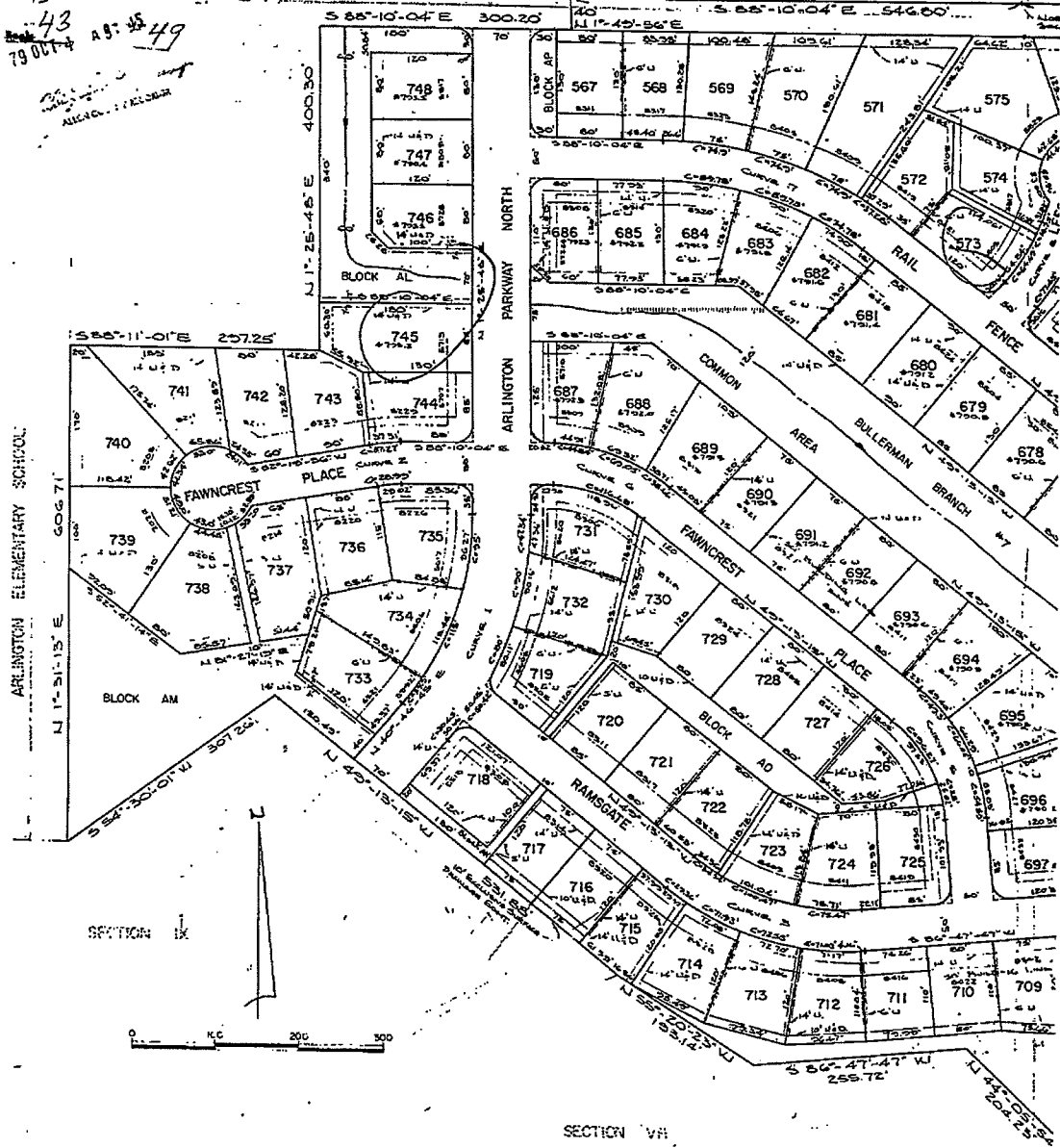


Plat Record 43 pages 47-52

ARLINGTON PARK SECTION XII

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



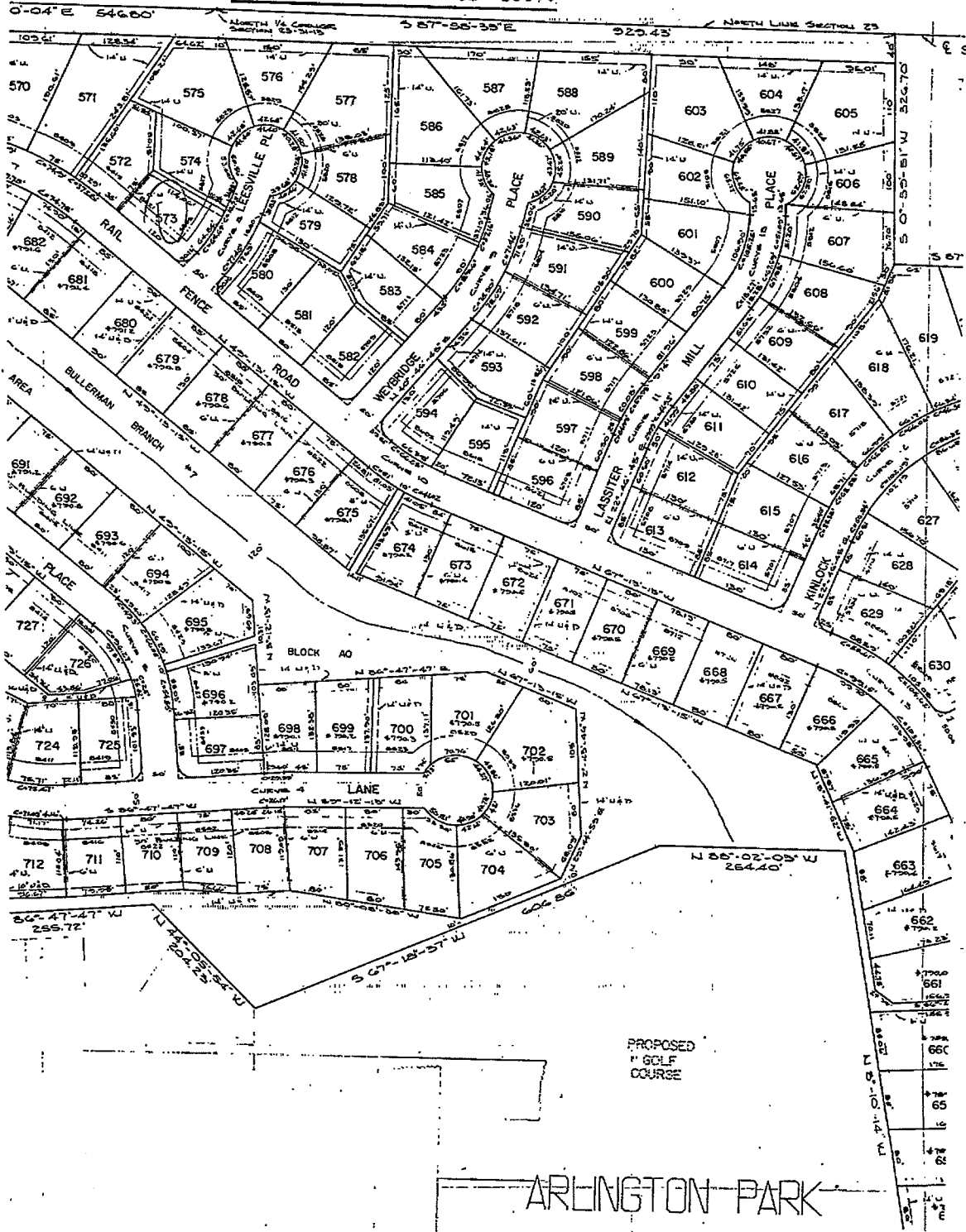
43
79 OCT 4
A 8: 49
ALLEN COUNTY RECORDS

ARLINGTON PARK

DEVELOPED BY
CHELSEA TWO, INC.
6700 E. STATE BLVD.
FORT WAYNE, INDIANA

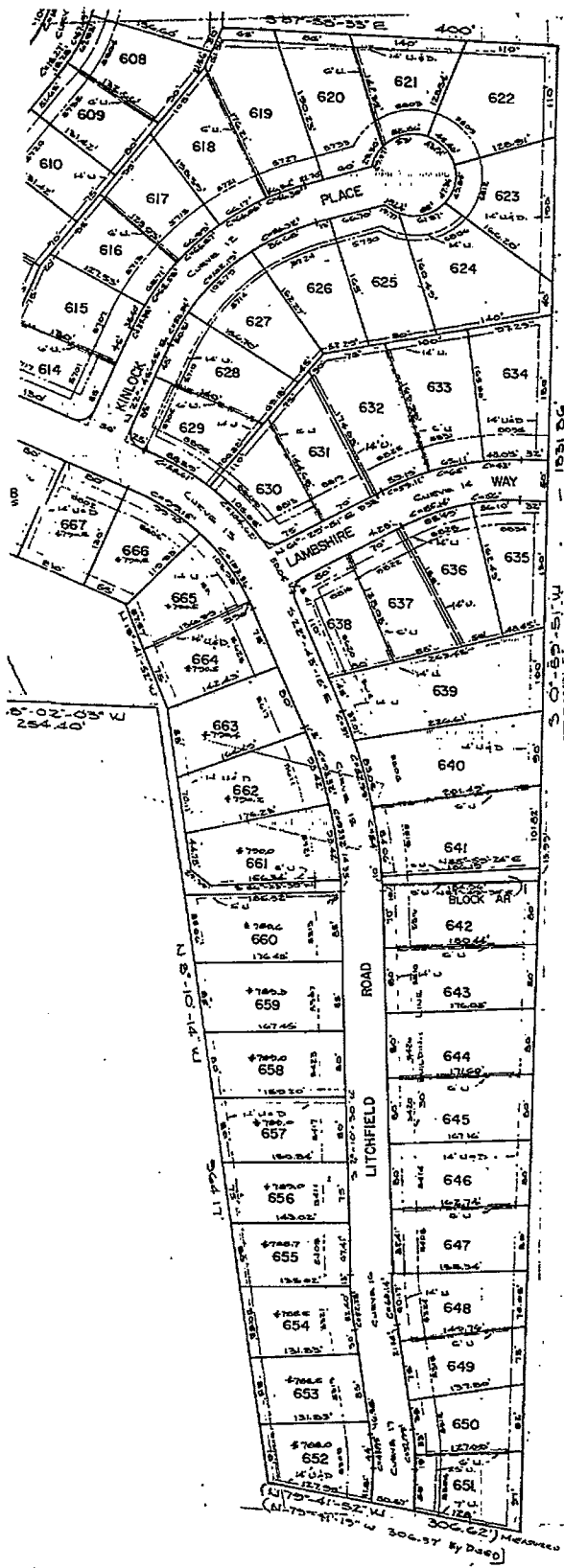
Book 43 48

73-30603



PROPOSED
GOLF
COURSE

ARLINGTON PARK



ARLINGTON PARK, SECTION XII

79- 30603

CHELSEA TWO, INC., an Indiana corporation by Joseph L. Zehr, its President, and Arlene K. Duncan, its Secretary, does hereby declare that it is the Owner of the following described real estate in Allen County, Indiana, to-wit:

As Per Exhibit "A" attached hereto ...

and does hereby cause the real estate above described to be platted into lots, streets, pedestrian rights-of-way, common areas and easements in accordance with the plan and plat appended hereto and made a part hereof, to be known as

ARLINGTON PARK, SECTION XII

a subdivision in Allen County, Indiana (the "Addition"). The lots in said Addition are numbered from 567 to 748 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 enforceful 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 revision, re-entry or forfeiture of title resulting from any violation.

PROTECTIVE COVENANTS, RESTRICTIONS AND LIMITATIONS

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

- a. "Developer" shall mean Chelsea Two, Inc., its successor or successors in interest in any person, firm or corporation designated by it or its said successor or successors.
- b. "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.
- c. "Living Unit" shall mean any portion of a building designated and intended for use and occupancy as a residence by a single family.

79 OCT 4 A9:45

- d. "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.
- e. "Lessee" shall mean and refer to a person leasing from an Owner, whether one or more persons or entities, of the fee simple title to any lot or living unit situated in the Addition.
- f. "Association" shall mean and refer to the Arlington Park Association.
- g. "Member" shall mean any person who may be entitled and obligated to hold one or more memberships in the Arlington Park Association.
- h. "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.
- i. "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.
- j. "Pedestrian Rights-of-Way" shall mean any area which is 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, subject to utility rights as hereinafter provided.
- k. "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.
- l. "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.
2. Use. No lots shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain, on any lot other than one detached dwelling for use by a single family. Each dwelling shall include not less than a two car garage, which shall be constructed as a part of said structure and attached thereto.
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 garages, of less than thirteen hundred and fifty (1350) square feet for a one-story dwelling, nor less than nine hundred (900) square feet for a dwelling of more than one-story on lots numbered 567 through 651; 686, 718; 736 through 743; and 746 through 748 all inclusive and not less than sixteen hundred (1600) square feet for a one-story dwelling; nor less than nine hundred fifty (950) square feet for a dwelling of more than one-story on lots numbered 652 through 654; 666 through 685; 687 through 697; 710 through 717; and 719 through 735; 744 and 745 all inclusive and not less than eighteen hundred (1800) square feet for a one-story dwelling, nor less than one thousand (1000) square feet for a dwelling of more than one-story on lots numbered 655 through 665 and 698 through 709 all inclusive.

5. Building Lines. No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. In any event, no building shall be located nearer than a distance of seven (7) feet to an interior lot line. No dwelling shall be located nearer than twenty-five (25) feet to the rear lot line.

6. Minimum Lot Area. No dwelling or structure shall be erected or permitted on any lot having a width of less than sixty-five (65) feet at the minimum building setback line, nor an area of less than seven thousand two hundred (7200) 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 fifteen (15) feet (plus or minus one foot) from the street curb. Such yard light or illuminating device will be of such design and construction as shall be approved by the Architectural Control Committee; said Committee shall also have the authority to approve a change in the location of said yard light or illuminating device. The Owners of said dwelling upon which said yard light or other illuminating device shall have been installed shall cause said yard light or other illuminating device to be illuminated at all times other than daylight hours.

8. Signs. No sign shall be erected or permitted, except one professional sign of not more than one square foot, 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.

9. Fences. No wire, metal or chain link fences will be permitted on any lot. Chain link back stops for play areas owned and maintained by the Arlington Park Association will be permitted.

10. Antennas and Appurtenances. Antennas for television or radio receiving or transmitting or any other appurtenance attached or detached from the dwelling will not be permitted if they extend six (6) feet above the top roof line without the written approval of the Architectural Control Committee.

11. 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 lot shall be used for the purpose of raising, breeding or keeping animals, livestock or poultry except as household pets, providing the same 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.

12. 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. One accessory building may be approved for each lot, the type and location to be approved by the Architectural Control Committee.

13. Common Areas. Certain playgrounds, flood control areas, pedestrian underpasses, greenways and pedestrian rights-of-way designated on the plans 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 easements of enjoyment in and to said Common Areas; provided that certain of the pedestrian rights-of-way as designated on the plat shall also be reserved as utility easements, as set forth in Paragraph 15 hereof, and shall be subject to all the terms and conditions as provided in said Paragraph 15. 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 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.

b. The right of the Association to dedicate or transfer all or any part of the Common Areas 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.

14. Approval of Improvements by Architectural Control Committee. In order to maintain harmonious structural design and lot grades, no dwelling, building or improvements 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 grade elevations, have been approved by the Architectural Control Committee. The Architectural Control Committee shall be comprised of three (3) members, two (2) members to be designated by the Developer and one (1) member to be designated by the Association initially. The Developer shall have the right, at such time as it may elect, to relinquish its right to designate the members of the Architectural Control Committee to the Association. 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 Developer'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 submitted, 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 in accordance with the plans and specifications as approved by the Architectural Control Committee. The provisions hereinbefore provided for violation or attempted violation of any of these covenants and restrictions shall be applicable hereto. In addition, before any lot 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.

15. 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, and any other utilities of a public or quasi-public nature) and sewer and drainage facilities.

a. Any utility company and the 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 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 housing, 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 services 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 plan are intended for either periodic or occasional use as conductors for the flow of surface water run-off 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.

16. Arlington Park Association. There has been organized and incorporated a not-for-profit association, which said association is known as the Arlington Park Association.

a. Membership. One membership shall be created for each lot or living unit planned in Arlington Park. The Developer's plans presently provide for the construction of an additional two hundred forty two (242) living units in Arlington Park, which will be voted by the Developer until transferred as hereinafter provided.

b. Membership Transfer. Memberships will transfer from the Developer to its grantee upon delivery of the deed. In the case of the conveyance of land to be used for multi-family construction, said memberships will not transfer to the grantee until the Architectural Control Committee has approved the grantee's plans and then one membership for each living unit to be constructed on the land conveyed will be transferred from the Developer to the grantee.

c. Continuing Membership. The purchaser of any lot or living unit in Arlington Park 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 or living unit in Arlington Park for the purposes herein mentioned. Membership shall pass with the Ownership of the land or living unit.

d. Transfer of Membership Rights and Privileges to Lessee. Each Owner, or in lieu thereof each Lessee, of a living unit (with the written consent of such Owner to the Association), 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.

17. Assessments. Each Owner of any lot or living unit, by acceptance of a deed therefore, 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 and/or Club Operating Fund. The Maintenance Fund and/or Club Operating Fund assessment shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents of the Addition and in particular, for the improvement and maintenance of a clubhouse, swimming pools, 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 and/or Club Operation Fund assessment as herein provided shall commence to accrue and become a lien upon any said lots or living units as soon as title thereto has been divested from Developer, 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 and/or Club Operation Fund assessment is established as follows:

- (i) The annual assessment for the calendar year starting January 1, 1979, shall be Two Hundred Sixty Dollars (\$260.00) per assessable membership.
- (ii) For each year thereafter, commencing with the year beginning January 1, 1980, the Board of Directors of the Association shall establish a budget for such 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 to which the assessment is applicable.
- (iii) The amount of the assessment set by the Board of Directors for any 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 membership 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. Collection. Such Maintenance Fund and/or Club Operating Fund assessment, together with interest thereon and costs of collection as hereafter provided, shall be a lien upon the property against which each 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 or the living unit 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 Owner, his heirs, devisees, personal representatives and assigns. However, the personal obligation of the then Owner to pay such assessment shall remain a personal obligation and 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.

18. Driveway Access. No driveway access shall be permitted for lots numbered 567 through 571; 575 through 577; 586 through 588; 603 through 605 all inclusive onto the St. Joe Center Road right-of-way.

19. 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 for 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 plat, 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 (75) percent of the membership of the Arlington Park Association; and may be changed, altered or amended by the Developer with the consent of the Association 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 successors.

20. 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 the right or covenant.

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

22. Further Subdivision. No lot or combination of lots may be further subdivided until approval therefor has been obtained from the Allen County Plan Commission.

23. Sidewalks. Plans and specifications for this subdivision, on file with the Allen County Plan Commission and the Board of Commissioners of Allen County, require the installation of concrete sidewalks within the street rights-of-way in front of lots numbered 567 through 574; 580 through 585; 594 through 602; 613 through 620; 629 through 634; 638 through 641; 652 through 660; 686 and 687; 718 and 719; 731 and 732; and 742 through 744 all inclusive. Installation of said sidewalks shall be the

obligation of the Owner of any such lot, exclusive of Chelsea Two, Inc., 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. Should such Certificate of Occupancy be issued to Chelsea Two, Inc., said corporation shall be considered an Owner for purposes of the enforcement of this covenant.

24. Flood Protection Grades. The following lots shall have minimum slab elevations of not less than the following respective feet above Mean Sea Level: Lot numbered 652 - 788.0 feet above Mean Sea Level; Lots numbered 653 through 654 - 788.5 feet above Mean Sea Level; Lot numbered 655 - 788.7 feet above Mean Sea Level; Lots numbered 656 through 658 - 789.0 feet above Mean Sea Level; Lot numbered 659 - 789.3 feet above Mean Sea Level; Lot numbered 660 - 789.6 feet above Mean Sea Level; Lot numbered 661 - 790.0 feet above Mean Sea Level; Lots numbered 675 and 698 - 790.1 feet above Mean Sea Level; Lots numbered 662, 674, 696 and 699 - 790.2 feet above Mean Sea Level; Lots numbered 676, 695 and 700 - 790.3 feet above Mean Sea Level; Lots numbered 663 and 673 - 790.4 feet above Mean Sea Level; Lots numbered 664 through 672, 677, 694, 701 and 702 - 790.5 feet above Mean Sea Level; Lots numbered 678 and 693 - 790.6 feet above Mean Sea Level; Lots numbered 679 and 692 - 790.8 feet above Mean Sea Level; Lots numbered 680 and 691 - 791.2 feet above Mean Sea Level; Lot numbered 690 - 791.3 feet above Mean Sea Level; Lot numbered 681 - 791.4 feet above Mean Sea Level; Lot numbered 689 - 791.5 feet above Mean Sea Level; Lot numbered 682 - 791.6 feet above Mean Sea Level; Lot numbered 683 - 791.8 feet above Mean Sea Level; Lots numbered 684 - 791.9 feet above Mean Sea Level; Lot numbered 688 - 792.0 feet above Mean Sea Level; Lot numbered 685 - 792.2 feet above Mean Sea Level; Lots numbered 686 through 687 - 792.3 feet above Mean Sea Level; Lot numbered 745 - 793.2 feet above Mean Sea Level; Lot numbered 746 - 793.3 feet above Mean Sea Level; Lot numbered 747 - 793.4 feet above Mean Sea Level; Lot numbered 748 - 793.5 feet above Mean Sea Level, all inclusive.

IN WITNESS WHEREOF, CHELSEA TWO, INC., by its President, Joseph L. Zehr, and its Secretary, Arlene K. Duncan, has hereunto set its hand and seal this 13th day of February, 1979.

CHELSEA TWO, INC.

By: 
Joseph L. Zehr, President

By: 
Arlene K. Duncan, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public, in and for said County and State, this 13th day of February, 1979, personally appeared Joseph L. Zehr and Arlene K. Duncan, to me known, and known by me to be the persons, who as President and Secretary, respectively of CHELSEA TWO, INC., the corporation which executed the foregoing instrument, signed the same and acknowledged to me that they did so sign the same in the name and on behalf of said corporation as such officers, respectively, and the free and corporate act and deed of said corporation; and that they were duly authorized thereunto by the Board of Directors of said Corporation.