

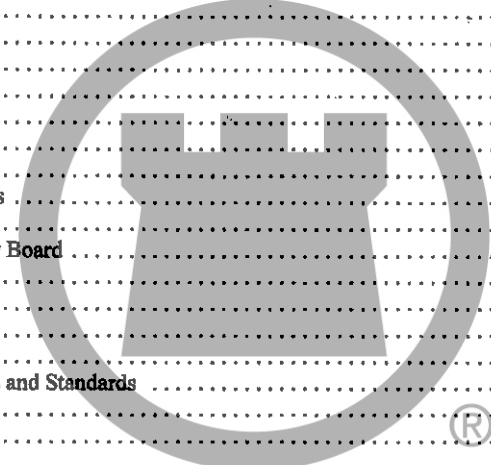
**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR BOSTON COMMONS**

**FILED**  
**AUG 14 1998**  
**LAWRENCE TOWNSHIP  
ASSESSOR**

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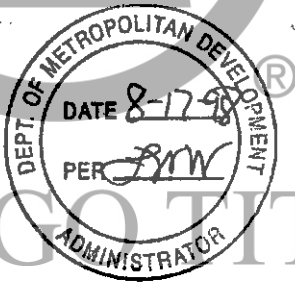
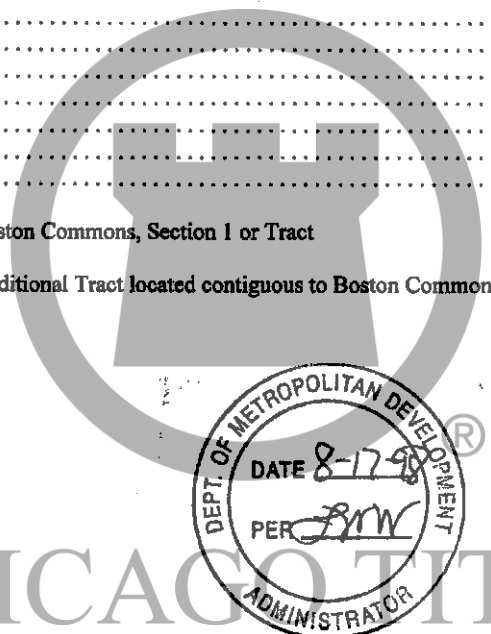


CHICAGO TITLE

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Exhibit "A"      Real Estate comprising Boston Commons, Section 1 or Tract

Exhibit "B"      Real Estate comprising Additional Tract located contiguous to Boston Commons,  
Section 1



CHICAGO TITLE

JOHN P. VON ARX  
 110884 08178  
 SUBJECT TO FINAL ACCEPTANCE  
 FOR TRANSFER

**DECLARATION OF COVENANTS AND RESTRICTIONS OF  
BOSTON COMMONS**

THIS DECLARATION made this 14 day of AUGUST, 1998, by HARRISON DEVELOPMENT, LLC., an Indiana limited liability company ("Declarant").

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner of the fee simple title to certain real estate located in Marion County, Indiana, more particularly described in Exhibit A, which is incorporated herein by reference (hereinafter referred to as the "Tract" or "Boston Commons, Section 1").

B. Declarant is the sole owner in fee simple title to certain real estate located in Marion County, Indiana, more particularly described in the attached Exhibit B, which is incorporated herein by reference (hereinafter referred to as "Additional Tract" ).

C. Declarant by execution of this Declaration assures that all properties which are conveyed which are a part of the Tract shall be conveyed subject to the terms and Conditions of this Declaration, which shall run with the Tract and be binding upon all parties having any right, title or interest in the Tract, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

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

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

- (a) "Additional Tract" means that real estate or any part of it described in Paragraph 24 of this Declaration and in the attached Exhibit B.
- (b) "Applicable Date" means the date determined pursuant to Paragraph 11 of this Declaration.
- (c) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.
- (d) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.
- (e) "Boston Commons, Section 1" means the name by which the Tract, as described in Paragraph A above, which is the subject of this Declaration, and which the Corporation manages, shall be known.
- (f) "Boston Commons" means Boston Commons, Section 1 and any additional area or section submitted to this Declaration by a Supplemental Declaration as provided herein.

(g) "By-Laws" shall mean the By-Laws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation. A copy of the By-Laws is attached hereto and incorporated herein by reference.

(h) "Common Area" shall mean (i) those portions, if any, of the Tract shown upon any recorded subdivision plat of the Tract, or any part thereof (including the Initial Plat), which are not Lots or dedicated Streets (reserving, however, unto Declarant the right to re-plat any of such areas as part of one (1) or more Lots), whether such plat is heretofore or hereafter recorded, including all improvements and structures constructed or to be constructed thereon, and (ii) such portions of the Tract (if any) as are hereafter declared to be "Common Area" by an instrument executed and recorded by Declarant, whether or not such areas comprise part or all of a Lot or Lots shown upon any recorded subdivision plat of the Tract.

(i) "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Area, and any other costs or expense incurred by the Corporation for the benefit of the same or the Owners, and all sums lawfully assessed against the Members of the Corporation.

(j) "Corporation" means Boston Commons Association, Inc., its successors and assigns, an Indiana nonprofit corporation, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 11 of this Declaration; such Corporation being more particularly described in Paragraph 11 of this Declaration.

(k) "Declarant" shall mean and refer to Harrison Development, LLC, an Indiana limited liability company, and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to any mortgagee acquiring title to any portion of the Tract pursuant to the exercise of rights under, or foreclosure of (or by acceptance of a deed in lieu of foreclosure), a mortgage executed by Declarant; provided, however, that any such mortgagee so acquiring title by virtue of foreclosure against (or acceptance of a deed in lieu of foreclosure from) the Declarant shall not be deemed to have assumed any prior obligations or liabilities of the Declarant hereunder.

(l) "Home" means the single family dwelling unit located upon a Lot.

(m) "Lake" shall refer to each of the separate bodies of water, if any, all of which will be located in the Common Area.

(n) "Lot" means any plot of ground included in the Tract (with the exception of Common Area) and designated as such upon the recorded Plat of Boston Commons, Section 1 or upon the recorded Final Plat, if any, of the Additional Tract or any part thereof and upon which one (1) Home is constructed, is to be constructed or has existed. When Lot is used it shall be deemed to include the Home, if any, located thereon.

(o) "Member" means a member of the Corporation.

(p) "Mortgagee" means the holder of a first mortgage lien on a Lot.

(q) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(r) "Plat" means the survey of the Tract and the Additional Tract dividing the Tract and Additional Tract into Sections, prepared by \_\_\_\_\_, certified by \_\_\_\_\_, a registered land surveyor, under date of \_\_\_\_\_, 1998, and recorded as Instrument Number \_\_\_\_\_ in the Office of the Recorder of Marion County, Indiana, which is incorporated herein by reference.

(s) "Public Street" or "Street" means the portion(s) of the Tract or Additional Tract designated and shown as "Public Streets" or "Streets" on any plat of the Tract or Additional Tract, which such Streets shall be and are hereby dedicated and designated as Public Streets for the use and benefit of the public.

(t) "Tract" means the real estate described in Paragraph A above and such portions of said real estate for which a Plat has been recorded in the Office of the Recorder of Marion County, Indiana, and which has been subjected to this Declaration or by a Supplemental Declaration as provided herein.

2. **Declaration.** Declarant hereby expressly declares that the Tract and Additional Tract, if any, shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. **Description of Boston Commons, Section 1.** Boston Commons, Section 1 consists of Sixty-One (61) Lots numbered 1 through 61, inclusive, together with the Common Area as designated on the Plat. The Common Area and the size of the Lots are as designated on the Final Plat. The legal description for each Lot in Boston Commons, Section 1 shall be as follows:

Lot \_\_\_\_\_ in Boston Commons, Section 1, a subdivision in Marion County, Indiana, as per plat thereof recorded \_\_\_\_\_, 19\_\_\_\_, as Instrument Number \_\_\_\_\_ in the Office of the Recorder of Marion County, Indiana.

4. **Lots.** The boundaries of each Lot in Boston Commons shall be as shown on the Plat.

5. **Common Area.** Common Area includes all the area designated as such on the recorded Plat of Boston Commons, Section 1 or on a recorded Plat of the Additional Tract or any part thereof, including but not limited to any Lake and perimeter landscaping and fencing benefitting only the Tract or Additional Tract, but excluding all Lots. If the Additional Tract is not platted, the Paragraphs in this Declaration relating to Common Area in the Additional Tract and ownership thereof by the Corporation shall not be applicable.

6. **Ownership of Common Area.** The Common Area shall be conveyed to or owned by the Corporation, and shall be held for the use and enjoyment of the Members, all of whom shall have the non-exclusive right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:

(a) The right of the Corporation, by its Board of Directors, without the approval of its Class A Members, Class B Members, or any first mortgagees, to dedicate or grant a specific easement to such portion of the Common Areas and to execute such documents as are necessary in furtherance of or for the purpose of perfecting the grant or reservation of easement for ingress and egress as set forth in Sub-Paragraph (f) below.

(b) In addition to the rights granted or reserved as set forth in Sub-Paragraph (a) immediately above, the right of the Corporation, upon approval by a written instrument signed by two-thirds of all Class A Members, all Class B Members, and by two-thirds of all first mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Corporation.

(c) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Paragraph 12.

(d) The Common Area in Boston Commons, Section 1 shall be conveyed to or owned by the Corporation at the time of conveyance of the first Lot in "Boston Commons, Section 1".

(e) There is hereby reserved and granted unto the owners of Historic Standish Estates, the real estate which adjoins and abuts the Tract and Additional Tract on and along the southern boundary lines of the Tract and Additional Tract, a continuing and perpetual easement which runs with the land for the purpose of ingress and egress to and from Historic Standish Estates, as specifically set forth and designated on the Plat of the Tract or Additional Tract, for so long as Historic Standish Estates remains and is used for residential purposes.

7. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Area and facilities to members of his family, his tenants or contract purchasers who reside on any Lot.

8. Encroachments and Easements for Common Area. If by reason of inexactness of construction, settling after construction or for any other reasons, any Common Area encroaches upon any Lot, an easement shall be deemed to exist and run to the Corporation for the maintenance, use and enjoyment of such Common Area.

9. Easement for Utilities and Public and Quasi Public Vehicles. All public and quasi public vehicles including, but not limited to, police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the ingress - egress easements and Common Area in the Tract in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such Utilities, including but not limited to water, sewers, gas, cable television, telephone and electricity on the Tract; provided, however, nothing herein shall permit the installation of sewers, electric lines, water line or other utilities, except as initially designed and approved by Declarant on the Plat or as thereafter may be approved by Declarant or by the Board of Directors. By virtue of this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Tract and to affix and maintain electrical and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Homes. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement on such Tract, without conflicting with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement on the Tract.

An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area to perform its duties.

10. Corporation: Membership: Voting: Functions.

(a) Membership in Corporation. Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.

(b) Classes and Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:

(i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the registered agent of the Corporation. Each Class B Member shall be entitled to three (3) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of:

(i) the date upon which the written resignation of the Class B Members as such is delivered to the registered agent of the Corporation,

(ii) thirty (30) days after the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or

(iii) five (5) years from the date of recordation of this Declaration.

After the Applicable Date, all Class B Members shall become Class A Members and subject to all terms, conditions, restrictions, rules and regulations applicable to Class A Members.

(c) Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area, to pay taxes assessed against and payable with respect to the Common Area and to pay any other necessary expenses and costs in connection with the Common Area, and to perform such other functions as may be designated to it to perform under this Declaration.

11. Board of Directors.

(a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 12.

(b) Initial Board of Directors. The Initial Board of Directors shall be composed of the following persons, to-wit: Colleen Page, Peter Page and Tony Page (hereinafter referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles or the By-Laws (a) the initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Home by any type or juridical acts inter vivos or cause mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration, the Articles, the By-Laws or otherwise; provided, however, this right to vote granted to Declarant shall not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging Common Area or merger/consolidation of the Corporation with another corporation. 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. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Initial Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

(c) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Tract, the management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party with or without cause upon sixty (60) days written notice to the other party. Any decision not to employ a professional property management agent shall require the prior consent of the Owners of at least sixty-seven percent (67%) of the vote and fifty-one percent (51%) of the vote of Mortgagees. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (i) protecting, repairing, maintaining and replacing the Common Area, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
- (ii) procuring of snow removal from the Common Area;
- (iii) landscaping, painting, decorating, furnishing, maintenance and upkeep of the Common Area.
- (iv) surfacing, paving and maintaining any sidewalks constituting a part of the Common Area;



(vi) preparing the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual meeting is mailed or delivered;

(vii) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be mailed or delivered to each Owner after the close of the fiscal year;

(viii) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage at any time during normal business hours;

(ix) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

(x) paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area;

(xi) furnishing, upon request of any Mortgagee, insurer or guarantor of first mortgage, an audited financial statement for the immediately preceding fiscal year; and

(d) **Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of its duties. These powers include, but are not limited to, the power:

(i) To purchase for the benefit of the Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;

(ii) To procure for the benefit of the Owners fire and extended coverage insurance covering the Common Areas to the full insurable value thereof, to procure public liability and property damage insurance and Worker's Compensation Insurance, if necessary, and to procure all such other insurance as is required or permitted under the Declaration, for the benefit of the Owners, the Corporation, and the Mortgagees;

(iii) To employ legal counsel, architects, engineers, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

(iv) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Area;

(v) To include the costs of all of the above and foregoing as Common Expenses of the Corporation and to pay all of such costs therefrom;

(vi) To open and maintain a bank account or accounts in the name of the Corporation and to designate the signatories thereto;

(vii) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Tract and Additional Tract provided that the Board shall give advance written notice to the Owners of such rules and any revision, amendment, or alteration thereof.

(e) **Limitation on Board Action.** After the Applicable Date, the authority of the Board of Directors to enter into contract shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00), unless the prior approval of a Majority of Owners (as defined in Section 3.5(e) hereof) is obtained, except in the following cases:

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

(ii) Proposed contracts and proposed expenditures expressly set forth in and which do not exceed by more than 10% in aggregate the proposed annual budget, as presented to the Owners at the annual meeting and, if necessary, approved by the Owners at such annual meeting. However, specific items within the budget need not be approved separately by the Owners at the annual meeting. The Board may also reallocate funds to items in the budget so long as the total budgeted funds are not exceeded by more than 10% and by doing so, the total budget will not be increased by more than 10%; and

(iii) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

The said Five Thousand Dollar (\$5,000.00) maximum shall automatically be adjusted every five (5) years from the date of execution of this Declaration to reflect changes in the purchasing power of the dollar, as determined by the most recently published annual GNP Implicit Price deflator or any comparable index.

(f) **Compensation.** No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

(g) **Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(h) **Bond.** The Board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation, and, such other officers or directors of the Corporation that handle or are responsible for funds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Lots) and any such bond shall specifically include protection for any insurance proceeds received for

any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of 'employees' or similar terms or expressions. Such bonds shall provide that they may not be canceled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

12. **Initial Management.** The Board of Directors has entered or will hereafter enter into a management agreement with Declarant or with a corporation or other entity affiliated with Declarant or designated by Declarant for a term not to exceed three (3) years with either party having the right to terminate upon sixty (60) days' notice under which Declarant (or such other corporation or entity as appropriate) will provide supervision, management and maintenance of the Common Area, and in general perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years or a new management agreement with different parties may be executed under similar terms and conditions. Any management agreement is or will be subject to termination by Declarant (or such other corporation or entity as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and Declarant (or such other corporation or entity as appropriate) is in effect, Declarant (or such other corporation or entity as appropriate) shall have and Declarant hereby reserves to itself (or such other corporation or entity as appropriate), the exclusive right to manage the Tract and perform all the functions of the Corporation.

13. **Real Estate Taxes.** Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Tract and Additional Tract or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Tract and Additional Tract or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Tract and Additional Tract or part thereof assessed as a whole, and shall pay his proportionate share of the real estate taxes assessed on the improvements on the Tract and Additional Tract or part thereof assessed as a whole based upon the ratio that the square footage of all improved Lots. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

14. **Utilities.** Each Owner shall pay for his own utilities, which are separately metered, used in connection with his Lot and Home. Utilities which are not separately metered shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.

15. **Maintenance, Repairs and Replacements.** Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

Notwithstanding any obligation or duty of the Corporation to repair or maintain the Common Area, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

If any owner shall fail so to maintain and keep his property or any part thereof in a good, clean and sanitary condition, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

So long as the Tract is subject to this Declaration, each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

#### 16. Architectural Controls.

(a) The Architectural Review Board. An Architectural Review Board ("Committee") consisting of two (2) or more persons shall be appointed by the Declarant. Following the end of the Development Period, the Architectural Review Board shall be appointed by the Board of Directors. For this purpose the "Development Period" shall mean that period of time until the last Lot of the Tract and Additional Tract is sold.

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

In requiring the submission of detailed plans and specifications as herein set forth, Declarant intends to develop the Tract and Additional Tract as an architecturally harmonious, artistic and desirable residential subdivision, and in approving or withholding its approval of any detailed plans and specifications so submitted, the Architectural Review Board, or its successors and assigns, may consider the appropriateness of the improvement contemplated with relation to improvements on contiguous or adjacent lots, its artistic and architectural merits, its adaptability to the Lot on which it is proposed to be made, and such other matters as may be deemed to be in the interest and benefit of the owners of the lots in the Tract and Additional Tract as a whole. In this regard, and without limiting the foregoing, the following architectural standards shall apply to all improvements constructed and maintained in the Tract and Additional Tract:

1. Siding Color. The Declarant shall designate for the Architectural Review Board those colors which will be available for siding in the Tract and Additional Tract on all new construction within the Tract and Additional Tract. Lot Owners shall not change the color of any exterior siding without the approval of the Architectural Review Board. Changes in any siding color shall be limited to those colors designated by the Declarant.

2. Trim Color. All Homes shall have and maintain white exterior trim, including without limitation, all columns, corners, ornamental fencing, screen doors, architectural details, eaves, overhangs, windows, window casings and any other non-siding or non-brick architectural features.

3. Brick Color. Seventy-five percent (75%) of the exterior facade of each Home must be red brick. The Declarant shall designate for the Architectural Review Board colors which will be available for brickwork in the Tract and Additional Tract on all new construction within the Tract and Additional Tract. Lot Owners shall not change the color of any exterior brick without the approval of the Architectural Review Board. Changes in any brick color shall be limited to those colors designated by the Declarant and, to the extent applicable, the Fort Harrison Architectural Review Commission, or its successor in interest.

4. **Roof Materials and Colors.** The roofs of all Homes in the Tract and Additional Tract shall be constructed of asphalt and/or fiber glass shingles of a single color as approved by the Architectural Review Board.

5. **Landscaping.** All Lots within the Tract and Additional Tract shall include in their initial construction a landscaping plan providing a minimum of one street tree and one lot tree and eight (8) shrubs. Each Lot Owner shall maintain, and to the extent necessary, replace the landscaping on such Owner's Lot in accordance with these minimum standards.

6. **Coach Light.** Each Home on each Lot shall include a photocell-operated coach light to be illuminated from dusk to dawn and mounted on the exterior of the dwelling.

7. **Recreational Facilities.** No permanently mounted basketball goals will be allowed to be attached to any Home or otherwise permanently installed on a freestanding pole or other permanent structure within the Tract and Additional Tract. This restriction will not prohibit the Declarant from installing any such recreational facilities in any Common Area.

8. **Screening.** Screening for outdoor patio and deck enclosures, air conditioners and other screening shall be of a wooden lattice-type screening as approved by the Architectural Review Board, and no opaque screen fencing will be permitted within the Tract and Additional Tract.

9. **Mail Boxes.** All mail boxes and mail box posts shall be of a uniform style, type, design and color, as designated by the Architectural Review Board, and all such mail boxes and mail box posts shall conform, at all times, to the required uniform style, type, design and color.

(c) **Conditions.** Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting, or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by any Owner other than Declarant of (i) construction, erection or alteration of any Home, building, fence, wall, swimming pool, tennis court, patio or other structure on a Lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board and no building, fence, wall, Home or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any person other than Declarant without the prior written approval of the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over the Tract and Additional Tract, and no Owner shall undertake any construction activity within the Tract and Additional Tract unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board.

(d) **Procedures.** In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within sixty (60) days after notice of such Plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant, or, if Declarant is no longer a Class B member, the Board of Directors, approval will be deemed denied. A decision of the Architectural Review Board (including a denial resulting from the failure of the Architectural Review Board to act on the Plan within the specified period) may be appealed to the Board of Directors, which may reverse or modify such decision (including approval of a Lot Development Plan deemed denied by the failure of the

Architectural Review Board to act on such Plan within the specified period) by a two-thirds vote of the Directors then serving.

(e) **Guidelines and Standards.** The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping guidelines and standards as it may deem appropriate to achieve the purposes set forth herein to the extent that such design guidelines and standards are not in conflict with the specific provisions of the Declaration. Any such guidelines or standards may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

(f) **Application of Guidelines and Standards.** The Architectural Review Board shall apply the guidelines and standards established in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Architectural Review Board if resubmitted.

(g) **Exercise of Discretion.** Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of sub-section (f), and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceedings challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Architectural Review Board, could only conclude that such action constituted an abuse of discretion.

(h) **Additional Approval.** The Tract and Additional Tract lie within certain designated Historic Districts. To the extent applicable, therefore, anything to the contrary in this section notwithstanding, no improvements, alterations, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner and no building, fence, wall, Dwelling Unit, or other structure or improvements of any kind shall be commenced, erected, maintained, improved, altered, made or done on any Lot without compliance with any and all rules and regulations or, if required, the prior written approval of the Fort Harrison Architectural Review Commission, or its successor in interest.

## 17. Property Rights

### (a) General.

(i) All easements described in this Declaration are permanent easements appurtenant, running with the land. They shall at all times inure to the benefit of and be binding on the Owner and the Mortgagee from time to time of any Lots and the owner and mortgagee, if any, from, time to time of the Common Area, and their respective heirs, successors, personal representatives or assigns.

(ii) The covenants and restrictions contained in this Declaration shall run with and bind the Tract and Additional Tract and shall inure to the benefit of and be enforceable by the Declarant, the Association or the Owner of any Lot subject to this Declaration, their respective personal representatives, heirs, successors and assigns, for an initial term commencing on the date this Declaration is recorded and ending January 1, 2017, after which time the covenants and restrictions shall be automatically renewed for

successive periods of ten (10) years each, as the same may be amended or modified as herein permitted and provided.

(b) **Right of Enjoyment.** Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area limited, however, to and for the uses and purposes for which any portion of the Common Area is designed and intended. Such right and easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

- (i) The right of the Association to pass reasonable rules, with respect to the Common Area, for the health, comfort, safety and welfare of persons using the same;
- (ii) The right of the Association to suspend the voting rights of an Owner for any period during any assessment against his Lot remains unpaid;
- (iii) The right of the Association to levy assessments as provided in this Declaration; and
- (iv) The rights of the Association and Declarant reserved in this Declaration.

(c) **Association's Rights and Obligations.**

(i) The Association shall have the obligation to manage, repair, maintain, improve and operate the Common Area and to perform all additional obligations described in this Declaration;

(ii) The Association shall have the right to mortgage all or any portion of the Common Area for the purpose of securing a loan of money to be used for any of the purposes specified in subsection (i) above, provided that the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners under this Declaration, and provided, further, that the mortgagee shall have received the prior written approval specified hereinbelow;

(iii) The Association shall have the right to dedicate or transfer all or any part of the Common Area to any governmental subdivision or public agency or utility, and to grant permits, licenses, and easements over the Common Area for utilities and other purposes necessary or useful for the proper maintenance or operation of the project, subject to any prior written approval required herein;

(iv) The Tract and Additional Tract shall be subject to easements of record on the date the various portions thereof become subject to this Declaration, and to any easements in the Common Area which may at any time be granted by Declarant or the Association (subject to the approval referred to in the preceding paragraph) to any public or private utilities or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers or water pipes, coaxial cable, or any other utility services serving any Lots or the Common Area.

(v) Anything herein apparently to the contrary notwithstanding, except as otherwise expressly herein provided for, no abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Area or other common property or any part thereof shall be effective unless it shall have received the prior written approval specified herein.

(c) **Declarant's Rights.** Declarant shall have the same rights as any other Owner as to Lots owned by it from time to time, except as otherwise specified herein. In addition, until the last single numbered parcel of land (shown upon and identified as a lot on any recorded plat) of the Tract and Additional Tract (whether

heretofore or hereafter recorded, including the Plat) is conveyed to an Owner other than Declarant or until the Applicable Date (whichever event shall first occur), Declarant shall have the right and easement over the Common Area for the completion of improvements and making repairs to improvements (whether on the Common Area, or upon unsold Lots, or upon other portions of the Tract and Additional Tract) and the right to maintain signs upon the Common Area and any other portions of the Tract and Additional Tract, other than Lots owned by an Owner other than Declarant for the purpose of marketing homes, and to invite and escort the public thereon for such purpose.

(d) **Public Streets.** All streets included in and constituting a part of the Tract and Additional Tract shall be Public Streets and dedicated as such on any recorded Plat and shall be for the use and benefit of the public. The Public Streets shall be subject to all easements, covenants, conditions, limitations and restrictions then of record.

#### 18. **Assessments**

(a) **Annual Accounting.** Annually, after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) **Proposed Annual Budget.** Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the applicable fiscal year. At the annual meeting of the Owners at which a quorum is present, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget shall include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Regular Assessments as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall pay Regular Assessments based upon the Board's proposed annual budget.



(c) Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay assessments quarterly, semi-annually or annually, in advance. The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot and Home as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. Monthly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

(d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, and further provided that the Declarant shall not be any Owner's agent, attorney-in-fact or proxy in this vote pursuant to the third sentence of Paragraph 12(b) of this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

(e) Regular Assessments Prior to the Applicable Date. During the period that Declarant or its authorized builders are constructing Homes within the Tract or any Additional Tract, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly, and notwithstanding any other provision contained in this Declaration, the Articles or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Paragraph 19(e).

The Corporation will enter into a management agreement with Declarant (or a corporation or other entity designated by Declarant) (hereinafter referred to as "Management Agent" or "Managing Agent") in accordance with the provisions of Paragraph 13 of this Declaration. So long as such management agreement (or similar agreement) remains in effect, the Common Expenses and Regular Assessments shall be paid by Owners to Management Agent. Declarant shall guarantee that until the earlier of (1) the termination of said management agreement or (2) 1 year after the date of recordation of this Declaration, the monthly Regular Assessment shall not exceed Thirty-Four Dollars (\$34.00) (the "Guaranteed Charge"). After this date (assuming that said management agreement or similar agreement is still in effect) and so long thereafter as said management agreement (or similar agreement) remains in effect and Management Agent continues to

perform such functions, Declarant guarantees that the monthly Regular Assessment shall not exceed the amount of the Guaranteed Charge plus a maximum of a twenty percent (20%) increase in the Guaranteed Charge for each year. Such adjustments to the Guaranteed Charge (up to a twenty percent (20%) increase as determined by the Board) shall be made annually on January 1 of each year so long as said management agreement remains in effect and Management Agent continues to perform such functions. Such monthly charge shall, during such guaranteed period, entirely defray the Owner's obligation for his share of Common Expenses and shall be the Owner's entire Regular Assessment. Declarant shall be responsible for any deficit during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or, if sufficient the replacement reserve fund, if any such fund exists. Other than funding deficits as described above, the Declarant shall not be required to pay any Regular Assessments during the guarantee period.

Ten percent (10%) of the Regular Assessment paid prior to the Applicable Date shall be designated as a reserve fund for maintenance, repairs or replacement of Common Areas that must be repaired and replaced on a periodic basis.

That portion of the Regular Assessments collected by Declarant prior to the Applicable Date applicable to any replacement reserve created shall be held by the Initial Board and if required, applied to the replacement of Common Areas. To the extent that any such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

Payment of Regular Assessments prior to the Applicable Date with respect to each Home (that is not owned by Declarant or its authorized builder) shall commence on the date of conveyance by Declarant or its authorized builder to such new Owner. The first payment shall be payable on the date of conveyance prorated to the first day of the calendar month next ensuing. Thereafter, payment of the Regular Assessment shall be paid the first day of each calendar month during the period prior to the Applicable Date. FOR EACH LOT OWNED BY AN AUTHORIZED BUILDER, SUCH BUILDER SHALL PAY TO THE CORPORATION NO REGULAR ASSESSMENT FOR A PERIOD OF SIX MONTHS FROM DATE OF PURCHASE OR UNTIL SUBSTANTIAL COMPLETION AND THE RECEIPT OF A CERTIFICATE OF OCCUPANCY FOR THE IMPROVEMENTS ON SUCH LOT, WHICHEVER OCCURS FIRST. THEREAFTER SUCH BUILDER SHALL PAY THE REGULAR ASSESSMENT LIKE ANY OTHER OWNER.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 13 of this Declaration and to adhere to and abide by the same.

(f) Failure of Owner to Pay Assessments. No Owner may exempt himself or herself from paying Regular or Special Assessments or any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Home belonging to such Owner. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular or Special Assessments when due, the lien for such assessment on the Owner's Home may be foreclosed by the Board for and on behalf of the Corporation as provided by law. Upon the failure of an Owner to make payments of any Regular or Special Assessments within ten (10) days after such are due, the Board, in its discretion, may:

- (1) impose a late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board of up to twenty-five percent (25%) of the amount of the Assessment;
- (2) accelerate the entire balance of the unpaid Assessments for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary;
- (3) suspend such Owner's right to use the recreational facilities within the Tract or the Additional Tract (if any) as provided in the Indiana Nonprofit Corporation Act of 1991, as amended; and
- (4) suspend such Owner's right to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended.

In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Home shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Home, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Home and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular or Special Assessments without foreclosing or waiving the lien securing the same. In any action to recover a Regular or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorney's fees, from the Owner of the respective Home.

(g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Home or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

#### 19. Mortgages.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

(b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement.

(c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any Mortgagee making such payment shall be owed immediately reimbursement by the Corporation.

(d) Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation loss which affects a material portion of Boston Commons or any Home. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.

(e) Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

## 20. Insurance.

(a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Common Area in an amount consonant with the full replacement value of the improvements which in whole or in part, comprise the Common Area. If the Board of Directors can obtain such coverage for reasonable amounts, they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation as provided in the By-Laws shall specifically include protection for any insurance proceeds so received.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are reasonably obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment

of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Mortgagees and at least ten (10) days prior written notice to the Corporation.

(b) **Public Liability Insurance.** The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time but not less than \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Tract, all Owners of Lots and all other persons entitled to occupy any Lot or Home. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be canceled or substantially modified without at least ten (10) days written notice to the Corporation.

(c) **Other Insurance.** The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to worker's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

(d) **General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation.

In the event of condemnation of all or any part of the Common Area the Corporation, as owner of the Common Area, shall represent the Owners in any negotiation or settlement regarding such condemnation. No Owners or any other party shall have priority over any rights of a Mortgagee pursuant to its mortgage in the case of distribution to such owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation to any Owners or Mortgagees, if to do so would be in violation of the Indiana Nonprofit Corporation Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

(e) **Insurance by Owners.** Each Owner should carry, and shall be responsible for carrying, insurance for his own benefit insuring his personal liability, his Lot, his Home, and fixtures, furniture, furnishings, and other personal property.

(f) Condemnation Awards. All proceeds payable as a result of condemnation shall be paid to the Corporation who shall act as trustee and hold such proceeds for the benefit of the individual Owners and Mortgagees. Such proceeds shall be distributed as provided above.

21. Casualty and Restoration of Common Areas. In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

22. Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Lots, Homes and Common Area shall be in addition to any other covenants or restrictions contained herein and in the Plat, which are incorporated herein by reference, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (a) Homes shall be used exclusively for residential purposes and the occupancy of a single family, all as permitted under local zoning ordinances. "Single Family" is defined as a single housekeeping unit, operating on a nonprofit, non-commercial basis between its occupants with a common kitchen and dining area. All Homes will have two (2), three (3), or four (4) bedrooms, a two-car garage and a minimum living area of one thousand two hundred (1,200) square feet.
- (b) No more than one (1) Home shall be erected or maintained on each Lot.
- (c) No nuisance shall be permitted, including without limitation any activities which are unsafe or hazardous with respect to any person or property, and no waste shall be committed in or on the Homes, the Lots or Common Areas.
- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or balconies or placed on the outside walls of the Home, and no sign, awning, canopy, shutter, or other attachment or thing shall be affixed to or placed upon the exterior walls or roof or any other parts of any Home without the prior written consent of the Board. The placement, installation, and maintenance of antennas, including satellite dishes, shall be subject to rules and regulations promulgated by the Board of Directors.

(e) No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any part of the Tract or Additional Tract, except that small dogs, cats or customary household pets in reasonable numbers may be kept in a Home subject to rules and regulations adopted by the Board of Directors; provided that such pet is not kept, bred or, maintained for any commercial purpose, and does not create a nuisance. All pets (including cats) shall be taken outdoors only under leash or other restraint and while attended by its owner, and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Areas, caused by his or her pet. The Owner shall be responsible for the cleaning of any Common Area made dirty by his or her pet's excrement, and shall be fully liable for the expenses of any cleaning not performed by the Owner. The tethering of pets in any area outside the Owner's Home does not constitute "attended." The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from Boston Commons upon ten (10) days' written notice from the Board to the respective Owner. The appropriate governmental authorities shall have an easement across Boston Commons to enforce local animal control laws and ordinances.

(f) No Lot or Home shall be used in any unlawful manner or in any manner to cause injury to the reputation of Boston Commons or to be a nuisance, annoyance, inconvenience or damage to other residents of Boston Commons, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines, or by loud persons, and objectionable odors.

(g) The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.

(h) No industry, business, manufacturing, mercantile, storing, trade, or any commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted in Boston Commons; provided, however, that an Owner may maintain an office or home business in the Home if: (1) such office or business generates no significant number of visits or unreasonable parking usage (both as determined by the Board of Directors) by clients, customers or other persons related to the business; (2) no equipment or other items related to the business are stored, parked or otherwise kept outside such Owner's Home; (3) there are no employees or independent contractors within the Home other than the Owner or other resident; (4) such Owner has obtained approvals for such use as may be required by the appropriate local and state governmental agencies; (5) the Owner in all other respects complies with any and all federal, state or municipal laws, regulations and ordinances, including but not limited to the Marion County Home Occupation Ordinance; and (6) all other provisions of this Declaration, the By-Laws and the rules and regulations are complied with. The Board may require the Owner to pay any increase in the rate of insurance or other costs for the Association which may result from such use. No Home shall be used or rented for transient, motel or hotel purposes.

(i) Only approved styles, sizes, locations and number of "For Sale", "For Rent" or "For Lease" signs or other window or advertising display shall be maintained or permitted on any part of the Tract or Real Estate or any Home without the prior written consent of the Board.

(j) All Owners and members of their families, their guests, or invitees, and all occupants of any Home or other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be

promulgated and issued by the Board governing the operation, use and enjoyment of the Homes and Common Areas.

(k) No boats or other water craft, campers, recreational vehicles, trailers of any kind, buses, mobile homes, commercial or business trucks or vans, motorcycles, mini-bikes, or any other vehicles of any description other than normal passenger trucks less than one ton, vans or automobiles, shall be permitted, parked or stored anywhere within Boston Commons; provided, however, that nothing herein shall prevent: (1) the parking or storage of such vehicles completely enclosed within a garage, or (2) the driving or using of such vehicles for ingress and egress to and from such Owner's Home provided the shortest route to and from a public road is used. No Owners or other residents shall repair or restore any vehicle of any kind within Boston Commons, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. "Commercial" vehicles are vehicles on which commercial lettering or equipment is visible or which are larger than normally used for noncommercial purposes. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept in Boston Commons.

(l) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with the express written permission from the Board.

(n) No garage shall be erected on any Lot which is not permanently attached to the Home, and no unenclosed storage area shall be erected. No enclosed storage area shall be erected on any Lot which is not permanently attached to the Home.

(o) No trailers, shacks, outhouses, mini-barns, detached storage sheds or toolsheds of any kind shall be erected or situated on any Lot, except that used by a builder during the construction of a Home, which temporary construction structures shall be promptly removed upon completion of construction of the Home.

(p) Each driveway on a Lot shall be of concrete or asphalt material.

(q) No swimming pools shall be permitted in Boston Commons.

(r) No solar heat panels shall be permitted in Boston Commons.

(s) All fencing shall be subject to approval by the Architectural Review Board. No fence shall be higher than forty-two inches. The only permitted fences shall be of a white picket construction or style and shall not extend forward of the back corners of the Home. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said lines, or, in the case of a rounded property corner, from the intersection of the street lines extended. The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage lines are maintained at sufficient height to prevent obstruction of such sight line.

(t) Any gas or oil storage tanks used in connection with a Lot will be either buried or located such that they are completely concealed from public view.



(u) Outside storage of any items, including, but without limiting the generality of the foregoing, sporting equipment toys, outdoor cooking equipment, yard and garden tools and equipment and trash and garbage containers, shall not be allowed unless screened from view by enclosures so as to be effectively screened from view outside the Lot upon which the same are located. The design of such screened enclosure must be approved by the Architectural Review Board in accordance with the architectural control provisions hereof. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious or illegal wood or other natural substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of residents is prohibited. Usual household trash and garbage shall be regularly collected and may be kept outside only if in sanitary containers which are so screened. .

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant shall have the right to use and maintain any Lots and Homes owned by Declarant and other portions of the Tract (other than individual Homes and Lots owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Homes and the sale of Lots and Homes or for the conducting of any business or activity attendant thereto, including, but not limited to, model Homes, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Area, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Tract at any time.

### 23. Amendment of Declaration.

(a) Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot or Home is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 20 with respect to casualty insurance or fidelity bonds to be maintained by the Corporation, or (3) the provisions of Paragraph 21 of this Declaration with respect to reconstruction or repair of the Common Area in the event of fire or any other casualty or disaster, or (4) the provisions of Paragraph 17 of this Declaration establishing the Architectural Review Board and providing for its functions, or (5) the provisions of Paragraph 18 of this Declaration with respect to the commencement

of assessments on any Lot, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration and the By-Laws.

(vi) **Additional Special Amendments.** No amendment to this Declaration shall be adopted which imposes a right to first refusal or similar restriction or which changes (1) the method of voting, or (2) reserves for and responsibility for maintenance, repair and replacement of the Common Area, or (3) right to use the Common Area, or (4) annexation of additional property to Boston Commons (other than as provided in Paragraph 24), or (5) the boundaries of any Lot, or (6) the leasing of Homes, or (7) termination of the applicability of this Declaration, or (8) any provisions which are for the express benefit of Mortgagees without the consent of at least ninety percent (90%) of the votes of the Owners for the first twenty (20) years after recording of this Declaration and thereafter by at least seventy-five percent (75%) of the votes of Owners and the consent of Mortgagees holding mortgages on fifty percent (50%) of the Lots subject to mortgages.

(vii) **Amendments Requiring Approval.** As long as there is a Class B membership, the following action will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties (other than as provided in Paragraph 24), dedication of Common Area and amendment of this Declaration.

(viii) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

(ix) **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.

(b) **Amendments by Declarant Only.** Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Homes, (c) to bring this Declaration into compliance with any statutory requirements or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 24 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Home and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 24 shall terminate at such time as the Declarant no longer hold or controls title to any part or portion of the Tract.

(c) **Amendment Prior to the Applicable Date.** Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration prior to the Applicable Date without the consent and approval of Declarant.

24. • **Annexation of Additional Tract.** In addition to Boston Commons, Section 1, Declarant is the owner of certain real estate described in the attached Exhibit B which is incorporated herein by reference and which is located contiguous to Boston Commons, Section 1 ("Additional Tract").

At any time prior to August 17, 2003, Declarant, without the consent of the Owners, may, but is not obligated to, develop the Additional Tract or any part thereof, in substantially the same manner as Boston Commons, Section 1 and file one or more Supplemental Declarations and Plats for such Additional Tract or part thereof to the Corporation, provided, however, that the maximum number of Homes which may be contained in the total development of the Tract and Additional Tract shall be not more than one hundred eight (108) and such Homes shall be consistent with the quality of construction of previous Homes. Improvements (excluding Homes) within the area to be annexed must be substantially completed prior to annexation.

In the event the Additional Tract or any part of it is platted in a manner similar to Boston Commons, Section 1, the Owners of such Lots in the Additional Tract or parts thereof, shall have the same rights and obligations as the Owners herein, and the Corporation shall have the same jurisdiction and authority over such Additional Tract or parts thereof as its authority and jurisdiction herein.

In the event Declarant decides not to develop or plat the Additional Tract or any part of it in a manner similar to Boston Commons, Section 1, Declarant shall file a Declaration stating that the Additional Tract or any part thereof shall not be developed as contemplated herein; provided, however, any part of the Additional Tract for which a Supplemental Declaration has not been filed by August 17, 2003, shall be automatically removed from the possibility of having a common entity provide for the maintenance, repair, replacement, administration and operation of such part of the Additional Tract, unless such is established by the Owners in the Tract and those in the Additional Tract.

Regardless of the method of development of the Additional Tract and whether or not all or any part of the Additional Tract comes within the jurisdiction of the Corporation or subject to the Declaration, Declarant reserves unto itself, its successors and assigns, for the use and benefit of that part of the Additional Tract not coming within the jurisdiction of the Corporation or subject to the Declaration, the right and easement to enter upon the Streets and Common Area of Boston Commons, Section 1 to provide ingress and egress to the Additional Tract.

Declarant hereby grants to the Owners in Boston Commons, Section 1 the right and easement to enter upon any streets and roadways that may exist in the Additional Tract to provide ingress and egress to Boston Commons, Section 1 as may be necessary.

It is the purpose and intent of the easements herein granted and reserved to provide free and unrestricted use and access across the roadways and Streets of the Tract and Additional Tract, no matter how developed, for the owners of the Tract and Additional Tract, their guests, invitees, and all public quasi-public vehicles, including but not limited to, police, fire and emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles.

The assessment which the Owner of each Lot in the Additional Tract or part thereof, if within the jurisdiction of the Corporation, shall be obligated to pay shall be equal to that paid by any Owner herein and shall commence on the date of conveyance of such Lot by Declarant. No assessment (Regular, Special or otherwise) on any Lot in the Additional Tract shall be due until such Lot has been conveyed to an Owner (other than Declarant or its authorized builders); provided, HOWEVER, FOR EACH LOT OWNED BY AN AUTHORIZED BUILDER, SUCH BUILDER SHALL PAY TO THE CORPORATION NO REGULAR ASSESSMENT FOR A PERIOD OF SIX MONTHS FROM DATE OF PURCHASE OR UNTIL SUBSTANTIAL COMPLETION AND THE RECEIPT OF A CERTIFICATE OF OCCUPANCY FOR THE IMPROVEMENTS ON SUCH LOT,

WHICHEVER OCCURS FIRST. THEREAFTER SUCH BUILDER SHALL PAY THE REGULAR ASSESSMENT LIKE ANY OTHER OWNER.

25. **Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Tract as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Tract in any manner shall be subject to the Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

26. **Negligence.** Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or its appurtenances or of the Common Area.

27. **Costs and Attorneys' Fees.** In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

28. **No Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot.

29. **Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

30. **Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. The singular shall include and refer to the plural and vice versa as appropriate.

31. **Interpretation.** The captions and titles of the various articles, sections, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

32. **The Plat.** The Plat of Boston Commons, Section 1 is incorporated into this Declaration by reference and the Plat has been filed in the office of the Recorder of Marion County, Indiana, as of the \_\_\_\_\_ day of \_\_\_\_\_, 1998, as Instrument No. \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first written above.

HARRISON DEVELOPMENT, LLC

By: Colleen M. Page  
Colleen M. Page, Managing Member

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Colleen M. Page, by me known and by me known to be the Managing Member of Harrison Development, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions for Boston Commons on behalf of said limited liability company and who, having been duly sworn, stated that the representations contained herein are true.

WITNESS my hand and Notarial Seal this 13 day of August, 1998.

MARILYN A. SCOTT  
Notary Public

Marilyn A. Scott  
Signature

My Commission Expires:

August 14, 2000

Residence County: Marion

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., Eads & Murray, P.C., Attorneys at Law, 7351 Shadeland Station, Suite 185, Indianapolis, IN 46256. (317) 842-8550.

CHICAGO TITLE

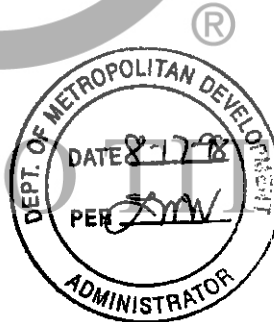


EXHIBIT A

# BOSTON COMMONS

SECTION 1  
PART OF THE S.1/2  
SECTION 6-16N-5E  
MARION COUNTY, INDIANA

LAND DESCRIPTION

Part of the Southeast Quarter of Section 6, Township 16 North, Range 5 East in Lawrence Township, Marion County, Indiana, described as follows:

Commencing at the South Quarter corner of said Section 6; thence South 89 degrees 06 minutes 47 seconds West along the south line of the Southwest Quarter of said Section 6 a distance of 513.10 feet; thence North 00 degrees 08 minutes 02 seconds East a distance of 320.78 feet; thence North 00 degrees 10 minutes 19 seconds West a distance of 587.51 feet; thence North 88 degrees 47 minutes 52 seconds East a distance of 61.30 feet; thence North 89 degrees 15 minutes 06 seconds East a distance of 133.34 feet; thence North 89 degrees 14 minutes 57 seconds East a distance of 372.21 feet to the Point of Beginning; thence continuing North 89 degrees 14 minutes 57 seconds East a distance of 97.87 feet; thence North 88 degrees 56 minutes 34 seconds East a distance of 101.35 feet; thence North 88 degrees 51 minutes 50 seconds East a distance of 80.03 feet; thence North 89 degrees 52 minutes 03 seconds East a distance of 121.14 feet; thence South 73 degrees 07 minutes 52 seconds East a distance of 275.75 feet; thence South 17 degrees 45 minutes 27 seconds West a distance of 15.18 feet; thence South 73 degrees 14 minutes 40 seconds East a distance of 88.72 feet; thence South 18 degrees 43 minutes 41 seconds West a distance of 191.64 feet; thence South 83 degrees 05 minutes 15 seconds East a distance of 180.08 feet; thence South 10 degrees 34 minutes 36 seconds West a distance of 55.72 feet; thence South 15 degrees 58 minutes 41 seconds West a distance of 219.80 feet; thence South 04 degrees 25 minutes 21 seconds West a distance of 67.42 feet; thence South 89 degrees 26 minutes 09 seconds West a distance of 771.18 feet; thence North 00 degrees 33 minutes 51 seconds West a distance of 125.59 feet; thence South 89 degrees 26 minutes 09 seconds West a distance of 23.29 feet; thence North 00 degrees 33 minutes 51 seconds West a distance of 382.00 feet; thence South 89 degrees 26 minutes 09 seconds West a distance of 4.49 feet; thence North 00 degrees 33 minutes 51 seconds West a distance of 134.00 feet; thence North 89 degrees 26 minutes 09 seconds East a distance of 28.82 feet; thence North 00 degrees 33 minutes 51 seconds West a distance of 101.82 feet to the Point of Beginning, containing 12.823 Acres, more or less.



CHICAGO TITLE

EXHIBIT B

# BOSTON COMMONS

## SECTION 2

PART OF THE S.E. 1/4  
SECTION 6-16N-5E  
MARION COUNTY, INDIANA

### LAND DESCRIPTION

Part of the Southeast and the Southwest Quarters of Section 6, Township 16 North, Range 5 East in Lawrence Township, Marion County, Indiana, described as follows:

Commencing at the South Quarter corner of said Section 6; thence South 89 degrees 06 minutes 47 seconds West along the south line of said Southwest Quarter of said Section 6 a distance of 543.10 feet; thence North 00 degrees 06 minutes 02 seconds East a distance of 320.78 feet; thence North 00 degrees 10 minutes 19 seconds West a distance of 102.19 feet to the Point of Beginning; thence continuing North 00 degrees 10 minutes 19 seconds West a distance of 495.32 feet; thence North 89 degrees 47 minutes 52 seconds East a distance of 61.30 feet; thence North 89 degrees 15 minutes 08 seconds East a distance of 133.34 feet; thence North 89 degrees 14 minutes 57 seconds East a distance of 372.21 feet to the northwest corner of Boston Commons Section 1, a subdivision in Marion County, Indiana, the plot of which is recorded as Instrument Number ~~82-114571~~ in the Office of the Recorder of said Marion County, Indiana; (the next seven described courses being along the westerly line thereof); thence South 00 degrees 33 minutes 51 seconds East a distance of 101.63 feet; thence South 89 degrees 28 minutes 08 seconds West a distance of 28.82 feet; thence South 00 degrees 33 minutes 51 seconds East a distance of 134.00 feet; thence North 89 degrees 28 minutes 08 seconds East a distance of 4.49 feet; thence South 00 degrees 33 minutes 51 seconds East a distance of 362.00 feet; thence North 89 degrees 28 minutes 08 seconds East a distance of 23.29 feet; thence South 00 degrees 33 minutes 51 seconds East a distance of 125.50 feet to the North line of Historic Stendish Estates, a subdivision in Marion County, Indiana, the plot of which is recorded as Instrument Number 980045482 in the Office of the Recorder of said Marion County, Indiana; (the next six described courses being along the northerly line thereof); thence South 89 degrees 28 minutes 08 seconds West a distance of 305.73 feet; thence North 00 degrees 10 minutes 19 seconds West a distance of 151.31 feet to a curve having a radius of 120.00 feet, the radius point of which bears North 37 degrees 38 minutes 58 seconds East; thence northwesterly along said curve an arc distance of 34.72 feet to a point which bears South 54 degrees 13 minutes 39 seconds West from said radius point; thence North 35 degrees 49 minutes 21 seconds West a distance of 55.20 feet to a curve having a radius of 120.00 feet, the radius point of which bears North 54 degrees 13 minutes 39 seconds East; thence northwesterly along said curve an arc distance of 4.93 feet to a point which bears South 56 degrees 34 minutes 51 seconds West from said radius point; thence South 89 degrees 28 minutes 08 seconds West a distance of 118.09 feet to the Point of Beginning, containing 8.294 Acres, more or less. ®

# CHICAGO TITLE

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M

**AMENDMENT TO CODE OF BY-LAWS FOR  
BOSTON COMMONS HOMEOWNERS' ASSOCIATION, INC.**

THIS AMENDMENT, dated February 18<sup>TH</sup>, 2005, is made by BOSTON COMMONS HOMEOWNERS' ASSOCIATION, INC., an Indiana nonprofit corporation (the "Association").

**Recitals:**

- A. Boston Commons is a single family housing development in Marion County, Indiana (the "Development"), which is subject to that certain document entitled "Code of By-Laws of Boston Commons Homeowners' Association, Inc." (the "Code of By-Laws") which was adopted on or about August 17, 1998.
- B. Article X, Section 10.1 of the Code of By-Laws provides that these By-Laws may be amended in the same manner, and subject to the same restrictions, as amending the Declaration (of Covenants and Restrictions for Boston Commons as filed under Instrument No. 1998-0142572 with the Marion County Recorder's Office).
- C. Article 23 of the Declaration of Covenants and Restrictions for Boston Commons set out the procedure for amending the Declaration, and as such set out the procedure for amending the Code of By-Laws.
- D. The Association, having complied with the provisions of said Article 23 of the Declaration, now desires to amend the Code of By-Laws in accordance with the terms hereof. ®

**Terms:**

NOW THEREFORE, the Association hereby amends the Code of By-Laws as follows:

- A. All the terms not expressly defined or modified herein shall have the same meaning as set forth in the Code of By-Laws.
- B. Article 23 (iv) Adoption shall be modified from "Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners" to "Any proposed amendment to this Declaration must be approved by a vote of not less than sixty-six percent (66%) in the aggregate of the votes of all Owners."
- C. Except as amended above in Paragraph B, the remaining portion of Article 23 (iv) shall remain in full force and effect.

575299 APR 22 05  
SUBJECT TO FINANCIAL STATEMENT  
FOR TRANSFER

MARTHA A. WONTACKS  
MARION COUNTY CLERK

MARION COUNTY CLERK





**This Instrument prepared by:**

**Joseph S. Schaefer, P.C.  
5514 North Tacoma Avenue  
Suite 105  
Indianapolis, IN 46220**



**CHICAGO TITLE**



