

20021

DECLARATION OF RESTRICTIVE COVENANTS
FOREST COMMONS SUBDIVISION
Sections 1 and 2

The undersigned, AVON DEVELOPMENT CORPORATION (referred to as "ADC"), represented by its corporate officer, as owner of FOREST COMMONS Subdivision, Sections 1 and 2 (the "Subdivision"), located in Washington Township, Hendricks County, Indiana, do by this indenture restrict and covenant the lots and other area within said Subdivision to itself and its assigns, grantees, successors, heirs, or legal representatives, and to any person, persons, corporations, banks, associations, and/or anyone who may obtain title to said lots as to the following terms, stipulations, restrictions, conditions and covenants, to wit:

1. FULLY PROTECTIVE RESIDENTIAL AREA: The following covenants shall apply to all lots in Forest Commons, Sections 1 and 2.
2. HOMESITE USE: No portion of said real estate shall be used for any purpose other than single family residential dwellings, nor shall any lot be further subdivided.
3. FOREST COMMONS MAINTENANCE ASSOCIATION: All owners of lots in the Subdivision shall become members of the Forest Commons Maintenance Association (the "Association") which includes all owners of lots in all sections and phases of Forest Commons. The Association is a not-for-profit corporation with mandatory membership of all lot owners. The sole purpose of the Association is to maintain a clean, safe and attractive subdivision for the enjoyment and benefit of the members. All common areas (see paragraph #25) will be deeded to the Association within sixty (60) days of plat recording and will be maintained by the Association as part of its normal activities.

(a) Each lot owner, by acceptance of a deed of conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments or charges for specific maintenance functions within the subdivision performed for the benefit of all members. Each such annual assessment shall be the personal obligation of the person(s) who was the owner of the property when the assessment was due. In the case of multiple owners of a specific lot, the term "owner" shall refer to the person representing such multiple owners. If a lot is sold, the payment of the previous owner remains with the Association and no assessment is due from the new owner until the next normal assessment date. The annual assessment date shall be January 1 for each calendar year. At the time of closing of the lot purchase from ADC, the original lot purchaser shall make a payment to the Association of a prorated assessment, calculated for the remaining calendar months in the current year, commencing with the first day of the month following closing. The payment shall be deposited in the Association's checking account. The next assessment shall be due on the following January 1 and will be for a full year. After formation, the Association may modify the above payment schedule as necessary to meet the needs of the Association.

(b) The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the Association members, and in particular for the following: (1) maintenance of all common areas or areas so directed by the Association, including mowing and general cleanup, (2) maintenance of the entrance plantings, including payment of electric or water bills associated with any irrigation systems or watering activities, (3) payments for billings by Hendricks County REMC for any lighting or other power requirements which the Association requests be provided within the Subdivision, (4) costs associated with routine expenses of the Association, including legal fees, property taxes on the common areas if applicable, insurance, etc., and (5) other general functions that the Association shall determine are in the best interests of its members, including any costs necessary to collect delinquent assessments from members. Additional uses of Association funds are dependent on the decisions of the membership.

(c) The initial annual assessment shall be in the amount of Ninety-Five Dollars (\$95.00) per lot. In no event shall any assessment or charge be levied against or be due from the undersigned Avon Development Corporation, its representatives, or assigns. Future assessments are to be determined by the Association membership based on a comparison of member payments and maintenance costs. The Association may change the maximum and basis of the assessments, provided that any such change shall have the assent of two-thirds of the voting members. If the assessments from members are not paid on the date due, then the assessment and costs of collection thereof shall thereupon become a continuing lien on the property. No assessments shall be levied against a builder who purchases a lot for the construction of a residence for resale. The purchaser of said residence shall make an initial payment to the Association at the time of closing on the purchase of the house from the builder as if the purchase had been from ADC directly at the time of such purchase from the builder, according to paragraph 3a.

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(d) The management, affairs and policies of the Association shall be vested in the Board of Directors (the "Directors") which will conduct the day to day functions of the Association on behalf of its members. The initial Board of Directors (the "Acting Directors") shall consist of a representative of ADC and up to Six (6) lot owners appointed by ADC. When a total of Thirty lots in the Subdivision have been sold by ADC the Acting Board shall contact all owners in writing and solicit interest in serving on the Board of Directors. Based on this solicitation, the Acting Directors shall then provide all lot owners with a slate of candidates (these must be existing owners of lots in the Subdivision) and a written ballot (one per lot). Based on the tabulation of all ballots returned, the new Board of Directors shall be established, whereupon the Acting Board shall be dissolved. The tenure of the members of the Board of Directors shall be such that no more than half of the Director's terms will expire each year. Upon its formation, the Board shall immediately elect a President, Vice-President, Secretary and Treasurer and assign specific duties to each. There will be no compensation paid to any member of the Board of Directors. The terms of all officers shall be one year, unless reelected by the Board. As long as any lots remain unsold in any section of Forest Commons, a representative of ADC may serve on the Board if desired by ADC, resulting in a total Board membership of seven (7) members.

(e) On an annual basis, the Directors shall prepare a roster of the properties and assessments applicable thereto at least thirty (30) days in advance of such assessment due date. Such roster shall be kept in the office of the Association. An assessment shall thereupon be sent to every Association member subject thereto prior to December 15 for payment the following January 1. Payments shall be considered delinquent if not received by January 15. Although generally the Directors shall have the authority to act on behalf of the members and total membership meetings are not required, the Directors may call meetings of all members of the Association when considered appropriate. At any meeting of the members, or through written ballot provided separately to the members, a two-thirds majority of those actually voting shall be required to pass any motion made by members. Only one vote per lot is permitted. Similarly, a two-thirds majority of the Directors voting shall be required to pass any motion made in Director's meetings or by written ballot outside any scheduled meeting. However, at least two-thirds of the Directors must vote in any action for that action to become effective. On an annual basis, the Directors shall prepare an annual report to the membership, summarizing the primary events of the past year and accounting for all funds received from the members.

(f) The Directors shall meet at a frequency considered appropriate to discuss the maintenance activities and review the need to take any action to protect the interests of the Association. Routine bills may be paid directly by the Treasurer after approval by one other officer. It is expected that the Board shall also contact any lot owner who may be causing or permitting any activity to occur to the detriment of the members, and request that such activity be eliminated or corrected. This includes, among others, permitting trash to accumulate on unimproved lots, not mowing unimproved lots, depositing refuse or material on an adjacent lot, or not maintaining a building site during construction of the residence in conformity with paragraph 22.

4. ARCHITECTURAL CONTROL: No building shall be erected, placed or altered on any lot in this subdivision until the plans, specifications and plot plan showing the location of such building has been approved by the Architectural Committee which shall consist of the undersigned owner, ADC, or by its duly authorized representatives, if a document is executed by ADC conveying such responsibility. The approval or disapproval, as required in these covenants, shall be in writing. In the event that said written approval is NOT received within ten (10) days from the date of submission, it shall be deemed that the plans and specifications have been **DISAPPROVED**. Prior to commencement of any construction activities, the builder (or general contractor) who will be responsible for the construction must contact the Chairman of the Architectural Committee to ensure an understanding of the "Special Provisions During Construction" as discussed in paragraph 22. This will be requested in the approval letter received from the Architectural Committee.
5. DWELLING: The ground floor of the main structure, exclusive of porches and garages, shall NOT be less than Two Thousand (2000) square feet in the case of one story structures, nor less than Twelve Hundred (1200) square feet in the case of multiple story structures, with no less than Twenty-Four Hundred (2400) square feet of finished floor area in such multiple story structures (determination of sufficiency and adequacy of the term "ground floor of main structure" with respect to dwellings of tri-level, bi-level and one-and-one-half story design shall rest exclusively with the Architectural Committee). Basements, either finished or unfinished, shall not be included in square footage calculations. In addition to the above square footage requirements, each structure shall have an attached garage structure of no less than 440 square feet in size. No detached garages or other outbuildings are permitted. All building locations and elevations must comply with the plat and Hendricks County or applicable municipal regulations. The exterior walls of a single story residence must be constructed with at least eighty-five (85) percent of the exterior walls covered with brick or stone veneer. Multiple story structures shall have one hundred (100) percent of the first floor covered with brick or stone veneer. The above brick or stone requirements do not apply

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to residence exteriors on covered porches. The Architectural Committee is solely responsible for determining the compliance of proposed house plans with these square footage and masonry requirements. No Aluminum or vinyl siding is permitted.

6. BUILDING LOCATION: Front yard set back lines, and side yard set back lines on corner lots are shown on the plat, between which lines and the property lines of the street there shall be no buildings or structures of any kind erected or maintained. Side yard set back lines on all other lots shall meet applicable Hendricks County zoning regulations.
7. DRAINAGE AND UTILITY EASEMENTS: The strips of ground marked UTILITY easements are hereby reserved for the use of public utilities subject at all times to the proper authorities and to the easements herein granted and reserved. The DRAINAGE easements reserved as drainage swales may be used by the proper authorities and are to be maintained by any owner such that adequate drainage is maintained along such swale. In the event that activities related to construction of a house, including yard grading or erosion damage, causes any swale to become blocked or fail to drain properly, it shall be the responsibility of the lot owner to reestablish the proper swale drainage. Lot owners should attempt to keep street drains clear of leaves and other debris in order to maintain a safe and attractive environment. All utility easements are also subject to all restrictions of drainage easements. No permanent or other structures are to be erected or maintained upon any easement shown upon the plat and owners of lots shall take their titles subject to the rights of the above easements; NO sump pump may be discharged into the street after a house is completed. The discharge of a sump pump MUST be installed underground with plastic pipe or vitrified tile to subsurface drains or approved drainage swales. NO downspout drains or any other drainage system except sump pumps may be connected to the subsurface drains located along the street. In order to ensure the proper operation of the drainage system, No dumping of any material into the drainage swales is permitted, including leaves, grass clippings, dirt, stones, trash or any other items. During construction activities through final establishment of a grass cover, it is the responsibility of the lot owner to ensure that suitable means are installed to prevent silting of any drainage swale or street. This will include placement of silt fences, straw bales or other means to prevent mud or dirt from washing into drainage swales or streets.
8. UTILITY BUILDINGS: NO out-buildings are permitted on any lot, including storage buildings, detached garages, mini-barns, tool sheds or any building other than the residence.
9. BUSINESSES: NO mercantile building shall be erected, built, or placed on any portion of the referenced subdivision or may any dwelling be used for any business of any nature. However, a house shall be permitted to be used as a model home by a builder for a period of six (6) months measured from the date of issuance of an occupancy permit by Hendricks County authorities, after which the house must be placed on the market and be available for sale by the builder. During such use of the house as a model home, the total signage that may be used on any lot shall not exceed twenty-five (25) square feet with no single sign exceeding sixteen (16) square feet. After the model home period (under the above time period limitation), the sign limits of paragraph 11 shall apply. The above sign limitations shall not apply to signs used by Avon Development Corporation or its agents to market lots in the subdivision or signs erected by lending institutions financing development of the subdivision.
10. NUISANCES: NO noxious or offensive activity shall be carried out on any homesite or anywhere within the boundaries of the subdivision, nor anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. This includes, but is not limited to, the operation of ANY moped, motorcycle, off-road vehicle, all-terrain vehicle or similar item on any lot or on any street within the boundaries of the subdivision. No vehicle shall be operated at any time within the subdivision if it is not properly licensed by the driver and legal on public thoroughfares.
11. TEMPORARY AND OTHER STRUCTURES: No structure of a temporary character, mobile home, basement, tent, shed, garage, barn, or other outbuildings shall be used upon any homesite at any time as a residence, either temporarily or permanently. No animal kennel, paved slab that would serve as a basketball court (except the use of an existing driveway), tennis court, paddle ball court or similar activity is permitted. No solar panels (if visible beyond the lot boundaries), satellite discs larger than twenty-four (24) inches in diameter, or signs other than one sign of no more than five (5) square feet used to advertise the property for sale, may be placed on any homesite (except as provided in paragraph 9 regarding model homes). No exterior antennas are permitted except that a temporary television antenna is permitted until cable television service is available to the lot in question. At such time that cable television service becomes available, then any exterior antennas must be immediately removed. Temporary structures used by builders during construction of the residence shall be allowed to remain during the building period. No sales trailers or other structures are permitted except for use by ADC for sales of lots in the Subdivision.

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12. **GARBAGE AND REFUSE DISPOSAL:** No homesite shall be used or maintained as a dumping ground for rubbish. Trash or other wastes shall not be kept except in sanitary containers. All equipment for disposal or storage of such materials shall be kept in a clean and sanitary container out of view from the street except on days of trash collection. There shall be no use of outside incinerators or burners for the burning of leaves, branches or trash.
13. **LANDSCAPING AND HOMESITE MAINTENANCE:** All homesites, whether improved or not, shall be kept mowed by the owner or representative during the months of April through October on a schedule such that no growth in excess of twelve (12) inches is permitted. Lot owners are responsible for the removal of any trees or limbs (caused by trees on their lot) that may block subdivision streets or fall on adjacent properties. It is expressly prohibited for any lot owner or other individual to transport any dirt, stones, rocks, sand, trash or any other materials to any other lot at any time, including during the final grading and seeding operations.
14. **VEHICLE REGULATIONS:** No vehicle of more than 3/4 ton hauling capacity or equivalent vehicle shall be parked on any homesite except while making a delivery or pickup. No trailer, boat or recreational vehicle shall be permitted to remain on any homesite for more than three (3) consecutive days unless kept within a garage, this includes any vehicle that is not in operational condition and bearing the current year's license plate. Routine on-street parking is prohibited except that in instances when guest parking is required for special occasions, on-street parking is permitted but vehicles must be removed as soon as the event ends and should not be parked on the street overnight.
15. **ANIMALS:** No more than two household pets are permitted per residence. However, additional pets are permitted if kept within the residence at all times. In any event, NO animals, livestock, or poultry shall be raised, bred, or kept on any homesite for any commercial purpose or if they cause a disturbance or become a nuisance to the adjacent lot owners. Any dog that is permitted outside MUST remain within a fenced yard (no outdoor animal kennel is permitted).
16. **WATER SUPPLY:** No individual water supply system shall be permitted on any homesite.
17. **SEWAGE DISPOSAL:** No individual sewage disposal system shall be permitted on any homesite.
18. **SIGHT DISTANCE AT INTERSECTIONS:** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet and six feet above the roadways, 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 them at points twenty-five (25) feet from the intersection of the street line or in the case of a property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any homesite within ten feet from the intersection of a street's property line with the edge of the driveway. No trees shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at such height to prevent obstruction of such sight lines.
19. **FENCES:** No fence shall be erected unless it has been approved by the Architectural Committee, and all fences shall be kept in good repair and erected without hinderance or damage to any other property. No fence shall be erected between the front property lines and the front of the dwelling, or in the case of a corner lot between the side property line along the street and the dwelling, except that short sections may be approved for landscaping purposes at the discretion of the Architectural Committee. Any fence that is intended to block the view, such as a privacy fence higher than forty-eight (48) inches, shall be located no further from the residence than midway from the residence and the property line (both side and rear).
20. **SIDEWALKS AND DRIVEWAYS:** All lots must have concrete sidewalks across the front property line meeting Hendricks County Standards and paved driveways (either blacktop or concrete) prior to occupancy of the dwelling. Sidewalks must be completed at time of construction and before occupancy or within one (1) year from the date of purchase of the lot from the undersigned, whichever occurs first. This obligation shall extend to the new owner(s) in the event that the lot is sold by the original purchaser with the one year period still measured from the date of the original purchase from Avon Development Corporation. Compliance is an obligation of the current owner. If sidewalks are not installed prior to the above one (1) year requirement, the Maintenance Association may have them installed and shall invoice the current owner who by receipt of title to the lot agrees to accept this obligation. If sidewalks are thus installed by the Maintenance Association, then the cost of the sidewalk, and a ten (10) percent service charge and costs of collection thereof shall thereupon become a continuing lien on the property. Sidewalks at property lines are to meet flush with no abrupt grade changes from one lot to another.
21. **STORAGE TANKS:** Oil, gas or any other storage tanks shall either be buried or located within the house or garage area so that they are completely concealed from outside view.

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22. **SPECIAL PROVISIONS DURING CONSTRUCTION:** It is the responsibility of the owner of any homesite to maintain a clean and safe construction site, placing such condition in the contractual agreement with a building contractor. Upon completion of the foundation, a stone driveway area shall be created to minimize mud and debris carryover to the subdivision and adjacent streets. In addition, the builder must place a temporary boundary (such as a silt fence) on each side of the stone drive, to ensure that subcontractors do NOT drive on and track mud from the lot. Likewise, in order to ensure the continued operation of the underground street drains contractors **MUST BE REQUIRED BY THE OWNER** to clear streets of any excess mud or dirt that is tracked by construction vehicles on a daily basis. Loose trash shall NOT be allowed to carry over to adjacent homesites. If the construction site is not maintained in conformity with this paragraph, the Maintenance Association reserves the right to perform such cleanup functions that it deems necessary to protect the interests of the other lot owners and **WILL INVOICE THE OWNER** accordingly similar to the provisions of paragraph 20 (including the establishment of liens on the property if necessary).
23. **SWIMMING POOLS:** No Swimming pool or associated structure shall be erected or placed on any homesite until the construction plans, including plot plan have been approved by the Architectural Committee. No above ground pool is permitted. Below ground pools shall be fenced for the safety of other residents.
24. **MAILBOXES:** It is the responsibility of the lot owner to install mailboxes meeting standards established by the Architectural Committee. At the time of approval of the building plans, the Architectural Committee will include in the approval letter the specifications to be followed and names of any approved vendors known to be able to supply approved mailboxes and posts.
25. **COMMON AREAS, RETENTION PONDS AND LEGAL DRAIN EASEMENT:** The retention ponds are installed according to Hendricks County drainage requirements.
- (a) **Section 1:** The two areas labeled on Section 1 as "Drainage Easement & Common Area" are not available for use by any lot owner. This includes fishing, ice skating, swimming, boating or any other use. While there is NO access permitted to the easement areas between the pond and the Subdivision boundaries (far bank of the ponds), access to the easement area between the pond and any adjacent property line is permitted for the adjacent property owner only, except for mowing or other maintenance operations performed by the Maintenance Association.
- (b) **Section 2:** The area labeled as "Tract A" is not considered a common area. The undersigned ADC will retain sole use and ownership of said tract and agrees to assume all maintenance responsibilities, except for that portion of Tract A included within the 75' Legal Drain Easement (see subparagraph (c) below). No access is permitted to Tract A except by representatives of the undersigned unless the tract is conveyed to another party, at which time the party assumes the responsibilities and rights of the undersigned.
- (c) **General:** The legal drain easement shown on the plat for lots 49, 50, 60, 62 and 63 is only accessible by the respective lot owners. Signs will be posted to indicate and enforce the above access limitations. All common areas and the entire Legal Drain Easement shown by the 75' boundaries shall be maintained by the Association.
26. **STREET LIGHTS:** Since Forest Commons is presently not within the boundaries of any incorporated municipality, any street lights that may be installed within the subdivision will be operated at the expense of the lot owners as part of the annual assessment by the Maintenance Association. If and when Forest Commons is annexed into a municipality that would assume the responsibility for the street light payments, then the assessment to the Maintenance Association will be adjusted accordingly.
27. **TERM:** These covenants are to run with the land and shall be binding on all parties claiming under them for a period of twenty-five (25) years from the date that these covenants are recorded, after which time said covenants shall automatically be extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part. However, at any time, an instrument signed by ALL owners of the lots in the referenced section(s) of Forest Commons may be recorded to change any covenant in the referenced section(s).
28. **ENFORCEMENT:** If the owner of any lot in the Subdivision shall attempt to violate any of the covenants herein, it shall be lawful for any other owners to prosecute at any proceeding at law or equity against the person(s) violating any such covenant and either prevent such violating owner from doing so or to recover any damages or other dues for such violation. It is solely the responsibility of the lot owners and the Association to monitor compliance with these covenants and Avon Development Corporation has no obligation in this regard beyond its role in the Maintenance Committee and Architectural Committee as defined in these covenants.

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29. **SEVERABILITY:** Invalidation of any one of these covenants by judgement or court order shall in no way affect any of the provisions otherwise contained in this document and they shall remain in full force and effect.

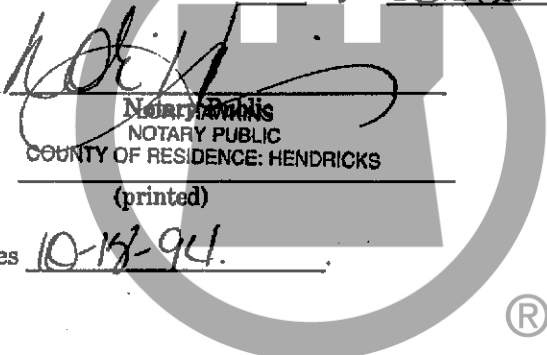
IN WITNESS WHEREOF: The said parties as owner and proprietor of the above described sections of Forest Commons, have hereunto set their hand and seal this 7th day of October, 1994.

AVON DEVELOPMENT CORPORATION by: Charles E. Foggatt
Charles E. Foggatt, President

STATE OF INDIANA)
)
COUNTY OF HENDRICKS)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Avon Development Corporation, represented by its Corporate Officer, Charles E. Foggatt, President, as owner and proprietor of the above described subdivision, acknowledged the execution of the above and foregoing RESTRICTIVE COVENANTS as their Voluntary Act and Deed.

WITNESS My Hand and Notarial Seal this 7 day of October, 1994.



My Commission expires 10-17-94.

CHICAGO TITLE