

*Declaration of Covenants,  
Conditions and Restrictions*

*for the*

*Trail Creek Community  
Association, Inc.*

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*Declaration of Covenants, Conditions, and Restrictions  
for the  
Trail Creek Community Association, Inc.*

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this day of \_\_\_\_\_, 2007, by Westpark Development, Inc. an Indiana Corporation. ("Declarant").

Declarant is the owner of the real property described in Exhibit "A", which is attached and incorporated by reference. This Declaration imposes upon the Properties (as defined in Article I) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I) shall be held, sold, used and conveyed subjected to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns.

ARTICLE 1  
DEFINITIONS

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Area of Common Responsibility": the Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or by contract become the responsibility of the Association.

1.2 "Articles of Incorporation" or "Articles": the Articles of Incorporation of the Trail Creek Community Association, Inc. as filed with the Indiana Secretary of State.

1.3 "Association": Trail Creek Community Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

1.4 "Base Assessment": assessment levied on all Units subject to assessment under Section 8.3 to fund Common Expenses for the general benefit of all Units.

1.5 "Board of Directors" or "Board": the body responsible for administration of the Association, selected as provided in the by-laws and generally serving the same role as the board of directors under Indiana corporate law.

1.6 "Builder": any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers or parcels or land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

1.7 "Business" and "Trade": shall be construed to have their ordinary generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

1.8 "By-Laws": the by-laws of the Trail Creek Community Association, Inc., attached as Exhibit "C" and incorporated by reference, as they may be amended.

1.9 "Class "B" Control Period": the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.2 of the by-laws.

1.10 "Common Area": all real and personal property which the Association owns, leases or otherwise holds possessors or use rights in for the common use and enjoyment of the Owners.

1.11 "Common Expenses": the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Owners representing a majority of the total Class "A" vote of the Association.

1.12 "Community-Wide Standard": the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the New Construction Committee.

1.13 "Declarant": Westpark Development, Inc. an Indiana Corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or resale in the ordinary course of business and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.14 "Design and Construction Guidelines": the architectural guidelines and procedures adopted by the New Construction Committee pursuant to Article IX and applicable to all Units within the property set forth in Exhibit "A".

1.15 "Master Plan": the land use plan for the development of the Trail Creek community, prepared by McMahon & Associates, as it may be amended, which plan includes the property described on Exhibit "A" and all or a portion of the property described on Exhibit "B" which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article VII.

1.16 "Member": a Person entitled to membership in the Association, as provided in Section 3.2.

1.17 "Mortgage": a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.18 "Mortgagee": a beneficiary or holder of a Mortgage.

1.19 "Mortgagor": any Person who gives a Mortgage.

1.20 "Owner": one or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, then upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, if the contract specifically so provides.

1.21 "Person": a natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.22 "Trail Creek": the Properties, as defined in Section 1.23.

1.23 "Properties": the real property described in Exhibit "A", together with such additional property as is subjected to this Declaration in accordance with Article VII.

1.24 "Special Assessment": assessments levied in accordance with Section 8.5 of this Declaration.

1.25 "Supplemental Declaration": an amendment or supplement to this Declaration filed pursuant to Article VII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

1.26 "Unit": a portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, triplex units, paired patio or duplex homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, or property dedicated to the public. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

Article II  
PROPERTY RIGHTS

2.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration, the by-laws and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area;
- (d) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.8.
- (e) The rights of certain Owners to the exclusive use of those portions of the Common Area.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, or social invitees, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit. The provisions of this paragraph are subject to Section 10.1(vii).

Article III  
ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

3.1 Function of Association The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules, regulating use of the Properties as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design and Construction Guidelines. The Association shall perform its functions in accordance with this Declaration, the by-laws, the Articles, and Indiana law.

3.2 Membership Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the by-laws, and all such Co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3 Voting. The Association shall have two classes of membership, Class "A" and Class "B".

- (a) Class "A" Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2; there shall be only one vote per Unit.
- (b) Class "B" The sole Class "B" member shall be the Declarant. The rights of the Class "B" Member, including the right to approve or withhold approval of actions proposed under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member may appoint a majority of the members of the Board during the Class "B" Control Period, as specified in Section 3.2 of the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in Section 3.3 of the By-Laws.

The Class "B" membership shall terminate upon the earlier of:

- (i) Two years after termination of the Class "B" Control Period pursuant to Section 3.2 of the By-Laws; or
- (ii) December 31, 2020; or
- (iii) When, in its discretion, the Declarant so determines and declares in a recorded instrument.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit by a Class "A" Member shall be exercised by the Voting Member representing the Unit.

If there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

#### Article IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Common Area The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Areas and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard.

4.2 Personal Property and Real Property for Common Use The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the properties described in Exhibits "A" or "B", personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed.

4.3 Rules The Association, through its Board, may make and enforce reasonable rules governing the use of the Properties, in addition to, further defining or limiting, and, where specifically authorized hereunder, creating exceptions to those covenants and restrictions set forth in this Declaration. Such rules shall be binding upon all Owners, occupants, invitees, and licensees until and unless repealed or modified in a regular or special meeting by the vote representing two-thirds (2/3) of the total Class "A" votes in the Association and by the Class "B" Member, so long as such membership exists.

4.4 Enforcement The Association and if it chooses the Town of Griffith, may impose sanctions for violations of this Declaration, the By-Laws, or rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote. In addition, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violation or to abate nuisances.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit the Town of Griffith, Indiana to enforce applicable ordinances on the Properties for the benefit of the Association and its Members.

4.5 Implied Rights/Board Authority The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, Articles, or by law, the Board without a vote of the membership may exercise all rights and powers of the Association.

4.6 Governmental Interests So long as the Declarant owns any property described on Exhibits "A" or "B", the Declarant may designate sites within the Properties for utility facilities, parks, and other public facilities. The sites may include Common Areas.

4.7 Indemnification The Association shall indemnify every officer, director, and committee member against all expenses, including attorney fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

The Association shall indemnify and forever hold each such officer, director or committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member 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.

4.8 Dedication of Common Areas The Association may dedicate portions of the Common Areas to the Town of Griffith, Indiana, or to any other local, state, or federal governmental entity provided at least 75% of the first Mortgagees or Voting Members representing at least 75% of the total Association vote entitled to cast, consent.

4.9 Security The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CAN NOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR DECLARANT, ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

4.10 Rights to Storm Water The Declarant hereby reserves for itself and its designees all rights to ground water, surface water, and storm water runoff within the Properties and each Owner agrees, by acceptance of a deed to a Unit, that the Declarant shall retain all such rights. No Person other than the Declarant and its designees shall claim, capture or collect rainwater, ground water, surface water or storm water runoff within the Properties without prior written permission of the Declarant or its designee.

## Article V MAINTENANCE

5.1 Association's Responsibility The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) All landscaping and other flora, parks, signage, structures, and improvements;
- (b) Landscaping, sidewalks, street lights and signage within public rights-of-way within or abutting the Properties, and landscaping and other flora within any public utility easements and conservation easements within the Properties (subject to the terms of any easement agreement relating thereto);
- (c) Such portions of any additional property included within any Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association.
- (d) All ponds, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water detention system for the Properties including any retaining walls, bulkheads, or dams detaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith.

There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for reasonable periods as necessary to perform required maintenance or repairs, unless Voting Members representing 75% of the Class "A" votes and the Class "B" Member agree in writing to discontinue such operation.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units in the manner of and as a part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2 Maintenance of Units and Improvements Except for the single-family detached units, the Association shall recommend to the owners, suppliers and providers for the maintenance of the front, back, and side yards (if any) of the Units. The Board shall provide the following information for maintenance:

- (a) Local companies that mow and provide fertilizer, weed control and bush trimming at such times as may reasonably be required in order to prevent the unsightly growth of vegetation and weeds.
- (b) Local companies that will remove snow from driveways and sidewalks.

5.3 Owner's Responsibility Each Owner shall maintain his or her Unit and all structures, parking areas, lawns, sidewalks and driveways and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.4 Standard of Performance Maintenance, as used in this Article, shall include periodic grass cutting (no higher than three inches) and snow removal on the parkway sidewalk, without limitation, and any repair and replacement as needed, as well as such other duties, which may include watering of lawns as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

Notwithstanding anything to the contrary contained herein, the Association, and/or an Owner shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5 Party Walls and Similar Structures

(a) General Rules of Law to Apply Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. All Owners who make use of the party structure shall share the cost of reasonable repair and maintenance of such structure equally.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners subsequently use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs with Land The right of an Owner, to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Disputes All disputes arising concerning a party structure shall be handled in accordance with the provisions of Article XIII.

Article VI  
INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance The Association, acting through its Board or its duly authorized agent, shall obtain blanket "special-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a loss. The Association shall have the authority to and interest in insuring any privately or publicly owned property for which the Association has maintenance or repair responsibility. If blanket "special-risk" coverage is not generally available at reasonable cost, then the Association shall obtain fire and extended coverage, including coverage for vandalism and malicious mischief. The face amount of the policy shall be sufficient to cover the full replacement cost of the insured property. The cost of such insurance shall be a Common Expense to be allocated among all Units subject to assessment as part of the annual Base Assessment.

The Association also shall obtain a public liability policy on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf.

If generally available at reasonable cost, the public liability policy shall have at least a \$1,000,000.00 combined single limit with respect to bodily injury and property damage.

The policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the required coverage. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Article II of the By-Laws, that the loss is the result of the negligence or willful conduct of one or more Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Unit of such Owner or occupant, pursuant to Section 8.6.

6.2 Owners Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry blanket "all-risk" property insurance on its Unit(s) and structures thereon providing full replacement cost coverage less a reasonable deductible or the Association carries such insurance (which they are not obligated to do hereunder).

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, he shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs that are not covered by insurance proceeds.

6.3 Damage and Destruction.

(a) Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Voting Members representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

(c) If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Association as applicable, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

6.4 Disbursement of Proceeds Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

6.5 Repair and Reconstruction If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors shall, without a vote of the Owners, levy Special Assessments against those Unit Owners responsible for the premiums for the applicable insurance coverage under Section 6.1.

6.6 Condemnation If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least 75% of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described in Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and Voting Members representing at least 75% of the total Class "A" votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Sections 6.4 and 6.5 regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

## Article VII ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1 Annexation without Approval of Membership Until all property described on Exhibit "B" has been subjected to this Declaration or 30 years after the recording of this Declaration, whichever is earlier, Declarant may unilaterally subject to the provisions of this Declaration all or portions of the real property described in Exhibit "B". Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Such annexation shall be accomplished by filing a Supplemental Declaration in the land records of Lake County, Indiana, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall not require the consent of the Owners. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

7.2 Additional Covenants and Easements The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

7.3 Amendment This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibits "A" or "B".

## Article VIII ASSESSMENTS

8.1 Creation of Assessments The Association is hereby authorized to levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time. There shall be two types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; and (b) Special Assessments as described in Section 8.5. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay these assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Board (not to exceed the highest rate allowed by Indiana law), late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 8.8. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments that accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself from liability for assessment, by nonuse of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2 Declarant's Obligation for Assessments The Declarant or any related entity, or successor developer, shall not be responsible for any assessment on any Unit held as inventory prior to sale. This Section 8.2 shall not be amended without the prior written consent of Declarant.

8.3 Computation of Base Assessment At least 90 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including at the Board's discretion a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.4.

The Base Assessment shall be levied equally against all Units and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units, subject to assessment under Section 8.6 on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated becoming subject to assessment during the fiscal year.

The Board shall deliver a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Owners representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Voting Members as provided for Special Meetings in Section 2.3 of the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.4. Reserve Budget and Capital Contribution The Board shall annually prepare reserve budgets, which 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 in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments, as appropriate, over the budget period.

8.5. Special Assessments In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessments may be levied against the entire membership, if such Special Assessment is for Common Expenses or against individual Unit Owners if appropriate. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least 51% of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. (However, notwithstanding the above, the Board in its sole discretion shall determine whether such assessment is levied against an individual Unit Owner or Owners when appropriate.) Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6 Date of Commencement of Assessments The obligation to pay assessments shall commence as to each Unit owned by Persons other than the Builder on the date of closing of sale of the unit. The first annual Base Assessment levied on each Unit may be adjusted accordingly to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

8.7 First Year Assessment During the first year following the date of recordation of this Declaration, the total assessments per Unit per year for Common Expenses shall not exceed \$200.00.

8.8 Lien for Assessments All assessments authorized in this Article shall constitute a lien against the Unit against which they are levied until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of Indiana law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien, when delinquent, by suit or judgment.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.5 including such acquirer, its successors and assigns.

8.9 Failure to Assess Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

8.10 Capitalization of Association Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to \$50.00. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-laws.

8.11 Exempt Property The following property shall be exempt from payment of Base Assessments, and Special Assessments:

- (a) All Common Area
- (b) Any property dedicated to and accepted by any governmental authority or public utility.
- (c) Units held as inventory prior to sale by Declarant, related entity of Declarant, or any developer (Section 8.2).

#### Article IX ARCHITECTURAL STANDARDS

9.1 General No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping material(s)) shall take place except in compliance with this Article and the Design and Construction Guidelines and upon approval of the appropriate committee under Section 9.2. In addition, the approval requirements set forth herein shall apply to the proposed removal or clearing of any tree having a caliper of more than two inches to a point two feet above the ground and the installation or placement of any fences or storage sheds. Notwithstanding this, the Board may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

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.

9.2 Architectural Review The two committees as described in subsection (a) and (b) below shall handle responsibility for the review of all applications for construction and modifications under this Article:

(a) New Construction Committee The New Construction Committee ("NCC") shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to Owners other than Builders, the Declarant retains the right to appoint all members of the NCC who shall serve at the Declarant's discretion.

There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board shall appoint the members of the NCC, who shall serve and may be removed in the Board's discretion or combine the NCC and the MC (hereinafter as defined) into a single architectural review committee which shall assume all powers and responsibilities of both committees under this Declaration.

(b) Modifications Committee The Board of Directors may establish a Modifications Committee ("MC") to consist of at least three and no more than five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures (especially all exterior surfaces-roofs, siding, porches, stone, masonry, concrete, etc.) on Units or containing Units and the adjacent open space. The NCC shall have the right to veto any action, taken by the MC, which the NCC determines, in its sole discretion, to be inconsistent with NCC guidelines.

9.3 Guidelines and Procedures The Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design and Construction Guidelines") which shall apply to all construction activities within the Properties. The Design and Construction Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use.

The NCC shall adopt such Design and Construction Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design and Construction Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The NCC shall make the Design and Construction Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such guidelines.

The MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design and Construction Guidelines and subject to review and approval or disapproval by the NCC.

#### 9.4. Submission of Plans and Specifications

(a) No construction or improvements shall be commenced, erected, placed or maintained on any Unit, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials, drainage, and landscaping have been submitted to and approved in writing by the NCC or MC, as appropriate. In reviewing each submission, the NCC or MC, as appropriate, may consider visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in the relation to surrounding structures and plant life. The committee may require relocation of native plants located within the construction site as a condition of approval of any submission.

(b) The NCC or the MC, as appropriate, shall, within 30 days after receipt of each submission of the Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with this Declaration, and/or the Design and Construction Guidelines, the reasons for such finding, and suggestions for the curing of such objections. In the event the appropriate committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plan, approval shall be deemed to have been given.

(c) If construction does not commence on a project for which Plans have been approved within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the NCC or the MC, as appropriate for reconsideration.

(d) Approval of proposals, plans and applications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

(e) The NCC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require.

9.5 Limitation of Liability Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the NCC or the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modification to any Unit.

9.6 Enforcement Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Special Assessment.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the NCC and MC.

## Article X USE GUIDELINES AND RESTRICTIONS

10.1 Initial Use Guidelines and Restrictions The Properties are subject to guidelines and restrictions governing land use, individual conduct, and uses of or actions upon the Properties as provided in this Article X. This Declaration and resolutions of the Board or the Voting Members may adopt and establish affirmative and negative covenants, easements, and restrictions (the "Use, Guidelines and Restrictions").

(a) General The Properties shall be used only for residential, recreational, and related purposes.

(b) Restricted Activities The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

(i) Parking of commercial vehicles, recreational vehicles, mobile homes, boats or other watercraft, or other oversized vehicles, stored vehicles or inoperable vehicles in places other than enclosed garages.

(ii) Capturing, trapping or killing of wildlife within the Properties, except in circumstances posing an imminent threat to the safety of persons using the Properties, and raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet.

(iii) Activities which materially disturb or destroy the vegetation, wildlife or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution.

(iv) Obstruction or re-channeling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right, provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

(v) Subdivision of a Unit into two or more Units after a subdivision plat including such Unit has been approved and filed with the appropriate governmental authority, or changing the boundary lines of any Unit, except that the Declarant and Builders, with Declarant's consent, shall be permitted to subdivide or change the boundary lines of Units which they own.

(vi) Conversion of any carport, garage, attic or other unfinished space, other than a basement, to finished space for use as an apartment or other integral part of the living area on any Unit.

- (c) Leasing Leasing of a unit shall only be permitted upon prior written approval from the Board. In granting approval, the Board shall consider the following: the relationship of the proposed lessee to the lessor; the length of the lease; and any undue hardship as determined by the Board. Approval shall not be unreasonably denied and any lease on any Unit shall provide that the Lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-laws and the rules of the Association.

10.2 Owners Acknowledgement All Owners are subject to the Use, Guidelines and Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board and/or the Voting Members may add and delete, modify, create exceptions to, or amend the Use, Guidelines and Restrictions unless two-thirds (2/3) of the total Class "A" votes and the Class "B" member, if any, disapproves.

Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use, Guidelines and Restrictions and rules may change from time to time. However, no action by the Association or Board shall unreasonably impede Declarant's right to develop in accordance with the Master Plan.

## Article XI EASEMENTS

11.1 Easements of Encroachment There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

11.2 Easements for Utilities, Etc There are hereby reserved unto Declarant, long as the Declarant owns any property described on Exhibit "A" or "B", of this Declaration, the Association, and the designees of each (which may include, without limitation, the Town of Griffith, Indiana and any utility) access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, ponds, wetlands, drainage systems, street lights, signage, sanitary sewer lift station, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, TV cable, computer access and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under, or through any existing dwellings on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant. Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties and anywhere on the exterior of the Units for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit, nor shall any utilities be installed nor relocated on the Properties, except as approved by the Board or Declarant.

11.3 Easements for Collection of Storm Water Runoff and FloodWater. The Declarant reserves for itself, and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon any easement located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any structure designed to divert, collect or retain water; and (c) remove trash and other debris. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any easement to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved for the benefit of Declarant, the Association, the Town of Griffith, and their designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 50 feet of lake beds, ponds, and streams within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties, (b) maintain and landscape the slopes and banks of such ponds, streams,; and (c) enter upon and across such portions of the Properties for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

11.4 Easements for Cross-Drainage. Every Unit and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter the natural drainage on any Unit so as to materially increase the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner of the affected property.

11.5 Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their 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 upon any 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 within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

11.6 Without limiting the generality of the forgoing, there are hereby reserved for the Town of Griffith, Indiana, easements across all lots for ingress, egress, installation, reading, replacing, repairing and maintaining water meters, storm water sewers and sanitary sewers.

## Article XII DECLARANT'S RIGHTS

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the By-Laws.

So long as construction and initial sales of Units shall continue, the Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

No person shall record any declaration of covenants, conditions and restrictions, or declaration of condition or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

Each Owner, by accepting title to a Unit and becoming an Owner, acknowledges awareness that Trail Creek is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to:

- (a) zoning or changes in zoning or to uses of, or changes in density of, the Properties, or
- (b) changes in any conceptual or master land plan for the Properties, including, but not limited to, the Master Plan; provided, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration (as amended from time to time). Notwithstanding anything to the contrary in this Article, the provisions of this Article shall be enforceable only to the extent not in violation of any applicable provision of law.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 30 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

Article XIII  
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

13.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes

The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agrees to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation if at all possible.

Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles of Incorporation (collectively "Claim"), except for those Claims authorized in Section 13.2, shall be subject to the procedures set forth in Section 13.3.

13.2 Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 13.3.

- (a) Any suit by the Association against any Bound Party to enforce the provisions of Article VIII.
- (b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IX and Article X.
- (c) Any suit between Owners (other than the Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under the law of the State of Indiana in the absence of a claim based on the Declaration, By-Laws, Articles or rules of the Association, if the amount in controversy exceeds \$10,000.00; and
- (d) Any suit which involves the Association, Declarant, and all Persons subject to this Declaration in disputes with outside vendors or contractors.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 13.3, but there shall be no obligation to do so.

13.3 Mandatory Procedures for All Other Claims. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than a Claim exempted from this provision by Section 13.2, shall not file suit in any court or initiate any proceedings before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

(a) Notice

The Claimant shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

1. The nature of the Claim, including date, time, location, persons involved, Respondent's role in the Claim and the provisions of this Declaration, the By-Laws, the Rules, the Articles of Incorporation or other authority out of which the Claim arises;
2. The basis of the Claim (i.e., the provision of the Declaration, By-Laws, rules or Articles triggered by the Claim).
3. What Claimant wants Respondent to do or not do so to resolve the Claim; and
4. That Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation

1. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation

1. If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of the nearest dispute resolution agency or mediation center or such other independent agency providing similar services upon which the Parties may mutually agree.
2. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(d) Final and Binding Arbitration

1. If the Parties do not resolve the Claim through mediation, the Claimant shall have 30 days following termination (as determined by the mediator) of mediation proceedings ("Termination of Mediation") to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.
2. This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Indiana. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Indiana.

13.4 Allocation of Costs of Resolving Claims

- (a) Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Section 13.3, including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 13.3.
- (b) Each Party shall bear all of its own costs (including the fees of its attorney or other representative incurred after the Termination of Negotiations under Section 13.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in this subsection; provided, however, if the Claim is rejected in whole or in part, the Claimant shall pay all Post Mediation costs, including the costs incurred by the Respondent.

13.5 Enforcement of Resolution If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 13.3 and any Party thereafter fails to abide by the terms of such Agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 13.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

Article XIV  
GENERAL PROVISIONS

14.1 Term This Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of 30 years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of 10 years, unless an instrument in writing, signed by a majority of the then Owners, and the written consent of the Town of Griffith Town Council, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or terminate this Declaration in which case this Declaration shall be amended or terminated as specified therein.

#### 14.2 Amendment

(a) By Declarant Until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is; (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association of Federal Home Loan Mortgage Corporation, to enable it to make purchase, insure or guarantee mortgage loans on the Units; to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; or (iv) otherwise necessary to satisfy the requirements of any governmental agency.

However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Declarant still owns Property described in Exhibits "A" or "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner. Further, no amendments shall violate the rights of the Town of Griffith, or enforcement of its ordinances.

(b) By Owners Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing 75% of the Class "A" votes in the Association, including 67% of the Class "A" votes held by Members other than the Declarant, and the consent of the Declarant, so long the Declarant has an option to subject additional property to this Declaration pursuant to Section 7.1.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments Amendments to this Declaration shall become effective upon recordation in the land records of Lake County, Indiana, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If any Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of the Declarant, without the written consent of the Declarant or the assignee of such right or privilege.

14.3 Severability Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

14.4 Litigation No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Voting Members. This Section shall not apply, however, to:

- (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens);
- (b) the imposition and collection of assessments as provided in Article VIII;
- (c) proceedings involving challenges to ad valorem taxation;
- (d) counterclaims brought by the Association in proceedings instituted against it; or
- (e) actions brought by the Association against any contractor or vendor arising out of a contract for services or supplies between the Association and such contractor or vendor. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided herein. This provision shall apply in addition to the provisions of Article XIII, if applicable.

14.5. Compliance Every Owner and occupant of any Unit shall comply with this Declaration, the By-Laws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Unit Owner(s).

14.6 Notice of Sale or Transfer of Title Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.7 Buyback In the event that construction of a Unit is not commenced on any unit within a period of two (2) years from the date on which such unit is conveyed by the Declarant or its designee to the purchaser thereof, unless such two (2) year period is extended by a written instrument duly executed by the Declarant, the Declarant shall thereupon have the right during the ensuing twelve (12) month period commencing on the second anniversary date of such conveyance to repurchase such unit from the current owner of such unit, free and clear of all liens and encumbrances except current property taxes which shall be prorated to the date of closing, at the same price at which the Declarant sold such unit to the original purchaser thereof, without payment of interest or any other charges, upon the Declarant serving written notice upon the current owner of such unit of the Declarant's intention to exercise its option and effect such repurchase, notwithstanding whether the current owner of such unit was also the original purchaser thereof. The closing of such repurchase shall take place at the Declarant's office not later than thirty (30) days from the date of the giving of such written notice to the current owner of such unit, who shall take such actions and shall execute such documents, including a warranty deed to such unit, as the attorneys for the Declarant shall deem reasonably necessary to convey good title to such unit to the Declarant, free and clear of all liens and encumbrances as aforesaid. This paragraph shall not be subject to the amendatory provisions of Section 14.2.

## **Article XV**

### TOWN OF GRIFFITH ORDINANCES

All Town of Griffith ordinances apply to and control the land described herein, in the event of a conflict between this Declaration of Covenants, Conditions and Restrictions and the ordinances of the Town of Griffith, the ordinance of the Town of Griffith shall control.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this \_\_\_\_ day of \_\_\_\_\_, 2007.

DECLARANT: Westpark Development, Inc.  
An Indiana Corporation  
ADDRESS: 131 Ridge Road  
Munster, Indiana 46321

BY: \_\_\_\_\_  
NAME: Chris C. Kovich  
TITLE: President

ATTEST: \_\_\_\_\_  
NAME: David C. Kovich  
TITLE: Vice President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

The foregoing instrument was acknowledged before me, this \_\_\_\_ day of \_\_\_\_\_, 2007 by Chris C. Kovich, President, and David C. Kovich, of Westpark Development Inc., an Indiana Corporation, on behalf of the company.

By: \_\_\_\_\_  
Name:  
Title: Notary Public

(Notarial Seal)

My Commission Expires:

\_\_\_\_\_

## **Table of Exhibits**

<u>Exhibit</u>	<u>Subject Matter</u>
"A"	Land Initially Submitted
"B"	Land Subject to Annexation
"C"	By-Laws of TrailCreek Community Association, Inc.
"D"	Rules of Arbitration

## EXHIBIT "A"

### PARCEL 1:

A parcel of land lying in the Northeast Quarter of Section 11, Township 35, North Range 9 West, of the Second Principal Meridian in Lake County, Indiana, being a portion of the parcel described to Howard Schweitzer and Janet L. Schweitzer in deed recorded 001589 in the Office of the Recorder of said County, more particularly described as follows:

Commencing at a brass plug monument located at the Northeast corner of Section 11, Township 35, Range 9 West; thence S 00 degrees 33' 53" E along the East line of Section 11, a distance of 2194.31 feet to the centerline of Turkey Creek; thence S 66 degrees 52' 58" W along the centerline of Turkey Creek a distance of 153.24 feet to the Easterly NIPSCO (Old Erie Railroad) Right-of-Way line; thence S 64 degrees 24' 53" W a distance of 153.19 feet to the Westerly NIPSCO Right-of-Way line for a Point of Beginning; thence S 64 degrees 24' 53" W along the centerline of Turkey Creek a distance of 537.78 feet; thence S 71 degrees 42' 18" W continuing along the centerline of Turkey Creek a distance of 280.00 feet to the South line of the Southeast Quarter of the Northeast Quarter of said Section 11; thence N 89 degrees 38' 15" W along said line a distance of 300.00 feet to the West line of the East Half of the Northeast Quarter of Section 11; thence N 0 degrees 35' 28" W along said line a distance of 1119.07 feet; thence N 19 degrees 14' 22" W a distance of 649.58 feet to the North line of the Northeast Quarter of Section 11; thence S 89 degrees 39' 39" E along said line a distance of 49.99 feet to the Westerly NIPSCO (Old Erie Railroad) Right-of-Way line; thence S 29 degrees 3' 8" E along said Right-of-Way a distance of 1532.89 feet; thence S 26 degrees 23' 11" E continuing along said Right-of-Way a distance of 1074.58 feet; thence S 29 degrees 3' 8" E continuing along said Right-of-Way a distance of 28.78 feet to the Place of Beginning.

### PARCEL 2:

A parcel of land lying in the Northeast Quarter of Section 11, Township 35 North Range 9 West of the Second Principal Meridian in Lake County, Indiana, being a portion of the parcel described to Howard Schweitzer and Janet L. Schweitzer in Deed Record 001589 in the Office of the Recorder of said county more particularly described as follows:

Commencing at a brass plug monument located at the Northeast corner of Section 11, Township 35, Range 9 West; thence S 00 degrees 33' 53" E along the East line of said section a distance of 1200.77 feet for a point of beginning; thence S 00 degrees 33' 53" E continuing along said section line a distance of 993.55 feet to the centerline of Turkey Creek; thence S 66 degrees 62' 08" W along the centerline of Turkey Creek a distance of 153.19 feet to the Easterly NIPSCO (Old Erie Railroad) Right-of-Way line; thence N 29 degrees 3' 8" W along said Right-of-Way line a distance of 867.66 feet thence N 61 degrees 52' 15" E a distance of 626.41 feet to the Point of Beginning.

## EXHIBIT "B"

That part of the West Half of the Northwest Quarter of Section 12, and the East Half of the Northeast Quarter of Section 11, in Township 35 North, Range 9 West of the Second Principal Meridian described as follows:

Commencing at the Northwest corner of the Northeast Quarter of the Northeast Quarter of said Section 11, and running; thence East 1352.93 feet to a stake; thence South parallel with the Section line 2158.5 feet to the center line of the old Turkey Creek Ditch; thence Southwesterly along the center line of said Turkey Creek Ditch 171.9 feet to a stake; thence Westerly along the center line of said Turkey Creek Ditch to a point 280 feet Northeasterly of the South line of the Southeast Quarter of the Northeast Quarter of said Section 11; thence Southwesterly along the center line of said Turkey Creek Ditch 280 feet to a stake in the South line of the southeast Quarter of the Northeast Quarter of said Section 11; thence West 300 feet to the West line of the East Half of the Northeast Quarter of said Section 11; thence North to the place of beginning excepting therefrom the right of way of the Chicago and Erie Railroad and containing 69.75 acres, more or less.

Also that part of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 11, Township 35 North, Range 9 West of the Second Principal Meridian lying Northeasterly of the public highway, excepting therefrom the right-of-way of the Chicago and Erie Railroad Company, more or less.

As amended by boundary survey by McMahon and Associates dated January 31, 2007 and recorded in Book 16, page 62 as Document # 2007-011198 in the office of the Recorder of Lake County, Indiana.

EXHIBIT "C"

*By-Laws*  
*of*  
*Trail Creek Community Association, Inc.*

ARTICLE I

Membership

Section 1.1. Name and Principal Office. The name of the Association shall be the Trail Creek Community Association, Inc. (hereinafter sometimes referred to as the "Association").

The principal office of the Association in the State of Indiana shall be located in Lake County. The Association may have such other offices, either within or outside the State of Indiana as the Board of Directors may determine or as the affairs of the Association may require.

Section 1.2. Definitions. The words used in these By-Laws shall be given their normal commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions and Restrictions for Trail Creek (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall otherwise require. Whenever the term "Assessments" is used herein it shall include the Base and Special Assessments as defined in the Declaration.

Section 1.3. Members. As provided in the Declaration, Members of the Trail Creek Community Association, Inc. are divided into Class A Members and the Class B member. Class A members are all Owners. The Class B Member is the Declarant. A Member shall be deemed in good standing so long as the Member remains in compliance with the covenants and obligations of an Owner under the Declaration and By-laws of the Association and as otherwise determined by the Board of Directors.

Section 1.4. Membership Certificates. The Association will not have membership certificates unless otherwise authorized by the Board of Directors. The form of any such certificate, if authorized, shall be prescribed by the Board of Directors.

Section 1.5. Duration of Membership/Resignation. By accepting a deed to a Unit, which is part of the Properties, the Owner shall be deemed to have consented to become and remain a Member of the Association and to be subject to all restrictions, assessment fees, and obligations imposed upon Members. A Member whose membership terminates as allowed by law will continue to be subject to all restrictions, Assessments, fees and obligations imposed upon Members and termination of membership does not relieve the member from any obligations the Member may have to the Association as a result of obligations incurred or commitments made before or after such termination, including any unpaid dues, fees or Assessments. All rights and privileges of a Member in the Association shall cease on the termination of membership.

Section 1.6. Expulsion, Suspension, and Termination. A Member may be expelled or suspended and a membership may be terminated or suspended only under a procedure that is fair and reasonable and carried out in good faith, as provided by law. Sufficient cause for suspension or termination of voting membership shall include, but not be limited to, violation of the Declaration, these By-laws, nonpayment of assessments, violation of any lawful rule or practice duly adopted by the Association, or any other conduct prejudicial to the interests of the Association.

Section 1.7. Dues, Fees, and Assessments. Subject to the Declaration, the amount of any Assessments of other dues or fees applicable to membership in the Association or to any class of such membership and the time and manner of payment thereof shall be determined by the Board of Directors.

## ARTICLE II

### Meetings of Members

Section 2.1. Annual Meeting. The annual meeting of the Members of the Association shall be at such time as may be designated by the Board of Directors. Annual meetings of the Members should be held within the earlier of six (6) months after the close of the fiscal year and fifteen (15) months after the Association's last annual meeting. The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with these By-laws does not affect the validity of any corporate action or work any forfeiture or dissolution of the Association. Annual membership meetings shall be held at the place specified in the notice of the meeting, otherwise such meeting shall be held at the Association's principal office. At the annual meeting of Members, the President and the Treasurer, or their designees, shall report on the activities and financial condition of the Association, respectively.

Section 2.2. Regular Meetings. The Association may hold regular membership meetings at the times stated in or fixed by a resolution of the Board of Directors. Regular membership meetings shall be held at the place specified in the notice of the meeting, otherwise such meeting shall be held at the Association's principal office.

Section 2.3. Special Meetings. Special meetings of the Members may be called by the President, by the Board of Directors, or upon a petition signed by Members representing at least twenty-five percent (25%) of the total Class "A" votes of the Association. Such petition or petitions must be presented to the President or Secretary of the Association and demand a special meeting and describe the purpose for which the meeting is to be held. Special membership meetings shall be held at the place specified in the notice of meeting, otherwise such meeting shall be held at the Association's principal office.

Section 2.4. Participation. A Member may participate in an annual, a regular, or a special meeting of the Members by or through the use of any means of communication by which all Members participating may simultaneously hear each other during the meeting. A Member participating by this means is considered to be present in person at the meeting.

Section 2.5. Notice of Meetings. Written notice stating the place, date and time of any meeting of the Members and, a description of the purpose or purposes for which such meeting is called, shall be delivered or mailed (first class or registered) by the Association to each Member of record entitled to vote at such meeting, at such address as appears on the records of the Association, at least ten (10) but not more than sixty (60) days before the date of such meeting, on being notified of the place, date and time thereof by the officers or persons calling the meeting. Notice shall also be given to any mortgage holder of a Unit who has requested notice of meetings. Notwithstanding the foregoing, action taken by the Members shall not be invalidated, and notice shall not be considered improper, if notice, including oral notice, is given in a fair and reasonable manner.

Section 2.6. Waiver of Notice. Notice of any meeting may be waived in writing by any Member before or after the date and time of the meeting, if the waiver is signed by the Member and delivered to the Association for inclusion in the minutes or filing with the Association's records. A Member's attendance at a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning objects to holding the meeting or transacting business at the meeting, and (b) waives any valid objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the Member objects to considering the matter when the matter is presented.

Section 2.7. Voting Rights. Except as may otherwise be provided in the Declaration, each Member of record of the Association shall be entitled to vote on each matter voted on by the Members.

Section 2.8. Date of Determination of Voting Rights. The Board of Directors may fix a record date to determine the Members entitled to notice of a Members' meeting, to demand a special meeting, to vote or to take any other action; provided, however, that the record date may not exceed sixty (60) days prior to the meeting or action requiring a determination of Members. In the absence of action by the Board of Directors to fix a record date as herein provided, the record date shall be the fourteenth (14th) day prior to the meeting or action requiring a determination of Members.

Section 2.9. Voting by Proxy. A Member entitled to vote at any meeting of Members may vote in person or by proxy. A Member may appoint a proxy to vote or otherwise act for the Members by signing an appointment form personally or by a duly authorized attorney-in-fact of such Member. (For purposes of this section, a copy of a signed proxy that has been telecopied shall be deemed "signed" by the Member.) An appointment of a proxy is valid for thirty (30) days. No proxy shall vote at any meeting of Members unless the appointment form designating such proxy shall have been filed with the Secretary or other officer or agent authorized to tabulate votes.

Section 2.10. Quorum: Voting. At any meeting of Members, thirty percent (30%) of the votes entitled to be cast on a matter, represented in person or by proxy, shall constitute a quorum for action on the matter, unless a higher quorum shall be required by law, the Declaration, or these By-laws. Notwithstanding the foregoing, unless at least one-third (1/3) of the Members is present in person or by proxy, the only matters that may be voted on at a meeting of the Members are those matters that are described in the meeting notice. After a vote is represented for any purpose at a meeting, the vote is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless a new record date is or must be set for that adjourned meeting. If a quorum exists, action on a matter other than the election of Directors is approved if the votes cast favoring the action exceed the votes cast opposing the action, unless a greater number is required by law, the Declaration, or these By-laws.

When an association or trust is an Owner or is otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the association duly empowered by the board of Directors of such association shall cast the vote to which the association is entitled.

Section 2.11. Voting List. The Association shall keep at all times, at the principal office of the Association; a complete and accurate list of all Members entitled to vote by the Declaration. After fixing a record date for notice of a meeting, the Association shall prepare a list of the names of the Association's Members who are entitled to notice of the Members' meeting. The list must show the address and number of votes each Member is entitled to vote at the meeting.

Subject to the limitations described below, the list of Members must be available for inspection by a Member for the purpose of communication with other members concerning the meeting, beginning five (5) business days before the date of the meeting for which the list was prepared and continuing through the meeting, at the Association's principal office or at the place identified in the meeting notice where the meeting will be held, and the list must be available for inspection at any time during the meeting or any adjournment. Subject to the limitations described below, a Member may also inspect and copy, at any reasonable time and reasonable location specified by the Association, the Association's membership list if the Member gives the Association written notice at least five (5) days before the Member desires to inspect and copy the same; provided, however, the following conditions must exist:

- (a) The Member's demand must be in good faith and for a proper purpose,
- (b) The Member must describe with reasonable particularity the purpose for the inspection, and
- (c) The membership list must be directly connected with the purpose.

Notwithstanding the foregoing, the Association in any event may refuse to provide names or identifying information relating to contributors.

Section 2.12. Conduct of Meetings. Meetings of Members, including the order of business, shall be conducted in accordance with such rules as the Board of Directors may adopt.

Section 2.13. Action by Consent. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if the action is approved by Members holding at least eighty percent (80%) of the votes entitled to be cast on the action, and is delivered to the Association for inclusion in the minutes or filing with the Association's records. Requests for written consents must be delivered to all Members entitled to vote. Action taken by written consent is effective when the last Member necessary to meet the eighty percent (80%) requirement signs the consent, unless a prior or subsequent effective date is specified in the consent. Approval by written ballot is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and when the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting. A solicitation for votes by written ballot must indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals necessary to approve each matter other than the election of Directors, and specify the time by which a ballot must be received by the Association to be counted. A written ballot may not be revoked once received by the Association.

### ARTICLE III

#### Board of Directors

Section 3.1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one vote. Except with respect to Directors appointed by the Class "B" Member, 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 (except in the case of Class "B" Member appointees). In the case of a Member which is not a natural person, the person designated in writing to the secretary of the Association as the representative of such Member shall be eligible to serve as a Director.

Section 3.2. Directors during Class "B" Control Period. The Directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

- (a) When seventy-five percent (85%) of the total number of Units proposed by the Master Plan for the property described on Exhibit "A" and "B" of the Declaration have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders;
- (b) December 31, 2020; or
- (a) When, in its discretion, the Class "B" Member so determines.

Section 3.3. Right to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the judgment of the Class "B" Member, would tend to impair rights of the Declarant or Builders under the Declaration or these By-Laws, or interfere with development, construction of any portion of the Properties, or diminish the level of services being provided by the Association.

No such action, policy or program shall become effective or be implemented until and unless:

- (a) The Class "B" Member shall have been given written notice of all meetings and proposed actions approved at meetings of the Association, the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association.
- (b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program, which would be subject to the right of disapproval set forth herein. The Class "B" Member shall have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Association, the Board of Directors or any committee thereof, if Board, committee, or Association approval is necessary for such action. This right may be exercised by the Class "B" Member, its successors, assigns, representatives, or agents at any time within 10 days following the meeting held pursuant to the terms and provisions hereof.

- (c) This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove in order to reduce the level of services, which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Section 3.4. Number, Term Appointment, Election, and Compensation. The Board of Directors shall consist of a minimum of three (3) Directors and a maximum of five (5) Directors. Upon incorporation and until expiration of the term of office of Directors appointed by the Class "B" Member, the Board of Directors shall consist of three (3) Directors. After expiration of the term of office of Directors appointed by the Class "B" Member, the exact number of Directors shall be specified from time to time by resolution of the Board of Directors. Other than the Directors appointed by the Class "B" Member, the Directors shall be elected at the annual meeting of the Members of the Association by the assent of two-thirds (2/3) of a quorum. The term of office of a Director elected by the Members of the Association shall be one (1) year. Despite the expiration of a Director's term, the Director continues to serve until a successor is appointed or elected and qualifies, or until there is a decrease in the number of Directors. No Director shall receive any compensation from the Association unless approved by the Members representing a majority of the total Class "A" votes of the Association at a regular or special meeting. However, any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the Directors.

Section 3.5. Vacancies. Any vacancy among the appointed Directors caused by death, resignation, removal, increase in the number of Directors, or otherwise may be filled by the person or entity appointing the Director. Any vacancy among the elected Directors caused by death, resignation, removal, increase in the number of Directors, or otherwise may be filled by a majority vote of the remaining members of the Board of Directors. The term of office of a Director chosen to fill a vacancy of an elected Director shall expire at the latter of the next annual meeting of the Members or at such time as a successor shall be duly elected and qualifies.

Section 3.6. Removal. Any appointed Director may be removed, with or without cause, by the person or entity appointing the Director upon such written notice as is required by law. Any elected Director may be removed, with or without cause, by the Members whenever the number of votes cast to remove the Director would be sufficient to elect the Director at a meeting to elect Directors.

Section 3.7. Annual Meetings. Unless the Board of Directors determines otherwise, the Board of Directors shall meet immediately following the annual meeting of the Members, at the place where such meeting of Members was held, for the purpose of election of officers of the Association and consideration of any other business which may be brought before the meeting. No notice shall be necessary for the holding of an annual meeting.

Section 3.8. Other Meetings. Regular meetings of the Board of Directors may be held pursuant to a resolution of the Board to such effect, and shall be held whenever convenient for the Board of Directors. Unless otherwise provided by the Board of Directors, regular meetings shall be held at the Association's principal office. No notice shall be necessary for any regular meeting. Special meetings of the Board of Directors may be held upon the call of the President or any two Directors then in office and upon at least seventy-two (72) hours notice specifying the date, time, place and purpose or purposes of the meeting, given to each Director either personally or by mail, telegram, facsimile transmission, or telephone. Oral notice is authorized. A Director may waive any required notice of an annual, regular, or special meeting. The waiver must be in writing, signed by the Director entitled to the notice, and filed with the minutes or corporate records. A Director's attendance at or participation in a meeting waives any required notice to the Director of the meeting unless the Director at the beginning of the meeting or promptly upon the Director's arrival, objects to holding the meeting or transacting business at the meeting and does not vote for or assent to action taken at the meeting.

Section 3.9. Quorum: Voting. One-third (1/3) of the Directors in office when action is taken, but in no event fewer than two (2) Directors, shall be necessary to constitute a quorum for the transaction of any business at a meeting of the Board of Directors. If a quorum is present when a vote is taken, the affirmative vote of a majority of the Directors present when the act is taken shall be the act of the Board of Directors, unless the act of a greater number is required by law, the Declaration, or these By-laws.

Section 3.10. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if the action is taken by all Directors. The action must be evidenced by at least one (1) written consent describing the action to be taken, signed by each Director, and included in the minutes or filed with the corporate records reflecting the action taken. Action taken under this section is effective when the last Director signs the consent unless the consent specifies a prior or subsequent effective date.

Section 3.11. Executive Committee. The Board of Directors may create an Executive Committee of the Association, which shall consist of at least two (2), Directors, appointed from among the Directors by a majority of all the Directors in office when the action is taken. During intervals between meetings of the Board of Directors, the Executive Committee shall have and exercise all of the authority of the Board of Directors in the management of the Association, except where prohibited by law. In addition, the Executive Committee, to the extent specified by the Board of Directors, may exercise the authority of the Board of Directors, except where prohibited by law. The Executive Committee shall cause minutes of its proceedings to be kept and filed with the minutes of the proceedings of the Board of Directors.

Section 3.12. Other Committees. The Board of Directors may from time to time create and appoint standing, special, or other committees to undertake studies, make recommendations, and carry on functions for the purpose of efficiently accomplishing the purposes of the Association. Committees, to the extent specified by the Board of Directors, may exercise the power, functions, or authority of the Board of Directors, except where prohibited by law; provided, however, that if a committee is to exercise board powers, functions, or authority, (a) all the persons serving on the committee must be Directors, (b) there must be at least two (2) persons on the committee, and (c) the creation of the committee and the appointment of its members shall be by a majority of all Directors in office when the action is taken.

Section 3.13. Duties of the Board of Directors. The Board of Directors shall undertake the following duties on behalf of the Association and shall, in the performance of the following duties, be subject to all applicable provisions of the Declaration:

- (a) Repair and replacement of the Area of Common Responsibility;
- (b) Landscaping maintenance of the Area of Common Responsibility;
- (c) Landscaping maintenance of the Units and snow removal, if applicable as forth in the restrictive covenants.
- (d) Determination of the appropriate amount and use of any Base or Special Assessment;
- (e) Making Assessments to defray the Common Expenses and collection from the Owners of (i) each Owner's proportionate share of the Common Expenses, and (ii) each Owner's pro-rata share of Base or Special Assessments;
- (f) Determination and distribution of any rebate of excess Assessments;
- (g) Establishment and maintenance of a replacement/working capital reserve fund.
- (h) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Member at the same time as the notice of annual meeting is mailed or delivered;

- (i) Preparing and delivering annually to the Members a full accounting of all receipts and expenses incurred each year, which accounting shall be delivered to each Member simultaneously with delivery of the annual Budget.
- (j) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the Common Area specifying and itemizing the expenses (all records and vouchers shall be available for examination by a Member at any time during normal business hours); and
- (k) Procuring and maintaining in force all insurance coverage required by the Declaration.
- (l) All such other duties as set forth in the Declaration.

Section 3.14. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) To employ a professional managing agent or real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties.
- (b) To purchase for the benefit of the Members such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
- (c) To procure all such insurance as is required or permitted under the Declaration, for the benefit of the Members and the Association;
- (d) To employ legal counsel, architects, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (e) To include the costs of all of the above and foregoing as Base or Special Assessments and to pay all of such costs therefrom;
- (f) To open and maintain a bank account or accounts in the name of the Association; and
- (g) Subject to the provisions of the Declaration, to adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of individual Units, the Area of Common Responsibility and facilities located thereon (if any); provided that the Board shall give written notice to the Owners of such rules and any revision, amendment, or alteration thereof.

All Owners, their families, tenants, guests, invitees, agent, and any other Person who might use or occupy a Unit or any part of the Development shall be subject to all rules and regulations promulgated by the Board of Directors.

- (h) Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.
- (i) After reasonable notice and hearing to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit.

In the event that any occupant, guest or invitee of a Unit violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

Section 3.15. Limitations on Powers of Board of Directors. After expiration of the term of office of Directors appointed by the Class B Member, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$7,500.00), unless the prior approval of the Members is obtained, except in the following cases:

- (a) Supervision and management of the replacement or restoration of any portion of the Common Area damaged or destroyed by fire or other casualty, where the cost thereof is payable out of insurance proceeds actually received; and

- (b) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Members at the annual meeting.

The Board of Directors shall not raise the total annual assessment in any year against any Unit during the first year after the date of the Declaration in excess of \$50.

## ARTICLE IV

### Officers

Section 4.1. Officers and Qualifications Therefor The officers of the Association shall consist of a President, a Vice President, a Secretary and a Treasurer. The officers shall be chosen by the Board of Directors. Any two (2) or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 4.2. Terms of Office Each officer of the Association shall be elected by the Board of Directors at its annual meeting and shall hold office for a term of one (1) year and until a successor shall be duly elected and qualified, or until resignation, removal, or death.

Section 4.3. Vacancies Whenever any vacancies shall occur in any of the offices of the Association for any reason, the same may be filled by the Board of Directors, and any officer so elected shall hold office until the expiration of the term of the officer causing the vacancy and until the officer's successor shall be duly elected and qualified.

Section 4.4. Removal Any officer of the Association may be removed, with or without cause, at any time, by the Board of Directors.

Section 4.5. Compensation Each officer of the Association shall receive such compensation for his services in such office as may be fixed by action of the Board of Directors.

## ARTICLE V

### Powers and Duties of Officers

Section 5.1. President The President, if present, shall preside at all meetings of the members and the Board of Directors. At each annual meeting of members, the President or the President's designee shall report on the activities of the Association. Subject to the general control of the Board of Directors, the President shall manage and supervise all of the affairs of the Association and shall perform all of the usual duties of the chief executive officer of a corporation.

Section 5.2. Vice President Subject to the general control of the Board of Directors, if the President is not present, the Vice President shall discharge all the usual functions of the President and shall have such other powers and duties as these By-laws, the Board of Directors, or an officer authorized by the Board may prescribe.

Section 5.3. Secretary The Secretary shall attend all meetings of the members and of the Board of Directors, and prepare, keep, or cause to be kept, a true and complete record and minutes of the proceedings of such meetings, and shall perform a like duty, when required, for all committees appointed by the Board of Directors. If required, the Secretary shall attest the execution by the Association of deeds, leases, agreements and other official documents.

The Secretary shall attend to the giving and serving of all notices of the Association required by these By-laws, shall have custody of the books (except books of account) and records of the Association, shall be responsible for authenticating records of the Association, and in general shall perform all duties pertaining to the office of

Secretary and such other duties as these By-laws, the Board of Directors or an officer authorized by the Board may prescribe.

Section 5.4. Treasurer The Treasurer shall keep correct and complete records of account, showing accurately at all times the financial condition of the Association. The Treasurer shall have charge and custody of, and be responsible for, all funds, notes, securities and other valuables which may from time to time come into the possession of the Association and shall deposit, or cause to be deposited, all funds of the Association with such depositories as the Board of Directors shall designate. At each annual meeting of the members, the Treasurer, or the Treasurer's designee shall report on the financial condition of the Association. The Treasurer, or the Treasurer's designee, shall furnish, at meetings of the Board of Directors or whenever requested, a statement of the financial condition of the Association, and in general shall perform all duties pertaining to the office of Treasurer.

Section 5.5. Assistant Officers The Board of Directors may from time to time designate and elect assistant officers who shall have such powers and duties as the officers whom they are elected to assist shall specify and delegate to them, and such other powers and duties as these By-laws or the Board of Directors may prescribe. An Assistant Secretary may, in the absence or disability of the Secretary, attest the execution of all documents by the Association.

## ARTICLE VI

### Notices and Mortgages

Section 6.1. Notice of Assessments Upon ten (10) days' written notice to the Association and the payment of a reasonable fee, the Association shall deliver to any Owner, mortgagee, prospective mortgagee, title insurance company, purchaser or other prospective transferee of a Unit, a written statement setting forth the amount of all unpaid Assessments, if any, with respect to the subject Unit, together with the amount of the current Assessments and the date(s) such Assessments become due and payable. Any such written statement shall be binding upon the Association in favor of any person relying thereon in good faith.

Section 6.2. Financial Statements The Association, upon the request of any mortgagee and the payment of a reasonable fee, shall provide to said mortgagee the most recent financial statement prepared on behalf of the Association.

Section 6.3. Notice to Mortgagees The Association shall promptly provide to any mortgagee, of whom the Association has been provided notice under this Article VI, notice of any of the following:

- (a) Any proposed termination of the Association;
- (b) Any condemnation or casualty loss that affects either a material portion of the Common Area or the building(s) or improvements on any Unit securing its mortgage.
- (c) Any delinquency in the payment of Base Assessments or Special Assessments owed by the Owner of any Unit securing its mortgage, if said delinquency continues for more than sixty (60) days'
- (d) Any lapse, cancellation or material modifications of any insurance policy or fidelity bond maintained by the Association; and
- (e) Any proposed action that requires the consent of a specified percentage of mortgagees.

Any notice required to be given to the mortgagee pursuant to the terms of the Declaration or these By-laws shall be deemed effectively given if mailed to such mortgagee at the address shown in the Association's record. Unless notification of any mortgages and the name and address of the mortgage are furnished to the Secretary, either by Owner or by the mortgagee, no notice to any mortgagee as may be otherwise required by the Declaration or these By-laws shall be required, and no mortgagee shall be entitled to vote on any matter on which he otherwise

may be entitled to vote by virtue of the Declaration or these By-laws or by proxy granted to such mortgagee in connection with the mortgage.

Section 6.4. Availability of Information The Association shall keep and shall make available to prospective purchasers of Units, upon request at reasonable business hours, copies of the Declaration, By-laws, current rules and regulations, if any, and the most recent financial statement of the Association.

## ARTICLE VII

### Miscellaneous

Section 7.1 Corporate Seal The Association may, but need not, have a corporate seal. The form of any such corporate seal may be specified in a resolution of the Board of Directors. A corporate seal, however, shall not be required for any purpose, and its absence shall not invalidate any document or action.

Section 7.2. Execution of Contracts and Other Documents Unless otherwise ordered by the Board of Directors, all written contracts and other documents entered into by the Association shall be executed on behalf of the Association by the President or Vice President, and, if required, attested by the Secretary or an assistant secretary.

Section 7.3. Fiscal Year The fiscal year of the Association shall begin on January 1 of each year and end on the immediately following December 31.

## ARTICLE VIII

### Amendments to By-laws

#### Section 8.1. Amendment

(a) By Declarant The Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Association, to enable such lender or purchaser to make or purchase mortgage loans on the Units; or (d) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

So long as it still owns property described in Exhibits "A" or "B" of the Declaration for development as part of the Properties, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Owners Except as provided above and otherwise specifically provided herein, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total votes in the Association, including sixty-seven percent (67%) of the vote held by Members other than the Declarant, and the consent of the Declarant, so long as the Declarant has a right to annex additional property to the Declaration. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the Office of the Recorder of Lake County, Indiana.

If an Owner consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

## **EXHIBIT "D"**

### Rules of Arbitration

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").
2. Each Party shall select an arbitrator ("Party Appointed Arbitrator"). The Party Appointed Arbitrators shall, by agreement, select one or two neutral arbitrators ("Neutral(s)") so that the total arbitration panel ("Panel") has an odd number of arbitrators. If any Party fails to appoint a Party Appointed Arbitrator within 20 days from the date of the Arbitration Notice, the remaining arbitrators shall conduct the proceedings, selecting a Neutral in place of any missing Party Appointed Arbitrator. The Neutral arbitrator(s) shall select a chairperson ("Chair").
3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, Claimant may notify the Indiana chapter of the Community Associations Institute, or state equivalent which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator ("Arbitrator"), and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.
4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral shall immediately disclose in writing to all Parties any circumstances likely to affect impartiality, including any bias or financial or personal interest in that outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral after receipt of that Neutral's Bias Disclosure, such Neutral shall be replaced in the same manner in which that Neutral was selected.
5. The Arbitrator or Chair, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties.
6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.
7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings.
8. There shall be no stenographic record of the proceedings.
9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

10. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence, as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.
12. There will be no post-hearing briefs.
13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.
14. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.
15. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.