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DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS


FOR

BURLWOOD TOWNHOMES AT WHITE OAK ESTATES

IN THE TOWN OF MUNSTER,  
LAKE COUNTY, INDIANA

MOHNS W. CARTER  
RECORDER

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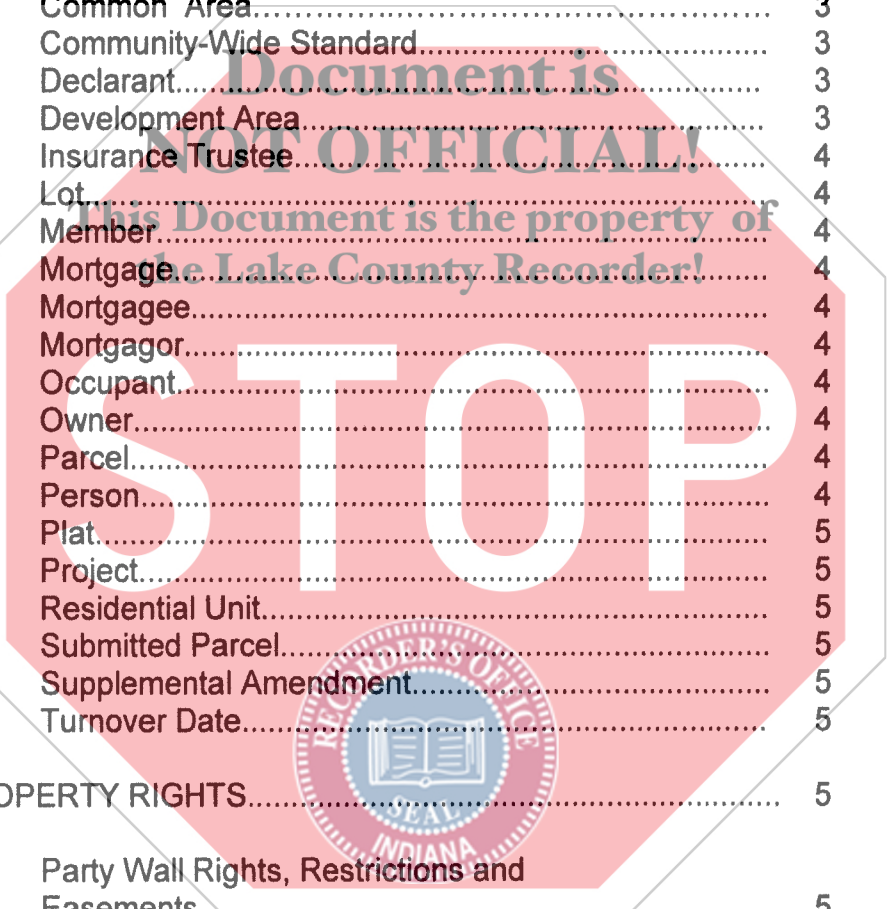
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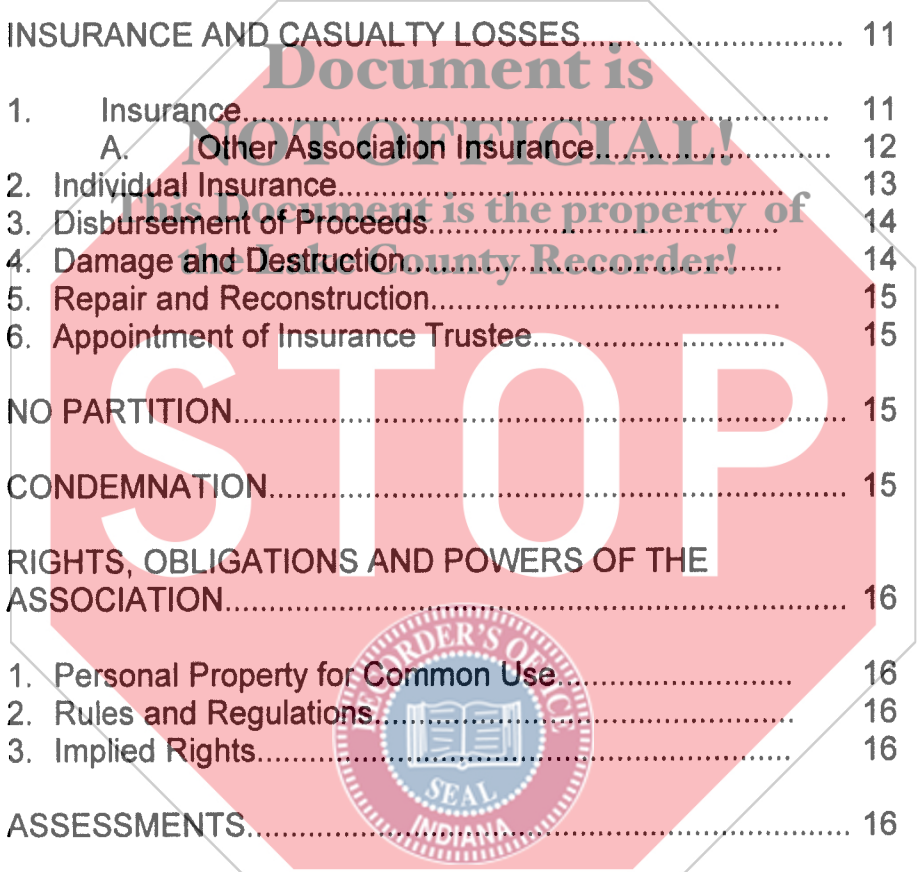
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TABLE OF CONTENTS

I.	DEFINITIONS.....	2
	1. Added Residential Units.....	2
	2. Added Property.....	2
	3. Assessments.....	3
	4. Association.....	3
	5. Common Expenses.....	3
	6. Common Area.....	3
	7. Community-Wide Standard.....	3
	8. Declarant.....	3
	9. Development Area.....	3
	10. Insurance Trustee.....	4
	11. Lot.....	4
	12. Member.....	4
	13. Mortgage.....	4
	14. Mortgagee.....	4
	15. Mortgagor.....	4
	16. Occupant.....	4
	17. Owner.....	4
	18. Parcel.....	4
	19. Person.....	4
	20. Plat.....	5
	21. Project.....	5
	22. Residential Unit.....	5
	23. Submitted Parcel.....	5
	24. Supplemental Amendment.....	5
	25. Turnover Date.....	5
II.	PROPERTY RIGHTS.....	5
	1. Party Wall Rights, Restrictions and Easements.....	5
	2. Easements of Encroachment.....	6
	3. Easements for Utilities, Etc.....	6
	4. Right of Entry.....	7

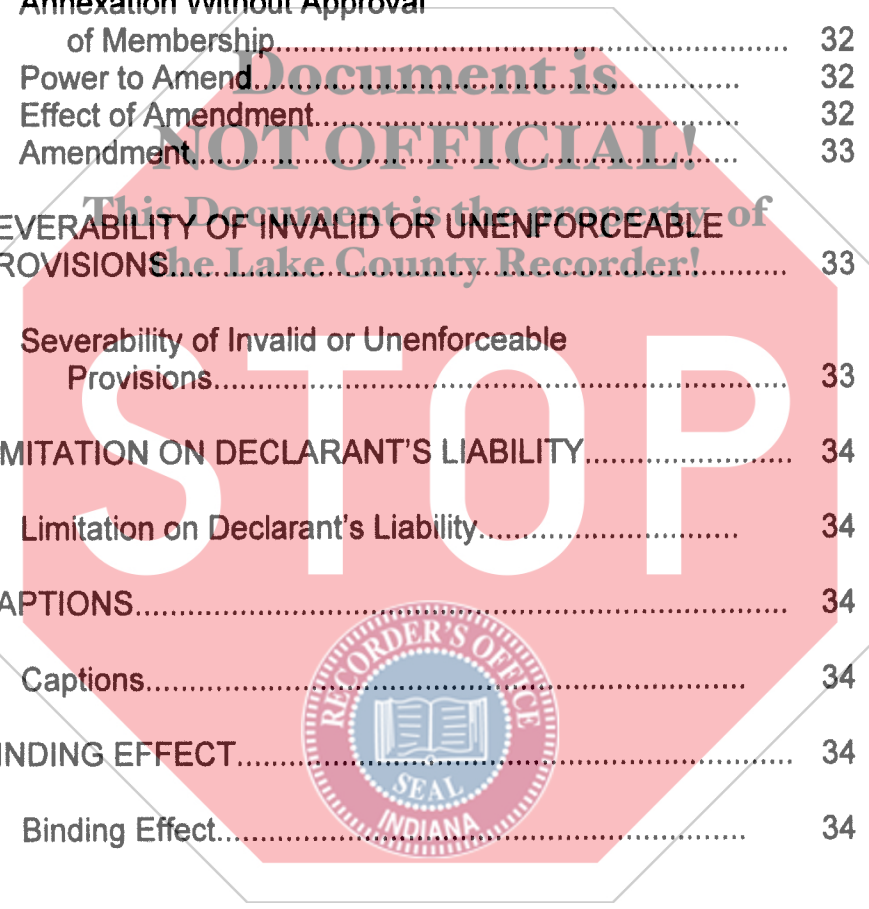


III.	MEMBERSHIP AND VOTING RIGHTS.....	8
	1. Membership and Meetings.....	8
	2. Voting.....	8
	3. Number Term and Selection of Board of Directors.....	9
IV.	MAINTENANCE.....	10
	1. Association's Responsibility.....	10
	2. Owner's Responsibility.....	10
V.	INSURANCE AND CASUALTY LOSSES.....	11
	1. Insurance.....	11
	A. Other Association Insurance.....	12
	2. Individual Insurance.....	13
	3. Disbursement of Proceeds.....	14
	4. Damage and Destruction.....	14
	5. Repair and Reconstruction.....	15
	6. Appointment of Insurance Trustee.....	15
VI.	NO PARTITION.....	15
VII.	CONDEMNATION.....	15
VIII.	RIGHTS, OBLIGATIONS AND POWERS OF THE ASSOCIATION.....	16
	1. Personal Property for Common Use.....	16
	2. Rules and Regulations.....	16
	3. Implied Rights.....	16
IX.	ASSESSMENTS.....	16
	1. Creation of Assessments.....	16
	2. Computation of Assessment.....	17
	3. Special Assessments.....	17
	4. Lien for Assessments.....	18
	5. Capital Budget and Contributions.....	18
	6. Date of Commencement of Annual Assessments.....	18
	7. Subordination of the Lien to First Deeds of Trust and First Mortgages.....	19



X.	ARCHITECTURAL STANDARDS.....	19
	1. Architectural Review Committee.....	19
	2. Review Procedure.....	19
XI.	USE RESTRICTION.....	20
	1. Residential Restrictions.....	20
	2. Nuisances.....	20
	3. Immoral, Improper, Offensive and Unlawful Use.....	20
	4. Uses Affecting Insurance Rates.....	20
	5. Signs and Other External Items.....	20
	6. Animals.....	21
	7. Vehicles.....	21
	8. Leasing Restrictions.....	21
	9. Rules and Regulations.....	21
XII.	ENFORCEMENT.....	21
	1. Authority and Administrative Enforcement and Procedures.....	22
	2. Sanctions.....	23
	3. Legal Remedies.....	24
	4. No Waiver of Rights.....	24
	5. No Election of Remedies.....	24
XIII.	AMENDMENT.....	24
	1. Declaration.....	24
	2. Articles of Incorporation, By-Laws and Rules and Regulations.....	25
XIV.	GENERAL PROVISIONS.....	26
	1. Term.....	26
	2. Indemnification.....	26
	3. Perpetuities.....	27
XV.	MORTGAGEES' RIGHTS.....	27
	1. Notices of Action.....	27
	2. Mortgagee's Rights Respecting Amendments To The Declaration.....	28
	3. Special FHLMC Provision.....	29
	4. Mortgagee's Right To Cure.....	29

XVI.	DECLARANT'S RIGHTS.....	29
	1. Control by Declarant.....	29
	2. Absence of Warranty.....	30
	3. Assessment Exemption.....	30
	4. Right to Amend Declaration.....	30
	5. Transfer of Rights.....	30
	6. Declarant's Reserved Rights and Easements.....	30
XVII.	ANNEXATION OF ADDITIONAL PROPERTY.....	32
	1. Annexation Without Approval of Membership.....	32
	2. Power to Amend.....	32
	3. Effect of Amendment.....	32
	4. Amendment.....	33
XVIII.	SEVERABILITY OF INVALID OR UNENFORCEABLE PROVISIONS.....	33
	1. Severability of Invalid or Unenforceable Provisions.....	33
XIX.	LIMITATION ON DECLARANT'S LIABILITY.....	34
	1. Limitation on Declarant's Liability.....	34
XX.	CAPTIONS.....	34
	1. Captions.....	34
XXI.	BINDING EFFECT.....	34
	1. Binding Effect.....	34



**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
BURLWOOD TOWNHOMES AT WHITE OAK ESTATES  
IN THE TOWN OF MUNSTER,  
LAKE COUNTY, INDIANA**

This Declaration of Covenants, Conditions, Restrictions and Easements is made this day by ATG HOMES, LLC, an Indiana limited liability company (hereinafter referred to as "Declarant");

**RECITALS:**

1. All capitalized terms used herein shall have the meaning ascribed to them at the first time they are used herein or in the definition set forth in Article I below.
2. The Development Area is a tract of land located in Munster, Lake County, Indiana, which is legally described on Exhibit A attached hereto.
3. Declarant intends to, and by recording this Declaration does, subject and submit to the provisions of this Declaration that portion of the Development Area referred to herein as the Submitted Parcel and legally described on Exhibit B attached hereto. The Development Area is the site of a residential development and from time to time Declarant may, but is not required to, subject additional portions of the Development Area to the provisions of this Declaration as Added Property, as more fully described in Article XVII hereof. Those portions of the Development Area which are not made subject to the provisions of this Declaration may be used for any purposes not prohibited by law. Nothing herein shall preclude Declarant from subjecting other property adjacent to or in the vicinity of the Development Area to the provisions of this Declaration.
4. In order to provide for the necessary administration, preservation, maintenance and enhancement of those portions of the Development Area and any other land subjected to the provisions of this Declaration, Declarant will form the Association which shall be responsible for the maintenance of the areas described in Article IV hereof and each Owner of a Residential Unit which is subject to this Declaration (excluding the Declarant) shall be assessed for his share of the cost thereof by the Association.
5. Declarant intends by this Declaration to impose upon the portions of the Development Area subjected to the provisions of this Declaration mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Development Area made subject to this Declaration and amendments thereto by the recording of this Declaration. Declarant desires to provide a flexible and reasonable procedure for the overall

development of the Development Area, and to establish a method for the administration, maintenance, enhancement, preservation, use and enjoyment of those portions of the Development Area as are now or may hereafter be subjected to this Declaration.

6. Declarant shall retain certain rights set forth in this Declaration. Prior to the Turnover Date, Declarant shall retain the right to appoint all members of the Board and the right to use portions of the Development Area and the Submitted Parcel for the purposes set forth in Section 16.06 hereof.

NOW, THEREFORE, Declarant hereby declares that only the real property legally described in Exhibit B and referred to herein as the Submitted Parcel and such additions thereto, referred to herein as Added Property, as may hereafter be made pursuant to Article XVII hereof, is and shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, burdens, uses, privileges, charges and liens which shall exist at all times hereafter among all parties having or acquiring any right, title or interest in or to any portion of the Submitted Parcel, which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the described Submitted Parcel or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I DEFINITIONS

Section 1.01. "Added Residential Units" shall mean the Residential Units (or Parcels upon which attached, single-family townhomes are being completed) comprising the Added Property submitted to the provisions of this Declaration by a Supplemental Amendment in accordance with Article XVII hereof.

Section 1.02. "Added Property" shall mean any portion of the Development Area submitted to the provisions of this Declaration in accordance with Article XVII hereof.

Section 1.03. "Assessments" shall mean Assessments for Common Expenses provided for herein or by any Supplemental Amendment or by any other amendment hereof pursuant to Article XIII hereof which shall be used for the purposes of promoting the health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Residential Units against which the Assessment is levied and of maintaining the Residential Units, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below.

The Assessment shall be levied equally against Owners of Residential Units for such purposes that are authorized by this Declaration or by the Board of Directors from time to time.

Section 1.04. "Association" shall mean and refer to Burlwood Townhomes at White Oak Estates Homeowners Association, Inc., an Indiana nonprofit corporation, and its successors and assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Indiana law. The Association shall be organized and governed in accordance with the Articles of Incorporation, By-Laws and Rules and Regulations, attached hereto as Exhibits "C", "D" and "E", respectively.

Section 1.05. "Common Area" shall mean (i) all lawns, landscaping (excepting any landscaping that is not part of or a replacement of the original installation of landscaping by Declarant), patios, sidewalks, driveways, curbs and gutters, paving, sanitary sewer, storm sewer and water main improvements, irrigation improvements and monument signage located on or within the Development Area, (ii) the concrete and brick wall installed or to be installed along the Main Street right-of-way from White Oak Avenue to the Munster-Highland town line adjacent to the Development Area, and along the White Oak Avenue right-of-way adjacent to the Development Area (the "Wall"), (iii) the ingress-egress easement areas shown on the Plat and the improvements therein, and (iv) all personal property owned or controlled by the Association and available for the common benefit and/or use of Owners, or for the maintenance or management of any part of the Development Area.

Section 1.06. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.

Section 1.07. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Development Area. Such standard may be more specifically determined and set forth by the Architectural Review Committee, or by the Board of Directors.

Section 1.08. "Declarant" shall mean ATG Homes, LLC, an Indiana limited liability company, its successors and assigns. Any such successor or assignee shall be deemed a Declarant and entitled to exercise all or any rights of Declarant as provided in Article XVI hereof.

Section 1.09. "Development Area" The real estate described on Exhibit A hereto with all improvements thereon and rights appurtenant thereto. Exhibit A is attached hereto for informational purposes only and no covenants, conditions, restrictions, easements, liens or charges shall attach to any part of the real estate described therein, except to the extent that portions



thereof are described on Exhibit B and expressly made subject to the provisions of this Declaration as part of the Submitted Parcel. Any portions of the Development Area which are not made subject to the provisions of this Declaration as part of the Submitted Parcel may be developed and used for any purposes not prohibited by law, including, without limitation, a residential development which is administered separately from the Association.

Section 1.10. "Insurance Trustee" shall mean the Association and its successors, unless the Association shall have appointed another entity as Insurance Trustee pursuant to Section 5.06 hereof.

Section 1.11. "Lot" shall mean a part of the Submitted Parcel, the size and dimensions of which are shown on the Plat.

Section 1.12. "Member" shall mean and refer to a person or entity entitled to Membership in the Association, as provided herein.

Section 1.13. "Mortgage" shall include a deed of trust, as well as a mortgage.

Section 1.14. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee.

Section 1.15. "Mortgagor" shall include the trustier of a deed of trust, as well as a mortgagor.

Section 1.16. "Occupant" shall mean and refer to one or more Persons or entities which may at any time be entitled to the use and possession of a Residential Unit, or any part thereof, by lease, license, contract or any other means, whether or not lawful, and shall include, without limitation, Owners, tenants, subtenants, and their guests and invitees.

Section 1.17. "Owner" shall mean and refer to one or more persons or entities who hold the record title to any Residential Unit which is part of the Submitted Parcel, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Residential Unit is sold under a recorded contract of sale, the purchaser (rather than the fee owner) will be considered the Owner.

Section 1.18. "Parcel" shall mean a part of a Lot, fee simple title to which shall be conveyed by deed of the Declarant to each Owner, upon which an attached, single-family residential structure is located or to be located.

Section 1.19. "Person" means a natural person, a corporation, a partnership, trustee or other legal entity.

Section 1.20. "Plat" shall mean the plats of subdivision of the Development Area, recorded in the Office of the Recorder of Lake County, Indiana on May 11, 1999 in Book 86, Page 66 as Instrument No. 99040393, in Book 86, Page 67 as Instrument No. 99040394, and in Book 86, Page 68 as Instrument No. 99040395. The Plat shows the Submitted Parcel made subject to this Declaration and the remaining portions of the Development Area which are not subject to this Declaration but may become part of the Submitted Parcel pursuant to the terms and provisions of this Declaration.

Section 1.21. "Project" shall mean the Development Area owned by Declarant and held for development under a common plan from time to time.

Section 1.22. "Residential Unit" shall mean one of the Parcels and the attached, single-family residential structure located thereon, which is a part of the Submitted Parcel intended for independent ownership for use and occupancy as a single-family residence. The boundaries of Residential Units shall be the boundary lines of the Parcels of the Submitted Parcel conveyed by Declarant to the Owners. As used herein, the term "Exterior" shall mean the roof, all other exterior surfaces and the exterior fixtures appurtenant to such Residential Unit. For the purposes of this Declaration, a Residential Unit shall come into existence when substantially complete or upon the issuance of a certificate of occupancy by the appropriate agency of the Town of Munster, Indiana, or other local governmental entity.

Section 1.23. "Submitted Parcel" shall mean that portion of the Development Area which is described on Exhibit B attached hereto, as Exhibit B may be amended from time to time, together with all rights appurtenant thereto.

Section 1.24. "Supplemental Amendment" shall mean a supplement to this Declaration to submit Added Property to this Declaration in accordance with Article XVII hereof. Such Supplemental Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the Added Property submitted by that Supplemental Amendment to the provisions of this Declaration.

Section 1.25. "Turnover Date" shall mean the date on which the right of Declarant to select and designate all of the members of the Board of Directors is terminated pursuant to Section 16.01 hereof.

## ARTICLE II PROPERTY RIGHTS

Section 2.01. Party Wall Rights, Restrictions and Easements. Subject to any other or additional provisions contained in any

written agreement between parties affected, each wall which is built as part of the original construction of a Residential Unit and placed on the lot line of a Residential Unit shall constitute a party wall and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and of liabilities for property damage due to negligence or willful acts or omissions shall apply thereto. In the event and to the extent that the center of any wall between Residential Units shall encroach into or onto the adjacent Residential Unit, the Owner utilizing said party wall shall have a perpetual exclusive easement appurtenant to his Residential Unit on and over such adjoining Residential Unit for the maintenance, repair and restoration of such wall and his Residential Unit to the extent that the same shall occupy such adjoining Residential Unit, and such wall shall be deemed a party wall for all purposes of this Declaration. The cost of reasonable repairs and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. If a party wall is destroyed or damaged by fire or other casualty, the Owner who has shared the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall contribute equally to the cost of restoration thereof, without prejudice however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. Notwithstanding any other provisions of this Declaration to the contrary, any Owner who by his negligence or willful act, or the negligence or willful act of his occupancy causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other owner under this Declaration shall be appurtenant to the land and shall pass to such Owner's successors in title. Easements are hereby declared and granted to Owners having a party wall to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components through the party walls of two or more Residential Units, whether or not such walls lie in all or in part within the boundaries of a Residential Unit. Every portion of a Residential Unit which contributes to the structural support of another Residential Unit shall be burdened with an easement of structural support for the benefit of the other Residential Units.

Section 2.02. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each adjacent Residential Unit due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance necessary to encompass any constructed encroachment, either now existing or arising in the future; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to the intentional, willful, knowing or negligent conduct on the part of any Owner or Occupant.

Section 2.03. Easements for Utilities, Etc. Declarant hereby reserves for itself and its designees (including, without limitation, the Town of Munster and any utility) easements upon, across over and under the Residential

Units for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, and similar systems, walkways, and all utilities, including, but not limited to, sanitary sewer, storm sewer, water main, meter boxes, telephones, gas and electricity, and any other Common Area. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the Development Area.

Without limiting the generality of the foregoing, there are hereby reserved for the Town of Munster, Indiana, easements across all Residential Units for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on Residential Units, except as may be approved by the Association's Board of Directors or as provided in the development and sale of the Development Area by Declarant. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this Article II shall in no way adversely affect any other recorded easement on the Submitted Parcel.

Section 2.04. Right of Entry. The Association shall have the right and license, but shall not be obligated, to enter into any Residential Unit for emergency, security and safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Residential Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board. There is hereby granted to the Association, and its agents, employees, and independent contractors, a license to enter upon all Residential Units to the extent necessary or appropriate for the conduct of the Association's responsibilities under Article IV.

Section 2.05. Use of the Common Area.  
a. Each Owner shall have the right to use the Common Area in common with all other Owners, as may be required for the purpose of ingress and egress to and from his respective Parcel and Residential Unit.

b. Each Owner shall have the right to use the Common Area for all purposes incident to the use, occupancy and enjoyment of his Parcel and Residential Unit as a place of residence, and such other incidental uses permitted by this Declaration.

c. The patio and any sidewalk or driveway serving an individual Residential Unit shall be exclusively used by the Owner of the Residential Unit serviced thereby.

d. The right to use the Common Area shall extend to each Owner and the agents, servants, tenants, family and invitees of each Owner, and such rights shall be subject to and governed by this Declaration, the By-Laws and the rules and regulation of the Association.

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**ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

Section 3.01. Membership and Meetings. Every Owner shall be deemed to have a membership in the Association. No Owner, whether one or more persons, shall have more than one (1) membership per Residential Unit owned. In the event the Owner of a Residential Unit is more than one (1) person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote for each class of membership applicable to a particular Residential Unit be cast for each Residential Unit.

The first annual meeting of the Association shall not be held until such time as the rights of the Declarant to appoint directors and to thereby control the Association shall have expired as provided in Section 3.03 of this Declaration or at such earlier time or times as may be determined by the Declarant. The next annual meeting shall be set by the Board of Directors so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent annual meetings shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board of Directors. Subject to the foregoing, the annual meeting of the Members shall be held at a date and time as set by the Board of Directors. Subject to the foregoing, the Members shall, at each annual meeting, elect the Board of Directors of the Association in accordance with the provisions of the By-Laws and transact such other business as may properly come before the meeting.

Section 3.02. Voting. The Association shall have one (1) class of membership. Members shall be entitled on all issues to one (1) vote for each Residential Unit in which they hold an interest required for membership by Section 3.01 hereof; there shall be only one (1) vote per Residential Unit. When more than one (1) person or entity holds such interest in any Residential Unit, the vote for such Residential Unit shall be exercised as those persons or entities

themselves determine and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Residential Unit's vote shall be suspended in the event more than one (1) person or entity seeks to exercise it.

Any Owner of Residential Units which are leased may, in the lease or other written instrument, assign the voting right appurtenant to that Residential Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting.

The voting rights of Members shall be subject to the Declarant's rights pursuant to the provisions of Article XVI and Article XVII hereof.

Section 3.03. Number Term and Selection of Board of Directors. The initial Board of Directors shall consist of three (3) directors appointed by the Declarant who may but need not be Owners or Members of the Association, and who shall serve those terms of office as established by the By-Laws. The Declarant shall have the right to select and designate all of the directors, and accordingly therefore the right to operate and control the Association, until the Turnover Date. Thereafter, directors shall be elected as otherwise required by the Articles of Incorporation and By-Laws of the Association and must be Members of the Association.

Notwithstanding any other provision of this Declaration, the Articles of Incorporation, or the By-Laws, from and after the date of the recording of the Declaration until the Turnover Date, the Association shall be governed by the Board of Directors appointed from time to time by Declarant. Such Board of Directors so appointed shall exclusively hold all rights and powers which a Board of Directors or the Association would have under this Declaration, the Articles of Incorporation, or the By-Laws, except as specifically limited herein. Such Board of Directors may appoint from time to time from among the Owners of Residential Units, one or more committees to advise and assist it in the performance of its functions. The rights and powers of such Board of Directors shall be limited as follows:

- (a) All assessments shall be made in accordance with this Declaration.
- (b) Such Board shall have no power to reallocate the voting power among the Members in any manner contrary to this Declaration.
- (c) Such Board shall not take any action requiring the vote or consent of any Mortgagee unless the vote or consent of such Mortgagee is obtained.

Declarant shall have the right to waive, on behalf of the Association, the annual meeting and annual accounting provided for in this Declaration, so long as Declarant retains control of the Association. At the time

of turnover of control by Declarant, a meeting of the Association will be called, at which time the rights and powers of the Declarant-appointed Board of Directors shall terminate and the Association shall thereafter be governed in accordance with the other provisions of this Declaration, the Articles of Incorporation and the By-Laws. Each Member shall be deemed to have given to Declarant an irrevocable proxy to vote on any and all matters on which such Member is entitled to vote under this Declaration, or under the Articles of Incorporation or the By-Laws of the Association. The proxy hereby granted to Declarant shall be deemed to be coupled with an interest and irrevocable. Such proxy shall terminate as of the Turnover Date as set forth above.

ARTICLE IV  
MAINTENANCE

Section 4.01. Association's Responsibility. Unless otherwise provided by an amendment to the By-Laws of the Association by a vote of two-thirds (2/3) of the Members (not two-thirds (2/3) of a quorum), the Association's responsibility for maintenance of the Submitted Parcel shall be limited to (i) the providing for the care of lawns, grass mowing and landscaping care (excepting any landscaping that is not part of or a replacement of the original installation of landscaping improvements by Declarant) including the obligation to water, or provide water for, any lawn or landscaped area, and (ii) maintenance, repair and replacement of the Common Area, and (iii) the maintenance, repair and replacement of the Exterior (as that term is defined in Section 1.22 hereof) of any Residential Unit, excepting the doors and windows of the Residential Unit, which shall be maintained, repaired and replaced by the Residential Unit Owner, and (iv) the providing for snow removal from driveways located within any Residential Unit, from sidewalks located within or adjacent to any Residential Unit and from the ingress-egress easement areas shown on the Plat. The Association's responsibility shall include not only routine maintenance and care of lawn and landscaped areas, but also the replacement of grass, sod, and trees and shrubbery which were a part of the original landscaping. Subject to Section 9.03, the cost of any such work to meet the Association's responsibility under this Section 4.01 may be paid out of a Special Assessment.

If, due to the act or neglect of an Owner, or an Occupant of such Owner's Unit, or of a guest or invitee of such Owner damage shall be caused to a part of the Common Area and maintenance, repairs, or replacements shall be required which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs or replacements as may be determined by the Board.

Section 4.02. Owner's Responsibility. Except as provided in Section 4.01 hereof, all maintenance, repair and replacement of the Residential Unit including, without limitation, the doors and windows of the Residential Unit, shall be the sole responsibility of the Owner thereof who shall perform such

maintenance in a manner consistent with the Community-Wide Standard of the Project and the applicable covenants.

**ARTICLE V**  
**INSURANCE AND CASUALTY LOSSES**

**Section 5.01. Insurance.** The Association may, but shall not, under any circumstances, be obligated to, obtain and continue in effect adequate blanket all-risk casualty insurance in such form as the Board of Directors deems appropriate for the full replacement cost of all structures on the Residential Units, as well as public liability insurance. If the Association elects not to obtain such casualty insurance, then each Owner shall obtain such insurance in accordance with Section 5.02 hereof. All provisions of this Article shall apply to all policy provisions, loss adjustment and all other subjects of all policies of insurance whether such policies are obtained by the Association or the Owners, or both.

Each Owner shall also obtain a public liability policy covering the Residential Unit owned by such Owner, and shall name the Association as an additional insured for all damages or injury caused by the negligence of such Owner. The public liability policy shall have at least a Three Hundred Thousand Dollars (\$300,000.00) single person limit as respects bodily injury and property damage, a Five Hundred Thousand Dollars (\$500,000.00) limit per occurrence, and a One Hundred Thousand Dollars (\$100,000.00) minimum property damage limit.

Premiums for insurance obtained by the Association shall be a Common Expense of the Association and shall be included in the General Assessment, as defined in Article IX. Premiums for insurance obtained by Owners shall be paid by such Owners.

All casualty insurance coverage obtained by the Association or by any Owner shall be for the respective benefited parties, as further identified in b. below. Such insurance shall be governed by the provisions hereinafter set forth.

a. All policies shall be written with a company licensed to do business in Indiana and holding a rating of XI or better in the Financial Category as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating, and shall be for the full replacement cost.

b. All policies on Residential Units shall be for the benefit of the Residential Unit Owners and their Mortgagees as their interests may appear. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in



the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

c. In no event shall any insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants or their Mortgagees.

d. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Highland, Indiana area.

e. The Association's Board of Directors and the Owner shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(1) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents and guests;

(2) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(3) that no policy obtained by the Association may be canceled, invalidated or suspended on account of any one or more individual Owners;

(4) that no policy may be canceled, invalidated or suspended on account of the conduct of any Director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or Mortgagee;

(5) that any "other insurance" clause in any policy exclude Association and individual Owners' policies from consideration; and

(6) that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

Section 5.01A. Other Association Insurance. In addition to the other insurance required by Section 5.01 hereof, the Board shall also have the authority to and shall obtain, as a Common Expense, the following:

(a) Comprehensive public liability and property damage insurance against claims for personal injury or death or property damage suffered by the public or by any Owner occurring in or about the streets, sidewalks and passageways and other areas adjoining the Submitted Parcel and/or with respect to the Association's maintenance obligations set forth in Section 4.01 hereof, in such amounts as the Board shall deem desirable.

(b) Such workmen's compensation insurance as may be necessary to comply with applicable laws.

(c) Employer's liability insurance in such amount as the Board shall deem desirable.

(d) Fidelity bond or bonds indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee of the Association or of any other person handling the funds of the Association, the Board or the Owners in such amount as the Board shall deem desirable, but may not be less than three (3) months Assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

(e) Directors' and Officers' liability insurance, as set forth in Section 14.02 hereof.

(f) Such other insurance in such reasonable amounts as the Board shall deem desirable.

Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. The premiums for such insurance shall be Common Expenses.

Section 5.02. Individual Insurance. By virtue of taking title to a Residential Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all-risk casualty insurance on the Residential Unit and structures constructed thereon as provided for in Section 5.01 hereof, unless the Association carries such insurance, which they are not obligated to do. Each individual Owner further covenants and agrees that in the event of any loss or damage and destruction the proceeds of such insurance shall be used only in accordance with this Declaration. In the event that the structure is totally destroyed and by a vote of three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum), it is determined, subject to the further

requirements of Section 5.04 hereof, not to rebuild or to reconstruct, the individual Owner shall clear the Residential Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. A decision not to rebuild or reconstruct shall under no circumstances relieve or discharge an Owner from the obligation to pay Assessments to the Association.

Section 5.03. Disbursement of Proceeds. Proceeds of insurance policies shall be paid to the Insurance Trustee to be disbursed as follows:

a. If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction or, in the event no repair or reconstruction is made, shall be disbursed to the affected Owner or Owners and their mortgagee(s) as their interests may appear. This is a covenant for the benefit of any Mortgagee of a Residential Unit and may be enforced by such Mortgagee.

b. If it is determined, as provided for in Section 5.02 hereof, that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for in Section 5.03.a. hereof.

Section 5.04. Damage and Destruction.

a. Immediately after the damage or destruction by fire or other casualty to all or any part of a Residential Unit, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Residential Units. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Residential Units to substantially the same condition in which they existed prior to the fire or other casualty.

b. Any damage or destruction shall be repaired or reconstructed unless by a vote of at least three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum), the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction shall be repaired or reconstructed.

c. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the Residential Unit shall be restored to its natural state by the Owner or Owners thereof and maintained as an undeveloped portion of the Project by the Association in a neat and attractive condition.

Section 5.05. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against the Owner or Owners of Residential Units affected by such damage or destruction. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Section 5.06. Appointment of Insurance Trustee. The Association, as Insurance Trustee, shall have the right to appoint any federal or state bank which is qualified to offer trust services to the public as Insurance Trustee hereunder, and upon such appointment shall be relieved of all liability and responsibility as Insurance Trustee hereunder.

ARTICLE VI  
NO PARTITION

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of a Residential Unit or any part thereof, nor shall any person acquiring any interest in any Residential Unit or any part thereof seek any such judicial partition unless the Submitted Parcel has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE VII  
CONDEMNATION

Whenever all or any part of a Residential Unit shall be taken (or conveyed in lieu of and under threat of condemnation by the Owner) by any authority having the power of condemnation or eminent domain, each Owner damaged by such condemnation shall be entitled to pursue all available remedies against the condemning authority. Should any property owned or maintained by the Association for common use be effected by the condemnation, the Association shall be entitled to pursue all available remedies against the condemning authority for the damages sustained to such property.

**ARTICLE VIII**  
**RIGHTS, OBLIGATIONS AND POWERS OF THE ASSOCIATION**

Section 8.01. Personal Property for Common Use. The Association, through action of its Board of Directors, may acquire, own, lease, hold and dispose of tangible and intangible personal property.

Section 8.02. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the operations of the Association, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may be imposed in accordance with Article XII. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. In addition, the Association shall permit the Town of Highland, Indiana, to enforce ordinances on the Submitted Parcel for the benefit of the Association and its Members.

Section 8.03. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation, the By-Laws, or the Rules and Regulations, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**ARTICLE IX**  
**ASSESSMENTS**

Section 9.01. Creation of Assessments. There are hereby created Assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 9.06 hereof. Assessments shall be allocated equally among all Residential Units within the Association and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these Assessments. All such Assessments, together with interest at the rate of twelve percent (12%) per annum, costs, and reasonable attorneys' fees, shall be a charge on the Residential Unit and shall be a continuing lien upon the Residential Unit against which each Assessment is made.

Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Residential Unit at the time the Assessment arose,

and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance to the extent expressly assumed, except no first Mortgagee who obtains title to a Residential Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual Assessment for delinquents; unless the Board otherwise provides, the Assessments shall be paid in monthly installments.

The Association is specifically authorized to enter into subsidy contracts with Declarant or other entities for the payment of some portion of the Common Expenses.

**Section 9.02. Computation of Assessment.** It shall be the duty of the Board, at least sixty (60) days before the beginning of the budget year (the budget year shall be from January 1 through December 31) and thirty (30) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming budget year. Subject to the provisions of Section 9.05 hereof, the budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall separately list general expenses. The Board shall cause a copy of the budget, and the amount of the Assessments to be levied against each Residential Unit for the following budget year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the Assessments shall become effective when adopted by the Board of Directors.

Notwithstanding the foregoing, however, in the event the Board fails for any reason so to determine the budget for the succeeding budget year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current budget year shall continue for the succeeding budget year.

The Board may not, without the vote or written consent of a majority of the votes of the Association, impose an Assessment per Residential Unit which is greater than one hundred fifty percent (150%) of the amount for the previous fiscal year, except for the Assessment levied for the first time.

**Section 9.03. Special Assessments.** In addition to the Assessments authorized in Section 9.01, the Association may levy a Special Assessment or Special Assessments in any year applicable to that year; provided, however, that such Special Assessment for any purpose other than as a sanction against an Owner shall have the vote or written assent of fifty-one percent (51%) of a quorum of Members entitled to vote at a meeting called for the purpose. The Association may also levy a Special Assessment as a sanction against any Member to reimburse the Association for costs incurred in bringing a

Member and his Residential Unit into compliance with the provisions of the Declaration, the Amendments thereto, the Articles of Incorporation, the By-Laws, and the Rules and Regulations, which Special Assessment may be levied upon the vote of the Board.

Section 9.04. Lien for Assessments. When a notice of the lien has been recorded, such Assessment or Special Assessment shall constitute a perfected lien on each Residential Unit prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgage or deeds of trust) made in good faith and for value.

Such lien, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Residential Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period owned by the Association, following foreclosure: (a) No right to vote shall be exercised on its behalf; (b) no Assessment shall be assessed or levied on it; and (c) each other Residential Unit shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Residential Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Assessments, and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 9.05. Capital Budget and Contributions. In the event that the Association becomes the owner of any capital asset, or is charged with the duty for the upkeep, maintenance and repair of a capital asset, the Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual Assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and Assessment, as provided in Section 9.02 hereof. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

Section 9.06. Date of Commencement of Annual Assessments. The annual Assessments provided for herein shall commence as to each Residential Unit on the first day of the first month following the conveyance of title to an Owner of said Owner's Residential Unit. Assessments shall be due and payable in a manner and on a schedule as the Board of

Directors may provide. The first annual Assessment shall be adjusted according to the number of months then remaining in that budget year.

Section 9.07. Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the Assessments, including interest, late charges subject to the limitations of Indiana law, and costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any bona fide first Mortgage upon any Residential Unit. The sale or transfer of any Residential Unit shall not affect the Assessment or Special Assessment lien. However, the sale or transfer of any Residential Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Unit from lien rights for any Assessments or Special Assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Residential Unit obtains title, his successors and assigns shall not be liable for the share of the Assessments by the Association chargeable to such Residential Unit which became due prior to the acquisition of title to such Residential Unit by such acquirer. Such unpaid share of Assessments shall be deemed to be Common Expense collectible from all of the Residential Units, including such acquirer, his successors and assigns.

ARTICLE X  
ARCHITECTURAL STANDARDS

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Architectural Review Committee established in Section 10.01. This Article may not be amended without the Declarant's written consent, so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

No construction, which term shall include within its definition staking, clearing, excavation, grading and other site work, and no plantings or removal of plants, trees or shrubs outside of any enclosed private courtyard shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the Architectural Review Committee has been obtained.

Section 10.01. Architectural Review Committee. The Architectural Review Committee (the "ARC") shall consist of three (3) members, all of whom shall be appointed by the Board of Directors. The ARC shall have exclusive jurisdiction over all new or original construction, and all modifications, additions or alterations made on or to existing Residential Units and the open space, if any, appurtenant thereto.

Section 10.02. Review Procedure. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such new



or original construction and such modifications, additions or alterations shall be submitted to the ARC for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right to an Owner to remodel the interior of his residence, or to paint the interior of his residence any color desired. In the event ARC fails to approve or to disapprove such plans or to request additional information reasonably required within one hundred eighty (180) days after submission, the plans shall be deemed approved.

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**ARTICLE XI  
USE RESTRICTION**

Section 11.01. Residential Restrictions. The Residential Units shall be used only for residential, personal recreational and related purposes as may more particularly be set forth in this Declaration and amendments thereto. The Association, acting through the Board of Directors, shall have standing and the power to enforce use restrictions contained in any such declaration as if such provision were a regulation of the Association.

Section 11.02. Nuisances. No nuisances shall be allowed upon any Residential Unit nor shall any use or practice be allowed which would annoy residents or interfere with the peaceful possession and proper use of the Residential Units by its residents, or which will obstruct or interfere with the rights of other Owners or the Association. This provision shall not be construed to prohibit or limit the enforcement of any provision of the Declaration which does not constitute a nuisance, or to prohibit the Association from adopting Rules and Regulations prohibiting conduct which does not constitute a nuisance.

Section 11.03. Immoral, Improper, Offensive and Unlawful Uses. No immoral, improper, offensive or unlawful use shall be made of any Residential Unit nor any part thereof and all laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The respective responsibilities of Owners and the Association of complying with the requirements of governmental bodies regarding the maintenance, modification or repair of Residential Units shall be the same as provided in Article IV hereof.

Section 11.04. Uses Affecting Insurance Rates. An Owner shall not permit or suffer anything to be done or kept in a Residential Unit which will increase the insurance rates on any adjacent Residential Unit.

Section 11.05. Signs and Other External Rates. No Owner shall display any sign (except for temporary but tasteful "for sale" or "for rent"

signs), advertisement or notice of any type on the exterior of a Residential Unit and no Owner shall erect any exterior antennae, aerials or awnings upon any Residential Unit. No clothesline or other similar device shall be allowed on any portion of any Residential Unit, except within an enclosed private courtyard.

Section 11.06. Animals. An Owner may not keep, raise or breed any animals, livestock or poultry in or on a Residential Unit, provided, however, that two (2) pets only shall be allowed to be kept in or on a Residential Unit, subject to the Rules and Regulations of the Association.

Section 11.07. Vehicles. No motor homes, campers, trailers, boats of any kind, or trucks in excess of 3/4 ton capacity, shall be parked at any time on any Residential Unit, except inside closed garages in a manner that shall allow the garage door to be closed entirely.

Section 11.08. Leasing Restrictions. All lease or rental agreements must be in writing. Residential Units shall not be leased for an initial term of less than six (6) months, nor for less than thirty (30) days for any term thereafter.

Section 11.09. Rules and Regulations. Rules and Regulations concerning the use of the Residential Units may be promulgated and amended by the Association acting by and through its Board of Directors each of which shall be deemed to be incorporated herein by reference and made a part hereof, as amended from time to time; provided, however, copies of all such Rules and Regulations shall be furnished to each Owner prior to the time that the same become effective. The initial Rules and Regulations are attached hereto, made a part hereof, and marked Exhibit "E". The Rules and Regulations set forth on Exhibit "E" and all rules and regulations promulgated from time to time shall be deemed to be reasonable and enforceable, so long as they bear any relationship to the safety, health, happiness and enjoyment of life of all of the Owners, are in furtherance of a plan to provide for the congenial occupation of the Residential Units, to promote and protect the cooperative aspects of ownership, the value of the Residential Units, and/or facilitate the administration of the community as a first class, safe, healthy, happy, quiet, and restful residential community, and are not arbitrary and capricious. The Board of Directors of the Association is hereby granted the specific power and authority to enforce said rules and regulations in accordance with the provisions of Article XII.

## ARTICLE XII ENFORCEMENT

Each Owner and Occupant of a Residential Unit shall be governed by and shall comply with the terms of this Declaration and the Articles of Incorporation, By-Laws, and the Rules and Regulations of the Association adopted pursuant thereto as they may be amended from time to time. A default

or violation by an owner or Occupant of a Residential Unit shall entitle the Association or any other Owner or Owners to the following remedies:

Section 12.01. Authority and Administrative Enforcement and Procedures.

a. Authority. Residential Units shall be used only for those uses and purposes set out in this Declaration, and subject to the covenants and restrictions set forth herein, and in the By-Laws and Rules and Regulations of the Association. The Board of Directors shall have the power and authority to impose reasonable Special Assessments in accordance with Section 9.03 hereof, which shall constitute a lien upon the Owner's Residential Unit and to suspend an Owner's right to vote, and to approve other appropriate sanctions in the event that it is determined in accordance with this Article XII that an Owner or Occupant has violated any provision of this Declaration, the By-Laws, or the Rules and Regulations as duly promulgated.

b. Procedure. The Board of Directors shall not impose a Special Assessment as a sanction, suspend the right to vote, or infringe upon any other rights of an Owner or Occupant for any such violations unless and until the following procedure is followed:

(1) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (a) the alleged violation; (b) the action required to abate the violation; and (c) a time period, not less than ten (10) days, during which the violation may be abated without further sanction.

(2) Notice. If the violation continues past the period allowed in the demand for abatement without sanction, the Association shall serve the violator with written notice of a hearing. The notice shall contain: (a) the nature of the alleged violation; (b) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice; (c) an invitation to attend the hearing and produce any statements, evidence and/or witnesses in his/her behalf; and (d) the proposed sanction to be imposed.

(3) Hearing. The hearing shall be held in executive session by the Board of Directors pursuant to the notice affording the violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice, the invitation to be heard, the written result and statements of the sanction shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting.

c. Sanctions. The Board of Directors' power and authority to impose sanctions shall be governed by the following provisions:

(1) All Special Assessments imposed upon a violator under this Article shall bear a reasonable relationship to the violation, considering all the circumstances, which may include, but shall not be limited to, the following:

(a) The actual costs and expenses incurred by the Board of Directors and the individual directors in the exercise of the power and authority under this Article XII, and in otherwise attempting to remedy the violation.

(b) The amount of actual damage done to other Owners and Occupants and/or their Residential Units and/or to the Association arising out of the violation or the efforts to remedy the effects of same.

(c) The amount which would be reasonably required to compensate the Association for the disruption of and inconvenience to, the community, the Association or any Member thereof, or Occupant of a Residential Unit.

(d) The extent to which the violation is or was flagrant, and the extent to which the violator cooperated or hindered in any effort to remedy the violation.

(2) All Special Assessment amounts imposed hereunder as a sanction shall be deemed to be a part of the Assessment attributable to the Residential Unit occupied by the violator, and shall be assessed against said Residential Unit occupied by the violator, and shall be assessed against said Residential Unit and its Owner as a Special Assessment to be due and payable on the date that the next Assessment payment would be due, and any such special Assessments which are not paid as of that date shall become a lien on such Residential Unit, and shall be collected and enforced in the same manner as Assessments.

(3) Nothing herein contained shall be construed as granting to the Board of Directors the power or authority to impose such a Special Assessment which is punitive in nature, or to suspend an Owner's right to vote, unless the Board of Directors finds, by specific special findings of fact in accordance with the foregoing procedure, that the violator's conduct was willful, malicious, oppressive and outrageous in nature. Said special findings of fact shall specifically set forth all facts and circumstances.

(4) All other sanctions imposed shall be reasonably related to the violation found.

(5) The decision of the Board of Directors made in accordance with the foregoing procedures shall be final.

Section 12.02. Legal Remedies. In addition to the administrative remedies set forth in Section 12.01 hereof, the legal remedies may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, an action to enforce the sanctions imposed by administrative procedure, or any combination thereof. The prevailing party shall be entitled to recover the costs of any legal proceeding including reasonable attorneys' fees.

Section 12.03. No Waiver of Rights. The failure of the Association or of an Owner to enforce any right, provision, covenant or condition which may be granted by the Declaration, Articles of Incorporation, By-Laws and Rules and Regulations or by law shall not constitute a waiver of the right of the Association or Owner to enforce such right, provision, covenant or condition in the future.

Section 12.04. No Election of Remedies. All rights, remedies and privileges granted to the Association or any Owner pursuant to any terms, provisions, covenants or conditions of the Declaration, Articles of Incorporation, By-Laws and Rules and Regulations or by law shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges.

ARTICLE XIII  
AMENDMENT

The Declaration and the Articles of Incorporation, By-Laws, and Rules and Regulations may be amended in the following manner:

Section 13.01. Declaration. Subject to Article XV and Article XVI, amendments to the Declaration shall be proposed and adopted as follows, provided, however, that no amendment may revoke, remove, or modify any right or privilege of the Declarant, without the Declarant's written consent.

a. Notice. Notice of the subject matter of any proposed amendment shall be included in the Notice of any meeting of the Board of Directors or Owners at which any proposed amendment is to be considered.

b. Resolution. Except as provided in subparagraph d. hereof, a resolution to amend the Declaration may be adopted by the affirmative

vote of not less than three-fourths (3/4) of the Members (not three-fourths (3/4) of a quorum), at any regular or special meeting of the Members called and held in accordance with the By-Laws; provided however, that any such amendment must also be approved and ratified by not less than three-fourths (3/4) of the Board of Directors (not three-fourths (3/4) of a quorum).

c. Recording. The amendment shall not be effective until a certified copy thereof is recorded in the Office of the Recorder of Lake County, Indiana. A copy of any such amendment shall also be sent to each Owner and his Mortgagee by registered or certified mail; provided, however, the mailing of such amendment shall not constitute a condition precedent to the effectiveness of such amendment.

d. Amendments by Declarant. Notwithstanding any other provision of the Declaration, and in addition to any other right to amend elsewhere set forth herein, the Declarant alone may amend this Declaration, or the Articles of Incorporation, By-Laws, and Rules and Regulations, without the consent of the Owners, the Association, the Board of Directors or any Mortgagee, or any other Person, (1) to correct scrivener's errors, minor defects or omissions, or (2) to comply with the requirements of Indiana law, or (3) to comply with the requirements of any governmental agency, public authority, or title insurance company, or (4) to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by each such entity, (5) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Residential Units, or (6) to add portions of the Development Area to the Submitted Parcel by Supplemental Amendment pursuant to Article XVII hereof. This subparagraph d. shall constitute an irrevocable special power of attorney to Declarant on behalf of all Owners, Mortgagees, and any and all other Persons having an interest of any kind in the Submitted Parcel, for so long as Declarant owns any portion of the Development Area or until the expiration of five (5) years from the date on which this Declaration is recorded, whichever occurs first. The amendment shall be signed by the Declarant and it shall become effective upon the recording of a copy thereof in the Office of the Recorder of Lake County, Indiana. A copy of such amendment shall also be sent to all Owners and their Mortgagees in the manner provided in subparagraph c. hereof.

Section 13.02. Articles of Incorporation, By-Laws and Rules and Regulations. The Articles of Incorporation, By-Laws and Rules and Regulations of the Association shall be amended in the manner provided by such documents or by law.

ARTICLE XIV  
GENERAL PROVISIONS

Section 14.01. Term. The covenants and restrictions of this Declaration shall run with and bind the Submitted Parcel, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Residential Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding and the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 14.02. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action suit or other proceeding, (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, or any other acts or omissions of any nature whatsoever as such directors and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless each of the directors and each of the officers, his heirs, executors or administrators, 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 or the Association, or arising out of their status as directors or officers, unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include an 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 such person being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, 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 reasonable grounds for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer. Any right to

indemnification provided for herein shall not be exclusive of any other rights to which any officer of director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 14.03. Perpetuities. If any of the covenants, conditions, restrictions, easements or other provisions of this Declaration shall be unlawful, void or violable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

## ARTICLE XV

### MORTGAGEES' RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first Mortgages on Residential Units. To the extent applicable, necessary, or proper, the provisions of this Article XV apply to both this Declaration and to the By-Laws of Essex Point Homeowners Association, Inc. Where indicated, these provisions apply only to "Eligible Holders," as hereinafter defined; provided, however, voting percentages set forth herein are subject to and controlled by higher percentage requirements, if any, set forth elsewhere in this Declaration for specific actions.

Section 15.01. Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request (such request to state the name and address of such holder, insurer or guarantor and the Residential Unit address), to the Association (thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- a. any proposed termination of the Association;
- b. any condemnation loss or any casualty loss which affects a material portion of the Submitted Parcel or which affects any Residential Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- c. any delinquency in the payment of Assessments or charges owed by an Owner of a Residential Unit subject to the Mortgage of such Eligible Holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;
- d. any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or



e. any proposed action which would require the consent of Eligible Holders, as required in Section 15.02 hereof.

Section 15.02. Mortgagee's Rights Respecting Amendments To The Declaration. To the extent possible under Indiana law, and notwithstanding the provisions of Article XIII, any amendment of a material nature must be approved by Eligible Holders representing at least fifty-one percent (51%) of the votes of Residential Units that are subject to Mortgages held by Eligible Holders. An amendment to any of the following shall be considered material:

- a. voting rights;
- b. Assessments, Assessment liens, or subordination of Assessment liens;
- c. reserves for maintenance, repair, and replacement of Common Areas;
- d. responsibility for maintenance and repairs;
- e. boundaries of any Residential Unit;
- f. expansion of the Development Area (to include real estate not described in Exhibit "A" or not adjacent thereto);
- g. insurance or fidelity bonds;
- h. leasing of Residential Units;
- i. imposition of any restrictions on an Owner's right to sell or transfer his or her Residential Unit;
- j. restoration or repair of the Submitted Parcel (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration;
- k. any action to terminate the legal status of the Submitted Parcel after substantial destruction or condemnation occurs, provided, however, that any action to terminate the legal status of the Project for reasons other than substantial destruction or condemnation shall require the consent of Eligible Holder's representing sixty-seven percent (67%) of the votes of Residential Units; or
- l. any provisions that expressly benefit mortgage holders, insurers or guarantors.

Section 15.03. Special FHLMC Provision. So long as required by FHLMC, the following provisions apply in addition to and not in lieu of the foregoing two sections of this Article. Unless two-thirds (2/3) of the first Mortgagees or Owners give their consent, the Association shall not:

a. by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Property shall not be deemed a transfer);

b. change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;

c. by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residential Units and of any Common Area;

d. fail to maintain fire and extended coverage insurance, as required by this Declaration; or

e. use hazard insurance proceeds for any Common Area losses for other than the repair, replacement or reconstruction of such.

The provisions of this Section 15.03 shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a larger percentage vote is otherwise required for any of the actions contained in this Section.

Section 15.04. Mortgagee's Right To Cure. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for any Common Area, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

## ARTICLE XVI

### DECLARANT'S RIGHTS

Section 16.01. Control by Declarant. Notwithstanding any of the other provisions of this Declaration or the By-Laws to the contrary, and in addition to any other right or privilege given or granted or reserved to Declarant under this Declaration, the first and all subsequent Board of Directors shall consist solely of three (3) individuals designated by Declarant, which individuals

may but need not be Owners or Members until the first to occur of any of the following (the "Turnover Date"):

(a) Thirty (30) days after Declarant has conveyed to purchasers for value all of the Residential Units proposed for the Development Area;

(b) The expiration of five (5) years from the date of the recording of this Declaration; or

(c) The date on which the Declarant elects to terminate its sole control by the delivery of written notice of such election to the Owners.

Section 16.02. Absence of Warranty. The Declarant specifically disclaims any warranty or representation in connection with the Submitted Parcel or Development Area or this Declaration except as specifically set forth herein; and no Person shall rely upon any warranty or representation not specifically set forth therein. Any estimates of Assessments are believed to be accurate, but no warranty or guaranty is made or intended, nor may one be relied upon.

Section 16.03. Assessment Exemption. Declarant shall be exempt from any Assessment levied by the Association on any or all Residential Units owned by the Declarant, which are unoccupied and offered by the Declarant for sale.

Section 16.04. Right to Amend Declaration. The Declarant shall have the right to amend the Declaration, and the Articles of Incorporation, By-Laws, and Rules and Regulations, in accordance with Section 13.01(d) hereof.

Section 16.05. Transfer of Rights. Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Office of the Recorder of Lake County, Indiana.

Section 16.06. Declarant's Reserved Rights and Easements. Notwithstanding any provisions herein to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel, for the benefit of Declarant, its successors, and assigns over, under, in, and/or on the real estate and any portion of the Development Area which becomes part of the Submitted Parcel, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation,

development, maintenance, repair, replacement, use and enjoyment and/or otherwise dealing with the Submitted Parcel and Development Area. The reserved easement shall constitute a burden on the title to all or any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel and specifically includes, but is not limited to:

- (1) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in all or any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel; and the right to tie into any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel with driveways, parking areas, streets, and drainage systems; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over all or any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel, and in connection therewith the right to store construction equipment and materials in appropriate areas in areas owned by Declarant without payment of any fee or charge whatsoever; and
- (2) the right to construct, install, replace, relocate, maintain, repair, use and enjoy model units, parking spaces, signs, lighting, construction offices, business offices and sales offices as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction of improvements and sale of units in all or any portion of the Submitted Parcel and Development Area;
- (3) no rights, privileges, and easements granted or reserved herein shall be merged into the title of any Residential Unit within the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit claim deed from Declarant releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel;

This Section 16.06 may not be amended without the advance written consent of Declarant.

## ARTICLE XVII

### ANNEXATION OF ADDITIONAL PROPERTY

#### Section 17.01. Annexation Without Approval of Membership.

As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option, from time to time at any time until the end of the fifth (5th) year after the recording of this Declaration, to annex, submit and subject to the provisions of this Declaration, all or any part of the Development Area, or other property adjacent to or in the vicinity of the Development Area, by recording an amendment to this Declaration ("Supplemental Amendment") as hereinafter provided. For the purposes of this Article, any portion of the Development Area which is made subject to this Declaration by a Supplemental Amendment shall be referred to as "Added Property," and any Residential Units (or Parcels upon which attached, single-family townhomes are being completed) in the Added Property shall be referred to as "Added Residential Units." Added Property may be made subject to the Declaration at different times and there is no limitation on the order in which Added Property may be made subject to this Declaration. There is no limitation on the location of improvements which may be made on Added Property and no particular portion of the Development Area must be made subject to this Declaration.

Section 17.02. Power to Amend. In furtherance of the foregoing, Declarant reserves the right to record a Supplemental Amendment, at any time and from time to time prior to five (5) years from the date of recording hereof, which amends those portions of this Declaration necessary to reflect the Added Property and the effect of the Added Residential Units

Section 17.03. Effect of Amendment. Upon the recording of a Supplemental Amendment by Declarant which annexes and subjects Added Property to this Declaration, as provided in this Article, then:

(a) The restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added Property (including Added Residential Units) and inure to the benefit of and be the personal obligation of the Owners of Added Residential Units in the same manner, to the same extent, and with the same force and effect that this Declaration applies to the Submitted Parcel and Owners of Residential Units which were initially subjected to this Declaration.

(b) Every Person who is an Owner of an Added Residential Unit shall be a Member of the Association on the same terms and subject to

the same qualifications and limitations as those Members who are Owners of Residential Units.

(c) Each Owner of an Added Residential Unit shall pay the same monthly Assessment as the Owner of an existing Residential Unit; provided, however, the Owner of an Added Residential Unit shall not be required to pay any installment of a special assessment levied to cover a deficit under a prior year's budget.

(d) The amount of the lien for assessments, charges or payments levied against an existing Residential Unit prior to the recording of the Supplemental Amendment shall not be affected.

Such Supplemental Amendment shall not require the vote of Members. Any such annexation shall be effective upon the filing for record of such Supplemental Amendment unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other person the said right, privilege and option to annex such Added Property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of such Added Property and that such transfer is memorialized in a written, recorded instrument.

Section 17.04. Amendment. This Article XVII shall not be amended without the written consent of Declarant, so long as the Declarant owns any portion of the Development Area.

#### ARTICLE XVIII

#### SEVERABILITY OF INVALID OR UNENFORCEABLE PROVISIONS

Section 18.01. Severability of Invalid or Unenforceable Provisions. If any term, covenant, provision, phrase or other element of this Declaration, the Articles of Incorporation, the By-Laws or the Rules and Regulations is held to be invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to affect, alter, modify or impair in any manner whatsoever any other term, covenant, provision, phrase or other element of this Declaration, the Articles of Incorporation, the By-Laws or the Rules and Regulations.

If any part of this Declaration, or any term, covenant, provision, phrase or other element, or the application thereof in any circumstances be judicially held in conflict with the laws of the State of Indiana, then the said laws shall be deemed controlling and the validity of the remainder of the Declaration and the application of any other term, covenant, provision, phrase or other element in other circumstances shall not be affected thereby.

ARTICLE XIX

LIMITATION ON DECLARANT'S LIABILITY

Section 19.01. Limitation on Declarant's Liability.

Notwithstanding anything to the contrary herein, it is expressly agreed, and such Owner, by accepting title to a Residential Unit and becoming an Owner acknowledges and agrees, that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any members of Declarant (or any member, partner, officer, director or shareholder in any such assignee) shall have any liability, personal or otherwise, to any Owner or other person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to ) this Declaration except, in the case of Declarant (or its assignee), to the extent of its interest in the Submitted Parcel; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets of the judgment debtor.

ARTICLE XX

CAPTIONS

Section 20.01. Captions. Captions used in this Declaration, the Articles of Incorporation, the By-Laws and the Rules and Regulations are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration, the Articles of Incorporation, the By-Laws and the Rules and Regulations.

ARTICLE XXI

BINDING EFFECT

Section 21.01. Binding Effect. This Declaration shall be binding upon and inure to the benefit of each Owner, its successors, grantees, assigns and the legal representatives thereof.

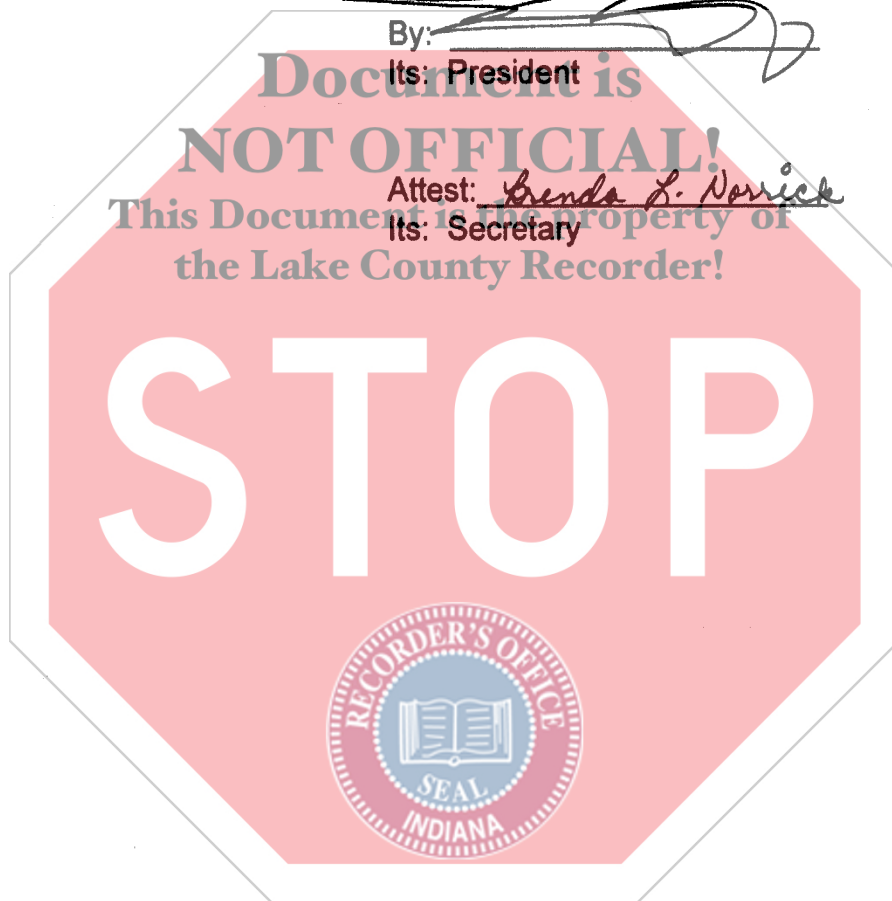
IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed as of this 4th day of October, 1999.

ATG HOMES, LLC,  
An Indiana limited liability company

By: ATG Corporation  
Its: Member

By:   
Its: President

Attest: Brenda S. Novick  
Its: Secretary





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

Before me, a Notary Public in and for said County and State, personally appeared Eric T. Gastevich and Brenda L. Narrick the President and Secretary, respectively, of ATG Corporation, as a member of ATG Homes, LLC, who acknowledged that they signed and delivered the said instrument as their own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notaries seal this 24 day of October, 1999.

*Brenda M. Shelton*  
Notary Public  
Resident of Lake County

My Commission Expires:  
Sept. 28, 2006

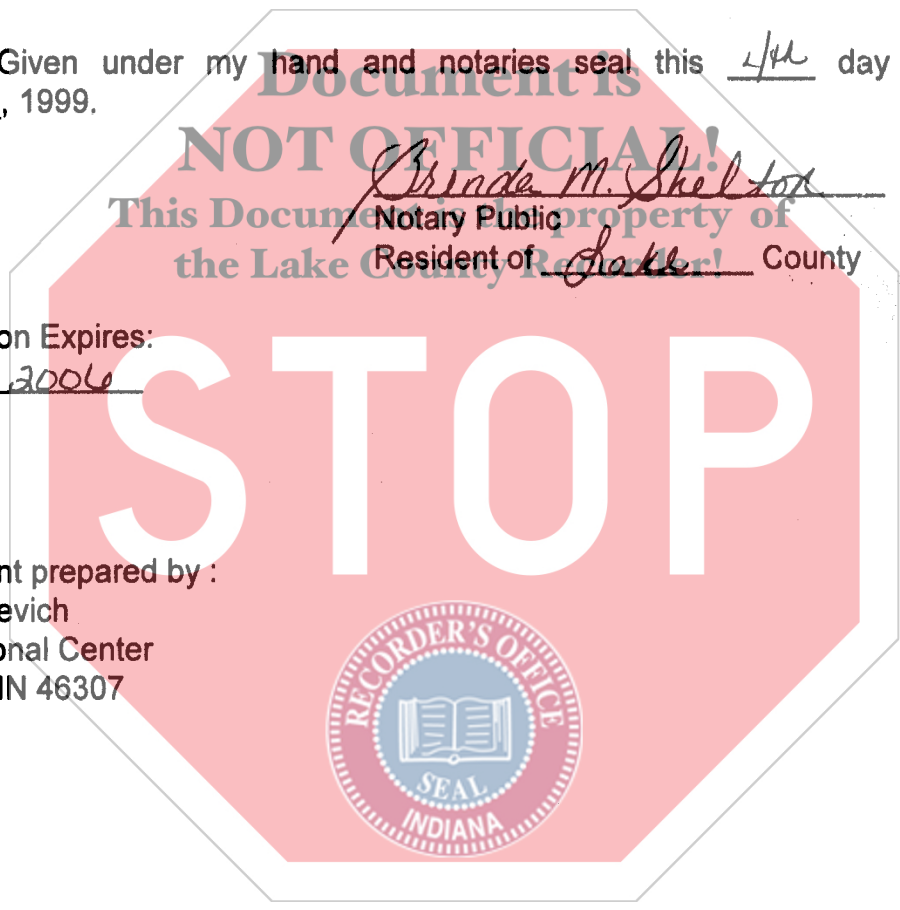
This instrument prepared by :  
Vladimir Gastevich  
One Professional Center  
Crown Point, IN 46307



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

Before me, a Notary Public in and for said County and State, personally appeared Eric T. Gastevich and Brenda L. Narrick the President and Secretary, respectively, of ATG Corporation, as a member of ATG Homes, LLC, who acknowledged that they signed and delivered the said instrument as their own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notaries seal this 14<sup>th</sup> day of October, 1999.



My Commission Expires:  
Sept. 28, 2006

This instrument prepared by :  
Vladimir Gastevich  
One Professional Center  
Crown Point, IN 46307



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE DEVELOPMENT AREA**

The Townhomes at White Oak Estates, Block 6, as shown in Plat Book 86, Page 66, Lake County, Indiana.

The Townhomes at White Oak Estates, Block 7, as shown in Plat Book 86, Page 67, Lake County, Indiana.

The Townhomes at White Oak Estates, Block 8, as shown in Plat Book 86, Page 68, Lake County, Indiana.



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The Townhomes at White Oak Estates, Block 8, as shown in Plat Book 86, Page 68, Lake County, Indiana.



**EXHIBIT B**

**LEGAL DESCRIPTION OF SUBMITTED PARCEL**

**Lots 13, 14 and 15, The Townhomes at White Oak Estates, Block 7, as shown in Plat Book 86, Page 67, Lake County, Indiana.**

**Lots 16 and 17, The Townhomes at White Oak Estates, Block 8, as shown in Plat Book 86, Page 68, Lake County, Indiana.**



**EXHIBIT B**

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EXHIBIT C

ARTICLES OF INCORPORATION  
(Not For Profit)

State Form 4162 (R77-91)  
Corporate Form 364-1 (October 1984)

ARTICLES OF INCORPORATION

OF

BURLWOOD TOWNHOMES AT WHITE OAK ESTATES  
HOMEOWNERS ASSOCIATION, INC.

The undersigned incorporator desiring to form a corporation (hereinafter referred to as the "Corporation") pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991 (hereinafter referred to as the "Act"), execute the following Articles of Incorporation:

ARTICLE I

NAME

The name of the Corporation is Burlwood Townhomes at White Oak Estates Homeowners Association, Inc.

ARTICLE II

PURPOSES

The purposes for which the Corporation is formed are:

Section 1. To establish an incorporated association (hereinafter the "Association") for the owners and residents of Burlwood Townhomes at White Oak Estates, a development located in Munster, Lake County, Indiana, to primarily provide for the acquisition, management, maintenance and care of association common area property and to promote the recreation, health, safety and welfare of said owners and residents pursuant to the Declaration of Covenants, Conditions, Restrictions and Easements for Burlwood Townhomes at White Oak Estates (hereinafter the "Declaration").

EXHIBIT C

ARTICLES OF INCORPORATION  
(Not For Profit)

State Form 4162 (R7/7-91)  
Corporate Form 364-1 (October 1984)

ARTICLES OF INCORPORATION

OF

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HOMEOWNERS ASSOCIATION, INC.

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Section 2. This Association is organized to own, maintain and administrate community properties and facilities, to administrate and enforce covenants and restrictions set forth in the Declaration and to collect and distribute assessments and charges therefor. The documents creating the community provide for the ownership, operation, management, maintenance and use of Residential Units as described in said document.

Section 3. The Association shall not engage in any activities for the profit of its members, and shall conduct its affairs in such fashion and for such purposes other than for the pecuniary gain of its members, directors, officers, or incorporators.

Section 4. The Association shall have all of the common law and statutory powers of a nonprofit corporation which are not in conflict with the terms of these Articles.

Section 5. The Association shall have all of the powers reasonably necessary to implement the purpose of the Association, including, but not limited to, the following:

- (a) Make and collect Assessments against Members.
- (b) To use the proceeds of Assessments in the exercise of its powers and duties.
- (c) To maintain, repair, replace and operate the Submitted Parcel in accordance with the Declaration.
- (d) The reconstruction of improvements after casualty.
- (e) To make and amend rules and regulations respecting the use of Residential Units.
- (f) To enforce by legal means the provisions of the Declaration, these Articles, the By-Laws of the Association, and the Rules and Regulations in accordance with Article XII of the Declaration.
- (g) To contract for the management of the Association and delegate to such contractor all powers and duties of the Association except such as are specifically required by the Declaration to have the approval of the Board of Directors or of the Members of the Association.
- (h) All funds and the titles of all properties acquired by the Association and the proceeds thereof shall be held only for the benefit of the Members in accordance with the provisions of the Declaration.

(i) The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration.

(j) If it so elects, to carry insurance for the protection of Owners and the Association against casualty and liabilities.

(k) To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association.

(l) To do any and all things necessary, convenient or expedient, as permitted by the "Act" for the accomplishment of any of the purposes or the furtherance of any of the powers hereinabove set forth either alone or in association with other corporations, firms or individuals.

Section 6. All rights, powers and descriptions of purposes established by the Articles of Incorporation, shall be subject to the Declaration and all provisions contained therein as if fully set forth in these Articles, and shall further be subject to Indiana law governing nonprofit corporations.

Section 7. Notwithstanding any other provision of these articles, the corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 528 of the Internal Revenue Code of 1986 or corresponding provisions of any future provisions of the Internal Revenue Code.

ARTICLE III

TYPE OF CORPORATION

The Corporation is a mutual benefit corporation.

ARTICLE IV

REGISTERED AGENT REGISTERED OFFICE, PRINCIPAL OFFICE

Section 1. Registered Agent. The name and address of the Corporation's Registered Agent for service of process is:

ATG Corporation  
One Professional Center  
Suite 304  
Crown Point, IN 46307

(i) The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration.

(j) If it so elects, to carry insurance for the protection of Owners and the Association against casualty and liabilities.

(k) To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association.

(l) To do any and all things necessary, convenient or expedient, as permitted by the "Act" for the accomplishment of any of the purposes or the furtherance of any of the powers hereinabove set forth either alone or in association with other corporations, firms or individuals.

Section 6. All rights, powers and descriptions of purposes established by the Articles of Incorporation, shall be subject to the Declaration and all provisions contained therein as if fully set forth in these Articles, and shall further be subject to Indiana law governing nonprofit corporations.

Section 7. Notwithstanding any other provision of these articles, the corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 528 of the Internal Revenue Code of 1986 or corresponding provisions of any future provisions of the Internal Revenue Code.

ARTICLE III

TYPE OF CORPORATION

The Corporation is a mutual benefit corporation.

ARTICLE IV

REGISTERED AGENT REGISTERED OFFICE, PRINCIPAL OFFICE

Section 1. Registered Agent. The name and address of the Corporation's Registered Agent for service of process is:

ATG Corporation  
One Professional Center  
Suite 304  
Crown Point, IN 46307

Section 2. Registered Office. The post office address of the registered office of the Corporation is:

c/o ATG Corporation  
One Professional Center  
Suite 304  
Crown Point, IN 46307

Section 3. Principal Office. The post office address of the principal office of the Corporation is:

c/o ATG Corporation  
One Professional Center  
Suite 304  
Crown Point, IN 46307

**Document is NOT OFFICIAL!**  
**This Document is the property of the Lake County Recorder!**

ARTICLE V  
MEMBERSHIP

The Corporation will have members.

ARTICLE VI  
INCORPORATOR

The name and post office address of the incorporator of the Corporation is:

<u>Name</u>	<u>No. &amp; Street or Bldg.</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
Eric T. Gastevich	c/o ATG Corporation One Professional Center Suite 304	Crown Point	IN	46307

ARTICLE VII

DISTRIBUTION OF ASSETS ON DISSOLUTION OR FINAL LIQUIDATION

Upon dissolution or final liquidation, the assets shall revert to the Owners of the Residential Units located in the Submitted Parcel.



Section 2. Registered Office. The post office address of the registered office of the Corporation is:

c/o ATG Corporation  
One Professional Center  
Suite 304  
Crown Point, IN 46307

Section 3. Principal Office. The post office address of the principal office of the Corporation is:

c/o ATG Corporation  
One Professional Center  
Suite 304  
Crown Point, IN 46307

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NOT OFFICIAL!**

**ARTICLE V  
This Document is the property of  
the Indiana Secretary of State**

The Corporation will have members.

ARTICLE VI

INCORPORATOR

The name and post office address of the incorporator of the Corporation is:

<u>Name</u>	<u>No. &amp; Street or Bldg.</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
Eric T. Gastevich	c/o ATG Corporation One Professional Center Suite 304	Crown Point	IN	46307

ARTICLE VII

DISTRIBUTION OF ASSETS ON DISSOLUTION OR  
FINAL LIQUIDATION

Upon dissolution or final liquidation, the assets shall revert to the Owners of the Residential Units located in the Submitted Parcel.

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c/o ATG Corporation  
One Professional Center  
Suite 304  
Crown Point, IN 46307

Section 3. Principal Office. The post office address of the principal office of the Corporation is:

c/o ATG Corporation  
One Professional Center  
Suite 304  
Crown Point, IN 46307

**Document is NOT OFFICIAL!**  
ARTICLE V  
This Document is the property of  
the MEMBERSHIP Recorder!

The Corporation will have members.

ARTICLE VI

INCORPORATOR

The name and post office address of the incorporator of the Corporation is:

<u>Name</u>	<u>No. &amp; Street or Bldg.</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
Eric T. Gastevich	c/o ATG Corporation One Professional Center Suite 304	Crown Point	IN	46307

ARTICLE VII

DISTRIBUTION OF ASSETS ON DISSOLUTION OR  
FINAL LIQUIDATION

Upon dissolution or final liquidation, the assets shall revert to the Owners of the Residential Units located in the Submitted Parcel.

IN WITNESS WHEREOF, I, the undersigned, do hereby execute these Articles of Incorporation and certify the truth of the facts herein states this \_\_\_\_\_ day of \_\_\_\_\_, 1999. I hereby verify subject to penalties of perjury that the facts contained herein are true.

\_\_\_\_\_  
Eric T. Gastevich

This instrument prepared by:

Vladimir Gastevich  
One Professional Center  
Suite 304  
Crown Point, IN 46307



IN WITNESS WHEREOF, I, the undersigned, do hereby execute these Articles of Incorporation and certify the truth of the facts herein states this \_\_\_\_\_ day of \_\_\_\_\_, 1999. I hereby verify subject to penalties of perjury that the facts contained herein are true.

\_\_\_\_\_  
Eric T. Gastevich

This instrument prepared by:

Vladimir Gastevich  
One Professional Center  
Suite 304  
Crown Point, IN 46307



EXHIBIT D

BY-LAWS

OF

BURLWOOD TOWNHOMES AT WHITE OAK ESTATES  
HOMEOWNERS ASSOCIATION, INC.

TABLE OF CONTENTS

	<u>Page</u>
I. NAME, MEMBERSHIP, APPLICABILITY, AND DEFINITIONS..	1
1. Name.....	1
2. Principal Office.....	1
3. Definitions.....	1
II. ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES..	1
1. Membership.....	1
2. Place of Meetings.....	1
3. Annual Meetings.....	1
4. Special Meetings.....	2
5. Notice of Meetings.....	2
6. Waiver of Notice.....	2
7. Adjournment of Meetings.....	2
8. Voting.....	3
9. Proxies.....	3
10. Majority.....	3
11. Quorum.....	3
12. Conduct of Meetings.....	3
13. Action Without A Meeting.....	3
III. BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS...	4
A. <u>Composition and Selection</u> .....	4
1. Governing Body; Composition.....	4
2. Directors During Declarant Control.....	4
3. Number of Directors.....	4
4. Nomination of Directors.....	4
5. Election and Term of Office.....	5
6. Removal of Directors and Vacancies.....	5

EXHIBIT D

BY-LAWS

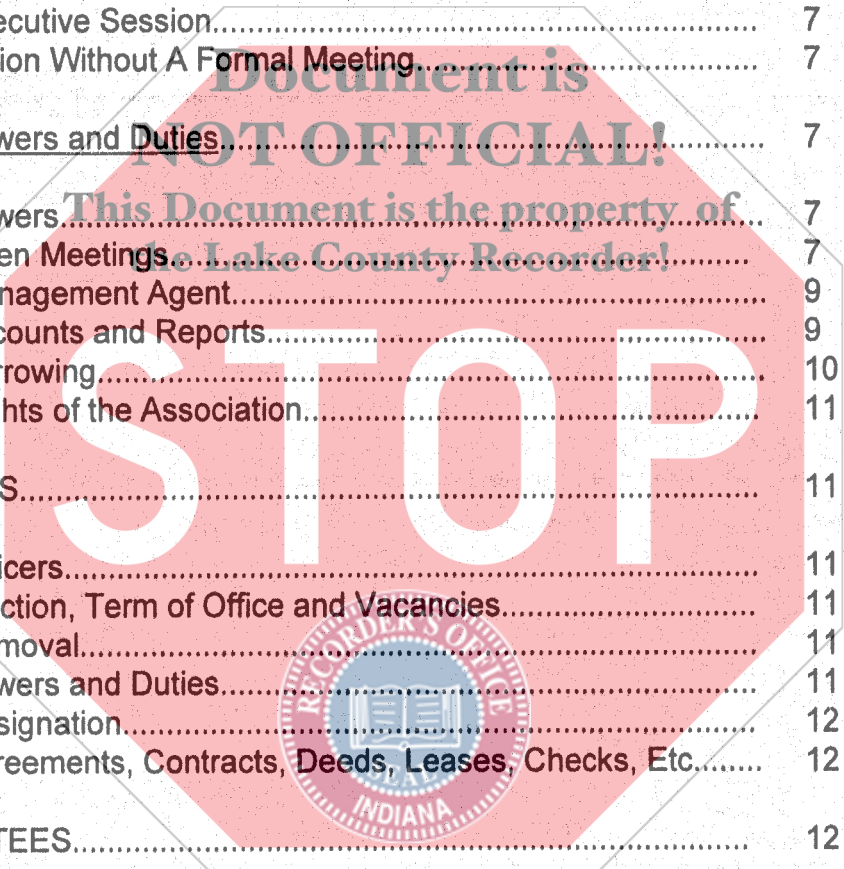
OF

BURLWOOD TOWNHOMES AT WHITE OAK ESTATES  
HOMEOWNERS ASSOCIATION, INC.

TABLE OF CONTENTS

	<u>Page</u>
I. NAME, MEMBERSHIP, APPLICABILITY, AND DEFINITIONS..	1
1. Name.....	1
2. Principal Office.....	1
3. Definitions.....	1
II. ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES..	1
1. Membership.....	1
2. Place of Meetings.....	1
3. Annual Meetings.....	1
4. Special Meetings.....	2
5. Notice of Meetings.....	2
6. Waiver of Notice.....	2
7. Adjournment of Meetings.....	2
8. Voting.....	3
9. Proxies.....	3
10. Majority.....	3
11. Quorum.....	3
12. Conduct of Meetings.....	3
13. Action Without A Meeting.....	3
III. BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS...	4
A. <u>Composition and Selection</u> .....	4
1. Governing Body; Composition.....	4
2. Directors During Declarant Control.....	4
3. Number of Directors.....	4
4. Nomination of Directors.....	4
5. Election and Term of Office.....	5
6. Removal of Directors and Vacancies.....	5

7.	Voting Procedure For Directors.....	5
B.	<u>Meetings</u> .....	5
8.	Organization Meetings.....	5
9.	Regular Meetings.....	5
10.	Special Meetings.....	6
11.	Waiver of Notice.....	6
12.	Quorum of Board of Directors.....	6
13.	Compensation.....	6
14.	Conduct of Meetings.....	7
15.	Open Meetings.....	7
16.	Executive Session.....	7
17.	Action Without A Formal Meeting.....	7
C.	<u>Powers and Duties</u> .....	7
18.	Powers.....	7
19.	Open Meetings.....	7
20.	Management Agent.....	9
21.	Accounts and Reports.....	9
22.	Borrowing.....	10
23.	Rights of the Association.....	11
IV.	<b>OFFICERS</b> .....	11
1.	Officers.....	11
2.	Election, Term of Office and Vacancies.....	11
3.	Removal.....	11
4.	Powers and Duties.....	11
5.	Resignation.....	12
6.	Agreements, Contracts, Deeds, Leases, Checks, Etc.....	12
V.	<b>COMMITTEES</b> .....	12
VI.	<b>MISCELLANEOUS</b> .....	12
1.	Fiscal Year.....	12
2.	Parliamentary Rules.....	12
3.	Conflicts.....	12
4.	Books and Records.....	12
5.	Notices.....	13
6.	Amendment.....	13
7.	Definitions.....	13



BY-LAWS  
OF  
BURLWOOD TOWNHOMES AT WHITE OAK ESTATES  
HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME, MEMBERSHIP, APPLICABILITY AND DEFINITIONS

Section 1. Name. The name of the Association shall be Burlwood Townhomes at White Oak Estates Homeowners Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association in the State of Indiana shall be located in the City of Crown Point, County of Lake. The Association may have such other offices, either within or without the State of Indiana, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in that Declaration of Covenants, Conditions, Restrictions and Easements for Burlwood Townhomes at White Oak Estates (said Declaration, as amended, renewed or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.

ARTICLE II

ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES

Section 1. Membership. The Association shall have one (1) class of membership, as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors.

Section 3. Annual Meetings. The first annual meeting shall not be held until such time as the rights of the Declarant to appoint all of the Board of Directors and to thereby control the Association shall have expired as provided in the Declaration, or at such earlier time or times as may be determined by the Declarant. The next annual meeting shall be set by the Board of Directors so as to occur no later than ninety (90) days after the close of the Association's fiscal



year. Subsequent annual meetings shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board of Directors. Subject to the foregoing, the annual meeting of the Members shall be held at a date and time as set by the Board of Directors. Subject to the foregoing, the Members shall, at each annual meeting, elect the Board of Directors of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by a least ten percent (10%) of the total votes of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Waiver of Notice. Waiver of notice of meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed a waiver by such member of notice of the time, date and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 7. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days

year. Subsequent annual meetings shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board of Directors. Subject to the foregoing, the annual meeting of the Members shall be held at a date and time as set by the Board of Directors. Subject to the foregoing, the Members shall, at each annual meeting, elect the Board of Directors of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

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Section 5. Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

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from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that at least twenty-five percent (25%) of the total votes of the Association remains present in person or by proxy, and provided further than any action taken shall be approved by at least a majority of the Members required to constitute a quorum.

Section 8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 9. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Residential Unit or upon receipt of notice by the Secretary of the Board of the death or judicially declared incompetence of a Member or upon the expiration of eleven (11) months from the date of the proxy.

Section 10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number.

Section 11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by proxy of forty percent (40%) of the Members shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

Section 12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

Section 13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing

from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings.

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Section 13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing

setting forth the action so taken shall be signed by all of the Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Members.

### ARTICLE III

#### BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

##### A. Composition and Selection.

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, the Directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time.

Section 2. Directors During Declarant Control. The Directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant until such time as is specified in the Declaration, unless the Declarant shall earlier surrender this right to select Directors. The Directors selected by the Declarant need not be Owners or residents in the Submitted Parcel. After the period of Declarant appointment, all Directors must be Members of the Association.

Section 3. Number of Directors. The Board of Directors shall consist of three (3) persons.

Section 4. Nomination of Directors. Except with respect to Directors selected by the Declarant, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of vacancies or terms to be filled. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members or solicit votes.

Section 5. Election and Term of Office. Notwithstanding any other provision contained herein:

At the first annual meeting of the membership after the termination of the Declarant's right to select all of the Board of Directors and at each annual meeting of the membership thereafter, Directors shall be elected. All Directors shall be elected at-large. All Members of the Association shall vote upon the election of Directors.

The term of each Director's service shall be for a period of three (3) years and extending thereafter until his successor is duly elected and qualified or until he is removed, provided, however, that the terms of the members to the initial Board of Directors shall be for periods of three (3) years, two (2) years, and one (1) year, such that there shall be only one vacancy each year on the Board of Directors occasioned by the expiration of the director's term.

Section 6. Removal of Directors and Vacancies. Unless the entire Board is removed from office by the vote of the Association Members, an individual Director shall not be removed prior to the expiration of his or her term of office, except by the votes of a majority of Members.

In the event of death or resignation of a Director, his or her successor shall be selected by a majority of the remaining members of the Board and shall serve for the unexpired term of the predecessor.

Section 7. Voting Procedure for Directors. The first election of the Board shall be conducted at the first meeting of the Association after the Turnover Date. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

B. Meetings.

Section 8. Organization Meetings. The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held as such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 5. Election and Term of Office. Notwithstanding any other provision contained herein:

At the first annual meeting of the membership after the termination of the Declarant's right to select all of the Board of Directors and at each annual meeting of the membership thereafter, Directors shall be elected. All Directors shall be elected at-large. All Members of the Association shall vote upon the election of Directors.

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In the event of death or resignation of a Director, his or her successor shall be selected by a majority of the remaining members of the Board and shall serve for the unexpired term of the predecessor.

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Section 10. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President, or Secretary of the Association, or by any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by telegram, charges prepaid. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 11. Waiver of Notice. The transactions of any meetings of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 12. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by a majority vote of the total vote of the Association at a regular or special meeting of the Association.



Section 14. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

Section 15. Open Meeting. All meetings of the Board of Directors shall be open to all Members, but Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board.

Section 16. Executive Session. The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 17. Action Without A Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

Section 18. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of all Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles of Incorporation or these By-Laws directed to be done and exercised exclusively by the Members.

The Board of Directors shall delegate to one of its Members the authority to act on behalf of the Board of Directors on all matters related to the duties of the Managing Agent or Manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but no limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

(b) making Assessments to defray the Common Expenses, establishing the means and methods of collecting such Assessments, and establishing the period of the installment payments of the annual Assessment, provided otherwise determined by the Board of Directors, the annual Assessment against the proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;

(c) providing for the operation, care, upkeep, and maintenance of any Common Area;

(d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement by the Association of its property, and any Common Area, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel or independent contractors in the performance of their duties;

(e) collecting the Assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of any common area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable to Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for

examination by the Owners and Mortgagees, their duly authorized agents, accountants, or attorneys during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners.

(m) make available to any prospective purchaser of a Residential Unit, any Owner of a Residential Unit, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage or any Residential Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, Rules and Regulations, and all other books, records, and financial statements of the Association; and

(n) permit utility suppliers to use portions of the Development Area reasonably necessary to the ongoing development or operation of the Residential Units.

Section 19. Management Agent.

(a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 19 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

(b) No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee on ninety (90) days' or less written notice.

Section 20. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) cash basis accounting shall be employed;

(b) accounting and controls should conform with established AICPA guidelines and principles, which require, without limitation, (i) a segregation of accounting duties, (ii) disbursements by check requiring two (2) signatures, and (iii) cash disbursements limited to amounts of Twenty-five Dollars (\$25.00) and under;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the Managing Agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the Managing Agent may have in any firm providing goods and services to the Association shall be disclosed promptly to the Board of Directors; and

(f) commencing at the end of the month in which the first Residential Unit is sold and closed, quarterly financial reports shall be prepared for the Association containing:

(i) an Income and Expense Statement reflecting all income and expense activity for the preceding three (3) months on a cash basis;

(ii) a Balance Sheet as of the last day of the Association's fiscal year and an Operating Statement for said fiscal year, which shall be distributed within ninety (90) days after the close of a fiscal year;

(iii) a Delinquency Report listing all Owners who have been delinquent during the preceding three (3) month period in paying the monthly installments of Assessments and who remain delinquent at the time of the report and describing the status of any action to collect such installments which remain delinquent (A monthly installment of the Assessment shall be considered to be delinquent on the fifteenth (15th) day of each month.); and

(iv) an annual report consisting of at least the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet as of the end of the fiscal year; (2) an operating (income) statement for the fiscal year; and (3) a statement of changes in financial position for the fiscal year. If said report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

**Section 21. Borrowing.** The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of any Common Area and facilities without the approval of the Members of the Association; provided, however, the Board shall obtain membership approval in the same manner provided Section 10.02, of the Declaration for Special Assessments in the event

that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

Section 22. Rights of the Association. With respect to any Common Areas or other Association responsibilities owned, and in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Directors of the Association.

## ARTICLE IV

### OFFICERS

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The Board of Directors may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

Section 2. Election, Term of Office and Vacancy. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by the President and Treasurer or by such other person or persons as may be designated by resolution of the Board of Directors.

## ARTICLE V

### COMMITTEES

Committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

## ARTICLE VI

### MISCELLANEOUS

Section 1. Fiscal Year. The initial fiscal year of the Association shall be a short year ending on December 31, 1999.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution establishing modified procedures, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Indiana law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Indiana law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Indiana law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection By Members and Mortgagees. The Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by his or her duly

appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Submitted Parcel as the Board shall prescribe.

(b) Inspection By Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Residential Unit of such owner; or

(b) if to the Association, the Board of Directors, or the Managing Agent, at the principal office of the Association or the Managing Agent, if any, or at such other address as shall be designated by the notice in writing to the Owners pursuant to this Section.

Section 6. Amendment. Declarant may amend the By-Laws in accordance with the Declaration. These By-Laws may be amended otherwise only by the affirmative vote (in person or by proxy) or written consent of Members representing two-thirds (2/3) of the total votes of the Association (not a majority of a quorum).

Section 7. Definitions. The capitalized words and phrases used in these By-Laws shall have the same definition and meaning as those set forth in the Declaration of Covenants, Conditions, Restrictions and Easements of Burlwood Townhomes at White Oak Estates.

EXHIBIT E

BURLWOOD TOWNHOMES AT WHITE OAK ESTATES

RULES AND REGULATIONS

1. ARCHITECTURAL STANDARDS: Neither the exterior appearance of a Residential Unit, nor the quality of the construction of a Residential Unit, can be changed in any way whatsoever without the prior approval of the Architectural Review Committee in accordance with the provisions of Article X of the Declaration of Covenants, Conditions, Restrictions and Easements for Burlwood Townhomes at White Oak Estates (hereinafter the "Declaration"). The prohibition of this provision shall include, but not be limited to, the following:

- a. The construction of any exterior addition to any Residential Unit, or the construction of any temporary or permanent improvement or building on the Parcel on which the Residential Unit is located.
- b. The reconfiguration of any existing structure of a Residential Unit in any manner whatsoever.
- c. The use of any materials on the exterior of any Residential Unit or associated structures which is not identical to that which was provided as a part of the original construction, both in quality, color and other appearance.
- d. The erection of aerials, antennas, clotheslines, awnings, or other similar items or devices in such a manner that they are not visible from any ground level location from the exterior.
- e. Storm doors and windows shall not be added to a Residential Unit.
- f. The erection or maintenance of any fences or other types of barricades.
- g. The use of window coverings which are not white or beige or show a white or beige appearance when viewed from the exterior of the Residential Unit.
- h. The use of mailboxes not in conformity with the quality and style and location requirements of the Architectural Review Committee. The original mailboxes installed for the Residential Units shall conform to the quality, style and location requirements of the Declarant.



EXHIBIT E

BURLWOOD TOWNHOMES AT WHITE OAK ESTATES

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1. ARCHITECTURAL STANDARDS. Neither the exterior appearance of a Residential Unit, nor the quality of the construction of a Residential Unit, can be changed in any way whatsoever without the prior approval of the Architectural Review Committee in accordance with the provisions of Article X of the Declaration of Covenants, Conditions, Restrictions and Easements for Burlwood Townhomes at White Oak Estates (hereinafter the "Declaration"). The prohibition of this provision shall include, but not be limited to, the following:

- a. The construction of any exterior addition to any Residential Unit, or the construction of any temporary or permanent improvement or building on the Parcel on which the Residential Unit is located.
- b. The reconfiguration of any existing structure of a Residential Unit in any manner whatsoever.
- c. The use of any materials on the exterior of any Residential Unit or associated structures which is not identical to that which was provided as a part of the original construction, both in quality, color and other appearance.
- d. The erection of aerials, antennas, clotheslines, awnings, or other similar items or devices in such a manner that they are not visible from any ground level location from the exterior.
- e. Storm doors and windows shall not be added to a Residential Unit.
- f. The erection or maintenance of any fences or other types of barricades.
- g. The use of window coverings which are not white or beige or show a white or beige appearance when viewed from the exterior of the Residential Unit.
- h. The use of mailboxes not in conformity with the quality and style and location requirements of the Architectural Review Committee. The original mailboxes installed for the Residential Units shall conform to the quality, style and location requirements of the Declarant.

In addition to the foregoing prohibitions, each Owner shall have an affirmative obligation to maintain and repair his and/or her Residential Unit in such manner as to maintain at all times the uniformity of appearance of such Residential Unit with all others in the community.

2. MAINTENANCE AND REPAIR OF RESIDENTIAL UNITS. Except as provided in Section 4.01 of the Declaration, it is the Owner's sole and exclusive responsibility to maintain and repair his and/or her single-family residential structure. The Association's responsibility for the maintenance of the Submitted Parcel shall be limited to (i) the providing for the care of lawns, grass mowing and landscaping care (excepting any landscaping that is not part of or a replacement of the original installation of landscaping improvements by Declarant) including the obligation to water, or provide water for, any lawn or landscaped area, and (ii) the maintenance, repair and replacement of the Common Area, and (iii) the maintenance, repair and replacement of the Exterior (as that term is defined in Section 1.22 of the Declaration) of any Residential Unit excepting the doors and windows of the Residential Unit, which shall be maintained, repaired and replaced by the Residential Unit Owner, and (iv) the providing of snow removal from driveways located within any Residential Unit, from sidewalks located within or adjacent to any Residential Unit and from the ingress-egress easement areas shown on the Plat. The Association responsibility shall include not only routine maintenance and care of these lawn and landscaped areas, but also the replacement of grass, sod and trees and shrubbery which were part of the original landscaping.

If, due to the act or neglect of an Owner, or an Occupant of such Owner's Unit, or of a guest or invitee of such Owner, damage shall be caused to a part of the Common Area and maintenance, repairs, or replacements shall be required which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs or replacements as may be determined by the Board.

3. INSURANCE. As of the adoption of these Rules and Regulations by the Association, the Association has elected not to obtain casualty insurance on Residential Units in accordance with the provisions of Section 5.01 of the Declaration. Accordingly, it is the sole and exclusive responsibility of each Owner of a Residential Unit to provide casualty insurance in accordance with the provisions of the Declaration. It is, therefore, the Owner's responsibility to be familiar with and to comply with Article V of the Declaration in every respect. This obligation shall include, but not be limited to, the requirement that all casualty insurance be for the full replacement value, that the proceeds thereof be payable to the Insurance Trustee, and that all liability insurance policies show the Association as a named insured.

4. SIGNS. No Owner shall display any sign on any part of any Residential Unit, except for temporary but tasteful "For Sale" or "For Rent" signs.

5. VEHICLES. No motor homes, campers, trailers, boats of any kind, or trucks in excess of 3/4 ton capacity, shall be parked at any time on any Residential Unit, except inside closed garages in a manner that shall allow the garage door to be closed entirely.

6. LEASING RESTRICTIONS. All lease or rental agreements must be in writing. Residential Units shall not be leased for an initial term of less than six (6) months, nor for less than thirty (30) days for any term thereafter.

7. MINIMUM HEAT. The minimum heat in every Residential Unit shall not be less than 60' F. for the period of time from November 1 to April 15 each year.

8. OCCUPANCY. No more than one (1) family may occupy one (1) Residential Unit with no more than two (2) persons per bedroom.

9. NOISE. Loud music or television or any other sound which may be objectionable to any other Occupant is prohibited at all times.

10. CAR WASHING. No car or other vehicle washing is permitted on any of the Residential Units in any manner which would allow soaps, detergents, or other chemical liquids or compounds to damage any lawn or landscaped area.

11. PETS. Only two (2) pets (either a dog(s) or cat(s)) shall be allowed to be kept in or on a Residential Unit, and otherwise, an Owner may not keep, raise or bred any animals, livestock or poultry in or on any Residential Unit. Notwithstanding the foregoing, the following shall apply with regard to any pet which is allowed to be kept in or on a Residential Unit:

a. Owners of a cat or dog shall be required to keep same on a leash at all times when such pets are outside the home.

b. Owners of a cat or dog shall be required to immediately removal all forms of excrement of such pets from the Development Area, including, but not limited to, lawns, walks, driveways, and parking areas, and such pets shall not be allowed to deposit excrement in any manner, or in any place, that would in any manner change or deface the Development Area, including any alteration in the uniformity of appearance of the lawn or landscaped areas.

c. No pet will be allowed which creates noise, emits noxious odors or creates unsafe or unhealthy living conditions, or other disturbances of any kind, whether on a continuous or intermittent basis, and regardless of the time of day or night.

d. Any Owner of a pet allowed hereunder, who is the subject of three (3) justifiable complaints of violation of this rule, shall forthwith permanently remove the pet from his or her Residential Unit, upon notice of same from the Board of Directors, and said Owner shall not be allowed to have any pets within the Residential Unit at any time thereafter, except with the express prior written consent of the Board of Directors.

e. The Board of Directors shall have the authority to make regular Assessments against any and all Owners with pets for the purpose of paying any additional costs which may be involved in maintaining and/or repairing the Submitted Parcel as a direct or indirect result of the housing of pets within the Submitted Parcel.

These Assessments may consist of a regular monthly or other periodic Assessment against all Owners housing pets, to be paid in the same manner and at the same time as the General Assessment for Common Expenses, and such an Assessment may be based upon an estimate of the cost of maintaining and/or repairing the Submitted Parcel necessitated by the housing of pets within the Residential Unit. As an alternative, or in addition to the foregoing, such Assessments may consist of a Special Assessment against any Owner housing a pet, if the Board of Directors, in its sole discretion, determines that a particular Owner shall be responsible for the cost of maintaining and/or repairing any part of the Submitted Parcel necessitated by the housing of the pet in such Owner's Residential Unit.

The failure of any Owner housing a pet to pay such Assessments shall automatically result in the immediate and permanent removal of such pet from the Residential Unit, such Owner shall not be allowed to have any pets within the Residential Unit at any time thereafter, and the Association and the individual members shall have the right to seek and obtain any and all other legal or equitable remedies allowed by the Declaration or by law for violation of these Rules and Regulations.

12. GARBAGE. All garbage receptacles shall be located and stored in such a place as to be not visible from any ground level location in the Submitted Parcel, excepting only on those days of garbage collection by the Town or its contractor, in which case such garbage containers, when empty, shall be immediately relocated to a place as described above.

13. RESPONSIBILITY FOR ASSESSMENTS AND COMPLIANCE WITH DECLARATION. The Owner is always responsible for Association Assessments, insurance deductibles or any other charge the Board of Directors may direct to the Residential Units, and the compliance by all Occupants (including tenants and subtenants) with the provisions of the Declaration, regardless of whether the Residential Unit is occupied by the Owner or by tenant or subtenant, and regardless of any agreement which Owner may have with any such Occupant, tenant or subtenant.

14. OWNERS OBLIGATION TO PROVIDE INFORMATION TO THE ASSOCIATION. All Owners shall advise the Association in writing of the names, residence addresses (if different from that of the Residential Unit owned) and telephone numbers of all Owners and all tenants, subtenants and other Occupants; and the name, business address and telephone numbers of all Mortgagees of record on the Residential Unit owned, and all such information provided in accordance herewith shall be updated in writing by each Owner within fifteen (15) days of the date of any change in the information.

15. DEFINITIONS. The capitalized words and phrases used in these Rules and Regulations shall have the same definition and meaning as those set forth in the Declaration of Covenants, Conditions, Restrictions and Easements of Burlwood Townhomes at White Oak Estates.

