

BOOK 180 PAGE 782

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DECLARATION OF COVENANTS AND RESTRICTIONS

The Terrace at Mohawk Crossing  
Carmel, Indiana

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DECLARATION OF COVENANTS AND RESTRICTIONS  
THE TERRACE AT MOHAWK CROSSING

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DECLARATION OF  
COVENANTS AND RESTRICTIONS  
THE TERRACE AT MOHAWK CROSSING

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This Declaration of Covenants and Restrictions, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 1984, by MOHAWK CROSSING, LTD., an Indiana limited partnership ("Declarant"),

W I T N E S S E S T H A T :

WHEREAS, the following facts are true:

A. Declarant is the sole owner of the fee simple title to the real estate located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. Declarant intends to subdivide the Section into Block Lots upon each of which Declarant intends to construct a Living Unit.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

1. Definitions. The following words, phrases and terms, as used in this Declaration, unless the context clearly requires otherwise, mean the following:

(a) "Architectural Review Committee" means that entity established pursuant to Paragraph 9 of this Declaration for the purposes therein stated.

(b) "Association" means The Terrace at Mohawk Crossing Homeowners Association, an Indiana unincorporated association, its successors and assigns.

(c) "Assessments" means all sums lawfully assessed against the Owners or as declared by this Declaration or the By-Laws.

(d) "Block" means a contiguous group of Block Lots with the Common Area associated therewith as depicted upon a Final Secondary Plat.

(e) "Block Lot" means any plot of land depicted upon a Final Secondary Plat as a separate parcel within a Block, with the exception of Common Area.

(f) "By-Laws" means the Code of By-Laws of the Association, as amended from time to time.

(g) "Conditional Secondary Plat" means a map or chart indicating a subdivision of the Section into Blocks recorded in the Office of the Recorder of Hamilton County, Indiana.

(h) "Common Area" means so much of the Section as is not depicted on the Final Plats as Block Lots.

(i) "Declarant" means Mohawk Crossing, Ltd., its successors and assigns to its interest in the Section other than Owners purchasing Block Lots or Living Units by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

(j) "Development Area" means the real estate described in Exhibit b.

(k) "Drainage Board" means the City of Carmel or the Hamilton County, Indiana Drainage Board, its successors or assigns, as the case may be, to the extent it has jurisdiction over drainage in the Development Area and the Section.

(l) "Drainage System" means the open drainage ditches and swales, storm water detention areas, subsurface drainage tiles, pipes and structures, and other structures, fixtures, properties, equipment and facilities located in Mohawk Crossing and designed for the purpose of expediting or controlling the drainage of surface and subsurface waters from, over and across Mohawk Crossing, including but not limited to those shown or referred to on a Final Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

(m) "Encroachment" means the encroachment upon a Block Lot or the Common Area by any Block Lot, the Common Area, or any building, overhang, fixture, structure or improvement as a result of the construction of a Living Unit or of other improvements in the Section, or as a result of the settling or shifting thereof.

(n) "Final Secondary Plat" means a map or chart indicating a subdivision of the Blocks into Block Lots recorded in the Office of the Recorder of Hamilton County, Indiana.

(o) "Living Unit" means any structure or portion thereof situated upon a Block Lot that is designed and intended for use and occupancy as a residence by a single family.

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(p) "Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) building plans, including elevation and floor plans, (iii) material plans and specifications, (iv) landscaping plan, and (v) all other data or information that the Architectural Review Committee may request with respect to the improvement of a Block Lot or the construction of a Living Unit or other structure or improvement thereon.

(q) "Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

(r) "Majority of the Owners" means the Owners of not less than 51% of the Block Lots.

(s) "Mohawk Crossing" means the name by which the Development Area is known.

(t) "Owner" means any Person, including Declarant, who at any time owns the fee simple title to a Block Lot.

(u) "Part of the Development Area" means any part of the Development Area not included in the Section.

(v) "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(w) "Private Roadway" means a street, lane, road or other right-of-way designed to provide access to one or more Block Lots that has not been accepted for maintenance by a public authority.

(x) "Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration or adopted by the Association or the Architectural Review Committee pursuant to authority granted hereby, as the same may from time to time be amended.

(y) "Section" means the real estate described in Exhibit A.

(z) "The Terrace at Mohawk Crossing" means the name by which the Section is known.

(aa) "Zoning Authority" with respect to any action means the Carmel Building Commissioner or, where he lacks the capacity to take action, or fails to take action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action or the failure to act of, the building commissioner.

2. Declaration. Declarant hereby declares that the Section shall be held, transferred, sold, conveyed and occupied subject to this Declaration of Covenants and Restrictions and the covenants, restrictions, easements, charges and liens herein set forth.

3. Description of Block Lots. Declarant plans to subdivide the Section into four (4) Blocks designated "A" through "D" containing not more than twenty-four (24) Block Lots. The boundaries of each Block Lot shall be as shown on a Final Secondary Plat.

4. Land Use. Block Lots may be used only for residential purposes and only one single-family dwelling, a private garage and other such structures and improvements usual and incidental to the use of a residential lot may be constructed thereon. No portion of any Block Lot may be sold or subdivided such that there will be thereby a greater number of Living Units in the Section than the number of original Block Lots shown on the Final Secondary Plats.

5. Common Area.

(a) Conveyance. Declarant hereby conveys to the Association, subject to the terms and conditions of this Declaration, the Common Area depicted on any Final Secondary Plat now or hereafter recorded in the Office of the Recorder of Hamilton County, Indiana. The use and maintenance thereof, and Assessments with respect thereto, shall be subject to the provisions of this Declaration.

(b) Ownership. Each Owner as a member of the Association shall have an undivided interest in the Common Area, which interest shall be appurtenant to and may not be separated from the Block Lot owned by such Owner. The Common Area shall remain undivided and no Owner or any other Person shall bring any action for partition or division of any part thereof unless the Final Plats are vacated with the consent of the Owners of all Block Lots in the Section and the holders of all first mortgages on such Block Lots. The

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undivided interest of an Owner in the Common Area shall be equal to that of each of the other Owners of Block Lots in the Section. Such interest may not be transferred, encumbered, disposed of or separated from the Block Lot to which it appertains, and any purported transfer, encumbrance or other disposition shall be void. The undivided interest shall be considered to be conveyed or encumbered with the Block Lot to which it appertains even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the Common Area in accordance with the purpose for which it is intended without hindering or encroaching upon the lawful rights of the other Owners, but subject to the terms, conditions and provisions of this Declaration.

6. Drainage.

(a) Detention Area. During periods of significant rainfall, water will temporarily collect and be drained in the area designated on the Conditional Secondary Plat as Storm Water Detention Area (the "Detention Area") which constitutes a part of the Drainage System. No structures or personal property shall be placed within such area which could be subject to water damage or which would restrict storm water flow. No earth fill or other material shall be placed within the Detention Area which would alter, obstruct or affect the storm water storage capacity or function of the Detention Area. The Owners of all Block Lots upon which the Detention Area is located shall be responsible for such routine maintenance of so much of the Detention Area as is located on their respective Block Lots as may be required to maintain such portion in a clean and sanitary condition at all times. To the extent such responsibility is not assumed by the Drainage Board, major maintenance, repair and restoration of the Detention Area shall be undertaken by the Association pursuant to its obligation to maintain the Drainage System.

(b) Maintenance. Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the earlier of December 31, 1985, or the date the Drainage System is accepted as a legal drain by the Drainage Board. After the earlier of such dates, the Association shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Block Lots serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Block Lot which is devoted exclusively to drainage of his Block Lot and which is not maintained by the Drainage Board.

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7. Private Roadways. Declarant shall maintain each Private Roadway in good condition satisfactory for the purpose for which it was constructed until Living Units have been constructed on seventy-five percent (75%) of the Block Lots fronting such Private Roadway, at which time responsibility for the maintenance thereof shall be assumed by the Association. The Maintenance Costs incurred by the Association in connection with maintaining a Private Roadway shall be assessed against all Block Lots whose principal means of vehicular access to a public right-of-way is over and across such Private Roadway.

8. Building Procedures and Controls.

(a) Dwelling Size. No Living Unit may be constructed on any Block Lot unless such Living Unit, exclusive of open porches, attached garages and basements, shall have a ground floor area of 1,100 square feet if a one-story structure, or 900 square feet if a higher structure.

(b) Building Control. Prior to construction of any structure upon a Block Lot, the Lot Development Plan and any other data or information that may be requested must be submitted to the Architectural Review Committee. The Architectural Review Committee is authorized to determine whether the proposed structures, plans and specifications show conformity and harmony of external design with existing structures, whether the building and property set-back lines are in conformity with applicable plat requirements, and whether the proposed site storm drainage plan conforms to the over-all project and lot drainage plan as specified in the approved final construction plans for the Section. It shall also undertake such other duties and responsibilities as are assigned to it by this Declaration. No charge will be made to any purchaser of an unimproved Block Lot for examination of the Lot Development Plan or for giving approval for construction thereon. In the event the Architectural Review Committee does not indicate in writing its approval or disapproval of the Lot Development Plan submitted for its review within a period of thirty (30) days after submission, the Architectural Review Committee is deemed to have disapproved such plan.

No member of the Architectural Review Committee shall have any liability to the Owner of any Block Lot with respect to the exercise or non-exercise of his duties hereunder.

(c) Building Location and Finished Floor Elevation. No building may be erected between the building line shown on the Final Secondary Plat and the front lot line. A

minimum finished floor elevation, shown on the development plan for the Section, is hereby established for each Block Lot and no finished floor elevation shall be constructed lower than said minimum without the written consent of the Architectural Review Committee and the Zoning Authority. Demonstration of adequate storm water drainage with both on-lot and overall project drainage plans shall be a prime requisite of alternative finished floor elevations. Before building commences, said finished floor elevation shall be physically checked on the Block Lot and certified by a licensed professional engineer or a licensed land surveyor.

(d) Building Completion. Unless a delay is caused by strikes, war, court injunction or acts of God, the Owner of any Block Lot that on the date of purchase is not improved with a Living Unit shall commence construction of a Living Unit upon the Block Lot within two (2) years from the date the Owner acquired title thereto and shall complete construction of such Living Unit within one (1) year after the date of commencement of the building process, but in no event later than three (3) years after the date the Owner acquired title to the Block Lot. If the Owner fails to commence or complete construction of a Living Unit within the time periods specified herein, or if the Owner should, without Declarant's written approval, sell, contract to sell, convey, or otherwise dispose of, or attempt to sell, convey or otherwise dispose of, the Block Lot before completion of construction of a Living Unit on the Block Lot, then, in any of such events, Declarant may:

(a) re-enter the Block Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Hamilton County the lesser of (i) the same net dollar amount as was received by Declarant from such Owner as consideration for the conveyance by Declarant of the Block Lot, together with such actual costs, if any, as the Owner may prove to have been incurred in connection with the commencement of construction of a Living Unit on the Block Lot and (ii) the then fair market value of the Block Lot, as determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Hamilton County Superior or Circuit Court;

(b) obtain injunctive relief to force the Owner to proceed with construction of any Living Unit, a Lot Development Plan for which has been approved by the Architectural Review Committee upon application by such Owner; or

(c) pursue such other remedies at law or in equity as may be available to Declarant.

The failure of the Owner of a Block Lot to apply for approval of, or receive approval from, the Architectural Review Committee of a Lot Development Plan shall not relieve such Owner from his obligation to commence and complete construction of a Living Unit upon the Block Lot within the time periods specified herein. For the purposes of this Paragraph 8(d), construction of a Living Unit will be deemed "completed" when the exterior of the Living Unit (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

9. Architectural Control.

(a) The Architectural Review Committee. An Architectural Review Committee consisting of three (3) or more Persons as provided in the By-Laws shall be appointed by the Class B member. At such time as there is no Class B member, the Architectural Review Committee shall be appointed by a Majority of Owners.

(b) Purpose. The Architectural Review Committee shall regulate the external design, appearance, use, location and maintenance of Mohawk Commons and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Conditions. No improvements, alterations, repairs, change of colors, excavations, changes in grade or other work that in any way alters any Block Lot or the exterior of any improvements located thereon from its natural or improved state existing on the date such Block Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Committee, except as otherwise expressly provided in this Declaration. Prior to the commencement, erection or alteration of any building, fence, wall, Living Unit, or other structure by any Owner other than Declarant, a Lot Development Plan shall be submitted to the Architectural Review Committee, and no building, fence, wall, Living Unit or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Review Committee.

(d) Procedures. In the event the Architectural Review Committee fails to approve, modify or disapprove in writing an application within thirty (30) days after such application was submitted to the Committee, approval will be deemed denied. At such time as the members of the Architectural Review Committee are appointed by a Majority of Owners, a decision of the Architectural Review Committee may be appealed to the Owners which may reverse or modify such decision by a two-thirds (2/3) vote of all Owners.

10. Development Standards and Restrictive Covenants.

(a) Driveways. All driveways shall be paved and maintained dust free.

(b) Vehicle Parking. No camper, motor home, truck, trailer or boat may be parked or stored overnight or longer on any Block Lot in open public view or in any Common Area.

(c) Signs. No sign of any kind shall be displayed to the public view on any Block Lot except that signs of any number, size or description may be displayed on Block Lots owned by Declarant and one sign of not more than five (5) square feet may be displayed at any time by an Owner for the purpose of advertising the property for sale or for rent, or may be displayed by a builder to advertise the property during construction and sale.

(d) Garage Doors. No garage door shall be kept open except during such minimum period of time as may be required for an Owner to enter or leave such garage.

(e) Vegetation. No Owner shall permit the growth of weeds and volunteer trees and bushes on his Block Lot, and shall keep the Block Lot reasonably clear from such unsightly growth at all times.

(f) Nuisances. No noxious or offensive activity shall be carried on upon any Block Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

(g) Garbage and Refuse Disposal. No Block Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(h) Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Block Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Block Lots such that they will not be a nuisance.

(i) Storage Tanks. No gas or oil storage tanks shall be located on a Block Lot without the prior approval of the Architectural Review Committee.

(j) Antennae. Except with the prior written approval of the Architectural Review Committee, no exterior television or radio antennae of any sort, including discs shall be placed, allowed or maintained upon any Block Lot or Living Unit.

(k) Electric Bug Killers. All exterior electric bug killers, "zappers" or similar devices are prohibited.

(l) Window Coverings. Owners of Living Units shall install and maintain window coverings such as curtains and blinds such that the window coverings shall not be unsightly from the exterior. Curtains shall have white or off-white liners as viewed from the exterior.

(m) Exterior Lights. No exterior lights shall be erected or maintained on any Living Unit or Block Lot so as to shine or reflect directly upon another Block Lot.

(n) Mailboxes. All mailboxes installed at the street to service Block Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Committee. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Committee.

(o) Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence.

#### 11. Easements.

(a) Drainage, Sewers, Utilities, Entry Signs and Maintenance. Block Lots are subject to drainage easements, sewer easements, utility easements and access easements, either separately or in any combination thereof, as shown on the Final Secondary Plats, which are reserved for the

use of Owners of Block Lots, the owners from time to time of any other Part of the Development Area, public utility companies and governmental agencies as follows: (i) Drainage Easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the Section and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Block Lot. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by Declarant, but Declarant shall not have any duty to undertake any such construction or reconstruction. Each Owner by the purchase of a Block Lot shall be deemed to have consented to the temporary storage (detention) of storm water within drainage easements shown in the Final Secondary Plan, including those located on such Owner's Block Lot. Drainage easements are for the mutual use and benefit of the Owners of all Block Lots in the Section and of any other land located in the Development Area. (ii) Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over the storm and sanitary waste disposal system designed to serve the Section and adjacent areas for the purpose of installation and maintenance of sewers that are a part of said system. (iii) Utility Easements (UE) are created for the use of all utility and cable television companies, but excluding transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements. (iv) Entry Sign Easements (ESE) are created for the use by Declarant and the Association for the construction, location, maintenance and operation of entry signs and appurtenances to provide an entrance to the Section. The Owner of a Block Lot that is subject to an entry sign easement shall maintain such easement (exclusive of all improvements thereon) in a slightly condition and in proper repair. The Association shall maintain all improvements located on an entry sign easement and the Maintenance Costs thereof shall be assessed as a Special Assessment against all Block Lots in the Section. (v) Maintenance Easements (ME) are created for the use of the Owners and the Association as provided in Paragraph 11(g). All such easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved.

(b) Public Health and Safety. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Common Area in the performance of their duties.

(c) Access. Declarant expressly reserves for the benefit of itself, its successors and assigns, and for the benefit of all Owners, an easement of right-of-way over and across the Private Roads. Each Owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to his Block Lot. Until such time as Final Secondary Plats comprising the entire Section have been recorded in the Office of the Recorder of Hamilton County, Indiana, each Owner and first mortgagee of a Block Lot shall have the right to ingress and egress over, upon and across such parts of the Section not then included in Final Secondary Plats as is reasonably necessary for access to his Block Lot.

(d) Drainage Board. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Section and all Block Lots and Common Area therein to the extent necessary to exercise its rights with respect to the Drainage System.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways and walkways provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossings, driveways or walkways, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) Encroachments. A perpetual easement is hereby reserved by Declarant for its benefit and for the benefit of the Association and of any Owner whose Block Lot is affected by an Encroachment. In the event an encroaching Living Unit or other improvement shall be partially or totally destroyed as a result of fire or other casualty or as a result of the exercise of the power of eminent domain or a conveyance in anticipation thereof, and then rebuilt, any resulting Encroachment shall be permitted and a perpetual easement therefor is hereby reserved by Declarant for its benefit and for the benefit of the Association and any Owner whose Block Lot is affected thereby.



(g) Maintenance. Each Owner and the Association shall have the right to ingress and egress over and upon, and the reasonable use of, the maintenance easement appurtenant to his Block Lot as shown on the Final Secondary Plat for the purpose of maintaining, repairing and restoring his Living Unit.

(h) Easements for Future Development. Declarant and each owner of a lot in Mohawk Crossing shall have a perpetual easement in, over and under The Terrace at Mohawk Crossing, and each Owner shall have a perpetual easement in, over and under Mohawk Crossing for the following purposes:

(i) to maintain, use, repair and replace all existing storm, water and sewerage systems and roadways used by the owners of lots in Mohawk Crossing as ingress and egress thereto; and

(ii) for the subterranean installation, maintenance and repair of any pipe, cable or other conduit of liquids or energy supplying water, sewerage, telephone, radio, television, electricity, heat or other similar services to Mohawk Crossing or any part thereof,

subject, however, to the condition that any such installation, maintenance or repair within The Terrace at Mohawk Crossing shall be done only with the written permission of the Architectural Review Committee, which permission shall not be unreasonably withheld; and subject to the further condition that upon the completion of any such installation, maintenance or repair the area disturbed by such work shall be restored to as near the original condition as is practicable.

(i) Declarant's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Block Lot, Declarant reserves for itself and the Association a blanket easement and right on, over and under the ground within the Section to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which Declarant or the Association shall restore the affected property to its original condition as nearly as practicable. Declarant or the Association shall give reasonable notice of its intention to take such action to all affected

Owners, unless in the opinion of Declarant or the Association an emergency exists which precludes such notice.

(j) Reservation of Easement Rights By Declarant. Declarant reserves unto itself until December 31, 1994, the right to grant, convey, transfer, cancel, relocate and otherwise deal with any and all utility and other easements now or hereafter located in the Section, subject to the approval of the Architectural Review Committee, which approval shall not be unreasonably withheld.

12. Maintenance, Repairs and Replacements.

(a) Living Units. Each Owner shall, at his own expense, be responsible for the maintenance, repair, decoration and replacement of his own Living Unit, and each Owner shall promptly perform all maintenance and repair which, if neglected, might adversely affect the structural integrity of his Living Unit or the exterior appearance thereof. In the event that the maintenance or repair of any Living Unit is reasonably necessary in the discretion of the Architectural Review Committee to preserve the structural integrity of a Living Unit, or is otherwise necessary for the health and safety or in the interest of general welfare of the Owners of Block Lots in the Section, the Architectural Review Committee shall have the power to undertake such maintenance or repair; provided that no such maintenance or repair shall be undertaken without a resolution adopted by all of the members of the Architectural Review Committee and reasonable written notice to the Owner of the Living Unit proposed to be maintained or repaired and, provided further, that the cost thereof shall be assessed against the Living Unit on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of said Living Unit at which time the Assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects as provided in Paragraph 14 of this Declaration.

(b) Common Areas. Except as otherwise provided herein, all maintenance, repairs and replacements to the Common Areas shall be furnished by the Association and the Maintenance Costs thereof shall be assessed as a General Assessment against all Block Lots subject to assessment pursuant to Paragraph 14 of this Declaration.

(c) Alteration and Additions. No Person shall make any alterations, additions or changes to the Common Area or

the exteriors of the Living Units without the prior written approval of the Architectural Review Committee.

13. The Terrace at Mohawk Crossing Homeowners Association.

(a) Membership. Each Owner shall automatically be a member of the Association and shall enjoy the privileges and be bound by the obligations contained herein and in the By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

(b) Powers. The Association shall have such powers as are set forth in this Declaration and in the By-Laws, together with all other powers that may belong to it by law.

(c) Classes of Members. The Association shall have two (2) classes of members as follows:

Class A. Every Person who is an Owner shall be a Class A member.

Class B. Declarant shall be a Class B member. No other Persons, except a successor to substantially all of the business and properties of Declarant, shall hold a Class B membership in the Association. The Class B membership shall terminate upon the resignation of the Class B member, when all of the lots in the Development Area (as depicted on the general plan of development filed with the Carmel-Clay Plan Commission) have been sold, or on December 31, 1994, whichever first occurs.

(d) Voting and Other Rights of Members. The voting and other rights of members shall be as specified in the By-Laws.

14. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Block Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following: (1) General Assessments and (2) Special Assessments, such Assessments to be established and collected as herein-after provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Block Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Block Lot at the time when the Assessment became due.

(b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Owners in the Section and for the improvement, maintenance and operation of the Common Area.

(ii) Basis for Assessment.

(1) Improved Lots. Each Block Lot upon which a Living Unit has been constructed and which is certified by the Zoning Authority for occupancy shall be assessed at a rate which is uniform for the type of Living Unit upon the Block Lot against which an Assessment is made.

(2) Unimproved Block Lots. Each Block Lot upon which a Living Unit has not been constructed and certified by the Zoning Authority for occupancy shall be assessed at a uniform rate.

(3) Change in Basis. The basis for assessment may be changed with the assent of the Class B member and of two-thirds (2/3) of the Class A member who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(iii) Method of Assessment. By a vote of a Majority of Owners, the Association shall, on the basis specified in subparagraph (ii), fix, with the approval of the Class B member, the General Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Association shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

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(iv) Allocation of Assessment. The cost of maintaining, operating, restoring or replacing certain of the Common Area has been allocated in this Declaration among Owners of Block Lots on the basis of the location of the lands and improvements constituting the Common Area and the intended use thereof. In determining the General Assessment, costs and expenses which in accordance with the provisions of this Declaration are to be borne by all Owners shall first be allocated to all Owners. Costs and expenses which in accordance with the provisions of this Declaration are to be borne by the Owners of certain Block Lots shall then be allocated to the Owners of such Block Lots. The provisions of subparagraph (ii) for uniform assessment shall not be deemed to require that all assessments against vacant Block Lots or Block Lots improved with comparable types of Living Units be equal, but only that each Block Lot be assessed uniformly with respect to comparable Block Lots subject to assessment for similar costs and expenses.

(c) Special Assessment. The Association may levy in any fiscal year a Special Assessment applicable to that year and not more than the next two (2) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property relating thereto, provided that any such assessment shall have the assent of the Class B members and of a majority of the votes of the Class A members whose Block Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(d) Other Assessments. The Association and/or the Architectural Review Board may make Assessments to cover any costs incurred in enforcing these covenants or in undertaking any maintenance or other activity that is the responsibility of the Owner of a Block Lot hereunder but which such Owner has not undertaken as required hereunder. Any such Assessment shall be assessed only against those Owners whose failure to comply with the requirements of these covenants necessitated the action to enforce these covenants or the undertaking of the maintenance or other activity.

(e) Date of Commencement of Assessments. The General Assessment shall commence with respect to assessable Block Lots on the first day of the month following conveyance of

the first Block Lot to an Owner who is not Declarant. The initial Assessment on any assessable Block Lot shall be adjusted according to the number of whole months remaining in the assessment year.

(f) Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date may at the election of Declarant or upon resolution of the Association bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Association for each assessment year. The Association and Declarant shall be entitled to institute in any court of competent jurisdiction any lawful action to collect the delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Declarant or the Association in collecting such Assessment. If the Association has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, Declarant or the Association may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Block Lot.

(g) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Block Lot shall be subordinate to the lien of any recorded first mortgage covering such Block Lot and to any valid tax or special assessment lien on such Block Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Block Lot shall not affect the assessment lien. The sale or transfer of any Block Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Block Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

(h) Certificates. The Association shall, upon demand, at any time, furnish a certificate in writing signed by an authorized signatory of the Association that the Assessments on a Block Lot have been paid or that certain Assessments remain unpaid, as the case may be. A reasonable charge may be made by the Association for the issuance of such certificates. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

(i) Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments, charge and lien created herein: (1) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (2) the Common Area; (3) all properties exempt from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said Assessments, charges or liens.

(j) Annual Budget. A Majority of Owners shall adopt an annual budget for the subsequent fiscal year which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration will be met.

15. Amendments.

(a) Generally. This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Association acting pursuant to the authority granted by not less than sixty percent (60%) of the votes of the Class A members cast at a meeting duly called for the purpose of amending this Declaration and, as long as there is a Class B member, (ii) Declarant.

(b) By Declarant. Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to December 31, 1987. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Block Lots conveyed to such Owners prior to the amendment. Declarant shall give notice in writing to each Owner of any amendments. Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Block Lot which Declarant has previously conveyed except with the consent of the Owner of such Block Lot.

(c) Effective Date. Any amendment shall become effective upon its recordation in the Office of the Recorder of Hamilton County, Indiana.

16. Enforcement. The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected

or maintained in violation thereof, is reserved to Declarant, the Association, the Architectural Review Committee, the Owners of the Block Lots, their heirs and assigns, and to the Zoning Authority, their successors or assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Association, the Architectural Review Committee, any Owner or Owners, or the Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall the Association, the Architectural Review Committee or Declarant be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Declaration. There shall be no rights of reversion or forfeiture of title resulting from any violations.

17. Interpretation. The provisions of this Declaration are to be construed and interpreted in such manner as to give full force and effect to the general scheme of development set forth herein. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter.

18. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Association, and the Declarant and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2014, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Block Lots in the Section.

19. Severability. Every one of the Restrictions herein contained is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

20. Declarant's Use During Construction. Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the period of construction and



sale of Block Lots and Living Units, or the development of any other Part of the Development Area, upon such portion thereof as is owned by Declarant, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Block Lots and Living Units, or the development of the Development Area, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Living Units and sales and/or rental offices.

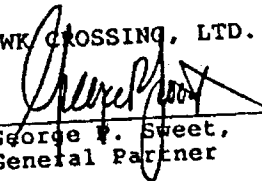
21. Non-Liability of Declarant. Declarant shall not have any liability to the Owner of any Block Lot or to any other Person with respect to drainage on, over or under a Block Lot. Such drainage shall be the responsibility of the Owner of the Block Lot upon which a Living Unit is constructed and of the builder of such Living Unit; and an Owner, by acceptance of a deed to a Block Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Block Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

22. By-Laws. The By-Laws, as in effect on the date hereof, are attached hereto and recorded herewith.

IN TESTIMONY WHEREOF, Declarant has caused this Declaration to be executed as of the date set forth above.

MOHAWK CROSSING, LTD.

By

  
George F. Sweet,  
General Partner

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STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared George P. Sweet by me known, and by me known to be a general partner of MOHAWK CROSSING, LTD., an Indiana limited partnership, who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

WITNESS my hand and Notarial Seal this 20th day of November, 1984.



Holly J. Lee  
Notary Public Residing in  
Hamilton County

HOLLY J. LEE  
(printed signature)

My Commission Expires:  
April 1, 1988

This instrument was prepared by Tom Charles Huston, 1313 Merchants Bank Building, Indianapolis, Indiana 46204

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EXHIBIT A

Legal Description of the Section

Part of the Southwest Quarter of Section 28, Township 18 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Beginning at the Southwest corner of said Southwest Quarter Section; thence South 89 degrees 41 minutes 03 seconds East along the South line thereof 819.48 feet to the Southwest corner of Mohawk Crossing-Section One, the plat of which was recorded May 16, 1979 as Instrument #5895 in Book 7, pages 100 and 101 in the Office of the Recorder of Hamilton County, Indiana (the next three courses are along the West line of said Section One); (1) thence North 00 degrees 18 minutes 57 seconds East 243.04 feet; (2) thence North 34 degrees 44 minutes 00 seconds West 265.03 feet; (3) thence North 00 degrees 00 minutes 00 seconds 313.30 feet; thence South 50 degrees 00 minutes 00 seconds West 372.53 feet; thence South 90 degrees 00 minutes 00 seconds West 384.43 feet to the West line of said Southwest Quarter; thence South 00 degrees 00 minutes 00 seconds along said West line 530.17 feet to the Place of Beginning, containing 10.180 acres, more or less.

Subject to all legal easements and rights of way.

Legal Description of the  
Development Area

Part of the Southwest Quarter of Section 28, Township 18 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Beginning at the Southwest corner of said Southwest Quarter; thence along the West line of said Southwest Quarter North 00 degrees 00 minutes 00 seconds East (assumed bearing) 2645.29 feet to the Northwest corner thereof; thence along the North line of said Southwest Quarter South 89 degrees 48 minutes 26 seconds East 1392.88 feet to a point which lies North 89 degrees 48 minutes 26 seconds West 1262.28 feet from the Northeast corner thereof; thence South 00 degrees 04 minutes 26 seconds West 2648.26 feet (along the West line of the land conveyed to William L. Mosbaugh and Sharon Mosbaugh by Warranty Deed recorded on August 24, 1976, as Instrument No. 1136 in Book 290 on page 707 in the Office of the Recorder of said County; and along the West lines of three tracts conveyed to Carmel-Clay Schools by Warranty Deeds recorded on January 31, 1975, as Instrument No. 11798 in Book 279 on page 475, and on February 11, 1974, as Instrument No. 1011 in Book 272 on page 63 and on February 28, 1973, as Instrument No. 137 in Book 264 on page 99 in said Office; and along the West line of land conveyed to Carmel Multi School Building Corporation by a Warranty Deed recorded as Instrument No. 7211 on August 23, 1972, in Book 260 on page 224 in said Office to a point on the South line of said Southwest Quarter, said point bears North 89 degrees 41 minutes 03 seconds West 1258.53 feet from the Southeast corner thereof; thence North 89 degrees 41 minutes 03 seconds West along the said South line 1389.48 feet to the place of beginning, containing 84.529 acres, more or less.

EXCEPTING THEREFROM the real estate described in Exhibit A.

CODE OF BY-LAWS  
OF  
THE TERRACE AT MOHAWK CROSSING HOMEOWNERS ASSOCIATION

ARTICLE 1

Identification

Section 1.01. Name. The name of the Association is THE TERRACE AT MOHAWK CROSSING HOMEOWNERS ASSOCIATION.

Section 1.02. Principal Office. The location of the principal office of the Association shall be determined from time to time by the Board of Managers.

Section 1.03. Definitions. The definitions and terms as defined and used in the Declaration of Covenants and Restrictions of The Terrace at Mohawk Crossing shall have the same meaning in these By-Laws and reference is specifically made to Paragraph 1 thereof containing definition of terms. As used herein, "Member" means a Class A or Class B member of the Association and "Members" mean Class A and Class B members of the Association.

ARTICLE 2

Membership

Section 2.01. Qualification. The qualifications for membership in the Association shall be those prescribed in the Declaration.

Section 2.02. Membership Certificates. A nontransferable Certificate of Membership may be issued to each Member. Such Certificate shall certify that the named Person is a Member of the Association, shall indicate the class of membership held, shall be signed by the President, or a Vice President, and by the Secretary or Assistant Secretary of the Association, and shall be substantially in the following form:

(Form for Certificate of Membership)

THE TERRACE AT MOHAWK CROSSING HOMEOWNERS ASSOCIATION  
(An Indiana Unincorporated Association)

CERTIFICATE OF MEMBERSHIP

No. \_\_\_\_\_

This certifies that \_\_\_\_\_ is a(n)  
\_\_\_\_\_ Member of THE TERRACE AT MOHAWK CROSSING  
HOMEOWNERS ASSOCIATION, an Indiana unincorporated association.  
Reference is made to the Declaration of Covenants and Restric-  
tions of Mohawk Mews and the Code of By-Laws of the Association  
for a statement of the rights, privileges and obligations of  
Members and other provisions affecting the Association. This  
Certificate is not transferable.

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

ARTICLE 3

Meetings of Members

Section 3.01. Place of Meetings. All meetings of the  
Members shall be held at such place in Hamilton or Marion  
Counties, Indiana as may be designated by the Board of Managers  
and specified in the respective notices or waivers of notice  
thereof.

Section 3.02. Annual Meeting. An annual meeting of the  
Members shall be held at eight o'clock P.M. on the first Tues-  
day in April of each calendar year except that the Board of  
Managers may designate another day and time for the annual  
meeting.

Section 3.03. Special Meetings. Special meetings of the  
Members may be called by the President, by a majority of the  
Board of Managers, or by written petition signed by not less  
than one-third (1/3) of all of the Members.

Upon a request in writing delivered to the President or the  
Secretary by a Person or Persons entitled to call a special  
meeting, it shall be the duty of the President or the Secretary  
to give notice to the Members of such meeting, and, if such  
request is refused, the Person or Persons making such request  
may call a meeting by giving notice in the manner hereinafter  
provided.

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Business transacted at all special meetings shall be limited to the subjects stated in the call or waiver of notice, and matters germane thereto.

Section 3.04. Notice of Meetings. A written or printed notice stating the place, day and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which such meeting is called, shall be delivered or mailed by the Secretary or by the officer or Person calling the meeting to each Member at such address as appears on the records of the Association not more than thirty (30) nor less than ten (10) days before the date of any regular meeting and not more than thirty (30) nor less than two (2) days before the date of any special meeting. Notice of any meeting may be waived in writing filed with the Secretary by any Member if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place of the meeting. Attendance at any meeting shall constitute a waiver of notice of that meeting.

Section 3.05. Voting Lists. At least five (5) days before each regular meeting of Members, the Secretary shall make a complete list of Members entitled to vote at the meeting, which list may be inspected by any Member, for any proper purpose, at any reasonable time.

Section 3.06. Quorum. At any meeting of the Members, those Members entitled to cast at least ten percent (10%) of the votes eligible to be cast at such meeting, present in person or by proxy executed in writing, shall constitute a quorum for the transaction of business, except as otherwise provided by law. In the absence of a quorum, the Members present in person or by proxy, by a majority vote and without notice, may adjourn the meeting from time to time until a quorum is present. At any such adjourned meeting at which a quorum is present, any business may be transacted for which notice was originally given. The Members present at a duly organized meeting may continue to do business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 3.07. Voting Rights.

(a) Class A Members. Each Block Lot shall have ap-  
purtenant thereto one (1) vote which may be cast by the  
Owners thereof who are present in person or proxy pursuant  
to the voting procedures hereinafter set forth.

(b) Class B Members. The Class B member, if present  
in person or by proxy, shall be entitled to one (1) vote  
for each Block Lot in the Section.

(c) Casting of Votes. Members who are not natural Persons shall designate by written notice to the Secretary of the Association the name of an individual who is authorized to exercise the right of such Member to vote. The name of such individual shall be kept on the records of the Association and may be changed only by written notice to the Secretary.

(d) Tabulation of Votes. In any matter upon which a vote of the Members is required or allowed, the votes of Class A members and the Class B member shall be totaled and considered as though there were a single class of membership.

(e) Voting for Managers. In any election of Managers, no Member shall have the right to multiply the number of votes to which such Member may be entitled by the number of Managers to be elected.

(f) Votes Required. A majority of the votes cast at a meeting of the Members, duly called and at which a quorum is present, shall be sufficient to take or authorize action upon any matter that may properly come before the meeting unless more than a majority of votes cast is required by law, the Declaration or these By-Laws.

Section 3.08. Multiple Owner. Where the Owner of a Block Lot constitutes more than one Person, or is a partnership, there shall be only one voting representative entitled to cast the vote allocated to that Block Lot. Those Persons constituting such Owner or the partners shall determine among themselves who shall be the voting representative for such Block Lot. In the event agreement is not reached the vote attributable to such Block Lot shall not be cast.

Section 3.09. Voting by Association or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled.

Section 3.10. Proxies. A Class A or Class B member may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Class A or Class B member shall designate his attorney-in-fact in writing, delivered to an officer of the Association prior to the commencement of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution unless a longer time is expressly provided in the proxy.



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Section 3.11. Action Without a Meeting. Any action required by the Declaration to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if, prior to the action, a consent in writing setting forth the action so taken is signed by all of the Members entitled to vote with respect to the subject matter thereof, and such written consent is filed with the minutes of the proceedings of the Members. Such consent shall have the same effect as a unanimous vote of the Members.

ARTICLE 4

Board of Managers

Section 4.01. Functions. The business, property and affairs of the Association shall be managed and controlled by a Board of Managers as from time to time constituted (herein collectively called "Board" or "Managers" and individually called "Manager").

Section 4.02. Eligibility. No person shall be a Manager who is not a Member or the appointee of Declarant.

Section 4.03. Number. So long as there is a Class B member, the number of Managers comprising the Board shall be three (3), which number may from time to time be increased by resolution adopted by not less than a majority of the Board. At such time as there is no Class B member, the number of Managers comprising the Board shall be that number which is equal to the number of Blocks within the Section plus, if required to result in an odd number of Managers, one (1), which number may from time to time be increased or decreased by resolution adopted by not less than a majority of the Board of Managers, provided that all times the number shall not be less than 50% of the number of Blocks within the Section. In no event shall the number of Managers be less than three (3) nor more than nine (9) and no reduction in the number of Managers shall have the effect of removing a Manager from office prior to the expiration of his term. In the event the number of Managers is increased as provided herein, the election of the additional Manager or Managers shall be by a vote of the Members according to a procedure established by the Board by resolution.

Section 4.04. Initial Board of Managers. The initial Board of Managers ("Initial Board") shall be George P. Sweet, Tom Charles Huston and David A. Trulock, all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, these

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By-Laws or the Declaration, (a) the Initial Board shall hold office as long as there is a Class B member and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever, prior to the termination of the Class B membership, every such vacancy shall be filled by an individual appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Block Lot, or by acquisition of any interest in a Block Lot by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which appointment shall be deemed coupled with an interest and irrevocable as long as there is a Class B member, to exercise all of said Owner's right to vote and to vote as Declarant determines on all matters as to which Members are entitled to vote under the Declaration, these By-Laws, or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same.

Section 4.05. Election. Subject to the provisions of Section 4.04 hereof, Managers shall be elected at the annual meeting provided in Article 3. The Board may, by resolution, establish such nomination and election procedures, consistent with the provisions of these By-Laws, as it deems appropriate.

Voting for the Board of Managers shall be by secret written ballot. The ballot shall be prepared by an Elections Committee appointed by the Board and shall contain the name of each Person nominated for election. Those Persons receiving the highest number of votes shall be elected.

Section 4.06. Term. Each Manager shall serve for a term of one (1) year or until his successor is elected and qualified. Incumbent Managers shall be eligible for re-election. The Initial Board shall be deemed to be elected and re-elected as the Board of Managers at each annual meeting as long as there is a Class B member.

Section 4.07. Resignation. Any Manager may resign at any time by giving written notice of such resignation to the President or the Secretary of the Association. Such resignation shall be made in writing and shall take effect at the time specified therein, and, if no time be specified, at the time of its acceptance by the President or the Secretary. The acceptance of a resignation shall not be necessary to make it effective.

Section 4.08. Vacancies. Subject to the provisions of Section 4.04 as to the Initial Board, any vacancy occurring on the Board caused by death, resignation or otherwise, shall be filled until the next annual meeting through a vote of a major-

ity of the remaining members of the Board. If a majority of the remaining members of the Board cannot agree on a Person to fill any such vacancy, a special meeting of the Members shall be called to elect a Person to fill such vacancy.

Section 4.09. Removal of Managers. A Manager or Managers, except the members of the Initial Board, may be removed with or without cause by vote of a Majority of Owners at a special meeting of the Members duly called and constituted for that purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Manager so elected shall serve until the next annual meeting of the Members or until his successor is duly elected and qualified.

Section 4.10. Meetings. The Board of Managers shall meet in each year immediately after the annual meeting of the Members, at the place where such meeting of the Members has been held, for the purpose of organization, election of officers, and consideration of any other business that may properly be brought before the meeting. No notice shall be necessary for the holding of this annual meeting. If such meeting is not held as above provided, the election of officers may be held at any subsequent meeting of the Board specifically called in the manner provided in Section 4.11. Special meetings of the Board may be called by the President and shall be called by order thereof upon the written request of not less than one-third (1/3) of the membership of the Board, which request shall set forth the business to be conducted at such meeting.

Section 4.11. Notice of Meetings. Notice of all meetings of the Board of Managers, except as herein otherwise provided, shall be given by mailing the same at least three (3) days or by telephoning or telegraphing the same at least twelve (12) hours before the meeting to the usual business or residence address of the Manager as shown upon the records of the Association. Notice of any meeting of the Board may be waived in writing filed with the Secretary by any Manager if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place of the meeting. Attendance at any meeting of the Board shall constitute a waiver of notice of that meeting. Any meeting of the Board may adjourn from time to time to reconvene at the same place or some other place. No notice need be given of any such adjourned meeting.

Section 4.12. Quorum. A quorum of the Board of Managers at any annual or special meeting of the Board shall be a majority of the duly qualified members of the Board then occupying office, but in no event less than two (2) Managers, except that in filling vacancies a majority of the remaining Managers (but not less than two (2) Managers) shall constitute a quorum. The

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act of a majority of the Managers present at a meeting, who constitute a quorum, shall be the act of the Board unless otherwise provided by the Declaration or these By-Laws. In the absence of a quorum, the Managers present may, by majority vote, adjourn the meeting from time to time until a quorum is present. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting for which notice was originally given.

Section 4.13. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Managers may be taken without a meeting if prior to such action a written consent to such action is signed by all of the Managers and such written consent is filed with the minutes of the proceedings of the Board of Managers.

Section 4.14. Committees. The Board of Managers, by resolution adopted by a majority of the Board, may designate one or more committees, each of which shall consist of two (2) or more Managers, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board in the management of the Association. Other committees not having and exercising the authority of the Board in the management of the Association may be designated by a resolution adopted by a majority of the Managers present at a meeting at which a quorum is present. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board, or any individual Manager, of any responsibility imposed upon it or him by law. Commencing in the first year in which there is no Class B member, the Board shall annually establish an Elections Committee which shall be responsible for the conduct of the election of the Board of Managers pursuant to Section 4.05.

Section 4.15. Powers. All the powers of the Association, except as otherwise provided herein or in the Declaration, shall be vested in and shall be exercised by the Board of Managers. Said powers shall include, but not be limited to:

(a) The power to adopt and enforce rules and regulations governing the use of the Common Area to the extent authorized by the Declaration;

(b) The power to lease or purchase for the benefit of the Members such property, equipment, materials, labor and services as may be necessary in the judgment of the Board;

(c) The power to exercise the powers and perform the duties of the Association granted, imposed, authorized or permitted by the Declara-

tion, the exercise of which is not reserved or committed to the Members by the Declaration or the By-Laws;

(d) The power to make and collect Assessments and charges;

(e) The power to employ legal counsel, architects, contractors, accountants, consultants, managers, independent contractors and others as in the judgment of the Board of Managers may be necessary or desirable in connection with the maintenance, repair, replacement, restoration, and operation of the Common Area and the business and affairs of the Association.

Section 4.16. Duties. It shall be the duty of the Board of Managers to:

(a) cause the Common Area to be maintained in good, clean, attractive and sanitary condition, order and repair;

(b) cause to be kept a complete record of all the affairs of the Association and the Board, making such records available for inspection by any Member or his authorized agent, and present an annual report thereof to the Members;

(c) supervise all officers, agents and employees of the Association and see that their duties are properly performed;

(d) issue upon demand by any Member a certificate setting forth whether or not any Assessment has been paid and giving evidence thereof for which a reasonable charge may be made;

(e) designate depositories for the funds of the Association, designate those officers, agents and/or employees who shall have authority to withdraw funds from such accounts on behalf of the Association, and cause such persons to be bonded, as it may deem appropriate;

(f) prepare the annual budget;

(g) recommend to the Owners an annual General Assessment in an amount sufficient to meet the obligations imposed by the Declaration;

(h) annually set the date(s) Assessments are due and decide what, if any, interest rate is

to be applied to Assessments which remain unpaid thirty (30) days after they become due;

(i) send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of the due date of the Assessment or the first installment thereof;

(j) cause the lien against any property for which Assessments are not paid within thirty (30) days after due date to be foreclosed or cause an action at law to be brought against the Owner personally obligated to pay the same;

(k) procure and maintain adequate insurance to protect the Association, its employees and its personal and real properties;

(l) appoint such committees as are prescribed in Section 4.14;

(m) faithfully observe and perform each duty imposed on the Association by the terms of the Declaration and exercise such discretion granted to the Board thereunder in the best interests of the Members; and

(n) exercise their powers and duties in good faith, with a view to the interests of the Association and to this end adopt appropriate guidelines for action on matters where a potential conflict of interest may exist.

Section 4.17. Non-Liability of Managers. The Managers shall not be liable to any Person for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Managers, except for their own individual willful misconduct, bad faith or gross negligence. The Members shall indemnify and hold harmless each of the Managers against any and all liability to any Person arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith or is contrary to the provisions of the Declaration or By-Laws. It is intended that the Managers shall have no personal liability with respect to any contract made by them on behalf of the Members and as their agent. The liability of any Member arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Managers shall be limited to such percentage of the total liability or obligation thereunder as is equal to a fraction, the numerator of which is the number of Block Lots owned by him and the denominator of which is the total number of Block Lots in the Section. Every contract made by the Board

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or any management agent on behalf of the Association shall provide that the Board of Managers is acting as agent for the Members and shall have no personal liability thereunder, except in their capacity as Members and then only to the extent of their fractional interest described above.

Section 4.18. Additional Indemnity of Managers. The Members shall indemnify any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Manager, against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Manager is liable for gross negligence or misconduct in the performance of his duties. The Members shall also reimburse to any such Manager the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if such Manager was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Manager, no Manager shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Manager relied on the books and records of the Association or statements or advice made by or prepared by any management agent employed by the Board on behalf of the Association, or any officer or employee thereof, or any accountant, attorney or other Person employed by the Association to render advice or service unless such Manager had actual knowledge of the falsity or incorrectness thereof; nor shall a Manager be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Managers.

Section 4.19. Transactions Involving Affiliates. No contract or other transaction between the Association and one or more of its Managers, or between the Association and any Person (including Declarant) in which one or more of the Managers are directors, officers, partners, or employees or are pecuniarily or otherwise interested, shall be void or voidable because such Manager or Managers are present at the meeting of the Board or any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose if:

- (a) the fact of the affiliation or interest is disclosed or known to the Board or a majority thereof or noted in the minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

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(b) the fact of the affiliation or interest is disclosed or known to the Class A members, or a majority thereof, and they approve and ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

(c) the contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Affiliated or interested Managers may be counted in determining the presence of a quorum of any meeting of the Board or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote thereat to authorize any contract or transaction with like force and effect as if they were not so affiliated or not so interested.

Section 4.20. Insurance. The Board of Managers, or its duly authorized agent, shall have the authority to and shall obtain insurance on any structures located in the Common Area, whether owned or leased by the Association, against loss or damage by fire or other hazards commonly insured against in similar properties in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insured hazard, and shall also obtain a broad form public liability policy covering all damage or injury caused by the negligence of the Association or any of its agents. All such insurance policies shall contain a provision that all Members shall, in appropriate circumstances, be able to recover damages as claimants under such insurance. Premiums for all such insurance shall be included in the General Assessment.

Section 4.21. Insured Loss, Damage or Destruction. In the event of loss, damage or destruction by fire or other peril, the Board of Managers shall (unless otherwise agreed by two-thirds of the Managers then serving), upon receipt of the insurance proceeds, contract to rebuild or repair damaged or destroyed portions of the insured property to its condition before such damage. All such insurance proceeds (if the amount of such proceeds exceeds \$5,000.00) shall be deposited in a bank or other financial institution, the accounts of which are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signatures of at least one-third (1/3) of the members of the Board of Managers (but in no event less than two (2) Managers), or by their duly authorized agent. In such event, the Board of Managers shall advertise for sealed bids with licensed contractors, and then may negotiate with any contractor, who may be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed structure or structures. In the event that



the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as previously existed, the Board of Managers may levy a Special Assessment in the manner specified in the Declaration to make up any deficiency. Excess insurance proceeds, if any, shall become a part of the Association's reserve for replacement.

Section 4.22. Uninsured Loss, Damage or Destruction. In the event of loss, damage or destruction to any property of the Association caused by perils not covered by standard insurance maintained by the Association, the Board of Managers may levy a Special Assessment in the manner specified in the Declaration to make up any deficiency created by such insured loss.

Section 4.23. Compensation. No Manager shall receive any compensation for any service he may render to the Association. He may, however, be reimbursed for his actual expenses incurred in the performance of his duties.

ARTICLE 5

The Officers of the Association

Section 5.01. Officers and Agents. The officers of the Association shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board of Managers may, by resolution, designate from time to time. Any two or more offices may be held by the same person, except that the duties of the President and the Secretary shall not be performed by the same person. The Board of Managers may, by resolution, create, appoint and define the duties and fix the compensation of such officers and/or agents as, in its discretion, is deemed necessary, convenient or expedient for carrying out the purposes for which the Association is formed; but such officers and agents shall be compensated only for actual services performed on behalf of the Association.

Section 5.02. Election, Term of Office and Qualifications. The officers shall be chosen annually by the Board of Managers. Each officer shall hold office until the next annual meeting of the Board of Managers or until his successor is chosen and qualified.

Section 5.03. Vacancies. In the event an office of the Association becomes vacant by death, resignation, retirement, disqualification or any other cause, the Board of Managers shall elect a person to fill such vacancy, and the person so elected shall hold office and serve until the next annual meet-

ing of the Board or until the election and qualification of his successor.

Section 5.04. President. The President, who shall be chosen from among the membership of the Board of Managers, shall preside at all meetings of the Board, if present; shall appoint the chairman and members of all standing and temporary committees, subject to the review of the Board of Managers; shall be the executive officer of the Association; shall have and exercise general charge and supervision of the affairs of the Association; and shall do and perform such other duties as these By-Laws provide or as may be assigned to him by the Board of Managers.

Section 5.05. Vice President. Any Vice President may perform all duties incumbent upon the President during the absence or disability of the President and shall perform other duties as these By-Laws may require or as may be assigned to him by the President or the Board of Managers.

Section 5.06. Secretary. The Secretary shall have the custody and care of the corporate records and the minute book of the Association. He shall attend all the meetings of the Board of Managers and the Members, and shall keep, or cause to be kept in a book provided for the purpose, a true and complete record of the proceedings of such meetings, and shall perform a like duty for all standing committees of the Board of Managers when required. He shall attend to the giving and serving of all notices of the Association, shall file and take care of all papers and documents belonging to the Association, and shall perform such other duties as may be required by these By-Laws or as may be prescribed by the Board of Managers.

Section 5.07. Treasurer. The Treasurer shall keep correct and complete records of account, showing accurately at all times the financial condition of the Association. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into the possession of the Association. He shall immediately deposit all funds of the Association coming into his hands in some reliable bank or other depository to be designated by the Board of Managers, and shall keep such bank account in the name of the Association. He shall furnish at meetings of the Board of Managers, or whenever requested, a statement of the financial condition of the Association and shall perform such other duties as may be required by these By-Laws or as may be prescribed by the Board of Managers.

Section 5.08. Removal. Any officer of the Association may be removed from office by the affirmative vote of two-thirds (2/3) of all the Managers at any regular or special meeting of the Board of Managers called for that purpose for nonfeasance,

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malfeasance, or misfeasance, for conduct detrimental to the interests of the Association, for lack of sympathy with its objects, or for refusal to render reasonable assistance in carrying out its purposes. Any officer whose removal is proposed shall be entitled to at least ten (10) days' notice in writing by mail of the meeting of the Board of Managers at which such removal is to be voted upon and shall be entitled to appear before and be heard by the Board of Managers at such meeting.

Section 5.09. Resignation. Any officer or member of a committee may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, and, if no time be specified, at the time of its receipt by the President or Secretary of the Association. The acceptance of a resignation shall not be necessary to make it effective.

## ARTICLE 6

### Architectural Review Committee

Section 6.01. Composition. The Architectural Review Committee shall be comprised of three (3) or more members appointed by the Class B member. At such time as there is no Class B member, the Architectural Review Committee shall be elected by a Majority of Owners. No member of the Architectural Review Committee shall simultaneously serve as a member of the Board of Managers except for such members as are appointed by Declarant.

Section 6.02. Organization. The Architectural Review Committee shall elect from among its membership a chairman, secretary and such other officers as it deems appropriate.

Section 6.03. Quorum. A quorum for action by the Architectural Review Committee shall be a majority of its members, but in no event less than two (2) members.

Section 6.04. Duties. It shall be the duty of the Architectural Review Committee to regulate the external design, appearance, location and maintenance of the Section and of improvements thereon and to regulate such uses of property, all as provided in the Declaration.

Section 6.05. Procedures. The Architectural Review Committee shall formulate general guidelines, procedures and regulations and submit them for approval to the Board of Managers. Such guidelines, procedures and regulations shall be considered

adopted policy of the Committee unless rejected by a two-thirds (2/3) vote of the Board of Managers within thirty (30) days after the date of submission.

ARTICLE 7

Loans to Officers and Managers

The Association shall not make any advancement for services to be performed in the future nor shall it make any loan of money or property to any officer or Manager of the Association.

ARTICLE 8

Association Books

Except as otherwise provided by the laws of the State of Indiana or these By-Laws, the books and records of the Association may be kept at such place or places, within or without the State of Indiana, as the Board of Managers may from time to time by resolution determine, but all of such books and records shall be open for inspection to any Member at any reasonable time for purposes reasonably related to his interest as a Member.

ARTICLE 9

Financial Affairs

Section 9.01. Contracts. The Board of Managers may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to a specific instance; and unless so authorized by the Board of Managers, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement, or to pledge its credit or render it liable pecuniarily for any purpose or to any amount.

Section 9.02. Checks, Etc. All checks, drafts, notes, bonds, bills of exchange, and orders for the payment of money, shall, unless otherwise directed by the Board of Managers or

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required by law, be signed by any two of the following officers, who are different persons: President, a Vice President, Secretary or Treasurer. The Board of Managers may, however, designate officers or employees of the Association, other than those named above, who may, in the name of the Association, execute drafts, checks and orders for the payment of money on its behalf.

Section 9.03. Investments. The Association shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board of Managers.

Section 9.04. Reserve for Replacements. The Board of Managers shall establish and maintain a reserve fund for replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Area. In determining the amount, the Board shall take into consideration the expected useful life of the Common Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant, the managing agent or any consultants the Board may employ. Such fund shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

Section 9.05. Fiscal Year. The fiscal year of the Association shall be fixed by resolution of the Board of Managers.

Section 9.06. Assessment Year. The assessment year of the Association shall be fixed by resolution of the Board of Managers.

Section 9.07. Auditing. At the discretion of the Board, or if requested by a Majority of Owners, at the close of each fiscal year, the books and accounts of the Association shall be audited by an independent Certified Public Accountant whose report shall be prepared and certified in accordance with generally accepted auditing standards. A copy of any such report shall be distributed to each Member who requests a copy thereof.

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ARTICLE 10

Amendments

The power to make, alter, amend or repeal the By-Laws is vested in the Members, which power shall be exercised by the affirmative vote of a two-thirds (2/3) majority of all votes eligible to be cast by Members at a meeting called for such purpose. Any proposed amendment shall be included in the notice of such meeting, and, to become effective, shall be approved in writing by the Class B member if, at the time of such amendment, there is a Class B member. If notice of a proposed amendment to the By-Laws is included in the notice of any meeting of the Members, it shall be in order to consider and adopt at that meeting any amendment to the By-Laws dealing with the subject matter with which the proposed amendment is concerned.

ARTICLE 11

Recording

A copy of the By-Laws together with all subsequent amendments thereto shall be recorded in the Office of the Recorder of Hamilton County, Indiana.

This Instrument Recorded Nov 21 1984  
Mary L. Clark, Recorder, Hamilton County, Ind.