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Chicago Title Insurance Company

**AMENDED AND RESTATED
DECLARATION OF COVENANTS,
EASEMENTS, CONDITIONS AND
RESTRICTIONS**

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DOUGLAS POINTE DEVELOPMENT

MARGARETTE CLEVELAND
RECORDER

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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

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SAM ORLICH
AUDITOR LAKE COUNTY

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, EASEMENTS,
CONDITIONS AND RESTRICTIONS**

DOUGLAS POINTE DEVELOPMENT

This Amended and Restated Declaration of Covenants, Easements, Conditions and Restrictions (the "Declaration") is made as of February 7, 1996, by **DOUGLAS POINTE ASSOCIATES, L.P.**, an Indiana limited partnership ("Douglas I"), **DOUGLAS POINTE II ASSOCIATES, L.P.**, an Indiana limited partnership ("Douglas II"), and **DOUGLAS POINTE DEVELOPMENT CORPORATION**, an Indiana corporation (the "Corporation").

The parties state as follows:

A. Douglas I and the Corporation entered into a certain Declaration of Covenants, Easements, Conditions and Restrictions dated August 31, 1992, and recorded in the Office of the Recorder of Lake County, Indiana, on October 8, 1992, as Document Number 92064153, and a First Amendment to Declaration of Covenants, Easements, Conditions and Restrictions dated May 10, 1994, and recorded in the Office of the Recorder of Lake County, Indiana, on June 16, 1994, as Document Number 94044481 (collectively, the "Original Declaration").

B. Pursuant to Section 9.2 of the Original Declaration, Douglas I and the Corporation retained the right to modify and amend the Original Declaration; Douglas I and the Corporation wish to amend and restate the Original Declaration in its entirety and substitute this amended and restated Declaration for the Original Declaration, with this Declaration to be in full force and effect as of the date hereof and with the Original Declaration to be terminated as of the date hereof. Douglas II wishes to join in this Declaration.

C. Douglas I is the record title owner of the real estate located in Lake County, Indiana, and legally described as follows:

Lot 1 and Lot 2 in the Replat of Douglas Pointe (a planned unit development), as shown in Plat Book 76, Page 49, in Lake County, Indiana

(the "Douglas I Property").

D. Douglas II is the record title owner of the real estate located in Lake County, Indiana, and legally described as follows:

Lot G-1 in Douglas Pointe II (a planned unit development), as shown in Plat Book 77, Page 75, in Lake County, Indiana

(the "Douglas II Property").

E. The Corporation is the record title owner of the real estate located in Lake County, Indiana, and legally described as follows:

Parcel A, Parcel B, Parcel C, Parcel D, Parcel E, and Parcel H in the Replat of Douglas Pointe (a planned unit development), as shown in Plat Book 76, Page 49, in Lake County, Indiana; and

Lot G-2 in Douglas Pointe II (a planned unit development), as shown in Plat Book 77, Page 75, in Lake County, Indiana

(the "Corporation Property").

F. Douglas I, Douglas II, and the Corporation (hereinafter sometimes collectively referred to as the "Declarant") wish to subject the Douglas I Property, the Douglas II Property, and the Corporation Property (hereinafter sometimes collectively referred to as the "Property") to the covenants, conditions and restrictions herein made, in order to cause the improvements placed on the Property to be developed in an orderly manner with appropriate architectural, landscaping, security, and maintenance controls, and in order to maintain the aesthetic appearance and architectural harmony of the Property during and after development, and in order to provide for access to and from the Property and the maintenance of the Access Routes (hereinafter defined), thereby preserving the real estate values of the overall complex.

NOW THEREFORE, the Declarant declares and covenants that the Property is and will be held, transferred, sold, conveyed, occupied and used subject to the covenants, restrictions, conditions, easements, charges and liens as hereinafter set forth:

Amendment and Restatement of Original Declaration. As of the date hereof, the Original Declaration is amended and restated in its entirety as provided in this Declaration.

ARTICLE I - Definitions

The following words, when used in this Declaration or any supplemental declaration, unless the context will otherwise require, will have the following meanings:

Section 1.1. "Access Routes" will mean those streets, roadways, and parking areas situated on the Phase II Property as indicated on the Plat for vehicular access, ingress and egress, and parking on, over and across the Phase II Property. The title holder of any portion of the Phase II Property may grant, modify, adjust, amend and relocate the Access Routes situated on such title holder's property as provided in Section 3.1 hereof.

Section 1.2. "Association" will mean the association of Owners with respect to the Property which may be established pursuant to Article VIII of this Declaration.

Section 1.3. "Declarant" will mean Douglas Pointe Associates, L.P., an Indiana limited partnership, Douglas Pointe II Associates, L.P., an Indiana limited partnership, and Douglas Pointe Development Corporation, an Indiana corporation, and any successor in interest or assignee thereof, collectively. All actions to be taken by the Declarant under this Declaration may be taken only by the joint action of Douglas Pointe Associates, L.P., Douglas Pointe II Associates, L.P., and Douglas Pointe Development Corporation.

Section 1.4. "Declaration" will mean this Amended and Restated Declaration of Covenants, Easements, Conditions and Restrictions, as the same may be hereafter modified or amended in accordance with Sections 9.2 and/or 9.6 hereof.

Section 1.5. "Detention Basin" will mean, collectively, all of those portions of the Property which are designated on the Plat as being dedicated for the detention and/or retention of storm and/or surface waters.

Section 1.6. "Developer" will mean Douglas Pointe Development Corporation, an Indiana corporation, agent for the Declarant, and its successors and assigns in such capacity. The Developer, whose principal office is located at:

P. O. Box 1473
Suite B
1610 Pointe Drive
Valparaiso, Indiana 46383

will act on behalf of the Declarant in the performance of the rights and responsibilities of the Declarant until the Declarant records in the Office of the Recorder of Lake County, Indiana, a notice setting forth the name and address of a replacement appointed to act on behalf of the Declarant hereunder.

Section 1.7. "Development Lots" will mean the following parcels:

- (a) Lot 1 in the Replat of Douglas Pointe (a planned unit development);

- (b) Parcel A in the Replat of Douglas Pointe (a planned unit development);
- (c) Parcel B in the Replat of Douglas Pointe (a planned unit development);
- (d) Parcel D in the Replat of Douglas Pointe (a planned unit development);
- (e) Parcel E in the Replat of Douglas Pointe (a planned unit development);
- (f) Lot G-1 in Douglas Pointe II (a planned unit development); and
- (g) Lot G-2 in Douglas Pointe II (a planned unit development);

provided, however, that the Declarant may combine any of said parcels to constitute a single Development Lot and may divide any of said parcels into two or more separate Development Lots if such re-configured parcel is to be separately developed; such re-configuration will be effectuated by the Declarant by an instrument in writing, executed, acknowledged and recorded by the Declarant, which designates a parcel as a Development Lot for purposes of this Declaration. If said Parcel A, said Parcel B, and/or said Parcel E should cease to be subject to this Declaration pursuant to the provisions of Section 9.6 hereof, such parcel or parcels will cease to be a Development Lot.

Section 1.8. "Improvements" will mean and include, but not be limited to, buildings, parking areas, loading areas, driveways, pedestrian walkways, walls, fences, hedges, landscaping, mass plantings, poles, signs, and all structures of any type or kind.

Section 1.9. "Owner" will mean any person owning fee title to a Development Lot according to the records of the Recorder of Lake County, Indiana. If there is more than one Title Holder with respect to any single Development Lot and an owners' association is in existence solely with respect to such Development Lot pursuant to any recorded declaration of covenants, easements, and restrictions (or similar document), such owners' association will be deemed to be the Owner of such Development Lot for purposes of this Declaration. If there is more than one Title Holder with respect to a single Development Lot and no such owners' association is in existence with respect to such Development Lot, such Title Holders will collectively constitute a single Owner for purposes hereof; if such Owners are unable to agree on any matter hereunder, any action of such Owner hereunder will be:

(a) as provided in any recorded declaration of covenants, easements, and restrictions (or similar document) solely with respect to such Development Lot; or, if there is no such recorded provision,

(b) by a majority of the value of the parcels constituting such Development Lot, which value will be based upon the most recent assessed value of land and improvements for purposes of real estate taxes.

Section 1.10. "Phase II Parcel" will mean the following described real estate:

Lot G-1 in Douglas Pointe II (a planned unit development), as shown in Plat Book 77, Page 75, in Lake County, Indiana; and

Lot G-2 in Douglas Pointe II (a planned unit development), as shown in Plat Book 77, Page 75, in Lake County, Indiana.

Section 1.11. "Plat" will mean the Corrective Plat of the Replat of Douglas Pointe (a planned unit development), recorded in the Office of the Recorder of Lake County, Indiana, in Book 76, Page 49, and the Final Plat of Douglas Pointe, Phase Two, Hammond, Indiana (a planned unit development), recorded in the Office of the Recorder of Lake County, Indiana, in Book 77, Page 75, and any subsequent re-plats thereof duly recorded.

Section 1.12. "Property" will mean the following described real estate:

Lot 1, Lot 2, Parcel A, Parcel B, Parcel C, Parcel D, Parcel E, and Parcel H in the Replat of Douglas Pointe (a planned unit development), as shown in Plat Book 76, Page 49, in Lake County, Indiana; and

Lot G-1 and Lot G-2 in Douglas Pointe II (a planned unit development), as shown in Plat Book 77, Page 75, in Lake County, Indiana

provided that parcels may be added thereto or removed therefrom pursuant to Section 9.6 hereof.

Section 1.13. "Residential Unit" will mean an apartment unit, condominium unit, townhome, detached single-family residential unit, or other dwelling unit which is intended for occupancy by a single person or a family and which is ready and suitable for immediate occupancy.

Section 1.14. "Tenant" will mean any occupant of any Residential Unit, whether such occupancy is pursuant to a written lease or an oral tenancy, including any occupant holding over possession upon expiration of its lease term.

Section 1.15. "Title Holder" will mean any person who holds fee title to any portion of any Development Lot.

ARTICLE II - Purpose

Section 2.1. Purpose. The Property is hereby subjected to the covenants, conditions, easements and restrictions herein declared, all of which will be deemed to run with the Property and each and every parcel thereof, to provide for the proper use and appropriate development of the Property so as to protect the owners and occupants of buildings against improper development and use of surrounding Development Lots; to prevent the erection or construction of improvements with improper or unsuitable materials or of improper quality; to insure adequate and reasonably consistent development of the Property; to encourage and insure the erection of attractively designed permanent improvements and landscaping appropriately located within the Property in order to achieve harmonious appearance and function; to provide for the orderly maintenance of streets and roadways serving the Property and adequate off-street parking and loading facilities; and to generally promote the welfare and safety of the occupants, tenants and owners of Development Lots.

ARTICLE III - Easements

Section 3.1. Grant of Easements for Ingress and Egress. The Declarant hereby grants:

(a) to each Title Holder with respect to the Phase II Parcel and all successors, assigns, Tenants, agents, employees and invitees with respect to the Phase II Parcel, a perpetual non-exclusive easement for ingress and egress and for parking (subject to the limitations provided in Section 3.2 hereof) to accommodate vehicular and pedestrian traffic and parking over, upon, and across the Access Routes; and

(b) to all Title Holders a perpetual non-exclusive easement for ingress and egress for emergency vehicles only over, upon, and across the Access Routes.

Notwithstanding any other provisions hereof, any Title Holder with respect to the Phase II Parcel may relocate the portion of the Access Routes situated on such Title Holder's property, provided that the Access Routes, as so relocated, will provide substantially equivalent ingress and egress for vehicles and pedestrians and substantially equivalent parking as that provided on the Plat at all times.

Section 3.2. Restrictions on Parking and Obstruction of Traffic. Anything to the contrary contained in Section 3.1 notwithstanding, no Title Holder or Tenant will permit parking on any public right-of-way (except as permitted by applicable law) or any driveway or any portion of the Access Routes (except those portions of the Access Routes which are designated for parking purposes in the Plat or as provided in Section 3.1). In addition, each Title

Holder will provide adequate off-street parking on its property for itself and its Tenants, agents, employees, and invitees, in compliance with applicable governmental authority parking ratio requirements for its particular use, taking into account, with respect to Title Holders of the Phase II Parcel or any portion thereof, parking areas (if any) on the Access Routes, and will require its Tenants, agents, employees, and invitees to park in the spaces so provided or on other spaces permitted within the Development Lot. No Title Holder will permit itself or any of its Tenants, agents, employees, or invitees to obstruct any Access Route or any public right-of-way so as to interfere with or restrict ingress, egress, or the passage of motor vehicles or pedestrians. No Title Holder will permit itself or any of its Tenants, agents, employees, or invitees to park on any portion of the Access Routes, excepting only parking on those portions of the Access Routes which are designated as parking areas by the Owners of the Phase II Parcel and their respective Tenants, agents, employees, and invitees.

Section 3.3. Easements Run with the Land. Subject to the aforesaid right of relocation and restrictions concerning parking, and subject further to the right to dedicate the Access Routes as provided in Section 3.5, all easements granted in this Article III will be deemed perpetual non-exclusive easements, running with the land, for the benefit of all Title Holders and Tenants and their respective agents, employees, and invitees, on the terms and conditions provided herein.

Section 3.4. Maintenance of Access Routes and Insurance.

(a) **Maintenance and Repair.** For so long as the Declarant has an interest in the Property, the Declarant will be responsible for the maintenance and repair of, and snow removal from, the Access Routes on the Property and the installation and maintenance from time to time of landscaping and streetlights and/or other illumination along the Access Routes. In addition, the Access Routes may be relocated or reconfigured pursuant to Section 3.1 hereof. However, the foregoing will not be construed to require the Declarant or any Title Holder to install or construct the Access Routes.

(b) **Insurance.** The Declarant will be entitled to purchase and keep in force such insurance as the Declarant deems necessary or desirable in connection with the performance of (or failure to perform) its obligations under this Section 3.4. The Declarant will, to the extent practicable, name the other Title Holders as additional insureds under such insurance policy.

(c) **Title Holders' Obligation to Pay Costs.** Each Title Holder will bear its proportionate share of all costs incurred by the Declarant pursuant to this Section 3.4, as reasonably determined by the Declarant. Such costs will exclude all costs of the initial construction or installation of the Access Routes or any portion thereof, and will exclude all costs of any relocation of the access routes pursuant to Section 3.1 hereof. Each Title Holder's proportionate share will be reasonably determined by the Declarant based upon the respective uses (or anticipated future uses) of the Access Routes by the various Title Holders or, if such respective uses cannot be reasonably determined, on another reasonable basis, as determined by the Declarant. The Declarant will estimate such costs at the beginning of each calendar year.

Each Title Holder will promptly pay to the Declarant in monthly installments (or such other period as the Declarant may determine), its proportionate share of such estimated costs within ten (10) days after receipt of the Declarant's statement therefor. Within ninety (90) days after the end of each calendar year, the Declarant will furnish each Title Holder a statement in reasonable detail of the actual amount of such costs paid or incurred by the Declarant during such period and thereupon there will be an adjustment between the Declarant and each Title Holder, with payment to or repayment by the precise amount of each Title Holder's proportionate share of such costs for such period. The Declarant may from time to time, at the Declarant's election, furnish each Title Holder a statement of the actual amount of such costs incurred by the Declarant from time to time, in lieu of the estimated monthly installments described above, in which event each Title Holder will pay to the Declarant its proportionate share of such costs within ten (10) days after receipt of the Declarant's statement therefor.

(d) **Performance of Obligations.** The obligations of the Declarant hereunder will be performed by and all payments to be made to the Declarant hereunder will be made to the Developer. However, upon the creation of the Association pursuant to Article VIII hereof, all rights and obligations of the Declarant and the Developer provided in this Section 3.4 will be transferred to and assumed by the Association, and neither the Declarant nor the Developer will have any further rights or responsibilities with respect to the items described in this Section 3.4.

Section 3.5. Dedication of Access Routes. In the discretion of the Owners of the Phase II Parcel, such Owners may, from time to time, use reasonable efforts to induce the applicable governmental authority to accept a dedication of all or any portion of the Access Routes as public streets and to assume the responsibility for maintenance thereof and for snow removal. If such body accepts the dedication of such Access Routes as public streets, then the easements granted hereunder with respect to such dedicated streets and the Declarant's responsibilities for maintenance thereof, snow removal therefrom and insurance relative thereto will cease as of the date of such dedication. If the applicable governmental authority fails to accept the dedication of such Access Routes, or any portion thereof, the provisions of this Declaration relating to the Declarant's responsibilities for maintenance thereof, snow removal, and insurance relating thereto will remain in full force and effect with respect to such Access Routes or portions thereof not so dedicated.

Section 3.6. Grant of Easements for Utilities.

(a) **General Grant of Easement.** The Declarant hereby grants to each Title Holder and each Title Holder hereby grants to the other Title Holders, the Declarant, the Developer, the Association, and their respective successors and assigns, and to Indiana Bell, Northern Indiana Public Service Company, United Artists Cable Company, and the City of Hammond, and to private utility companies which hold certificates of territorial authority to render service, and their respective successors and assigns, a non-exclusive easement in, upon, along, over, and across the Access Routes (excluding the parking areas thereon) and other areas which may be reserved or dedicated by the Declarant for the installation, operation and maintenance, repair, replacement, removal, relocation, servicing and testing of lines, mains,

conduits, cables, equipment, and facilities for gas, water, telephone, electricity, cable television, storm and sanitary sewers, and swales, either overhead or underground, with all necessary braces, guys, anchors, and other appliances, and for the purpose of providing utility services to the respective Development Lots and for electricity for signage; such easement rights will include, but not be limited to, the right to trim and keep trimmed any trees, shrubs, or saplings that interfere with any such utility use; provided, however, that the easements established after the date hereof will be established only along the property lines of the respective Development Lots (along the entire perimeter of each Development Lot) and will not exceed ten (10) feet in width. The easement rights granted pursuant to this Section 3.6(a) will be in addition to, and not in limitation of, all easement rights granted pursuant to the Plat.

(b) **Change of Location of Utility Easements.** The location of the utility easements, as described in Section 3.6(a) hereof, may be relocated by the Declarant from time to time as the Declarant deems to be necessary or appropriate for the provision of utility services to all of the Development Lots. In furtherance thereof, the Declarant hereby expressly reserves the right to dedicate or grant on any Development Lot additional easements for the purposes set forth in this Section 3.6 to other Owners, and public and private utility companies, subject to the conditions of this Section 3.6. In no event will such utility easements be located (or relocated) in any manner which would cause any damage to any building located on a Development Lot or interfere with any contemplated use of such Development Lot. Each Owner will make available to the Declarant and the other Owners, upon request, any drawings made by such Owner which show the location of such lines, mains, conduits, cables, equipment and facilities, provided that the Owner making such request will reimburse such Owner for the cost of duplicating such drawings.

(c) **Public and Private Utilities.** Nothing herein will be construed to require the Declarant to grant any easement rights to any public or private utility. The Declarant, in its discretion, may grant easement rights to public utility or may provide for private utility services to any one or more of the Development Lots.

(d) **Maintenance of Easements.** Except to the extent that any utility services are provided directly to any Development Lot by any public utility, the Declarant will be responsible for the installation and maintenance of all private utility easements (if any), all connections between public utility services and such private utility easements, all utility costs, and all other costs associated with such utility services, provided that the Title Holder of each Development Lot (or any portion thereof) served or to be served by such utility will bear its proportionate share of the costs therefor ("Utility Maintenance Costs"), as reasonably determined by Declarant based upon the respective uses (or anticipated future uses) of such utility services by the various Title Holders or, if such respective uses cannot be reasonably determined, on another reasonable basis, as determined by the Declarant. The Utility Maintenance Costs will include, in addition to the costs provided above, the cost of insuring the utility easements and connections against liability for bodily injury, property damage or against damage thereof by casualty, and any applicable deposits. The Utility Maintenance Costs will be estimated and paid in the same manner as the costs relating to the Access Routes, as set forth in Section 3.4(c).

Anything herein to the contrary notwithstanding, if for any reason the Declarant does not provide for the utilities as provided in this Section 3.6, the various Title Holders will be responsible for such costs; provided, however, that each Title Holder will bear only its proportionate share as provided in this Section.

(e) **Payment of Costs Allocable to Single Development Lot.** Notwithstanding any other provisions of this Section 3.6, and except as otherwise agreed by the Declarant and the Owners, all costs and expenses of installing or connecting utilities located within an easement area, which utilities will serve only one or more, but less than all, of the Development Lots, will be paid by the Title Holders benefitted by such installation or connection and such benefitted Title Holders will promptly restore (or cause the appropriate utility company to restore) the affected portion of the easement area to the condition such area was in immediately prior to such installation or connection by such Title Holder.

(f) **Performance of Obligations.** The obligations of Declarant under this Section 3.6 will be performed by and all payments to be made to the Declarant hereunder will be made to the Developer. However, upon the creation of the Association pursuant to Article VIII hereof, all rights and obligations of the Declarant and the Developer provided in this Section 3.6 will be transferred to and assumed by the Association, and neither the Declarant nor the Developer will have any further rights or responsibilities with respect to the items described in this Section 3.6.

Section 3.7. Storm Water.

(a) **On-Site Storm Water Detention.** Each Owner will provide for water detention and/or retention on its Development Lot in accordance with the regulations of any governmental authority having jurisdiction and as reasonably approved by the Developer, taking into account the Detention Basin serving such Development Lot. The Detention Basin, the parking area, and/or other detention or retention areas for each Development Lot will have the capacity to collect and detain one hundred percent (100%) of the water runoff, for drainage into storm sewers as provided below, in accordance with the requirements of applicable laws, ordinances, rules and regulations; however, this requirement may be reduced or waived by the Developer in its reasonable discretion if it is established by a duly licensed land surveyor or professional engineer acceptable to the Developer, or in any other method reasonably acceptable to the Developer, that a lesser amount of on-site detention is appropriate for all affected Development Lots and for the overall surface water runoff and drainage plan for the Property.

Except as otherwise reasonably approved by the Developer, the detained runoff will drain into the storm sewers serving the Property or directly into the Detention Basin. Storm water detention and release rate will be provided for by each Owner and designed to meet criteria reasonably established from time to time by the Developer. Parking lots will be designed so that detention does not over spill into the Access Routes or adjoining public rights-of-way.

(b) **Maintenance and Landscaping of Storm Sewers and Detention Basin.**

The Declarant will be responsible for the maintenance and landscaping of the Detention Basin and swales and storm sewers on the Property, as indicated on the Plat or as otherwise reasonably determined by the Declarant to be necessary or appropriate for the development of the Property (the locations and configurations of which may be changed as provided in Section 3.6(b) hereof), provided that each Title Holder will bear its proportionate share of the costs therefor ("Storm System Maintenance Costs"), as reasonably determined by the Declarant based upon a fraction, the numerator of which is the square footage of such Title Holder's Development Lot (or portion thereof) and the denominator of which is the square footage of all of the Development Lots, less the square footage of dedicated roads and the Access Routes (excluding the parking areas thereon), and other common areas; provided, however, that the Declarant may reasonably exclude Title Holders with respect to Development Lots which are not served by the portion of the storm water system being maintained or landscaped from all or a portion of the Storm System Maintenance Costs. Anything herein to the contrary notwithstanding, if for any reason the Declarant does not provide the maintenance and landscaping as provided in this Section 3.7, the various Owners will be responsible for such costs; provided, however, that each Title Holder will bear only its proportionate share as provided in this Section.

(c) **Performance of Obligations.** The obligations of Declarant hereunder will be performed by and all payments to be made to the Declarant hereunder will be made to the Developer. However, upon the creation of the Association pursuant to Article VIII hereof, all rights and obligations of the Declarant and the Developer provided in this Section 3.7 will be transferred to and assumed by the Association, and neither the Declarant nor the Developer will have any further rights or responsibilities with respect to the items described in this Section 3.7.

Section 3.8. Security and Fences.

(a) **General Grant of Easement.** Each Owner hereby grants to the Declarant, the Developer, and the Association, a non-exclusive easement in, upon, along, over, and across the exterior perimeter (fifteen (15) feet in width) of the Property, for the installation, operation and maintenance, repair, replacement, removal, relocation, servicing and testing of security fencing, security gates, and security guard facilities; subject to the right of Declarant to relocate or reconfigure such security easement with the consent of the Owner(s) whose Development Lot(s) will be affected, which consent will not be unreasonably withheld, provided such relocation or reconfiguration will not materially interfere with any buildings located on or prevent a contemplated use for any Development Lot.

(b) **Operation and Maintenance of Security System.** To the extent that the Declarant elects to establish a security system for the Property and/or fences on any portion of the Property (which the Declarant may elect not to do), the Declarant will be responsible for the installation, operation, and maintenance of a security system and/or fences for the Property, which security system and/or fences will be of a nature to be determined by the Declarant and may include, but not necessarily be limited to, the employment of security guards or a security service. The Title Holders reasonably determined by the Declarant to derive substantial benefit from such

security system and/or fences will bear their proportionate share of all costs therefor ("Security Maintenance Costs"), as reasonably determined by Declarant based upon the number of Residential Units therein or as otherwise reasonably determined by the Declarant. The Security Maintenance Costs will include, in addition to the costs provided above, the cost of insuring the security system and/or fences against liability for bodily injury, property damage or against damage thereof by casualty. The Security Maintenance Costs will be estimated and paid by the Title Holders responsible for such costs in the same manner as the costs relating to the Access Routes, as set forth in Section 3.4(c).

(c) **Performance of Obligations.** The obligations of Declarant under this Section 3.8 will be performed by and all payments to be made to the Declarant hereunder will be made to the Developer. However, upon the creation of the Association pursuant to Article VIII hereof, all rights and obligations of the Declarant and the Developer provided in this Section 3.8 will be transferred to and assumed by the Association, and neither the Declarant nor the Developer will have any further rights or responsibilities with respect to the items described in this Section 3.8.

Section 3.9. Walking Paths.

(a) **Operation and Maintenance of Security System.** The Declarant may elect to construct and install walking paths on portions of the Property which do not constitute Development Lots (and, with the consent of the Owner of a Development Lot, on a Development Lot). To the extent that the Declarant elects to construct and install such walking paths (which the Declarant may elect not to do), the Declarant will be responsible for the installation, operation, and maintenance of such walking paths; provided, however, that the Declarant may enter into agreements or arrangements whereby the City of Hammond or any other governmental entity may assume some or all of the responsibility for such activities. The Title Holders reasonably determined by the Declarant to derive substantial benefit from such walking paths will bear their proportionate share of the costs therefor ("Path Maintenance Costs"), as reasonably determined by Declarant based upon the number of Residential Units therein or as otherwise reasonably determined by the Declarant. The Path Maintenance Costs will include, in addition to the costs provided above, the cost of insuring such paths against liability for bodily injury, property damage or against damage thereof by casualty. The Path Maintenance Costs will be estimated and paid by the Title Holders responsible for such costs in the same manner as the costs relating to the Access Routes, as set forth in Section 3.4(c).

(b) **Performance of Obligations.** The obligations of Declarant under this Section 3.9 will be performed by and all payments to be made to the Declarant hereunder will be made to the Developer. However, upon the creation of the Association pursuant to Article VIII hereof, all rights and obligations of the Declarant and the Developer provided in this Section 3.9 will be transferred to and assumed by the Association, and neither the Declarant nor the Developer will have any further rights or responsibilities with respect to the items described in this Section 3.9.

Section 3.10. Rules and Regulations. The Declarant may establish from time to time reasonable rules and regulations to provide for security, for the orderly flow of traffic, parking, employee parking and maintenance of improvements over or on the Access Routes, and for the use of the Detention Basin, and the Declarant will distribute copies of such rules and regulations to the Owners. Each Title Holder will at all times abide by such rules and regulations. The Declarant may, but will not be so obligated, enforce such rules and regulations in the manner herein provided, but the Declarant's failure to enforce such rules and regulations against any Title Holder will not be deemed to constitute a waiver thereof, nor will the Declarant be liable to any Title Holder or Tenant for failing to enforce such rules and regulations against any other Title Holder or Tenant. If the Declarant fails to enforce such rules and regulations against any Title Holder or Tenant, any other Title Holder adversely affected by such violation may enforce such rules and regulations at such affected Owner's expense, in the manner set forth in Section 7.1 hereof.

Section 3.11. Fees, Utilities and Taxes. Each Title Holder will pay its pro rata share of the utility charges, municipal, county and other governmental fees (including without limitation fire hydrant water charges) and real estate taxes and assessments, if any, assessed against the Access Routes, Detention Basin, security areas, storm sewers, or any other area used in common by all Title Holders, based upon their use (or anticipated future use) thereof as reasonably determined by the Developer.

ARTICLE IV - Use Limitations and Permitted Uses

Section 4.1. Use Limitations. No noxious or offensive trades, services, or activities will be conducted within the Property, nor will anything be done thereon which may, in the reasonable opinion of the Declarant, be or become an annoyance or nuisance to any Title Holder or Tenant by reason of unsightliness, excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke, or noise.

Section 4.2. Permitted Uses. Development Lots will be utilized only for such uses as the Declarant may reasonably determine; provided, however, said uses will be compatible with the maintenance and development of a first class development of its type, and will be in compliance with the zoning and other applicable laws, rules, regulations and ordinances as amended or from which variances or special uses may be granted from time to time. It is intended that the Property will be used for office, medical, banking, retail, and single and multi-family and townhome residential purposes, although this statement of intention will not limit the authority of the Declarant to restrict uses on the Property pursuant to Section 4.1 and this Section 4.2.

Section 4.3. Decisions on Uses. Upon the creation of the Association pursuant to Article VIII hereof, the authority of the Declarant to restrict uses on the Property pursuant to Section 4.1 and this Section 4.2 will be transferred to and assumed by the Association, and neither the Declarant nor the Developer will have any further rights or responsibilities with respect to the items described in Section 4.1 and this Section 4.2.

ARTICLE V - Regulation of Improvements

Section 5.1, Architectural Review Committee. There is created an Architectural Review Committee (the "Committee") which will have the following powers and duties:

(a) **Creation.** The Committee will initially consist of three (3) members, Neville J. Gough, Larry N. Gough, and one representative of the City of Hammond designated from time to time by the Mayor of the City of Hammond. In the event of death or resignation of any member of the Committee (other than the representative of the City of Hammond), the Declarant will have the right to designate a successor. The Declarant will have the further right to increase the membership of and to fix rules of procedure for the Committee. Should the Declarant fail or be unable, after the expiration of sixty (60) days, to appoint a successor for each vacancy, such successor may be appointed by a unanimous vote of the remaining members of the Committee. Upon the creation of the Association pursuant to Article VIII hereof, the authority of the Declarant under this Section 4.4(a) will be transferred to and assumed by the Association.

(b) **Approval.** No improvements will be constructed, erected, placed, altered, maintained or permitted to remain in the Property until final plans and specifications showing the plot layout, all exterior elevations with materials and colors thereof, and landscaping will have been submitted to and approved in writing by the Committee. Such final plans and specifications will be submitted in writing in triplicate under the authorized signature of the grantee or Title Holder of the particular part of the Property, or its authorized agent. Changes in approved plans which materially affect building size, placement or external appearance must be similarly submitted to and approved by the Committee.

(c) **Procedure.** All actions of the Committee will be by a majority of the members of such Committee, acting at a meeting called with notice to all Committee members, or by unanimous written consent. All plans, specifications and other material for the improvement of any portion of the Property will be delivered to the Committee at the address of the Developer provided in Section 1.6 hereof, or at such other location as the committee may, from time to time, designate. The Committee's approval or disapproval on matters required by this Declaration will be by majority vote of the Committee. A report in writing setting forth the decisions of the Committee and the reasons therefore will thereafter be transmitted to the applicant by the Committee within thirty (30) days after the date of filing the plans, specifications, and other material by the applicant. The Committee will aid and collaborate with prospective builders and make suggestions from preliminary sketches. Prospective builders are encouraged to submit preliminary sketches for informal comment prior to the submittal of architectural drawings and specifications for approval.

If: (i) the Committee fails to approve or disapprove within thirty (30) days after submission, the final plans, specifications and other materials, as required in this Declaration; and (ii) no suit to enjoin construction has been filed within forty-five (45) days after commencement of such construction, approval will not be required.

(d) **Construction.** Construction of Improvements will commence within twelve (12) months after approval by the Committee and will be substantially completed within eighteen (18) months after the commencement thereof, except so long as such completion is rendered impossible or would result in substantial hardship due to strikes, fires, national emergencies, national calamities or other supervening forces beyond the control of the grantee or Owner.

If the construction is not commenced within said twelve (12) month period and/or the Improvement is not substantially completed within the eighteen (18) month period after commencement, the Declarant will have the right and option to purchase from the Title Holder of the Development Lot (or portion thereof) on which the improvements are being or are to be constructed and the improvements thereon, if any, at a price equal to the excess (if any) of the fair market value of the Development Lot (or portion thereof) on which the improvements are being or are to be constructed, including all improvements thereon, over the total amount of the all liens to which such Development Lot (or portion thereof) is then subject. The fair market value of such Development Lot and Improvements will be determined by a real estate appraiser selected and paid by the Declarant, provided that such appraiser will have the designation Member of the Appraisal Institute or an equivalent designation. Construction will be deemed "commenced" when the foundation has been excavated as provided in the plans approved by the Committee. Upon the creation of the Association pursuant to Article VIII hereof, the rights of the Declarant under this Section 4.4(d) will be transferred to and assumed by the Association.

(e) **Liability.** Neither the Committee nor any member or agent thereof will be liability for any damage, loss or prejudice suffered or claimed by any Title Holder or builder who submits such plan (and such person or entity who submits such plans will hold the Committee and the members and agents thereof harmless from all damage, loss or prejudice suffered or claimed by any third party) on account of (i) any defects in the plans and specifications submitted, revised, or approved in accordance with the foregoing provisions; (ii) any structural or other defects in any work done according to such plans and specifications; (iii) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (iv) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; and (v) the development of any property within the Property.

Section 5.2. Off-Street Parking. No parking will be permitted on the Access Routes (excluding portions thereof designated as parking areas) or any driveway, street or any place other than on the paved parking spaces provided for by each Owner and described herein below. Each Title Holder and Tenant will be responsible for compliance with the foregoing by its employees and visitors. Adequate off-street parking will be provided by each Title Holder and Tenant for themselves and all employees, customers, and invitees. Each Development Lot will at all times comply on its own with the applicable governmental authority's parking ratio requirements for its particular use. All off-street parking and access drives and loading areas will be paved and properly graded to assure proper draining.

Section 5.3. Signs. No signs will be permitted anywhere within the Property unless plans and specifications therefor as described in Section 5.1 hereof will have been

submitted to and approved in writing by the Committee. No temporary signs will be permitted after construction without the prior written approval of the Declarant. The Committee will have the right to enter on and to remove, at the sole cost and expense of the Title Holder of the portion of the Development Lot where such sign exists, any sign, temporary or permanent, erected without such written approval.

Section 5.4. Loading Docks and Areas. The Committee will have the right, in its sole discretion, to approve the location of loading docks and areas, which location will be shown on plans and specifications submitted to the Developer pursuant to Section 5.1 hereof. Loading docks and areas will be screened in a manner approved in writing by the Committee, considering such things as location and views from adjacent and nearby properties and streets.

Section 5.5. Outside Storage. No materials, supplies, equipment, finished or semi-finished products or articles of any nature will be stored or permitted to remain on any Development Lot outside of the building, without the prior written consent of the Committee. In any event, each Title Holder will at all times comply with applicable zoning ordinances, rules and regulations relative to outside storage. All dumpsters and other such garbage receptacles will be properly screened, as determined by the Committee. No large or unsightly vehicles will be parked overnight on any Development Lot unless such parking area is properly screened as determined by the Committee.

Section 5.6. Landscaping. All landscaping required hereunder or otherwise to be provided on any Development Lot will be completed within ninety (90) days after the substantial completion of construction of any buildings to be construed on the Development Lot; provided, however, if weather conditions prevent the completion of the landscaping within said ninety (90) day period, then such landscaping will be completed as soon as weather conditions permit, but in no event will such landscaping be completed later than the last to occur of said ninety (90) day period or June 1 immediately following said substantial completion. If any Title Holder fails (i) to undertake and complete its landscaping within the time limit set forth above; or (ii) to maintain said landscaping after the installation of same, the Committee may, after giving the Title Holder ten (10) days' written notice (unless within said ten (10) day period the Title Holder proceeds and thereafter pursues with due diligence the completion or maintenance of such landscaping), undertake and complete or perform the maintenance of the landscaping of the Development Lot in accordance with the landscaping plan. If the Committee undertakes and completes such landscaping or performs the maintenance thereof because of the failure of such Title Holder to complete or maintain the same, the costs of such landscaping or such maintenance will be assessed against the Title Holder, and if said assessment is not paid within thirty (30) days after written notice of such assessment from the Committee, said assessment will constitute a lien on the portion of the Development Lot owned by such Title Holder and may be enforced as set forth in Section 7.2 hereof.

Section 5.7. Roof Top Equipment. Roof objects (including fans, vents, cooling towers, skylights and all roof mounted equipment which rises above the roof line) will either be enclosed or otherwise completely screened from public view.

Section 5.8. Utility Connections. All utility connections, including all electrical and telephone connections and installation of wires to buildings, will be made underground from the nearest available power source. No transformer, electric, gas, water or other meter or any type or other apparatus will be located on any power pole nor hung on the outside of any building, but the same will be placed on the ground surface, will be adequately screened, and all such installations will be subject to prior written approval of the Committee.

Section 5.9. Construction Standards.

- (a) All building sides must be faced with quality face materials.
- (b) Construction must conform to plans and specifications approved in writing by the Committee pursuant to this Article V.
- (c) Once commenced, construction will be diligently pursued to the end so that it is not left in a partly finished condition any longer than reasonably necessary. Each Title Holder will, during construction, maintain its Development Lot (or portion thereof) in a clean and sightly condition, diligently remove debris, and, if reasonably required by the Committee, properly screen such construction area from public view. The failure of any Title Holder to diligently pursue construction and/or to maintain its Development Lot (or portion thereof) during construction as described in this Section 5.9(c) will be deemed a nuisance giving rise to the remedies set forth in Section 7.1 hereof.
- (d) Any damage to any streets, roadways, landscaping, Improvements or parking areas caused during the construction of Improvements on a Development Lot will be immediately repaired by the Title Holder, and said streets will be maintained by the Title Holder in a clean and sightly condition during said construction. Nothing herein contained will be deemed to prevent Committee, or the Owner of the Development Lot so damaged, from proceeding at law to recover damages for such constructing Title Holder's failure to make such repairs.

Section 5.10. Fences. No fence will be constructed or maintained on a Development Lot without the prior written approval of the Committee, as provided in Section 5.1 hereof.

Section 5.11. Walkways. If required by the Committee, walkways will be established and maintained by each Owner within the setback of its Development Lot, or such other location selected by said Owner and approved in writing by the Committee pursuant to Section 5.1 hereof, so as to provide pedestrian and non-motorized vehicular ingress and egress throughout the Property for the benefit of all Title Holders and Tenants and their respective agents, employees and invitees. Such walkways will comply with the requirements of appropriate governmental authorities and may, with the written consent of the Committee, be relocated by any Title Holder within its Development Lot (or portion thereof).

Section 5.12. Basis of Approval. Approval of plans and specifications by the Committee will be based, among other things, on adequacy of lot dimensions, conformity and harmony of external design and of location with neighboring structures and Development Lots, relation of finished grades and elevations to neighboring Development Lots, and conformity to both the specific and general intent of this Declaration.

ARTICLE VI - Maintenance of Development Lots

Section 6.1. Condition of Development Lots. Each Title Holder will keep its building, improvements, landscaping and appurtenances thereon at all times in a safe, clean, maintained, neat and wholesome condition, and will comply in all respects with all governmental statutes, ordinances, regulations, health and police and fire requirements in force from time to time. Each such Title Holder, Tenant or occupant will remove, at his own expense, any rubbish or trash or any character which may accumulate on its Development Lot, and will take all necessary steps to prevent the presence of rodents on its Development Lot. Rubbish, trash, garbage or other waste will be kept only in properly covered containers. All equipment for the storage or disposal of such materials will be kept in a clean and sanitary condition and will be properly screened from public view. Rubbish and trash will not be disposed of on the Property by burning.

ARTICLE VII - Enforcement

Section 7.1. Deemed to Constitute a Nuisance. Every violation of this Declaration or any part hereof is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed therefor by law or equity against a Title Holder, Tenant, or occupant will be applicable against every such violation and may be exercised by the Declarant, the Developer, a Title Holder, and/or the Association (when established) as the case may be. In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the losing party or parties will pay the reasonable attorneys' fees of the prevailing party or parties in the amount as may be fixed by the court in such proceedings. All remedies provided herein or at law or in equity will be cumulative and not exclusive. The failure to enforce any of the conditions, covenants, restrictions or reservations herein contained will in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other conditions, covenants, restrictions or reservations.

Section 7.2. Enforcement of Maintenance Obligations. If, in the Declarant's opinion, any Title Holder, Tenant, or occupant of a Development Lot (or portion thereof) has failed in any of its maintenance duties or responsibilities, then the Declarant may give such person written notice of such failure and such person will, within ten (10) days after receiving such notice, perform the care and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Declarant, through its authorized agent or agents, will have the right and power to enter onto the Development Lot (or portion thereof) and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise, to any person. The Title Holders and occupants (including Tenants), as

the case may be, of any Development Lot (or portion thereof) on which such work is performed will promptly reimburse the Developer for the cost of such work. If such Title Holder or occupant fails to reimburse the Declarant within ten (10) days after receipt of a statement for such work from the Declarant, or if any Title Holder fails to pay or reimburse the Declarant for such Title Holder's proportionate share of the costs of maintenance, repair and snow removal, or insurance, as provided in Section 3.4 above, or if any Title Holder fails to pay or reimburse Declarant for such Title Holder's proportionate share of any Utility Maintenance Costs, as provided in Section 3.6 above, or such Title Holder's proportionate share of the Storm System Maintenance Costs as provided in Section 3.7 above, or such Title Holder's proportionate share of the Security Maintenance Costs as provided in Section 3.8 above, or such Title Holder's proportionate share of fees, utility charges or taxes, as provided in Section 3.10 above, within ten (10) days after the receipt of a statement therefor, then said indebtedness will bear interest to the Developer or Declarant, as the case may be, at the rate of three percent (3%) over the prime rate of interest announced from time to time by The First National Bank of Chicago (changing as said rate changes) on the amount of the assessment from the due date thereof through the date paid, together with all costs and expenses, including, but not limited to, attorneys' fees, incurred by Developer or Declarant, as the case may be, as a result of said default. Such debt will constitute a lien against that Development Lot or portion thereof owned by such Title Holder which or for the benefit of which said work (including snow removal, repair or maintenance or landscaping) was performed and/or the Development Lot(s) or portion thereof owned by the Title Holder failing to pay its proportionate share of any cost, as the case may be, which will bind such Development Lot or portion thereof and the personal representatives and assigns of the Title Holder thereof. To evidence the aforesaid lien, the Declarant will prepare a written notice of said lien setting forth the amount of the unpaid indebtedness, the name of the Title Holder of such Development Lot or portion thereof covered by such lien and a description of such Development Lot or portion thereof. Such notice will be recorded in the Office of the Recorder of Lake County, Indiana. Such lien for nonpayment will attach from the date that such payment becomes delinquent, as set forth in this Section 7.2, and may be enforced by all available legal methods of collection including, but not limited to, the foreclosure of such lien by the Declarant in a like manner as a mortgage on real property, subsequent to the recording of a notice of lien as provided above, or the Declarant may institute suit against the Owner obligated to pay such charges and/or for the foreclosure of the aforesaid lien judicially. To the extent permitted by law, said lien, subsequent to the recording of a notice thereof, will take priority over any mortgage on the Development Lot or portion thereof against which such notice is filed. In any foreclosure proceeding, whether judicial or nonjudicial, the Title Holder will be required to pay the costs, expenses, and reasonable attorneys' fees incurred by the Developer. The Declarant will have the power to bid on such Development Lot at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

Upon the creation of the Association pursuant to Article VIII hereof, the authority, rights, and obligations of the Declarant and the Developer under this Section 7.2 will be transferred to and assumed by the Association.

ARTICLE VIII - Property Owners' Association

Section 8.1. Declarant May Form Association. The Declarant may, at any time so long as Declarant has an interest in the Property, establish a not-for-profit corporation (the "Association") for the purpose of performing or causing to be performed the responsibilities and obligations of Declarant and/or the Developer set forth in this Declaration. After the Declarant ceases to have any interest in the Property, if the Association has not previously been established, any two or more Owners may establish the Association as set forth herein. The Association will be established (if Declarant or the Owners elect to do so as set forth above) in accordance with law and substantially in accordance with the provisions of this Article VIII. Upon the incorporation of the Association, Declarant will (a) convey to the Association all of Declarant's right, title and interest in the Detention Basin and all portions of the Property which do not then constitute Development Lots, and (b) assign to the Association all of Declarant's rights and obligations under the Declaration, which rights and obligations the Association will expressly assume.

Section 8.2. Membership. Each Owner will automatically be a member of the Association. Membership will be appurtenant to and may not be separate from the ownership of a Development Lot. The Declarant will also be a member for so long as the Declarant owns any part of the Property. An Owner may assign its rights, but not its obligations, to a Tenant or to the Title Holders with respect to a Development Lot. Nothing herein will preclude a Title Holder from entering into a lease which, as between such Title Holder and Tenant, requires Tenant to perform the obligations of the Title Holder.

Section 8.3. Voting Rights.

(a) The Association will have reasonably determined classes of membership, and will be governed by a Board of Directors as provided in the By-Laws of the Association, as amended from time to time (the "By-Laws"), who will be appointed or elected as provided in such By-Laws. Anything in this Declaration to the contrary notwithstanding, and except as may otherwise be provided in the By-Laws, the first and each subsequent Board of Directors of the Association will consist of, and vacancies on the Board of Directors will be filled by, such persons as the Developer will from time to time appoint, who may, but need not be members of the Association, until the first to occur of any one of the following events: (i) the expiration of ninety (90) days after the sale and transfer of title by Declarant of all of the Development Lots; or (ii) the Developer, by written notice to the Association, voluntarily elects to release its right to appoint all members of the Board of Directors. The By-Laws will provide that any directors not appointed by the Developer will be elected by a majority vote of the members of the Association.

(b) Except for directors appointed by the Developer, directors will be members (or, in the case of a corporate, partnership, limited liability company, or trustee member, any party designated by such entity) of the Association. After the incorporation of the Association, but prior to the appointment of the first Board of Directors, the Developer may exercise all rights,

power and privileges and act in the capacity of the Board of Directors and may perform all its functions as set forth in this Declaration and the By-Laws.

(c) After the incorporation of the Association, and except as otherwise provided in the By-Laws, upon termination of Developer's right to appoint any or all of the directors as hereinabove provided in the preceding paragraph, those directors not subject to appointment by the Developer will be elected by the members at a meeting called by the President of the Association, by the Developer, or by any three (3) members. Such meet will be called by notice sent pursuant to the By-Laws.

(d) Except as otherwise provided by law, by the Articles of Incorporation or the By-Laws, neither the directors nor the officers of the Association will be personally liable to the Owners, the Title Holders, or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Association will indemnify and hold harmless the directors and officers, their heirs and legal representatives, against all contractual and other liabilities to others arising out of contracts made by, or other acts of the directors and officers on behalf of, the Owners, the Title Holders, or the Association, or arising out of their status as directors or officers unless any such contract or act will have been made fraudulently or with gross negligence. The foregoing indemnification will include indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director or officer may be involved by virtue of being or having been such director or officer; provided, however, that any such indemnity will not be operative with respect to: (i) any matter as to which such person will have finally been adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such director or officer; or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board of Directors, there is not a reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such director or officer.

Section 8.4. Powers and Duties of the Board of Directors. The Board of Directors will exercise the powers and duties of the Association for the benefit of the Property and the owners thereof, and will pay the costs required to be paid from assessments levied by the Association in lieu of the payments to be made to the Developer or Declarant pursuant to Sections 3.4, 3.7 (reimbursed by Declarant pursuant to Section 3.7), or Section 3.11 hereof.

ARTICLE IX - Miscellaneous Provisions

Section 9.1. Duration. This Declaration and the covenants, restrictions, charges and liens set out herein will run with and bind the Property, and will inure to the benefit of and be enforceable by the Declarant, and its legal representatives, successors, and assigns. Except as otherwise expressly set forth herein, this Declaration benefits only the land described in this

Declaration, and there is no intention to the benefit any persons other than those having an interest in the Property. The existence of easement rights or covenant rights in persons not owning or having an interest in the Property will not confer on any such person, any right whatever to enforce the covenants, conditions and restrictions hereby created. The easements granted hereunder will be perpetual, subject to the provisions of this Declaration; with the exception of the easement rights provided herein, this Declaration will continue and remain in full force and effect at all times with respect to the Property and each part thereof (subject, however, to the right to amend the provisions hereof as provided for in Section 9.2 and to submit additional property to the covenants herein contained as provided for in Section 9.6), until December 31, 2032, unless this Declaration is continued in effect beyond said date by the written approval of the Owners of 66% (based on acreage) or more of the Development Lots. Upon such termination, this Declaration and all provisions hereof (excepting the grants of easement provided herein) will expire and terminate as of such date without any further act or instrument by any party.

Section 9.2. Amendment. So long as the Declarant has an interest in the Property, this Declaration, any provision hereof, or any covenant, condition or restriction contained herein, may be terminated, extended, modified or amended, as to the whole of the Property or any portion thereof, by the Declarant; provided that any such change will not, in the reasonable judgment of the Declarant, materially and adversely affect the rights and obligations of the Owners and/or the Title Holders; and further provided that if a Development Lot is directly affected by such change, the Declarant will have first obtained the written consent of the Owner of such Development Lot, which consent such Owner will not withhold unreasonably. After the Declarant has no interest in the Property, this Declaration, any provisions thereof, or any covenants, condition or restriction contained herein, may be terminated, extended, modified or amended, as to the whole of the Property or any portion thereof, by the Owners, provided that, except as hereinafter provided, such change is approved by the Owners of 66% (based on acreage) or more of the Development Lots, or as may otherwise be provided by the By-Laws. Notwithstanding the foregoing, no easement granted hereunder may be terminated without the prior approval of all other Owners, provided, however, that any easement may be relocated as provided in this Declaration. No such termination, extension, modification or amendment will be effective until a proper instrument in writing has been executed by the requisite number of Owners, acknowledged and recorded in the Office of the Recorder of Lake County, Indiana.

Section 9.3. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration is or becomes illegal, null or void for any reason or will be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses, or phrases of this Declaration will continue in full force and effect and will not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses or phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses, or phrases will become or be illegal, null or void.

Section 9.4. No Waiver. The failure of the Declarant or Developer to enforce any provision herein contained will in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision.

Section 9.5. Successors. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property, or any right to possess or occupy any premises situated therein, is and will be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired such interest or right. If any portion of the Property will be acquired in lieu of foreclosure, or under the provisions of any deed of trust in the nature of a mortgage, or sold under foreclosure of any mortgage, or under any judicial sale, any purchaser at such sale, his or its grantees, personal representatives, successors or assigns will hold any such portion of the Property subject to all the covenants, liens and other provisions of this Declaration.

Section 9.6. Right to Subdivide, to Remove Property, and to Add Additional Property.

(a) Resubdivision. The Declarant reserves the right from time to time to subdivide and resubdivide portions of the Property owned by it for the purpose of creating additional Development Lots within the Property without consent of any Owner.

(b) Deletion of Property. Douglas Pointe Development Corporation reserves the right, upon any transfer or transfers by Douglas Pointe Development Corporation of:

- (a) Parcel A in the Replat of Douglas Pointe (a planned unit development); and/or
- (b) Parcel B in the Replat of Douglas Pointe (a planned unit development); and/or
- (c) Parcel E in the Replat of Douglas Pointe (a planned unit development),

or any portion or portions thereof, to cause the parcel or parcels so transferred to cease to be subject to the terms and conditions of this Declaration, or to cease to be subject to the terms and conditions hereof excepting only designated easement rights, and/or to cease to be a part of the Property, and/or to cease to constitute Development Lots hereunder. Douglas Pointe Development Corporation may exercise such right by including a statement of the exercise in any relevant recorded transfer document or in a separate document executed and recorded within a reasonable time after the execution and delivery of the relevant transfer document.

(c) Addition of Property. The Declarant may permit the addition of land to the Property by permitting the owner of a parcel of land adjacent to the property, with the consent

of the Declarant, to add such land to the Property. Such land will be added to the Property by recording in the Office of the Recorder of Lake County, Indiana, a declaration executed by Declarant and the record owner of such land, declaring such land to be subject to the terms, covenants and conditions of this Declaration, deemed to be a portion of the Property, and constituting a portion of the Property or one or more Development Lots, whereupon such additional land will be bound by the terms, covenants and conditions hereof. Upon the recording of such declaration, such record owner will become and will thereafter be deemed an Owner and/or a Title Holder hereunder.

Section 9.7. Variances. The Declarant may, in its reasonable discretion, grant reasonable variances from the provisions of this Declaration, or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that said variances will not materially injure any of the Property or Improvements within the Property, and will otherwise be subject to all applicable laws, ordinances, rules and regulations of any governmental agency or political subdivision having jurisdiction over the Property. No variance granted pursuant to the authority granted herein will constitute a waiver of any provision of this Declaration as applied to any other person, Owner, Title Holder, or Development Lot. Upon the establishment of the Association pursuant to Article VIII hereof, the right of the Declarant to grant variances provided in this Section 9.7 will be transferred to and assumed by the Association.

Section 9.8 Notice. Any notice required or permitted to be given under this Declaration will be in writing and will be deemed to have been properly served when: (a) delivered in person and receipted for; (b) delivered by overnight or other courier; or (c) two (2) days after deposit in the United States mail, certified, return receipt requested, postage prepaid, addressed to a Title Holder at the Title Holder's last known address (which may include the address of such Title Holder's property).

Section 9.9. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 9.10. Owner's Liability Subsequent to Sale. Upon the sale of a Development Lot or portion thereof, or, in the case of any Development Lot owned by Declarant, upon the sale of a portion of such Development Lot, the Title Holder so selling will not have any liability for the obligations thereon created by this Declaration which accrue against the Development Lot or portion thereof sold after the date of the conveyance; provided, however, that nothing herein will be construed so as to relieve a Title Holder of any Development Lot from any liabilities or obligations incurred prior to such sale pursuant to this Declaration.

Section 9.11. Additional Restrictions. The Declarant hereby reserves the right, prior to any sale by Declarant of any portion of the Property, to impose additional covenants and restrictions concerning the manner of use and the permitted use of the portion of the Property sold. Such additional covenants and restrictions may be set forth in the deed conveying such

portion of the Property and will be binding on such portion of the same as if such covenants and restrictions were set forth in this Declaration.

Section 9.12. Singular and Plural. Words used herein, regardless of the number and gender specifically used, will be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

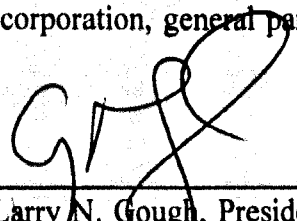
IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Declaration of Covenants, Easements, Conditions and Restrictions for the Douglas Pointe Development as of the day and year first above written.

DECLARANT:

Douglas I:

DOUGLAS POINTE ASSOCIATES, L.P., an
Indiana limited partnership

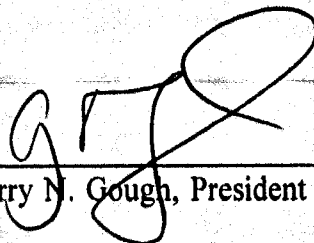
By: Douglas Pointe Development Corporation, an
Indiana corporation, general partner

By: 
Larry N. Gough, President

Douglas II:

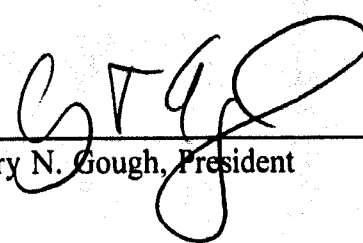
DOUGLAS POINTE II ASSOCIATES, L.P.,
an Indiana limited partnership

By: Douglas Pointe II Corporation,
an Indiana corporation, general
partner

By: 
Larry N. Gough, President

Corporation:

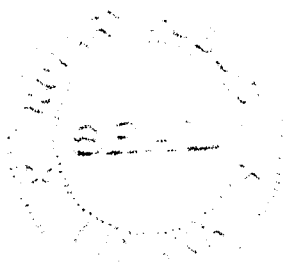
DOUGLAS POINTE DEVELOPMENT
CORPORATION, an Indiana corporation

By: 
Larry N. Gough, President

STATE OF INDIANA)
)
) SS:
COUNTY OF LAKE)

BEFORE ME, the undersigned, a Notary Public, on February 7, 1996, personally appeared Larry N. Gough, personally known to me to be the same person whose name is subscribed to the foregoing instrument as President of Douglas Pointe Development Corporation, as general partner of Douglas Pointe Associates, L.P., as President of Douglas Pointe II Corporation, as general partner of Douglas Pointe II Associates, L.P., and as President of Douglas Pointe Development Corporation, and being first duly sworn by me upon oath, acknowledged that he has read and understands the foregoing Declaration and that he has affixed his name as his own free and voluntary act and as the free and voluntary acts of said entities for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.



Barbara L. Smolinski
Notary Public

Barbara L. Smolinski
Printed Name

My Commission Expires: 7/24/98
County of Residence: Lake

This instrument was prepared by:

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Burke, Murphy, Costanza & Cuppy
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