

*Schema Subject to
POB# 545
N# 46342*

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR DEEP RIVER POINTE DEVELOPMENT
CITY OF HOBART, INDIANA

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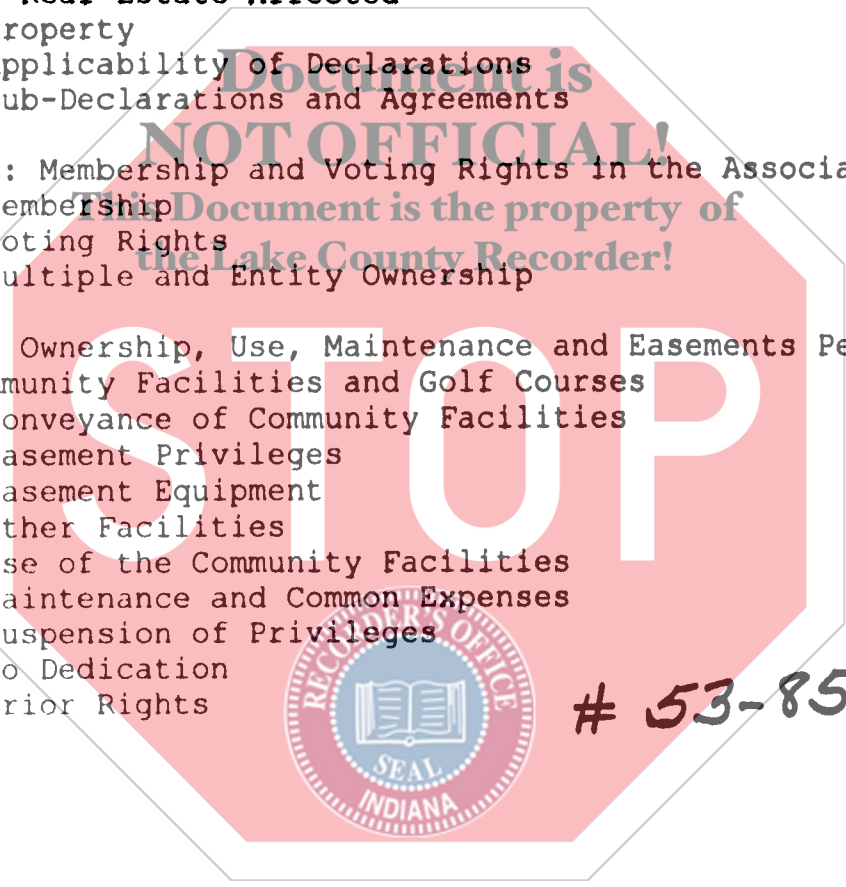
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SAM ORLICH
AUDITOR LAKE COUNTY

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DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR DEEP RIVER POINTE DEVELOPMENT
CITY OF HOBART, LAKE COUNTY, INDIANA

THIS DECLARATION, dated this 13th day of February, 1996, made by SCHEMA DEVELOPMENT COMPANY, LLC, an Indiana Limited Liability COMPANY, (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property ("Property") described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Developer, Schema Development Company, LLC, desires to create on the property a residential community (Community") with permanent roadways, with appurtenant parkways, and general parking areas, and to reserve the right to provide recreational facilities and other common areas ("Community Facilities") for the benefit of the Community (described in Exhibit "B"); and

WHEREAS, Developer desires to provide for the preservation of the values and amenities of the Community and for the enhancement, maintenance and use of the Community Facilities; and, to this end desires to subject the property and the respective owners to the covenants, restrictions, terms and conditions hereinafter set forth, each and all of which is and are for the benefit of the Property; and

WHEREAS, Developer deems it desirable for the preservation of the Community to create an agency to which should be delegated and assigned the power of maintaining, administering and enforcing various covenants and restrictions and collecting and disbursing the assessments and charges hereinafter set forth, to be known as Deep River Pointe Property Owners Association, Inc, for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that all of the property described in Exhibit "A" shall be held, transferred, sold conveyed, occupied and dedicated subject to the covenants, conditions, restrictions, easements, undertakings agreements, changes, liens and rules of Deep River Pointe Property Owners Association, Inc. as provided herein and as may be later amended as hereinafter set forth.

ARTICLE I

DEFINITIONS

1.01 **Definitions.** The following terms, unless the context requires otherwise, shall have the following meaning when used in this Declaration:

A. **"Declaration"** shall mean this instrument, the code of By-Laws and shall include such amendments, if any, to this instrument as may from time to time be adopted as permitted by the term hereof.

B. **"Declarant"** shall mean

provided, however, that Declarant may act hereunder by and through its beneficiaries, its successors and assigns and on behalf of all persons seeking to acquire any interest hereof.

C. **"Developer"** shall mean Schema Development Corporation, an Illinois Corporation, provided, however, that Developer may act hereunder by and through its beneficiaries, its successors and assigns on behalf of all persons seeking to acquire any interest therein.

D. **"Property"** shall mean the real estate described in Exhibit "A" hereto, which is by this reference incorporated herein and made a part hereof.

E. **"Association"** shall mean Deep River Pointe Property Owners Association, Inc., an Indiana not-for-profit corporation and its successors and assigns.

F. **"Community Facilities"** or **"Common Areas"** shall mean those areas or parts of the Property not comprising the lots as described and depicted in Exhibit "B", said common area will be owned by the Association for the common use and benefit of the members of the Association, subject to and in accordance with the provisions hereof, including but not limited to: (i) all portions of the Property conveyed to the Association pursuant to Article 4.01 hereof; (ii) all easement rights held by the Association and all facilities and equipment located therein and thereon; and (iii)

any structures or improvements constructed or placed upon any part of the Community Facilities. All personal property owned or controlled by the Association and available for the common benefit and/or use of Owners, or for the maintenance and management of any part of the Property in accordance with the provisions of this Declaration and the By-Laws, shall be deemed to be Community Facilities insofar as the same is to be owned, used or disposed of for the benefit of Owners. All paths or walkways under Article IV for any golf course shall not be a community facility or common area, and Owners shall not be entitled to use such paths or walkways.

G. **"Unit"** or **"Dwelling Unit"** shall mean a residential building and/or house which, as originally constructed, is integrated and designed for use exclusively as living quarters for a single family.

H. **"Building"** shall mean a structure, located on the property.

I. **"Parcel"** shall mean and refer to any property (i) which is owned by developer or has been conveyed by Developer to a grantee other than the Association, and (ii) which Developer has neither designated nor conveyed to the Association for use as a Community Parcel.

J. **"Owner"**, **"Unit Owners"**, or **"Parcel Owners"** shall mean and refer to a record owner, whether one or more persons or

entities, and including the Developer, of a fee simple title to any Dwelling Unit or Parcel, including contract sellers, but excluding those other than contract sellers having such interest merely as security for the performance of an obligation. Developer shall not be considered an Owner of unsold parcels for purposes of Section 3.01.a. of the By-Laws.

K. **"Member"** shall mean and refer to every person or entity who holds membership in the Association.

L. **"Board"** shall mean and refer to the board of directors of the Association as constituted at any time or from time to time.

M. **"Occupant"** shall mean a person or persons who from time to time occupy a Dwelling Unit.

N. **"Occupancy Expense"** shall mean all sums incurred, expended, or proposed to be expended for the purpose of carrying out, protecting, performing, or implementing the required or permitted activities of the Board or Association hereunder or which are for the benefit of Owners.

O. **"Proportionate Share"** shall mean that amount of the Common Expense as bears the same ratio to the total amount of Common Expenses, as the number of Units owned by an Owner bears to all Units existing subject to the provisions hereof, at the time or times each respective determination of Proportionate Share is made. A parcel which is vacant or which is being improved with a Dwelling

Unit shall be deemed to be the Unit for purposes of calculating Proportionate Share.

ARTICLE II

REAL ESTATE AFFECTED

2.01 **Property.** The property described in Exhibit "A" at all times hereafter, shall be held, transferred, sold, conveyed, used and occupied subject to and in accordance with the terms, provisions and conditions contained in this Declaration.

2.02 **Applicability of Declaration.** Upon subjection of the Property to the terms, provisions and conditions of this Declaration, unless otherwise specified by Developer, all action heretofore taken hereunder by the Board, the Association, the Developer, its beneficiaries and their contractors, agents and employees shall be binding upon and inure to the benefit of the Parcel and Unit Owner.

However, the Owners of such Property shall not be responsible for any portion of the expenditures made by the Board or Association prior to the date such Property is subject to this Declaration, except at the election of Developer, Developer may specify any equitable adjustment of accrued expenses or anticipated expenses of the Association.

2.03 **Sub-Declarations and Agreements.** Developer, the Board, the Association and individual Owners may from time to time hereafter make further Declarations and enter into further

agreements affecting the Parcel or Unit on the Property, including but not limited to, condominium declarations, maintenance and cross easement agreements and homeowner or building owner declarations. To the extent the provisions of any such agreement or declaration shall conflict with the terms, provisions and conditions hereof, then this Declaration shall govern.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.01 **Membership.** Each Owner of a Unit or of any Parcel shall have a membership in the Association. Membership in the Association is appurtenant to and shall not be separated from ownership of a Parcel or Unit, and each Owner shall be an Owner of a Parcel or Unit, or by accepting a conveyance of the same, be a Member of the Association, and thereby succeed to the rights and become subject to the obligations of a Member of the Association, whether or not reference is made thereto in the instrument of conveyance or any other document of ownership. Nothing contained herein shall be interpreted to exclude Developer from membership while it or its successors in interest, if any, own one (1) or more Units or Parcels.

3.02 **Voting Rights.**

A. Each Owner, including the Developer, shall be entitled to one (1) vote for each Unit or Parcel owned by such Owner.

B. Notwithstanding the foregoing, the Developer shall have the right to control the Owners Association until four (4) months after seventy-five percent (75%) of the Units in the recorded phases shall be sold or for five (5) years, whichever event shall occur first. After the Developer no longer has the right to control the Owners Association, control shall be transferred to the Unit Owners. Developer, however, shall retain voting rights with respect to each Unit and each Parcel owned by Developer.

3.03 **Multiple and Entity Ownership.** There shall be one (1) vote and one (1) voting member for each Parcel or Unit, regardless of the number of persons who may have ownership interest in a Unit or Parcel or the manner in which title is held by them. If any Parcel or Unit shall be owned by more than one (1) person, then such Owners shall confirm in writing to the Association the name of the person who shall be entitled to vote on behalf of such joint Owners and the membership represented thereby in accordance with the provisions of Section 2.04 of the By-Laws. The voting right of any Owner which is: (a) a corporation, shall be exercisable by its chief executive officer; (b) a corporate trustee, shall be exercisable by its beneficiary; and (c) an individual trustee, shall be exercisable by such Trustee.

ARTICLE IV

OWNERSHIP, USE, MAINTENANCE AND EASEMENTS

PERTAINING TO COMMUNITY FACILITIES and GOLF COURSES

4.01 **Conveyance of Community Facilities.** Developer shall convey to the Association that portion of the Property described in Exhibit "A" attached hereto and by this reference made a part hereof, to be used as a Community Facility for streets, parkway, sewer, and utility conduits and drainage, and such other purposes as may be designated by the Association. From time to time and at any time Developer may convey to the Association additional portions of the Property then owned by Developer, which when conveyed shall become a part of the Community Facilities. The Association shall be obligated to accept any and all of such conveyances, and to hold such part of the Property subject to the terms and conditions hereof pertaining to Community Facilities; provided, however, that any part of the Property to be conveyed which is generally designed, used or intended to provide vehicular or pedestrian access to any Parcel shall be deemed to be subject to a perpetual easement for ingress and egress appurtenant to each adjacent Parcel and also for the benefit of all other portions of the Property, whether or not expressed in the instrument of conveyance. Developer hereby reserved the right, both before and after any such conveyance, to use all Community Facilities for the benefit of any other portion of the Property not subject to the provisions of this Declaration, and provide improvements upon such Community Facilities which are not inconsistent with the purpose

thereof.

4.02 Easement Privileges. Developer hereby reserves the following rights, with respect to all portions of the property, which rights shall survive the conveyance of every Parcel and Community Facility, whether or not such rights are expressly reserved in the instrument of conveyance:

A. To grant to any public or private utility having a certificate of territorial authority, to any governmental authority or to any other entity providing such services the right to install and maintain facilities and equipment to provide utility services (including but not limited to electric, gas, water, sanitary and storm sewer, and telephone services), whether the same shall be located in, upon or outside of the Unit or Property, for the benefit of all or any portion of the Property or the public at large;

B. To reserve or grant for the benefit of any other portion of the Property easements for drainage purposes and storm sewer purposes, and such easement rights may include the right to tap into and use all pipes and other conduits, pumping facilities and equipment on the Property utilized in connection with the disposal of surface water and sewage, which are owned by the Association or which constitute Community Facilities;

C. To reserve or grant for the benefit of any other portion of the Property the right to re-enter any portion of the

Property to effect repairs on all pipes and other conduits, pumping facilities and equipment, whether the same shall be located in, upon, or outside of a Unit.

D. To reserve or grant for the benefit of the existing privately owned eighteen hole golf course (owned and operated by the Gary Works Supervisors Club Incorporated), the proposed additional nine hole golf course (to be owned and operated by the Gary Works Supervisors Club Incorporated), and all other land, buildings and appurtenances thereto, all reasonably necessary easements on the Property to permit the efficient maintenance of the golf course and the efficient play of golf, including easements in all lakes and ponds for use in irrigation of said golf courses. In addition, each Owner hereby releases, waives and forfeits any claim against Developer, Gary Works Supervisors Club Incorporated, and any party or entity that may own, use, manage, maintain or repair the golf courses, which claim arises from the use, maintenance or construction of the golf courses and hereby indemnifies and holds harmless Developer and all other parties from such claim.

E. To modify, relocate and expand the foregoing easements rights, including but not limited to the provision of rights and restrictions reasonably calculated to preserve, maintain and facilitate the use of any such easement for its intended purpose;

F. However, no such easement shall be located in any location which shall unreasonably impair the use of any Unit by its Owner as a dwelling.

4.03 Easement Equipment. All pipes, cables, poles and equipment installed in or as part of an easement for any of the purposes set forth in Article 4.02 above shall be a part of the Community Facilities, constituting the property of the Association, unless the same are owned by a utility company, private entity or governmental authority or unless Developer or any other person shall reserve any title or rights therein, and specifically excluding the golf path/walkway through the conservation easement areas.

4.04 Other Facilities. The Association shall have the right to install and operate upon the Community Facilities (to the extent permissible under applicable law) recreational and other facilities incidental to the residential nature of the Community and primarily for the benefit of the Owners and Occupants. Fees and charges may be imposed for the use of such facilities, provided that such facilities shall be maintained for the benefit of the Owners, Occupants and their guests. The fees and charges herein permitted shall be limited to the amounts necessary to pay for the cost of operation and replacement thereof.

4.05 Use of the Community Facilities. Subject to the provisions of Articles 4.04 and 4.07 hereof, each Owner shall have

the right to the use and benefit of all Community Facilities in connection with the use, possession, occupancy or enjoyment of the respective Parcels and Units owned by such Owner. Such rights shall extend to the Owners, Occupants, guests and other authorized invitees of the Owners, Occupants and the Association, and shall be appurtenant to and pass with the title of every Parcel and Unit; provided that such rights shall be subject to and governed by the provisions of this Declaration and the By-Laws, rules and regulations of the Board, or the Association acting through the Board. The Association shall have the right of ingress to and egress from, under, along, over and upon the Community Facilities for any and all purposes connected with the use, maintenance, construction, operation, repair and reconstruction of any of the Community Facilities.

4.06 **Maintenance and Common Expenses.** Except as otherwise provided in Section 4.06 and 6.06 hereof, and except to the extent the same is assumed by any person pursuant to a grant of right or otherwise, the ownership, management and maintenance responsibilities of the Association which shall include but not be limited to: snow removal from streets and sidewalks, upkeep of common areas, upkeep of decorative street lights on dedicated roads; maintenance and taxes on drainage easement areas for the benefit of the property; repair, alteration and improvement of the Community Facilities; purchase of fidelity bonds and insurance of

the types and in the amounts specified in Section 2.10 of the By-Laws, accounting services, legal services, payment of real estate taxes on common areas, including drainage easement areas, payment of Declarant's portion of maintenance expense on drainage easement areas, management of Association expenses and seven percent (7%) to a contingency fund, shall be at the cost and expense of the Association and all expenses in connection therewith shall be Common Expenses.

4.07 **Suspension of Privileges.** The rights to the use of Community Facilities and the easements created hereunder shall be subject to suspension, with respect to any Owner or Occupant for any period during which any assessment of the Association shall remain unpaid for the Parcel or Unit owned or occupied by such person, or for any period which the Board shall determine as a result of any default in or infraction of the terms, conditions, undertakings or obligations of this Declaration, the By-Laws of the Association, or pursuant to specific action of the Board or Association. No policy or action in any specific case shall limit the powers of enforcement of the Board and Association in other cases, and the Board may in its discretion seek injunctive or other legal or equitable relief to enforce its determination to suspend privileges.

4.08 **No Dedication.** Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express

or implied, of any part of the Community Facilities to or for any public use or purpose whatsoever except and only to the extent specifically set forth herein. At any time and from time to time, the Board and the Developer may jointly make application to dedicate any portion of the Community Facilities for public use and to subdivide any portion of the Property, both before and after the conveyance of the same, without further consent or action of the Owners; and at such time that Developer is no longer the Owner of any portion of the Property, the Board alone may exercise such prerogative. The right to make such application shall include the right to execute such documents, incur such expenses as Common Expenses and take such further action as shall be necessary to consummate any such dedication.

4.09 **Prior Rights.** Notwithstanding anything herein to the contrary, the rights and easements created hereunder shall be subject to easements, covenants, conditions and restrictions of record which may be prior to the provisions hereof.

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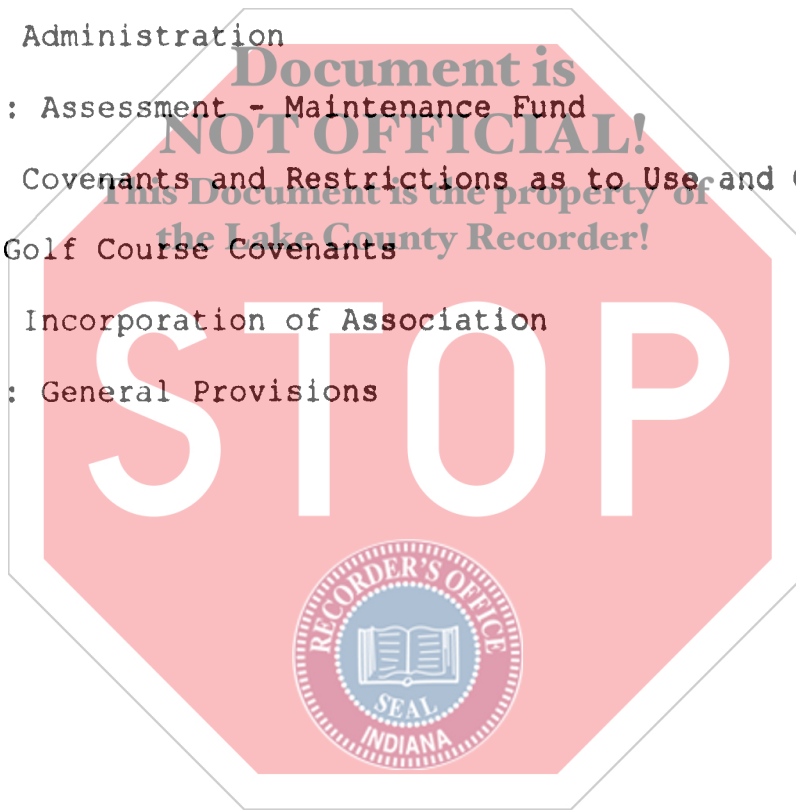
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CODE OF BY-LAWS

OF

DEEP RIVER POINTE PROPERTY OWNERS ASSOCIATION, INC.

SECTION I

Identification and Applicability

1.01 **Identification and Adoption.** These By-Laws are adopted simultaneously with the execution of a certain Declaration to which these By-Laws are attached and made a part thereof. The Declaration is incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these By-Laws and reference is specifically made to Article I of the Declaration containing definitions of terms. The provisions of these By-Laws shall apply to the Property and the administration and conduct of the affairs of the Association. These By-Laws shall also constitute the By-Laws of the Association.

1.02 **Individual Application.** All of the Owners, future Owners, tenants, future tenants, and their guests and invitees, or any other person that might use or occupy a Unit or any part of the

Property, shall be subject to the restrictions, terms and conditions set forth in the Declaration, these By-Laws, and to any rules and regulations adopted by the Board as herein provided.

SECTION II

Administration

2.01 **Board.** The direction and administration of the Community Facilities shall be vested in the Board. Until the first meeting of Voting Members held pursuant to Section 2.05, the initial Board shall consist of three (3) person, who shall be appointed by the Developer. Until such a first meeting of Voting Members, Developer shall have the right to appoint other persons to serve in the place of any Board member who shall be unable or unwilling to serve. Thereafter, the Board shall consist of five (5) persons who shall be elected by the Voting Members, and such persons and their successors shall serve until the third annual meeting following their election or until their successors have been qualified; provided, however, that of the persons elected to the Board at the first meeting of the Voting Members, three (3) shall be elected for terms of two (2) years and two (2) shall be elected for terms of one (1) year each. Subsequently, each Board member elected shall serve for a term of two (2) years. The provisions of Sections II and III shall constitute the initial and basic By-Laws of the Board

and Association. After the first annual meeting of Voting Members, each member of the Board shall be an Owner unless such a person is nominated by or approved by a two-thirds (2/3) vote of the Association. In the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director or officer of such corporation, partner of such partnership, trustee or beneficiary of such trust, or manager of such other legal entity, shall be eligible to serve as a member of the Board.

2.02 **Determination of Board to be Binding.** Notwithstanding that the words "Board" and "Association" may in some instances be used interchangeably in various sections of this Declaration, matters of dispute or disagreement between Owners or with respect to interpretation or application of the provisions of the Declaration or the By-Laws shall be determined by the Board, which determination shall be final and binding on the Association and on all Owners.

2.03 **Operation of the Board.**

A. **Meetings of the Board.** An Annual Meeting of the Board shall be held immediately following each Annual Meeting of the Voting Members and at the same place. Special Meetings of the Board shall be held upon call by the President or by a majority of the Board on not less than forty-eight (48) hours notice in writing to each Board Member, delivered personally or by mail or telegram.

Any Board Member may in writing waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action of the Board without a meeting (in which event unanimous consent of all Board Members shall be required). A majority of the Board shall constitute a quorum, and determinations of the Board shall be binding upon the affirmative vote of a majority of those members of the Board present at any meeting at which a quorum is in attendance (or by unanimous consent, as above stated).

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B. Compensation of Board Members. No compensation shall be paid to Board Members for services in such capacity, unless Voting Members having three-fourths (3/4) of the total votes shall approve such compensation.

C. Election of Officers by Board. At each annual meeting of the Board, the Board shall elect from among its members a President who shall preside over its meetings and those of the Voting Members, a Secretary who shall keep the minutes of all meetings of the Board and of the Voting Members and who shall, in general, perform all the duties incident to the Office of Secretary, and a Treasurer to keep the financial records and books of account. The Board may by resolution create additional offices and elect appointees thereto, may create committees and make appointments thereto and may at Any time make appointment to fill a vacancy in any office. All officers shall serve until the next

annual meeting of the Board or until their successors are elected and qualified.

D. **Compensation of Officers.** No compensation shall be paid to an officer for services in such capacity, unless Voting Members having three-fourths (3/4) of the total vote shall approve such compensation.

E. **Removal from Officers.** Any Board Member may be removed from office by affirmative vote of the Voting Members having at least three-fourths (3/4) of the total votes, at any Special Meeting called for such purpose. Any officer may be removed from office by the affirmative vote of a majority of the members of the Board at a Special Meeting of the Board called for such purpose.

2.04 **Voting Rights of Members.** There shall be one (1) person with respect to each Parcel or Unit ownership who shall be entitled to exercise the voting rights attributable to such Parcel or Unit at any meeting of the Owners. Such person shall be known (and is herein referred to) as a Voting Member. Such Voting Member may be the Owner or one of the group composed of all Owners, or may be a person designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner. Such proxy designation shall be made in writing to the Board and may be changed at any time by actual notice to the Board by the Owner or Owners of any Unit or Parcel covered by such proxy, and shall be changed upon

actual notice to the Board of the death or judicially-declared incompetence of any designee, The Developer (or its nominee or designee) may exercise the voting rights with respect to each Parcel or Unit owned by the Developer.

2.05 Annual Meeting of Voting Members. The first Annual Meeting of the Voting Members may be held upon not less than ten (10) days notice given by the Developer and shall be held within a reasonable time after the Developer no longer has the right to control the Association as specified in Section 3.02(b) of the Declaration. Thereafter, there shall be an Annual Meeting of the Voting Members on the first Tuesday of June of each succeeding year, at 7:30 o'clock p.m. on the Property, or at such other reasonable place or time (not more than thirty (30) days before or after such date), as may be designated by written notice of the Board delivered to the Voting Members not less than fifteen (15) days prior to the date fixed for said meeting. At each Annual Meeting of Voting Members, the Voting Members shall, by a majority of the total votes present at any such meeting, elect the Board members for the following year, and transact such further or other business as shall properly be brought before the meeting.

2.06 Special Meetings of Voting Members. After the initial Annual Meeting of Voting Members, special meetings of the Voting Members may be called at any time for the purpose of considering matters which, by the terms of this Declaration, require the

approval of all or some of the Voting Members, or for any other reasonable purpose. Said meetings shall be called by written notice (unless waived in writing), authorized by a majority of the Board, or by the Voting Members having one-third (1/3) of the total votes, and delivered no less than ten (10) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

2.07 **Notice of Meetings of Voting Members.** Notices of Meetings required to be given herein may be delivered either personally or by mail to the person entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Unit or Parcel with respect to which the voting right appertains, if no such address has been given to the Board.

2.08 **Quorum: Procedure.** The presence at any meeting of the Voting Members having twenty percent (20%) of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total present at such meeting. Any Voting Members in writing may waive notice of a meeting, or consent to the holding of a meeting without notice or consent to any action of the Association without a meeting (in which event unanimous consent of all Voting Members shall be required.)

2.09 **General Powers of the Board.** Without limiting the general powers which may be provided by law, the Declaration and these By-Laws, the Board shall have the following general powers and duties:

A. To elect the officers of the Association as herein above provided;

B. To administer the affairs of the Association and the Community Facilities;

C. To engage the services of a manager or managing agent who shall manage and operate the Community Facilities for all of the Owners, upon such terms and for such compensation and with such authority as the Board may approve;

D. To formulate the policies for the administration, management, use and operation of the community Facilities, and to provide for the implementation thereof;

E. To adopt administrative rules and regulations governing the administration, management, operation and use of the Community Facilities, and to provide for the enforcement thereof, and to amend such rules and regulations from time to time;

F. To provide for the maintenance, repair and replacement of the Community Facilities and payments therefor, and to approve payment vouchers or to delegate such approval to the officers or the manager or managing agent;

G. To provide for the designation, hiring, and removal of

employees and other personnel, and to engage or contract for the services of others, and to make purchases, for the maintenance, repair, replacement, administration, management, and operation of the Community Facilities, and to delegate any such powers to the manager or managing agent (and any such employees or other personnel employed by the managing agent);

H. To estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Owners their respective Proportionate Shares thereof, as hereinafter provided;

I. To comply with the instructions of the Voting Members, as expressed in any resolution adopted by an affirmative vote of a majority of the total votes held by all Voting Members (unless a greater plurality is required with respect to any issue or matter, as elsewhere herein specified);

J. To manage and to make determinations with respect to the Community Facilities;

K. To exercise all other powers and duties of the Board referred to in the Declaration or these By-Laws, and to perform all acts necessary to implement the foregoing.

2.10 Specific Powers of the Board. The Board shall acquire and shall have the power to purchase, contract for and pay for the following within the general powers granted herein, and which are listed for the purposes of illustration and not for the purpose of

limitation;

A. Utility Service for Community Facilities. Water, waste removal, electricity, telephone, heat, power and other necessary utility services if not separately metered or charged to the Parcels or Units.

B. Casualty Insurance. Insurance against loss or damage by fire and all other hazards normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects including those covered by the standard "all risk" endorsement covering all of the Community Facilities (exclusive of land, foundations and excavation) but including fixtures and building service equipment that are considered part of the Community Facilities as well as common personal property and supplies. Said insurance shall be in an amount equal to the maximum insurable replacement value of the above-described property and shall contain a maximum deductible of the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. Each casualty insurance policy must be written by an insurance carrier which carries a B general policyholders rating and a III financial size category or as an alternative, an A general policyholders rating. Casualty insurance policies shall contain an Inflation Guard Endorsement when it can be obtained and Construction Code, Demolition Cost, Contingent Liability from Operation of Building Laws, Increased Cost of

Construction, and Steam Boiler and Machinery Coverage endorsements. All casualty insurance policies shall show the Owner's Association as the named insured and must also contain the standard mortgage clause. The casualty insurance policy shall require the insurer to notify the Owner's Association and each first mortgage holder named in the mortgage clause in writing at least ten (10) days before it cancels or substantially changes the Project's coverage.

C. Liability Insurance. Comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable (but not less than One Million Dollars [\$1,000,000.00] for bodily injury and property damage for any single occurrence), and other liability insurance as it may deem desirable, insuring each Owner, the Association, its officers, members of the Board, the Developer, the manager and managing agent, if any, and their respective beneficiaries, employees and agents (to the extent that any or all of the same are, in the determination of the Board, properly named as insured), from liability in connection with the ownership and/or use of the Community Facilities, and legal liability that results from lawsuits related to employment contracts to which the Association is a party. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. The liability policy should also provide for at least thirty (30) days written

notice to the Owner's Association before the insurer can cancel or substantially modify the policy.

D. Worker's Compensation Coverage. Worker's compensation insurance to the extent necessary to comply with applicable laws.

E. Wages and Fees for Services. The services of any person or firm employed by the Board, including without limitation the services of a person or firm to act as manager or as managing agent for the Community Facilities, the services of any person or persons required for maintenance or operation of the Community Facilities, and legal, accounting and other professional services necessary or proper in the operation of the Community Facilities or the enforcement of this Declaration and for the organization, operation and enforcement of the rights of the Association.

F. Care of Community Facilities. Landscaping, gardening, snow removal, painting, paving, striping, cleaning, maintenance, repair and replacement of the Community Facilities and such equipment used in connection therewith as the Board shall determine to be necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the Community Facilities; and all real estate taxes and other impositions upon the Community Facilities.

G. Additional Expenses. Any other materials, equipment, supplies, furniture, labor, services, maintenance, repairs,

structural alterations or additions, insurance or assessments which the Board is required to or may secure or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the maintenance and operation of the Community Facilities or for the enforcement or implementation of any of the terms and provisions of this Declaration.

H. **Discharge of Mechanic's Liens.** Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Property or any part thereof which may, in the opinion of the Board, constitute a lien against the Community Facilities or any part thereof (rather than merely against the interest therein of particular Owners); it being understood, however, that the foregoing authority shall not be in limitation of any other lawful action relating to the same subject matter. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the costs of discharging it, and any costs incurred by the Board by reason of discharging said liens or otherwise in relation thereto shall be specially assessed to and paid by said Owners.

I. **Maintenance of Buildings.** Maintenance and repairs of or other work to any Building, Unit or Parcel which is necessary in the discretion of the Board to protect the Community Facilities or the appearance of the Property, or to carry out any of the purposes encompassed by this Declaration, and which the Owner or Owners of

a Building, Unit or Parcel have failed or refused to perform within a reasonable time after written notice delivered by the Board to said Owner or Owners. The Board shall levy a special assessment against such Owner for the cost of said maintenance, repair or other work. The Board or its agent may enter any Unit or upon any Parcel when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners and Occupants as practicable and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund. In the event of any emergency originating in or on any Unit or Parcel threatening any Community Facility or other Unit or Parcel, or in the event of an Owner's absence at a time when required alterations, maintenance, repairs or other work are to be performed, the management agent or his representative or any other person designated by the Board may enter in or upon such Unit or Parcel and immediately, whether the Owner is present or not, perform the required work.

J. Certain Utility Services to Parcels. The Board may pay from the maintenance fund amounts payable for water, waste removal and any utilities which are not separately metered or otherwise directly charged to individual Owners. However, the Board may discontinue such payments at any time, in which case each Owner shall be responsible for direct payment of his share of such

expenses as determined by the Board. The Board reserves the right to levy additional assessments against any Owner to reimburse it for excessive use by such Owner of any utility service, the expense of which is charged to the maintenance fund.

The Board's powers herein above enumerated shall be limited in that the Board shall have no authority to acquire or to pay for out of the maintenance fund during any one (1) calendar year, any equipment, capital additions or improvements, (other than for purposes of replacing or restoring portions of the Community Facilities, subject to all the provisions of this Declaration) having a total cost in excess of Fifteen Thousand Dollars (\$15,000.00), without in each case the prior approval of the Voting Members holding two-thirds (2/3) of the total votes; except that the Board shall be entitled to make expenditures in excess of said amount if (a) the same are approved at an annual meeting of Voting Members by a majority of the total votes represented at said meeting, or (b) are expended to alleviate or eliminate a situation which in the discretion of the Board constitutes an emergency.

2.11 **Vouchers.** All vouchers for payment of expenditures by the Board shall be signed by such officer(s) or agent(s) of the Board in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such vouchers shall be signed by the Treasurer and countersigned by the President of the Association.

SECTION III

ASSESSMENT-MAINTENANCE FUND

3.01 A. Common Expenses - Estimate. Each year on or before December 1, the Board (or in the event that the Board is not yet in effect, the Developer) shall estimate the total amount necessary to pay the cost of wages, materials, equipment, improvements, additions, insurance, services and supplies which are anticipated will be required or incurred during the ensuing calendar year for the performance of all the services and other undertaking required or permitted herein and to be charged as Common Expenses, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall, on or before December 15, notify each Owner in writing as to the amount of such estimate, with reasonable itemization of the categories or composition thereof. Each Owner shall be assessed for a Proportionate Share of said "estimated cash requirement." On or before January 1, of the ensuing year, and each ninety (90) days thereafter, each Owner shall be obligated to pay to the Board or as it may direct, one quarter (1/4) of the annual Owners Assessments made pursuant to this Section. A late charge of Twenty-Five Dollars (\$25.00), or such other amount as may be determined by the Board from time to time, shall be added to any assessment not paid within thirty (30) days of its due date. On or before the date of

the Annual Meeting of each calendar year, the Board shall supply to all Owners an itemized accounting of all expenditures for Common Expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures, plus reserves. For the purpose of this Section, Developer shall not be considered the Owner of any unsold parcels. Annual assessments shall commence at the time of the initial sale of each individual unit.

B. Special Assessments to Particular Owners. Special assessments made against particular Owners as permitted in Paragraphs 2.09 H, I, K, 3.02, or any other provisions hereof, shall be due and payable within twenty (20) days after notice by the Board to an Owner, specifying the amount and nature thereof. The Board shall have all rights and remedies with respect to nonpayment and collection of any such special assessment as is provided herein for assessments for Common Expenses.

3.02 Reserve for Contingencies and Replacements. The Board shall establish and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year, shall be charged first against such reserve. If the annual "estimated cash requirement" proves inadequate for any reason, including but not limited to, nonpayment of any Owner's

assessment, the Board may, at any time, levy a further assessment, which shall be assessed to the Owners in Proportionate Shares. The Board shall serve notice of such further assessment on all Owners responsible therefor by a statement in writing giving the amount and reason therefore, and such further assessment shall become effective with the next quarterly maintenance payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted quarterly amount. At the time of the conveyance, by a contractor or any other person who may erect Buildings upon the Property for sale, of a Unit or Parcel containing a Building, the Owner who purchases the same shall pay (in addition to that portion of the first quarterly assessment) to the Association, or as otherwise directed by the Board, an amount equal to one (1) full quarterly assessment of each Unit contained in the Property as conveyed, which amount shall be used and applied as an operating reserve for Common Expenses in the manner herein provided; together with unamortized insurance premiums and prepaid expenses which constitute a Common Expense. If any Parcel is conveyed in an unimproved state, the reserve payments required herein shall be due and payable when any Building erected thereon is occupied in whole or in part.

3.03 Budget for First Year. When the first Board elected hereunder takes office, it shall determine the estimated Common

Expenses, as herein above defined, for the period commencing thirty (30) days after said election and ending on December 31 of the calendar year in which said election occurs. Assessments shall be levied against the responsible Owners during said period as provided in Section 3.01. Nothing herein shall limit the authority of any Board serving prior to the first annual meeting of Voting Members to prepare budgets and require assessments, and to exercise all of the other rights and prerogatives of the Association and the Board hereunder.

3.04 **Failure to Prepare Annual Budget.** The failure or delay of the Board to prepare or serve the annual or adjusted estimate on an Owner shall not constitute a waiver or release in any manner, of such Owner's obligation to pay any sums herein provided whenever the same shall be determined, or whenever served; and in the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay the monthly assessment at the then pendant monthly rate.

3.05 **Books and Records.** The Association shall maintain or cause to be maintained full and correct books of account in chronological order of the receipts and expenditures. Such records and the vouchers authorizing the payment shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Owner. Upon ten

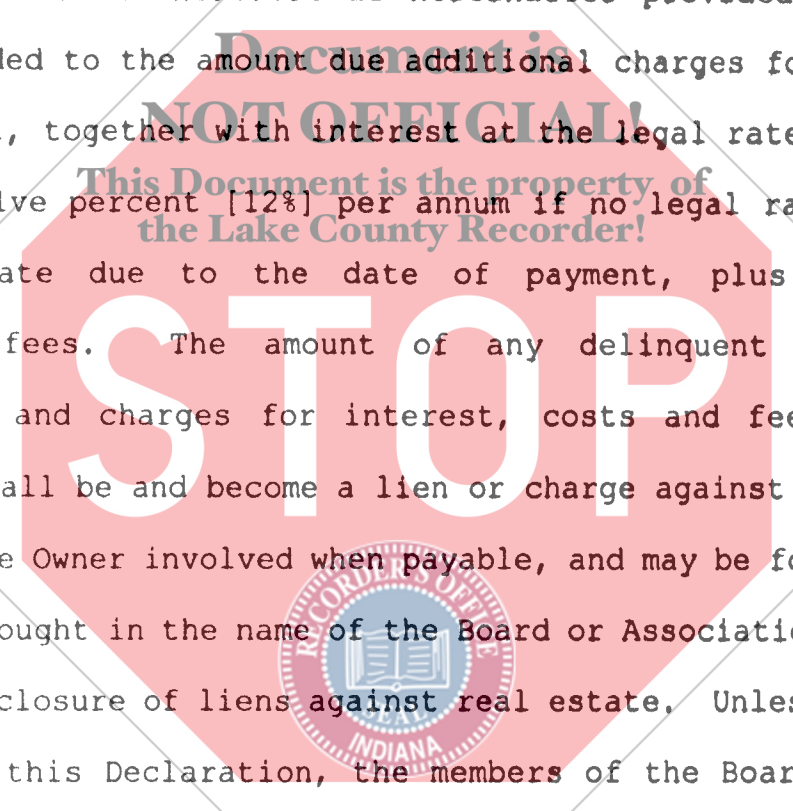
(10) days notice to the Board and payment of a reasonable fee, any Owner shall be furnished a current statement of his account, setting forth the amount of any unpaid assessments or other charges due and owing from such Owner, to the extent the same is then determined.

3.06 **Status of Collected Funds.** All funds collected hereunder shall be held and expended for the purposes designated herein, and shall be deemed to be held for the benefit, use and account of all the Owners in their respective Proportionate Shares, except to the extent special assessments are collected for and are to be applied against, specific expenditures or obligations and except for such adjustments as may be required to reflect delinquent or prepaid assessments.

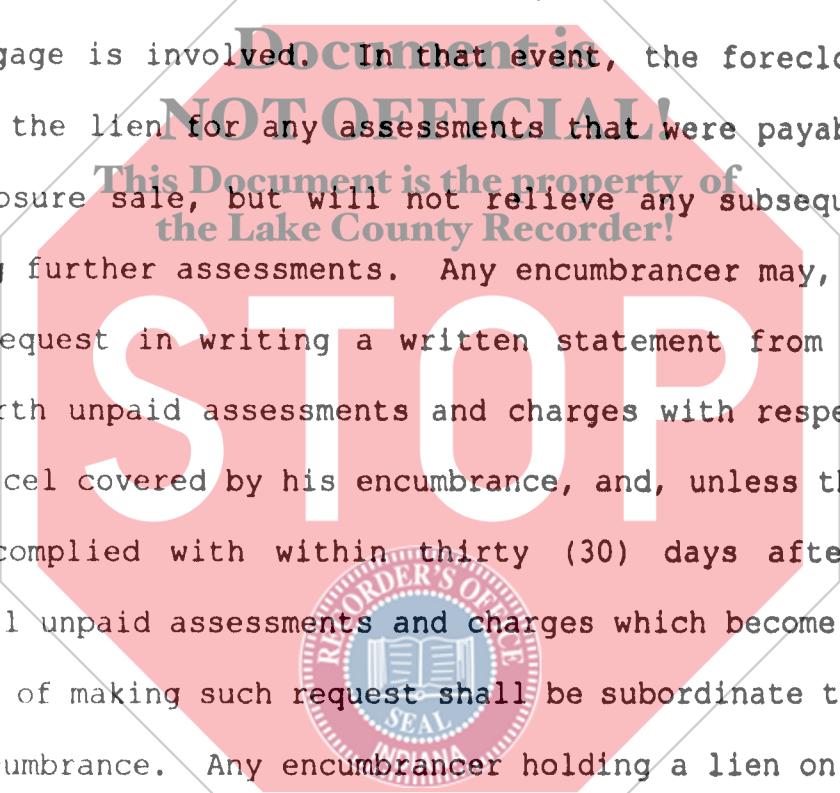
3.07 **Obligations and Rights Upon Transfer.** Each assessment together with such interest, costs and reasonable attorney's fees shall be the personal obligation of the person who was the Owner of the Unit or Parcel at the time the assessment was levied. This personal obligation shall not pass to successors in title unless expressly assumed. Upon the transfer of a Unit, unless there is an agreement to the contrary, approved by the Board, any reserves or other funds of the transferor held by or subject to the control of the Association shall be deemed transferred to the transferee of the Unit or Parcel.

3.08 **Remedies for Failure to Pay Assessments.** If an Owner is

in default in the payment of any charges or assessments required hereunder for thirty (30) days after the same are due and payable, the Board may bring suit for and on behalf of itself or the Association and as representative of all Owners, to enforce collection thereof against such Owner personally, and may in addition thereto or in the alternative as it elects, bring suit to foreclose the lien therefore as hereinafter provided; and there shall be added to the amount due additional charges for the costs of said suit, together with interest at the legal rate (or at the rate of twelve percent [12%] per annum if no legal rate applies) from the date due to the date of payment, plus reasonable attorney's fees. The amount of any delinquent and unpaid assessments and charges for interest, costs and fees as above provided, shall be and become a lien or charge against the Unit or Parcel of the Owner involved when payable, and may be foreclosed by an action brought in the name of the Board or Association as in the case of foreclosure of liens against real estate. Unless otherwise provided in this Declaration, the members of the Board and their successors in office, acting on behalf of the Association, shall have the power to bid in the interest so foreclosed at foreclosure Sale, and to acquire and hold, lease, mortgage and convey the same. Said lien shall take affect and be in force thirty (30) days after an assessment is delinquent but shall not be binding upon nor affect third persons unless and until a notice thereof is recorded



with the Recorder of Deeds; provided, however, that encumbrances owned or held by any bank, insurance company, savings and loan association, or any other person providing purchase money financing, shall be prior to the lien of the Association hereunder, if the encumbrance was recorded before the delinquent assessment was due. A lien for a common expense assessment is not affected by the sale or transfer of a Unit estate, unless a foreclosure of first mortgage is involved. In that event, the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent Owner from paying further assessments. Any encumbrancer may, from time to time, request in writing a written statement from the Board setting forth unpaid assessments and charges with respect to the Unit or Parcel covered by his encumbrance, and, unless the request shall be complied with within thirty (30) days after receipt thereof, all unpaid assessments and charges which become due prior to the date of making such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a Unit or Parcel may pay any unpaid assessments and charges payable with respect to such Unit or Parcel and may, if permitted by the terms and provisions of his encumbrance, have a lien on such Unit or Parcel for the amounts paid at the same rank as the lien of his encumbrance. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Community



Facilities or abandonment of his Unit or Parcel.

SECTION IV

Covenants and Restrictions as to Use and Occupancy

4.01 **Use.** The Units, Parcels, and Buildings and Community Facilities shall be used and occupied as follows:

A. **Residential Purposes.** No part of the Property shall be used for other than housing and other related common purposes, except Community Facilities and concession areas erected or installed primarily for the convenience, recreation or service of Owners and Occupants. Each Dwelling Unit shall be used as a residence for a single family or for such other user permitted by this Declaration and for no other purposes.

B. **Architectural Controls.** No building, deck, antenna, fence, wall or other improvement shall be commenced, erected, or maintained, nor shall any addition to or change or alteration therein be made, except interior alteration, until the construction plans and specifications showing the nature, kind, shape, height and materials, color scheme, location and lot and approximate cost of such Building or other improvement, and the grading plan and landscape plan of the Parcel to be built upon shall have been submitted to and approved in writing by the Board or the Developer. The Board and the Developer shall, in their sole discretion, each have the right to refuse to approve any such construction plans or specifications, grading plan, or landscape plan, for aesthetic or

other reasons; and in so passing upon such construction plans and specifications, grading plan, or landscape plan, shall have the right to take into consideration the suitability of the proposed building or other improvements with the surroundings, and the effect of the Building or other improvement with the surroundings, and the effect of the Building or other improvement on the outlook from adjacent or neighboring parcels, and the ratio between the size of the Parcel and the proposed Building. No consent or approval shall be required with respect to any building or other improvement erected by Developer. The Board may decide to add additional items as needed to maintain the integrity of the Association.

C. Zoning and Restrictions. Each Owner shall faithfully comply with and observe the restrictions and requirements of each planned unit development ordinance and other zoning ordinances, including any amendments and modifications thereto to, now or hereafter, which affect his Parcel, and no Owner shall permit any other person to violate the same in connection with his Parcel. Such restrictions include but are not limited to the location of Buildings and the maintenance of open areas or "green areas." Each Owner hereby irrevocably authorizes Developer, on his behalf, to apply for an consent to any modification of any applicable planned unit development ordinance for so long as Developer is a member of the Association, and thereafter, the Board shall have the same

right. Each Owner shall also faithfully comply with and observe any restriction or requirement affecting his Parcel which may be incorporated by Developer in a Declaration (while Developer is the title-holder thereof,) deed, or agreement with the Owner which is either filed for record with the Recorder of Deeds or of which Owner shall have notice or knowledge.

D. **Decorating Schemes.** Each Unit shall have a uniform and coordinated and sightly landscaping scheme. Any substantial deviation from the original exterior plan and landscaping provided by Developer or, approved by Developer or the Board shall require the written approval of the Board. Awnings, canopies, exterior shutters and other similar decor may not be added without such consent.

E. **Painting and Repairs.** If any Unit shall be in substantial need of exterior painting or repairs, or interior repairs necessary to the safe and proper maintenance in any portion of the Unit, upon written notice to the Owner and after the expiration of thirty (30) days subsequent to the mailing of such notice, the Board shall have the right to order the necessary work done, and the Owner affected thereby shall have the obligation to pay for such work as may be ordered by the Board. The color or quality of the exterior paint cannot be changed without the consent of the Owner. In the event of conflict with respect to the foregoing, any aggrieved Owner may require that the matter in controversy be determined by the Board,

whose determination shall be conclusive.

F. Obstruction of Community Facilities. No Owner shall maintain or permit any obstruction of the Community Facilities or any common area, nor shall anything be stored in or on the Community Facilities without the prior consent of the Board.

G. Lounging or Storage in Community Facilities. There shall be no playing, lounging, parking of baby strollers or playpens, bicycles, tricycles, wagons, scooter, toys, vehicles, benches or chairs, or similar items, on any part of the Community Facilities except such portion thereof as may be designated for such purpose by the Board.

H. Alterations of Community Facilities. Nothing shall be altered or constructed in or removed from the Community Facilities except upon the written consent of the Board. No waste shall be committed to the Community Facilities.

I. Prohibited Activities and Signs. No signs, posters or advertisements of any kind or description shall be erected, maintained or displayed, visible to public view, except that "For Sale" or "For Rent" signs no larger than ten inches by fifteen inches (10" X 15") may be exhibited inside the front window of a Building or Unit. The provisions hereof shall not apply to the Developer. No trade or business of any kind or character, nor the practice of any profession shall be conducted, maintained or permitted on the Property, except as otherwise provided in these

Declarations.

In addition, since the existing golf course is privately owned and operated and the additional nine holes will also be privately owned and operated, no owner may use or enjoy any portion of or facility relating to the golf course without prior written permission of Gary Works Supervisors Club Incorporated. Any activity which disrupts the maintenance or use of the golf course is prohibited.

J. ~~Certain Personal Activities Permitted.~~ The restrictions in Paragraphs A. and I. of this Section shall not, however, be construed in such manner as to prohibit an Owner or Occupant from renting a Unit to third parties, maintaining in a Unit his personal professional library, keeping in his Unit his personal, business or professional records or accounts, or handling his personal, business, or professional telephone calls or correspondence from his Unit.

K. ~~Pets.~~ No animals, including livestock, rabbits, pigs, fowl or poultry of any kind shall be raised bred or kept in or about any Unit or Parcel or in the Community Facilities, except that two (2) dogs, cats or other household pets may be kept in a Unit, subject to rules and regulations adopted by the Board, provided that they are not kept, bred or maintained for any commercial purposes; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance in the opinion of the Board, shall be

permanently removed from the property upon three (3) days written notice from the Board. Residents keeping domestic animals which comply with these restrictions, shall abide by municipal requirements and shall be responsible for any inconvenience or damage caused by such animals.

L. **Nuisances.** No Owner shall permit any noxious or offensive activity to be carried on in any Unit or in the Community Facilities, nor shall anything be done therein, either willfully or negligently, which may become a nuisance to other Owners or Occupants. Radio antenna transmitting equipment and other high power electronic equipment on any Parcel shall be subject to regulation by the Board. Loud noises, loud music, objectionable odors, and excessive external lighting which may be determined by the Board to be objectionable, are prohibited.

M. **Laundry and Rubbish.** No clothing, linen or laundry of any kind, or any other articles shall be hung out or exposed on any part of a Unit, Parcel or the Community Facilities. The Community Facilities shall be kept free and clear of rubbish and other unsightly materials. Garbage and recycling materials for municipal collection shall be bagged and placed near the street only on collection days. Garbage shall not be stored outside the unit at any other location.

N. **Rules and Regulations.** All Units, Parcels and Community Facilities and all activities thereon and therein shall be

maintained and conducted in accordance with the rules and regulations adopted by the Board, from time to time.

O. **Parking and Traffic.** Traffic and parking on the Community Facilities shall be regulated by the Board, which may fix and amend traffic patterns for vehicles, bicycles and pedestrians, vehicle speed limits, commercial traffic flow and parking locations. The Board may purchase, maintain and install at any location on the Community Facilities and at any reasonable location on a Parcel, traffic control signals, signs and devices and parking signs and control devices. The Board may install and maintain parking areas on the Common Facilities, may designate parking areas and may assign individual spaces or areas to any Unit or Parcel for any specified purpose or group of Owners, upon such terms as it deems desirable, and the Board may elect to treat the maintenance cost thereof as a Common Expense.

F. **Landscaping.** Developer agrees to use a quality landscaping program to enhance the development. The Developer agrees to install landscaping on each lot.

Q. **Prohibition Against Fences and Additional Structures.** No accessory structures, including fences, walls or storage sheds, are permitted without written approval of the Developer.

R. **Plantings.** All plantings shown on the initial plans and specifications of the Units and such other plantings as determined appropriate by the Developer shall be completed within thirty (30)

days of occupancy, weather permitting. All front and side yards must be sodded and all rear yards must be seeded or sodded, all of which shall occur within thirty (30) days of occupancy, weather permitting. Each lot shall have one (1) trees, of at least one and three-quarter inches (1-3/4") planted in the parkway. Trees must be of the following varieties, or must be approved in writing by the Developer:

1. Bradford Pear;
2. Marshall Seedless Ash;
3. Purple Autumn Ash;
4. Red Sunset Maple;
5. Shademaster Locust;
6. Sugar Maple;
7. Sunburst Locust.

S. Yard lights. The Developer shall install and maintain decorative yard lights.

T. Adjacent Golf Course and Facilities. No rights to use or enjoyment of any facility of Gary Works Supervisors Club Incorporated accrue to any owner, except by virtue of membership in Gary Works Supervisors Club Incorporated. No rights to membership in Gary Works Supervisors Club Incorporated accrue to any owner.

U. Parking Restrictions and Prohibition Against Recreational and Commercial Vehicle Parking and Exterior Storage. No part of any Parcel, including any driveway or parking area which may be in

front of or adjacent to any Parcel, may be used as a habitual parking place for any commercial or recreational vehicle, including but not limited to boats, snowmobiles, water jet skis, mobile or recreation homes or trailers, all of which are specifically prohibited. The term "commercial vehicle" shall include all vehicular equipment which shall bear signs or references to any commercial undertaking or enterprise. Storage of any item in the driveway area shall be prohibited; unit owners shall utilize the garage to park their vehicle. Patio areas and rear yards are intended for recreational purposes, including barbecuing. Storage of unsightly or noxious objects in those areas is prohibited. The habitual violation of this paragraph shall be deemed a nuisance.

V. Pest Control.

Pest control within a unit shall be the responsibility of the unit owner; pest control outside the unit, which shall be defined as outside of the face of the exterior material construction of the building, shall be the responsibility of the Association.

W. Minimum Heating Requirements.

The minimum heat to be maintained in any unit at any time is fifty (50) degrees Fahrenheit.

X. Development Activities of Developer. During the period of construction of any Unit and/or Community Facilities, the Developer and its contractors and sub-contractors, their respective agents and employees shall have access, ingress and egress to any Unit,

Parcel, roadway or parking area as may be required. The Developer may grant permission to any person or entity to occupy, with or without payment, one (1) or more Unit for business or promotional purposes, including clerical activities, sales offices, model Units, display Units, etc., and Developer or any Manager selected by the Association may maintain management offices, storage areas work and rest areas for personnel, including construction personnel and any other activity related to the development, construction, management and/or operation of the Property.

Y. Area, Width and Yard Regulations. Each front yard shall extend across the full width of the lot which abuts a street.

SECTION V

GOLF COURSE COVENANTS

5.01 Easements Permitting the Intrusion of Golf Balls and Golfers. Every unit, and the Common Area and the common property of a Neighborhood is burdened with an easement permitting golf balls unintentionally to come upon such areas and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfer of liability for damage caused by errant golf balls. Under no circumstances shall any of the following persons be held

liable for any damage or injury resulting from errant golf balls or the exercise of this easement; the Declarant, the Association or the Members (in their capacity as such); Gary Works Supervisor's Club Incorporated or its successor, successors-in-title, or assigns; any successor Declarant; any Builder or Contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

5.02 **Easements for Golf Course Water Overspray.** The Properties immediately adjacent to the Golf Course are hereby burdened with a non-exclusive easement in favor of the adjacent Golf Course for Overspray of water from the irrigation system serving the Golf Course. Under no circumstances shall the Association or the owner of the Golf Course be held liable for any damage or injury resulting from such Overspray or the exercise of this easement.

5.03 **Easement for Retrieving Golf Balls.** The owner of the Golf Course, its respective successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Area lying reasonably within range of golf balls hit from any golf course.

5.04 **Easement for Irrigation System Installation and Repair, Water Drainage, and Storm Water Runoff.** The Properties are hereby burdened with easements in favor of the Golf Course for natural drainage of storm water runoff from the Golf Course. The owner of

the Golf Course, its respective agents, successors and assigns shall have a perpetual non-exclusive easement, to the extent reasonably necessary, over the Properties, for the installation, operation, maintenance, repair, replacement, monitoring and controlling of irrigation systems and equipment, including, without limitation, wells, pumps and pipelines, utility lines, wires and drainage pipelines serving all or portions of the Golf Course.

Declarant has granted to the owner of the Golf Course an easement to drain water from bodies of water within the Common Area for purposes of irrigation of the Golf Course and for access to and the right to enter upon the Common Area for installation and maintenance of any irrigation systems.

5.06 **View Impairment.** Neither the Declarant, the Association, nor the owner or operator of any Golf Course guarantees or represents that any view over and across the Golf Course from adjacent Units will be preserved without impairment. The owner of the Golf Course shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the owner of the Golf Course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course from time to time. Any such additions or changes to the Golf Course may diminish or obstruct

any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

5.07 Limitation on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the owner of the Golf Course, no amendment to this Article, and no amendment in derogation of any rights reserved or granted to the owner of the Golf Course by other provisions of this Declaration, may be made without the written approval of the owner of the Golf Course.

5.08 Jurisdiction and Cooperation. It is Declarant's intention that the Association and the owner of the Golf Course shall cooperate to the maximum extent possible in the operation of the Properties and the Golf Course. Each shall reasonably assist the other in upholding the Community-Wide Standard. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Course.

SECTION VI

Incorporation of Association

6.01 Formation of Corporation. Developer, prior to the election of the first Board, and the Board at any time thereafter, may cause to be incorporated a corporation under the laws of the State of Indiana, to facilitate administration and operation of the Property, and to assume the responsibilities of the Association

hereunder.

SECTION VII

General Provisions

7.01 **Associations.** An association shall have all the duties and obligations of an Owner hereunder, provided that the right of an association hereunder shall be derived solely from the Unit Owners who are members thereof, and shall be exercisable by any such association only to the extent permitted by its organizing documentation or by the acts of its Unit Owners, and provided further that an association shall not be obligated to pay any portion of the Common Expenses unless the Association shall elect to require the same from the association in lieu of payments from the individual Unit Owners therein.

7.02 **Encumbrances.** No Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the Community Facilities or any other part of the Property other than his own Parcel or Unit.

7.03 **Utilities.** Each Owner shall pay for any utility service, including his own telephone, electricity, gas, water, sewage, if such are separately metered or billed to each Unit or Parcel by the respective utility company.

7.04 **Separate Real Estate Taxes.** It is intended that real estate taxes are to be separately taxed to each Owner for his Unit or Parcel. In the event that for any year such taxes are not

separately taxed to an Owner but are taxed on the property or some part thereof, then such Owner shall pay the amount thereof attributable to his Unit or Parcel as shall be determined by the Board, or the Developer if the Board is not yet elected or constituted.

7.05 **Insurance; Parcel Owners.** Each Owner shall be responsible for his own casualty insurance for the Unit or Parcel owned by him, and for his own liability insurance for any incident occurring upon his Parcel or within his Unit. Each Occupant of a Unit shall be responsible for insurance on the contents within the Unit, and each Owner and Occupant of a Unit shall be responsible for his own personal liability all to the extent not covered by the liability insurance for all of the Parcel Owners obtained as part of the Common Expenses. Each Unit Owner and Parcel Owner hereby waives and releases any and all claims which he may have against other Parcel Owners and Unit Owners, the Association, its officers and members of the Board, the Developer, the manager and managing agent of the Community Facilities, if any, and their respective employees and agents, for damage to the Community Facilities, the Units and to any personal property located in a Unit or in Community Facilities caused by fire or other casualty, to the extent that such damage is covered by insurance.

7.06 **Negligence of Occupant or Owner.** If, due to the negligent act or omission of an Owner or Occupant of a Unit, or a contractor,

employee, agent or invitee of such Owner or Occupant, damage is caused to the Community Facilities or a Unit owned by another Owner, then such cost shall be paid for by the Owner and Occupant by or under whom the damage was caused, unless the act or omission is covered by insurance and the insurance proceeds are sufficient to pay for and are applied to all required repairs and/or replacements. The liability of an Owner and Occupant for any such damage is joint and several; and it shall not be a defense that the person causing the damage was not authorized to perform the specific act out of which the damage arose.

7.07 **Joint Facilities.** To the extent that equipment, facilities and fixtures within Units shall be connected to similar equipment, facilities or fixtures affecting or serving other Units or the Community Facilities, or shall function for the benefit of the Units owned by more than one (1) Owner (including structural members), then the use thereof by an Owner shall be subject to the rules and regulations of the Board. An authorized representative of the Association or the Board, or of the manager or managing agent for the Community Facilities, shall be entitled to reasonable access to any Unit as may be required in for purposes of maintenance, repairs or replacement of or to the Community Facilities or any equipment, facilities, or fixtures affecting or serving other Units or the Community Facilities.

7.08 **Abatement and Enjoyment.** The violation of any

restriction, condition or regulation adopted by the Board, or the breach of any covenant or provision herein contained, shall give the Board and Developer the right, in addition to the rights set forth in the next succeeding Section to:

A. Enter upon the Parcel or Unit upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any thing or condition that may exist contrary to the intent and meaning of the provisions hereof, provided, however, that judicial proceedings must be instituted before any items of construction maybe altered or demolished, and the Developer or its successors or assigns, or the Board or its agents, shall not thereby be deemed guilty in any manner of trespass; or

B. Enjoin, abate or remedy by appropriate legal proceedings (including, but not limited to, a suit for damages), either at law or in equity, the continuance of any breach.

7.09 **Phasing and Expansion.** Developer shall develop the property described in Exhibit _____, otherwise referred to as "Unit _____", in one (1) phase.

7.10 Developer's Rights and Responsibilities.

A. Developer may hire a managing entity to manage the Association and the entity will be compensated fairly. The Developer cannot directly or indirectly bind the Association to a

professional management contract unless the contract includes a right of termination without cause, exercisable by the Association at any time after transfer of control to the Association. This right of termination may not require the payment of any penalty, and may not require an advance notice exceed more than ninety (90) days.

B. Developer shall establish a working capital fund equal to at least three (3) months' estimated common charges for each Unit. Each Unit's share of the working capital fund shall be collected at the time the sale of the Unit is closed, and shall be transferred to the Association for deposit at that time.

7.11 Service of Notices Upon Board. Notices required or desired to be given to the Board or the Association may be delivered to any member of the Board or officer of the Association, either personally or by mail, addressed to such member at his last known address. The method of service of such notices may be changed by the Board from time to time, provided that such Voting Members are notified of such change.

7.12 Service of Notices Upon Owners. Notices required or desired to be given to an Owner may be delivered either to the Owner, or any Co-Owner, or the Voting Member having the privilege of voting with respect to the Unit or Parcel of such Owner, and delivery by mail at the last known address of such person, by personal delivery, or by posting on the door shall be sufficient

service thereof.

7.13 **Covenants to Run with Land.** Each grantee of the Developer, by the acceptance of a deed of conveyance, and each purchaser under Articles of Agreement for Trustee's Deed, or any contract for any deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or served by this Declaration, and all rights, benefits and privileges of each character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest in said land, and shall inure to the benefit of such Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

7.14 **Non-Waiver of Covenant.** No covenant, restriction, condition, obligation or provision contained in this Declaration shall be deemed to have been abrogated or waived by any failure to enforce the same, irrespective of the number of breaches or violations which may occur.

7.15 **Waiver of Damages.** Neither Developer, nor its beneficiary, nor their respective representatives or designees, shall be liable for any claim whatsoever arising out of or by reason of any action performed pursuant to this Declaration,

whether or not such claim (a) shall be asserted by any Owner, Occupant, the Board or the Association, or by any person or entity claiming through any of them; or (b) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (c) shall raise ex contractu or ex delicto (except in case of gross negligence). Without limiting the generality of the foregoing the preceding enumeration includes all claims for, or arising by reason of, the Property or any part thereof being or becoming out of repair, or any act or neglect of any Owner, Occupant, the Board, the Association, and their respective agents, employees, guests, and invitees, or by reason of any neighboring property or personal property located on or about the Property, or by reason of the failure to function, or disrepair of, any utility services. However, this Section 6.17 shall not affect or impair liability otherwise assumed or imposed upon Developer in connection with sales of Units or Parcels.

7.16 **Amendments to Declaration and By-Laws.** This Declarant reserves the right to make any changes or modifications to the Declaration and/or the By-Laws by a written instrument at any time prior to the transfer of control of the Association as defined in Section 3.02. Thereafter, this Declaration and/or the By-Laws may be changed, modified, or rescinded by a written instrument setting forth such change, modification or rescission signed and acknowledged by the Board, upon the approval of sixty-seven percent

(67%) of the Owners and their eligible mortgagees. Provided further, however, that Declarant reserves the right, and is hereby granted the consent of each Owner, to execute and record amendments to this Declaration to comply with the requirements of the secondary mortgage market in order to induce any such entity to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Units. The Declarant's right to make such amendments shall terminate upon the transfer of control of the Association as defined in Section 3.02 hereof. The change, modification or rescission shall be effective upon recording of such instrument in the office of the Lake County Recorder. No change, modification or rescission of any provision of this Declaration affecting the Developer shall be effective as to the Developer unless the Developer consents thereto in writing.

7.17 **Right of Action.** The Association, and any aggrieved Unit Owner, shall have a right of action against any Unit Owner who fails to comply with the provisions of this Declaration, the By-Laws, Articles of Incorporation, or the rules and regulations promulgated by the Association. Unit Owners shall have a similar right of action against the Association for its failure to comply with the provisions of the above-referenced documents.

7.18 **Perpetuities and Restraints on Alienation.**

A. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for

violation of the (a) rule against perpetuities or some analogous statutory provision, (b) rule restricting restraints on alienation, or (c) other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the now living lawful descendants of the Governor and the United States Senators from the State of Indiana serving on the date of recordation hereof.

B. The Association may not restrict a Unit Owner's right to sell, transfer, or convey his Unit. Notwithstanding the above, however, any lease or rental agreement must be in writing and subject to the Declaration, Articles of Incorporation, By-Laws and rules and regulations of the Association. In addition, no Unit may be leased or rented for a period of less than thirty (30) days.

7.19 **Ownership by Trust.** In the event title to any Parcel is conveyed to a land title holding trust under the terms of which all powers of management, operation and control of the trust property remain vested in the trust beneficiary, then the trust estate under such trust and the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Parcel; and such beneficiaries shall be entitled to exercise all of the rights and powers of the Owner in title to a Unit or Parcel as fully as if such beneficiary were the Owner of

record. No liability shall be asserted against any such title holding trustee personally for the payment of any claim, lien or obligation or for the performance of any agreement, covenant or undertaking hereby created, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part thereon, but the amount thereof shall continue to be a charge or lien upon the Parcel, notwithstanding any charges in the beneficial interest of any such trust or transfers of title to such Parcel.

7.20 Indemnity to Board Members. The members of the Board and the officers thereof or of the Association, or Developer or any beneficiary or other person exercising the powers of the Board or Association pursuant to Section 6.10 hereof, shall not be liable to any Parcel or Unit Owner for any mistake of judgment, or act or omission made in good faith as such member or officer or acting official. The Unit and Parcel Owners shall indemnify and hold harmless each such member, officer and acting official against all contractual liability to others arising out of contracts made by such member or officer on behalf of the Unit or Parcel Owners or of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration. Such member or officer shall have no personal liability with respect to any contract made by him on behalf of the Unit or Parcel Owners or the Association. The liability of any Owner arising out of the aforesaid indemnity shall be limited to a Proportionate Share of

the total liability thereunder.

7.21 **Severability.** Should any part, term, or provision of this Declaration be declared or decided by any Court to be illegal, or in conflict with the law of Indiana, the validity of the remaining portions, terms or provisions shall not be affected thereby and said illegal part, term or provision shall be deemed not to be a part of this Declaration.

7.22 **Condemnation, Destruction or Termination.**

A. **Damage or Destruction and Restoration of Buildings.** In case of fire or any other disaster the insurance proceeds shall, except as provided in the next succeeding paragraph of this section, be applied to reconstruct the Unit.

In the event of fire or other casualty or disaster loss resulting in less than complete and total destruction of a Building or Unit, the improvements shall be reconstructed and the insurance proceeds applied to reconstruct the improvements.

Reconstruction of the improvements, as used in this Section, means restoring the improvements to substantially the same condition in which they existed prior to the fire or other disaster, with each Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries as before.

B. **Condemnation.** In the event that any portion or all of the Property which has been subjected to this Declaration is condemned, the proceeds shall be divided among the Owners in the

same percentage as each Owner holds an interest in the Common Areas and Facilities condemned and the property condemned shall be considered removed from the Declaration. The distribution of proceeds shall be subject to the interest of all mortgage lien holders. The Association shall act on behalf of all Owners with regard to the negotiation and/or defense of any condemnation proceedings.

C. **Termination.** The Owners by unanimous vote may remove the Property from the provisions of the Declaration by an instrument to that effect duly recorded provided that holders of any and all liens affecting any of the Units agree and/or consent thereto and their liens shall be transferred to the percentage of the interest of the Owner in the Property. Upon removal of the Property from the provisions of the Declaration, the Property shall be deemed to be owned in common by all the Owners according to their respective percentage ownership interest which shall be the same as their percentage of interest in the Common Areas and Facilities.

7.23 **Exculpatory Clause.** It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Declarant are made and intended not as personal representations but are made and intended for the purpose of binding the property

specifically described herein. No personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against any officer or principal of Schema Development Company, Inc.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed and attested as of the day and year first above written.

Schema Development Co. LLC

ATTEST:

Mike Johnson
Secretary

BY:

Mark J. Cantu
Managing Principal

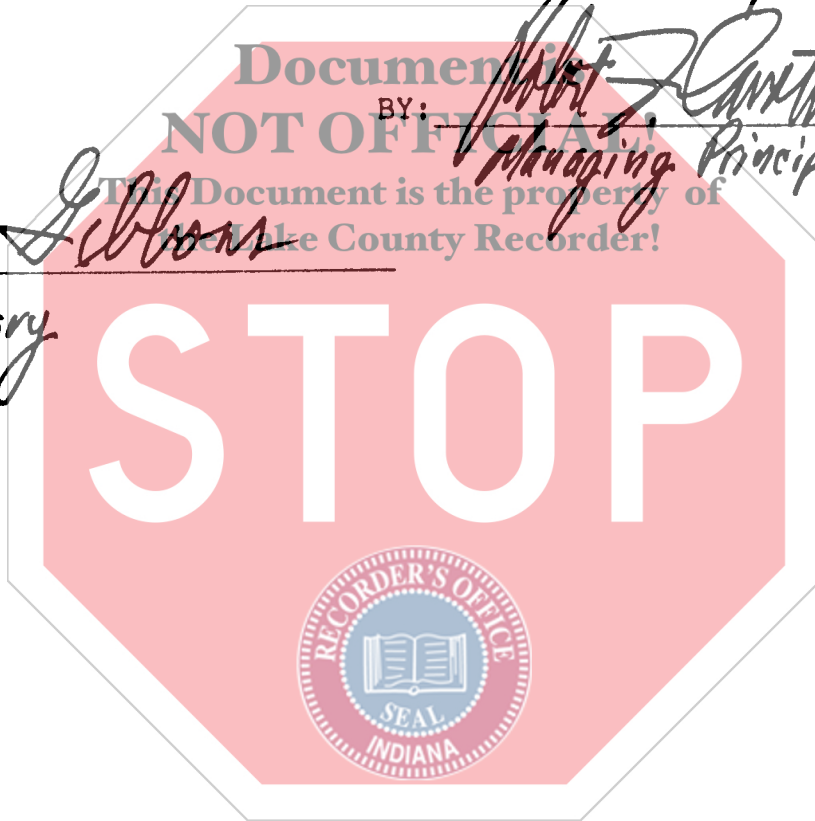


EXHIBIT B

**DECLARATION OF CONVENANTS, CONDITIONS AND
RESTRICTIONS FOR DEEP RIVER POINTE DEVELOPMENT
CITY OF HOBART, LAKE COUNTY, INDIANA**

NONE

