to 876, inclusive, and all dimensions are shown in feet and decimals of a foot on the plat.

The undersigned does hereby declare and provide that the Lots and easements platted as aforesaid shall be subject to and impressed with the covenants, agreements, restrictions, easements and limitations hereinafter set forth, and they shall be considered a part of every conveyance of land in said Addition without being written therein. The provisions herein contained are for the mutual benefit and protection of the Owners present and future of any and all land in said Addition, and they shall run with and bind the land and shall inure to the benefit of and be enforceable by the Owners of any land included therein, their respective legal representatives, successors, grantees and assigns. The Owner or Owners, present or future, of any land included in said Addition shall be entitled to injunctive relief against any violation or attempted violation of the provisions hereof and also damages for any injury resulting from any violations thereof, but there shall be no right of reversion, re-entry or forfeiture or title resulting from any violation.

PROTECTIVE COVENANTS, RESTRICTIONS AND LIMITATIONS

1. Definitions. The terms hereinafter set forth shall have the following meanings:

a. "Architectural Control Committee" shall mean the body designated herein to review plans and to grant or withhold certain other approvals in connection with improvements and developments.

b. "Association" shall mean and refer to the Arlington Park Association.

c. "Common Area" shall mean and refer to those areas of land shown on any recorded subdivision plat and intended to be devoted to the common use and enjoyment of the Owners and Lessees in the Addition.

d. "Corporation" shall mean and refer to Brittany Village Association, Inc.

e. "Developer" shall mean OAK BOROUGH DEVELOPMENT CORP., its successor or successors in interest, and any person, firm or corporation designated by it or its said successor or successors.

f. "Lessee" shall mean and refer to a person, whether one or more persons or entities, leasing from an Owner any "Lot" situated in the Addition.

g. "Lot" shall mean either any of said Lots as platted or any tract or tracts of land as conveyed originally or by subsequent Owners, which may consist of one or more Lots or parts of one or more Lots as platted upon which a dwelling or other structure may be erected in accordance with the restrictions hereinafter set forth.

h. "Member" shall mean any person who may be entitled and obligated to hold one or more memberships in the Arlington Park Association, except that for purposes of Paragraphs 21 and 22 hereof, "member" shall mean and refer to a person who is a member of Brittany Village Association, Inc.

i. "Membership" shall mean any membership in the Arlington Park Association entitled to one vote and one assessment as hereinafter set forth. A member may hold one or more memberships. Provided, that for purposes of Paragraphs 21 and 22 hereof, "membership" shall refer to membership in Brittany Village Association, Inc.

j. "Owner" shall mean and refer to the holder, whether one or more persons or entities, of the fee simple title to any Lot or living unit situated in the Addition.

k. "Pedestrian Right of Way" shall mean any area which is shown on the recorded plat of said Addition for the purpose of a pedestrian traffic system and intended to be devoted to the common use and enjoyment of the Owners and Lessees in the Addition, subject to utility rights as hereinafter provided.

1. "Street" shall mean any street, avenue, roadway, cul de sac or boulevard of whatever name which is shown on the recorded plat of said addition, and which has been heretofore and is hereby, dedicated to the public for the purpose of a public street or for park or boulevard purposes.

2. Use. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family dwelling not to exceed two and one-half stories in height. Each dwelling shall include not less than a two-car garage, which shall be built as part of said dwelling structure and attached thereto. In order to maintain harmonious structural design and construction, all dwelling units shall be constructed by Oak Borough Development Corp., unless a different builder shall have been approved in writing by the Architectural Control Committee prior to the commencement of construction.

3. Driveways. All driveways from the street to the garage shall be of concrete and not less than sixteen (16') feet in width.

4. Minimum Area. No dwelling shall be erected or permitted on any Lot having a ground floor area upon the foundation, exclusive of open porches, breezeways or garage, of less than one thousand two hundred (1,200) square feet in the case of a one-story dwelling, nor less than nine hundred (900) square feet for a dwelling of more than one-story.

5. Building Lines. No building shall be located nearer to a public street or common access easement than the minimum building setback line shown on the recorded plat. There shall be no established side or rear yard requirements for any Lot, so long as one side yard has a minimum width of ten (10) feet between a Lot line and a residential building. The Architectural Control Committee shall have the exclusive authority to control the location of each residential building on each Lot. A detached dwelling may be constructed up to the Lot line on one side of any Lot with the approval of the Architectural Control Committee in which case there must be a



distance of at least ten (10) feet from the exterior of that residential building to the exteriors of the residential buildings on adjacent Lots.

6. Minimum Lot Area. No dwelling or structure shall be erected or permitted on any Lot having a width of less than sixty (60) feet, nor an area of less than six thousand (6,000) square feet. Developer, its successors and assigns, may alter the size or shape of said Lots as platted, provided that no dwelling or other structure shall be erected, placed or maintained upon any Lot which does not conform to the restrictions herein set forth, without express approval of the Allen County Plan Commission.

7. Yard Light. Each dwelling will cause a yard light or other illuminating device to be installed in the front yard. Such yard light or illuminating device will be of such design, construction and location as shall be approved by the Architectural Control Committee.

8. Sidewalks. Plans and specifications for this subdivision, on file with the Allen County Plan Commission, require the installation of concrete sidewalks within the street rights-of-way in front of Lots 838 through 843 and 858 through 876, all inclusive. Installation of said sidewalks shall be the obligation of the Owner of any such Lot, exclusive of the developer, shall be completed in accordance with said plans and specifications and prior to the issuance of a Certificate of Occupancy for any such Lot and the cost of said installation shall be a lien against any such Lot enforceable by the Allen County Plan Commission or its successor agency. Should such Certificates of Occupancy be issued to the developer, said individual or corporation shall be considered an Owner for the purposes of the enforcement of this covenant.

9. Signs. No sign shall be erected or permitted, except one professional sign of not more than one foot square, or one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

10. Fences. No wire, metal or chain link fences will be permitted on any Lot. Further, no fence shall be erected without the prior written approval of the Architectural Control Committee, as hereinafter provided.

11. Antennas and Appurtenances. No free-standing antenna shall be permitted on any Lot, nor shall any satellite dishes or solar apparatus, either attached or detached, be permitted. No Owner shall cause or permit anything to be placed or affixed on the outside walls or roofs of any dwelling, including but not limited to awnings, canopies, shutters or radio or television antennas without the prior written approval of the Architectural Control Committee.

12. Nuisances. No use shall be permitted which is offensive by reason of odor, fumes, dust, smoke, noise or pollution or which constitutes a nuisance or which is hazardous by reason of fire, explosion or in violation of the laws of the State of Indiana or any subdivision thereof. No electrical insect control devices shall be permitted on any Lot. No Lot shall be used for the purpose of raising, breeding or keeping animals, livestock or poultry except as household pets, providing they are not kept, bred or maintained for any commercial purpose. All fuel or oil storage tanks shall be installed underground or located within the main structure of the dwelling, its basement or attached garage.

13. No Temporary Dwelling. No structure of a temporary character, trailer, boat, boat trailer, camper, or

camping trailer, mobile home, travel trailer, motor home, basement, tent, garage, barn, tool shed, or other outbuilding shall be either used or located on any Lot or used as a residence either temporarily or permanently.

14. Common Areas. Certain playgrounds, flood control areas, pedestrian underpasses, greenways and pedestrian right-of-ways designated on the plats shall be installed for the benefit of all the Owners and Lessees in Arlington Park. The same will be deeded or transferred to the Arlington Park Association and each Owner and Lessee shall have a right and easement of enjoyment in and to said Common Areas; provided that certain of the pedestrian right-of-ways as designated on the plat shall also be reserved as utility easements, as set forth in Paragraph 18 hereof, and shall be subject to all the terms and conditions as provided in said Paragraph 18. The Developer may retain legal title to the Common Areas until such time as it has completed improvements thereon, after which time it shall convey the same to the Association and the Association shall accept said conveyance and thereafter be responsible for the maintenance thereof. The rights and easements of enjoyment in the Common Areas shall be subject to the following:

a. The right of the Developer to borrow money and to mortgage any part or parts of Arlington Park, Section XV, in connection therewith.

b. The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment of any Member for any period during which any assessment remains unpaid.

c. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors of the Association, and subject to acceptance of such assignee.

15. Approval of Improvements by Architectural Control Committee. In order to maintain harmonious structural design and Lot grades, no dwelling, building, fence, or improvements, or attachments or additions thereto, shall be erected, permitted or altered on any Lot (and construction shall not be commenced) until the construction plans and specifications, and a site plan showing the location of the structure on said Lot and the grade elevations have been approved by the Architectural Control Committee. The Architectural Control Committee shall be comprised of three (3) members, the first Committee members to be: Roy McNett, Roger Delagrang, and Jeffrey A. Gilmore. The Developer shall have the right, at such time as it may elect, to transfer the function of the Committee to the Association by an instrument recorded in the Allen County Recorder's Office, whereupon the function of the Committee shall be thereafter performed by the Association, which shall have the right to designate the members of the Committee. The Developer shall be required to transfer the function of the Committee to the Association by such recorded instrument no later than the final date upon which the improvements on all Lots have been completed. Two sets of plans of each improvement, with detailed front, side and rear elevations and floor plans showing square footage and grade elevations, shall be submitted to the Architectural Control Committee at the Association's office or such other place as may be designated. The Committee's approval or disapproval of said plans shall be in writing; in the event the Committee, or its designated representative, shall fail to approve or disapprove said plans within thirty (30) days after all necessary instruments, documents and other information have been given, then approval to the request as submitted shall be deemed to have been given. The improvements as shown upon said plans shall be substantially completed before said building shall be used or occupied as a dwelling. All improvements shall be constructed in

accordance with the plans and specifications as approved by the Architectural Control Committee and any improvements not so constructed shall be subject to immediate removal at Owner's expense. The provisions contained herein for violation or attempted violation of any of these covenants and restrictions shall be applicable hereto. In addition, before any Lot or tract within the Addition may be used or occupied, said user or occupier shall first obtain the Improvement Location Permit and Certificate of Occupancy required by the Allen County Zoning Ordinance. Further, before any living unit within the Addition shall be used and occupied, the Developer shall have installed all improvements serving the Lot whereon said living unit is situated, as set forth in Developer's plans filed with the Allen County Plan Commission.

16. Maintenance of Building Exteriors and Landscaping.

a. The Corporation will maintain the roof and exterior portion of each dwelling unit in good condition and repair, including painting, staining, repair and replacement of wood siding as necessary, remove snow from streets, driveways and sidewalks, and maintain the lawn and landscaping on each Lot. The frequency and manner of performance of such maintenance shall be determined solely by the Board of Directors of the Corporation. The Corporation shall not be responsible for repair or maintenance of decks and screened-in porches, any concrete on a Lot, or yard lights and other exterior lights, including replacement of bulbs, nor for window washing and glass replacement. The Board of Directors of the Corporation may, at its option by appropriate resolution, transfer to each Lot Owner the maintenance responsibility for that portion of the lawn and/or landscaping on each Lot which was not initially installed or planted by the Developer. In such event, the Corporation shall keep and make available to each Lot Owner a drawing or other suitable record of such original landscaping which the Corporation is to maintain. Each Lot Owner shall be permitted to perform or cause to be performed, at the Owner's sole expense, maintenance or repairs on the exterior of any dwelling unit on his Lot, which would otherwise fall within the maintenance responsibility of the Corporation hereunder, subject to prior written approval from the Architectural Control Committee.

b. Except to the extent of the Corporation's responsibilities for maintenance and repair, as above provided, each Owner shall, at his sole cost and expense, maintain and repair his Lot and the improvements situated thereon, keeping the same in good condition and repair, including those items specifically excluded from the Corporation's responsibilities and any other maintenance and repair responsibilities not expressly included among such responsibilities, as set forth above. In the event that any Owner shall fail to maintain and repair his Lot and the improvements thereon as required hereunder, the Corporation, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon; and each Owner (by acceptance of a deed for his Lot) hereby covenants and agrees to repay to the Corporation the cost thereof immediately upon demand. Such costs incurred and demanded by the Corporation, together with interest, costs, and reasonable attorney's fees, shall have the same status as both a continuing lien on the Lot and improvements and the personal obligation of the Owner as an assessment made under Section 22 hereof, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay such an assessment when due.

17. Maintenance Easements.

a. The Corporation and the Owner of any Lot whose dwelling is constructed up to or within ten (10) feet of an interior Lot line shall have an access easement over a portion of the adjacent Lot which shall be ten (10) feet in width measured from said interior Lot line, for the entire length of said Lot line separating the two Lots, for purposes of maintaining, replacing and repairing the exterior of the dwelling so located. This access easement shall extend to the agents, employees and independent contractors of either the Corporation, the Owner, or both. Any damage to an adjacent Lot or landscaping on an adjacent Lot shall be repaired at the expense of the Corporation, the Owner, or their respective agents, employees or independent contractors utilizing this easement.

b. Each Owner shall also have a permanent easement permitting roof structures which overhang and encroach upon the adjoining servient Lot, provided that the construction of such roof structure is permitted and approved as elsewhere herein provided.

18. Utility Easements. Easements are hereby expressly reserved and dedicated with dimensions, boundaries and locations as designated on the attached plat for the installation and maintenance of public utilities (including but not limited to, water, gas, telephone, electricity, sanitary sewer, and any other utilities of a public or quasi-public nature) and sewer and drainage facilities.

a. Any utility company and Developer, their successors and assigns, will have the right to enter upon said easements for any lawful purpose. All easements shall be kept free at all times of permanent structures except improvements installed by Developer or an authorized utility and removal of any obstruction by a utility company shall in no way obligate the company to restore the obstruction to its original form. The utility will restore any improvement installed by Developer or other authorized utility.

b. No buildings or structures located in the Addition shall be connected with distribution facilities provided by electrical, television or telephone services, except by means of wires, cables or conduits situated beneath the surface of the ground (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Addition, and except for such housings, pedestals or facilities as may be appropriate for connection of utility services for individual Lot Owners). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables.

c. The utility operating the sewer lines and sewage disposal plant for said subdivision shall have jurisdiction over the installation of all sewer connections and the same shall be installed to the property lines of each Lot by the developers. No individual water supply system, or individual sewage disposal system, shall be installed, maintained or used in the Addition. No rain or storm water run-off from roofs, street pavements or otherwise, or any other surface water, shall at any time be discharged into, or permitted to flow into, the sanitary sewer system, which shall be a separate sewer system from the storm water and surface water run-off system. No sanitary sewage shall at any time be discharged or permitted to flow into the storm water and surface water run-off sewer system.

d. Surface drainage easements and common areas used for drainage purposes as shown on the plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the land surface

shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the County Surveyor or a proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstruction exists and to repair and maintain, or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed.

19. Arlington Park Association. There has been organized in connection with the development of the preceding Sections of Arlington Park, an incorporated not-for-profit association known as the Arlington Park Association.

a. Membership. One membership shall be created for each Lot in Arlington Park, Section XV, in accordance with the intent that one membership be created for each Lot or living unit planned in Arlington Park, including all of its various Sections. Memberships will be voted by the Developer until transferred as hereinafter provided.

b. Membership Transfer. Memberships will transfer from the Developer to the grantee upon delivery of the deed.

c. Continuing Membership. The purchaser of any Lot in the Addition shall be a member of said Association and shall continue to be a member of said Association so long as he continues to be the Owner of a Lot for the purposes herein mentioned. Membership shall pass with the ownership of the land.

d. Transfer of Membership Rights and Privileges. Each Owner, or in lieu thereof (and with the written consent of such Owner to the Association) each Lessee of a Lot, shall be a member of the Association and have the right to the Owner's vote and privileges. Membership, where assigned to a Lessee, will pass with the lease except if the Owner withdraws his consent in writing to the Association. The Owner may withdraw his membership assignment to the Lessee at his discretion by a sixty (60) day notice in writing to the Association.

20. Assessments Payable to Arlington Park Association. Developer, for each Lot owned by it within the Addition, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or conveyance, shall be deemed to covenant and agree to pay to the Arlington Park Association, the Maintenance Fund and/or Club Operating Fund assessments and charges, as hereinafter provided.

a. Maintenance Fund. The "Maintenance Fund" assessment shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents of Arlington Park, and in particular, for the improvement and maintenance of the greenways, sidewalks, playgrounds and all other Common Areas, including but not limited to, repair, maintenance, the cost of labor, equipment and materials, supervision, security, lighting, lawn care, snow removal, insurance, taxes, and all other things necessary or desirable in the opinion of the Members of the Association in connection therewith.

The Maintenance Fund Assessment as herein provided shall commence to accrue and become a lien upon any Lot as soon as title thereto has been divested from Developer, or when a dwelling shall be erected thereon, whichever shall first occur, and shall be payable on the first day of January of each year thereafter. All assessments shall be determined by and paid to the Association, and the Association shall be responsible for carrying out the purposes of such assessments.

The amount of said Maintenance Fund assessment is established as follows:

(i) The Board of Directors of the Association shall establish a budget for each calendar year and shall determine the annual membership assessment required to meet said budget. Such budget and assessment for each such calendar year shall be established by the Board of Directors at a meeting to be held not later than October 31st of each preceding calendar year. The Board of Directors shall then mail to all Association members a copy of said budget and notice of the ensuing year's assessment not later than November 15th of the year prior to the year to which the assessment is applicable.

(ii) The amount of the assessment set by the Board of Directors for any such calendar year may be changed by the members of the Association at a meeting duly called for that purpose as hereinafter provided. The President or Secretary of the Association shall call a meeting of the membership of the Association, to be held prior to December 31st of the year prior to the year to which the assessment is applicable, upon receipt, prior to November 30th, of a written petition for assessment review bearing the signatures of at least twenty (20%) percent of the memberships of the Association. The President or Secretary of the Association shall give at least fifteen (15) days written notice of such meeting to all members.

(iv) Any change so adopted in the amount of the assessment set by the Board of Directors must have the assent of two-thirds (2/3) of the memberships of the Association who are voting in person or by proxy at a meeting duly called for such purpose. At any such meeting, a quorum of not less than fifty (50%) percent of all memberships shall be required.

b. Club Operating Fund. For the purpose of maintaining and operating the clubhouse and associated facilities in Arlington Park, the Club Operating Fund has been established. The Club Operating Fund assessment will commence to accrue and become a lien upon each Lot in the Addition at such time as a dwelling has been erected on such Lot. Said Club Operating Fund assessment shall be payable on the first day of January of each year thereafter. All assessments shall be determined by and paid to the Association, and the Association shall be responsible for carrying out the purposes of such assessments.

The amount of said Club Operating Fund Assessment is established as follows:

(i) The Board of Directors of the Association shall establish a budget for each calendar year and shall determine therefrom the annual membership assessment required to meet said budget. Such budget and assessment for each calendar year shall be established by the Board of Directors at a meeting to be held not later than October 31st of each preceding calendar year. The Board of Directors shall mail to all Association members a copy of said budget and notice of the ensuing year's assessment not later than November 15th of the year prior to the year to which the assessment is applicable.

(ii) The amount of the assessment set by the Board of Directors for any such calendar year may be changed by the members of the Association at a meeting duly called for that purpose as hereinafter provided. The

President or Secretary of the Association shall call such meeting of the membership, to be held prior to December 31st of the year prior to the year to which the assessment is applicable, upon receipt, prior to November 30th, of a written petition for assessment review bearing the signatures of at least twenty (20%) percent of the memberships of the Association. The President or Secretary of the Association shall give at least fifteen (15) days written notice of such meeting to all members.

(iii) Any change so adopted in the amount of the assessment set by the Board of Directors must have the assent of two-thirds (2/3) of the memberships of the Association who are voting in person or by proxy at a meeting duly called for such purpose. At any such meeting, a quorum of not less than fifty (50%) percent of all memberships shall be required.

(iv) Said Club Operating Fund shall be used exclusively for the purpose of operating and maintaining said clubhouse and all recreational facilities therein or used in connection therewith, including but not limited to, repair, maintenance, cost of labor, equipment, supervision, taxes, insurance, and all other things necessary or desirable in the opinion of the Members of the Association in connection therewith.

c. Collection. Such Maintenance Fund and Club Operating Fund assessments, together with interest thereon and costs of collection as hereafter provided, shall be a lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection, shall also be the personal obligation of the person or persons who was the Owner of such property at the time when the assessment fell due. The obligation of the assessment is upon the Owner of the property and is not transferred, even though the Owner may have transferred the membership and voting rights in Arlington Park Association, as hereinbefore provided. If the assessments are not paid on the due date, then such assessments shall be a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. However, the personal obligation of the then Owner shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid within sixty (60) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight (8%) percent per annum, and the Association may bring an action against the Owner personally obligated to pay the same, or foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing such action. The lien of the assessments as provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the property, taxes and assessments for public improvements.

21. Brittany Village Association, Inc.. There will be organized by the Developer forthwith a not-for-profit corporation to be known as Brittany Village Association, Inc.

a. Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Corporation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment, and shall be subject to the By-Laws of the Corporation.

b. Classes of Membership. The Corporation shall have two classes of voting membership:

Class A. Class A members shall be all Owners exclusive of the Developer. Owners shall be entitled to one (1) vote for each Lot owned.

Class B. Class B member(s) shall be the Developer, which shall be entitled to 78 votes less that number of votes which Class A members are entitled to exercise. Class B membership shall cease upon the happening of either of the following events:

(1) when fee simple title to all Lots in the Addition has been conveyed by the Developer; or

(2) on December 31, 1994.

22. Maintenance Assessments Payable to Brittany Village Association, Inc..

a. Each Owner, exclusive of the Developer, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation (1) annual assessments and (2) special assessments to be established and collected as hereinafter provided. Such assessments shall be in addition to the assessments payable to the Arlington Park Association pursuant to Paragraph 20 hereof. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

b. Purpose of Assessments. The assessments levied by the Corporation shall be used exclusively for the performance of the obligations of the Corporation as described herein.

c. Maximum Annual Assessment. Until July 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Nine Hundred Dollars (\$900.00), subject to increase and decrease in accordance with the By-Laws of the Corporation.

(i) From and after July 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 8% above the maximum assessment for the previous year without a vote of the membership.

(ii) From and after July 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 8% by the vote or written assent of 51% of each class of members.

(iii) The Board of Directors of the Corporation may fix the annual assessment at an amount not in excess of the maximum.

d. Special Assessments for Capital Improvements and Extraordinary Items. In addition to the annual assessments authorized above, the Corporation may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of necessary maintenance of an extraordinary nature, or the cost of new



construction or replacement of items of a capital nature, provided that any such assessment shall have the vote or written assent of 66.66% of each class of members.

e. Notice and Quorum. Any action authorized by the foregoing subparagraphs c.(ii) and d. shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting (66.66% in the case of action under subparagraph d.), but such vote is less than the requisite 51% of each class of members (66.66% in the case of action under subparagraph d.), members who were present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Corporation not later than 30 days from the date of such meeting.

f. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or yearly basis, in advance.

g. Date of Commencement of Assessments; Due Dates. The monthly assessments provided for herein shall commence as to each Lot on the first of the following dates: (1) the date of issuance of a Certificate of Occupancy for a completed dwelling on said Lot; and (2) the date of payment of the final construction draw with respect to a dwelling constructed on said Lot, disregarding any monies retained in escrow from such final draw. The first annual assessment shall be adjusted according to the number of days remaining in the year. The Board of Directors shall fix the amount of the assessment against each Lot not later than June 1 of each year, to be effective for one (1) year. Written notice of the assessment shall be sent to every Owner subject thereto. Assessments shall be due and payable quarterly on the 1st day of July and October of each year, and on the 1st day of January and April of the following year. The Corporation shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Corporation setting forth whether the assessments on a specified Lot have been paid as of a particular date.

h. Effect of Non-Payment of Assessments; Remedies of the Corporation. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate per annum which shall be Two (2.0) percentage points above the prime rate of Summit Bank, Fort Wayne, Indiana, determined as of the due date. The Corporation may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

i. 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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

23. Installation of Improvements. Before any house or building on any Lot or tract in this subdivision shall be used and occupied as a dwelling or as otherwise provided in the subdivision restrictions above, the developing Owner of said platted Lot or tract shall install all improvements serving said

Lot or tract as provided in said plans and specifications for this subdivision filed with the Board of County Commissioners. This covenant shall run with the land and be enforceable by the County of Allen, State of Indiana, or by any aggrieved Lot Owner in this subdivision.

24. Permits. Before any Lot or tract may be used and occupied, such user or occupier shall first obtain from the Allen County Zoning Administrator the Improvement Location Permit and Certificate of Occupancy as required by the Allen County Zoning Ordinance.

25. Lot Subdivision. No Lot or combination of Lots within this subdivision may be further subdivided unless and until approval therefore has been obtained from the Allen County Plan Commission.

26. Duration and Alteration. These protective covenants, restrictions and limitations shall be construed as, and shall be, covenants running with the land and shall be binding upon all Owners and Lessees of land in said Addition and all persons claiming under them. They shall continue in existence of a period of fifty (50) years from the date of the recording hereof and thereafter shall be automatically extended for successive periods of ten (10) years each. The protective covenants, restrictions and limitations (but not the easements) may be changed, abolished or altered in part by written instrument signed by the Owners of not less than seventy-five percent (75%) of the membership of the Arlington Park Association, except that Paragraphs 16, 17, 21 and 22 hereof may be changed, abolished or altered in part by written instrument signed by the Owners of not less than sixty-six and two thirds percent (66.66%) of the membership of Brittany Village Association, Inc.; and may be changed, altered or amended by the Developer within two (2) years from and after the date of recording hereof; all said amendments, changes or alterations, however, shall have the prior approval of the Allen County Plan Commission or its successor.

27. Enforcement. The Association, the Corporation, the Developer, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these covenants and restrictions.

28. Waiver. The failure of either the Developer or an Owner to enforce any covenant contained herein or right arising from any covenant contained herein shall in no case be deemed a waiver of that right or covenant.

29. Severability. Invalidity of any one of these provisions shall in no way affect any of the other provisions which shall remain in full force and effect.

30. Flood Protection Grades. In order to minimize potential damages from surface water, flood protection grades are established as set forth below. All dwellings shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum elevation of the first floor or the minimum fill elevation of any opening below the first floor. Flood protection grades above mean sea level are as follows: Lots 838 through 855, 782.5; Lots 856 and 857, 784.1; Lot 858, 783.9; Lot 859, 783.7; Lot 860, 783.6; Lot 861, 783.5; Lot 862, 783.4; Lots 863 through 871, 783.3; and Lots 872 through 876, 783.2.