

102 E. Carol England
Colony Village
(47)

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Maryln J. Smith, Boone County Recorder

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

For

MULBERRY PLACE

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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made and entered into this 10th day of December, 2002, by COLONY VILLAGE, LLC, ("Developer"),

WITNESSETH:

WHEREAS, Developer is the fee simple title holders of all the land in Zionsville, Boone County, contained in and fully described on Exhibit "A", attached hereto and made a part hereof (hereinafter the "REAL ESTATE").

WHEREAS, Developer intends to divide the Real Estate into Seventeen (17) tracts (each such tract hereinafter referred to individually as a "Lot" and collectively as "Lots"), numbered 1 through 17, inclusive, such subdivision known as **Mulberry Place**.

WHEREAS, Developer desires to sell and convey Lots subject to the imposition of certain mutual and beneficial easements, restrictions, covenants, conditions and charges designed to assure ingress and egress thereto and to protect the value and desirability thereof.

NOW, THEREFORE, Developer hereby declares that each Lot and all Lots shall be held, conveyed, encumbered, leased, rendered, used, occupied and improved subject to the following covenants, conditions and restrictions, which shall run with the Real Estate and be binding on each party having any right, title or interest in any Lot or Lots, and his, her or its heirs, beneficiaries, successors, assigns and personal and legal representatives, and which covenants,

conditions and restrictions shall inure to the benefit of the Owners and each and every one of the Owner's successors in title to any Lot or Lots into which the Real Estate is subdivided.

ARTICLE I

Definitions

Section 1.01. Declaration: "Declaration" shall mean this instrument, together with any amendments or changes hereto which are hereafter made and evidenced as herein required.

Section 1.02. Developer: "Developer" shall mean Colony Village LLC, their successors or assigns in the ownership, development and division of the Real Estate, and/or any person, firm, corporation or other legal entity specifically designated as such as set out in Article III of this Declaration.

Section 1.03. Lot: "Lot" (also referred to as "Tract"), referred to in the plural thereon as "Lots", shall mean any of the Seventeen (17) tracts, more or less, into which the Real Estate is subdivided, the legal description being attached as Exhibit "A", which tracts are to be numbered in sequence (1-17), as set out in the plat of Mulberry Place, recorded in the Office of the Recorder of Boone County, Indiana, in Book Number 13, Page 43-44, Instrument Number 0300935 and any subsequent sections (2 and 3) recorded thereafter, as any tract(s) may be enlarged or diminished by Developer in connection with a reconfiguration thereof (in which event each tract shall be defined by the outside boundaries thereof). In no event shall any reconfiguration result in any tract

having an area less than the area permitted by applicable zoning laws and in no event shall the Real Estate be divided to permit the construction of more than Seventeen (17) single family residences and related improvements otherwise permitted hereunder, except as otherwise set out in Section 6.13.

Section 1.04. Owner: "Owner", referred to in plural as "Owners", shall mean and refer to the record owner, whether one or more persons or entities, their respective heirs, beneficiaries, successors, assigns and personal and legal representatives, of the legal title to any Lot, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation. Developer shall also be considered an Owner for purposes of this Declaration for so long as, and to the extent that, Developer owns a Lot or Lots.

Section 1.05 Driveway: "Driveway", referred to in the plural as "Driveways", shall mean that portion of any Lot developed and hard surfaced for the purpose of permitting ingress and egress to and from such Lot from any public road.

Section 1.06. Lot Development Plans: "Lot Development Plans" shall mean and consist of the following plans:

(i) site plan, prepared by a licensed civil engineer or registered surveyor approved by Developer, showing existing improvements on a Lot, any proposed alteration of the topography, elevation or natural state of the Lot in connection with the improvement thereof or any construction thereon, and

locating thereon all proposed improvements and structures showing finished floor elevations and details relating to drainage; (ii) complete house building and/or accessory structure plans, including structural details, exterior elevations and floor plans; (iii) material plans and specifications; (iv) detailed landscaping plans describing the size and name of all plantings as well as location and size of trees which will be removed as part of the construction process; (v) all other data or information which Developer may reasonably request, including, but not limited to, a fully executed original and two (2) copies of the CHECK LIST OF COMPLIANCE FOR MULBERRY PLACE, as well as all accompanying plans, specifications and data requested therein.

Section 1.07. Property Owners' Association: "Property Owners' Association" shall mean the unincorporated association of owners established in accordance with Article IV of this Declaration, or such other legal entity as may be formed as a successor thereto.

Section 1.08. Subdivision: "Subdivision" shall mean the Real Estate as divided into Lots, all as evidenced by a plat thereof recorded herewith in the Office of the Recorder of Boone County, Indiana, Book Number _____, Page _____, identified as the plat of Mulberry Place, and any additional sections of said subdivision that may hereafter be recorded and subject to these Declarations, along with any amendments thereto.

Section 1.09. Maintenance Costs: "Maintenance Costs" shall mean all of the costs necessary to keep the facility or improvements which the

Property Owners' Association has determined is for the common good, operational and in good condition, including but not limited to (i) the costs for all upkeep, maintenance, repair or replacement of all or any part thereof, (ii) payment of all insurance premiums and taxes imposed thereon and on the underlying easement or right-of-way, and any other expense related to the continuous operation thereof and (iii) costs associated with the operation of the Property Owners' Association or incurred in connection with the enforcement of the terms and provisions of this Declaration.

Section 1.10. Common Areas: "Common Areas" shall mean those areas designated on the Plat or in another document executed by Developer for the common good or service to one or more Lots in the Subdivision. Common Areas may be designated on the Plat as Blocks or otherwise. Common Areas may include drainage systems and retention ponds.

ARTICLE II

Character of Lots

Section 2.01. In General: Every Lot or group of Lots referred to in these covenants shall be used exclusively for single-family residential purposes.

Section 2.02. Improvement and Development of Lots: No Lot shall be further divided to create any additional tract upon which a single family residence and improvements otherwise permitted hereunder may be constructed, nor shall any improvements be made thereto or construction commence, proceed or continue thereon, except in strict accordance with the terms and provisions of

this Declaration. Not more than one (1) single-family dwelling house, together with attached garage and such related accessory structures and recreational facilities as may be permitted by this Declaration shall be constructed, altered, placed or permitted to remain on any Lot referred to by the covenants. In the event of multiple Lot ownership, no single-family dwelling house shall be constructed on or across a portion of more than one (1) Lot without the express written consent of the Developer herein.

Section 2.03. Occupancy or Residential Use of

Partially Completed Dwelling House Prohibited: No dwelling house constructed on a Lot shall be occupied or used for residential purposes for human habitation until it has been substantially completed. Developer and the Zionsville Building Inspector shall make the determination of whether a dwelling house has been "substantially completed", and such decision shall be binding on all parties affected thereby.

ARTICLE III

Developer

Section 3.01. Developer: The powers and authorities contained in this Article shall be vested in Developer and the covenants, conditions and restrictions in Article V of this Declaration shall be administered and enforced by Developer, or their designated successors and/or assigns. Developer's administration and enforcement of such covenants, conditions and restrictions shall include, but not be limited to, approval of Lot Development Plans prior to

the improvement of any Lot. Neither the exercise of such administration and enforcement duties by Developer, nor the approval of any Lot Development Plans by Developer, shall relieve any Owner of any duty and obligation imposed by this Declaration or compliance with the covenants, conditions or restrictions as the same are recorded in the Office of the Boone County Recorder. In the event that a written approval is not received from Developer within thirty (30) days from the date submittals are made, the failure to issue such written approval shall mean the disapproval thereof. In the event of disapproval, Developer shall give a short statement of the reason or reasons for such disapproval within ten (10) days following receipt of a written request to do so. The Developer shall not unreasonably withhold approval and shall act in a manner, which is neither arbitrary nor capricious. However, Developer reserves the right to unilaterally deny approval of Lot Development Plans if the single family dwelling is inconsistent as to design, color, building materials, size or costs with adjacent lots.

Section 3.02. Powers of Developer: No Lot shall be developed and no single family dwelling house, accessory building, driveway or other structure or improvement of any type, kind or character shall be constructed, placed, altered or permitted to remain on any Lot in the Subdivision without the prior written approval of Developer. An Owner shall request any required approval by written application to Developer. Such written application shall be made in the manner and form prescribed from time to time by Developer, and shall be

accompanied by three (3) complete sets of Lot Development Plans as defined in Section 1.07 of these covenants, and such other information as may be reasonably required by Developer. The authority given to Developer hereby is for the purpose of determining whether the proposed improvement and development of a Lot is consistent with the terms and provisions of this Declaration, is consistent with and meets Developer's overall plans for improvement and development of the Real Estate and is compatible and consistent with the development of other Lots. In furtherance of the foregoing purposes, Developer is hereby given discretion as to matters related to location, building orientation, layout, design, architecture, color schemes and appearance in approving Lot Development Plans. Any house building or other accessory structure plans included as a part of any application to Developer for required approvals shall set forth the color and composition of all exterior materials proposed to be used and any site plan submitted shall describe and detail all proposed landscaping and include any other material or information which Developer may reasonably require. All plans and drawings representing a part of the Lot Development Plans and any other plans reasonably required to be submitted to Developer shall be drawn to a scale of 1" = 10', or to such other scale as Developer may require. A registered land surveyor and an engineer or architect shall prepare all plans submitted unless Developer specifically permits otherwise.

Section 3.03. Liability of Developer: Neither Developer, nor his

agents, successors or assigns, shall be responsible in any way for any defects or insufficiencies in any plans, specifications or other materials submitted for review, whether or not approved by Developer, nor for any defects in any work done in accordance therewith. Developer shall not be liable to any person, firm, corporation or other legal entity aggrieved by Developers' exercise of (or failure to exercise) any of his powers as specified in Section 3.02 hereof, and shall have no liability whatsoever which is claimed or alleged to result, in whole or in part, upon refusal by Developer to approve Lot Development Plans submitted to Developer.

Section 3.04. Inspection: Developer, the Property Owners' Association or their assigns shall have the right to go upon any Lot, without being a trespasser, to inspect any work being performed thereon, in order to assure compliance with this Declaration and conformity with Lot Development Plans and with any other plans or submittals made to him and upon which any approvals required by this Declaration are based.

Section 3.05. Assignment of Duties: All of the duties, responsibilities and rights held by Developer under this Declaration shall be exercised and administered by Developer in good faith until such time, if any, as they may be assigned by Developer to another of one or more Owners referenced by these covenants or any other legal entity formed as a successor thereto. Any such assignment shall be at the option and sole discretion of Developer and may be made at any time or stage of development. Any assignment by Developer shall

be by written instrument duly executed and recorded in the Boone County Recorder's Office. Following any such assignment and recordation, the duties, responsibilities and rights of Developer under this Declaration shall immediately vest in and be performed by the assignee or successor.

ARTICLE IV

Association of Property Owners and Assessments

Section 4.01. Association of Property Owners: In

order to provide for the continuing maintenance and administration of the Subdivision, there is hereby established an unincorporated association of Owners of Lots in Mulberry Place ("Property Owners' Associations"). The Property Owners' Association shall be comprised of and limited in members to the Owners from time to time of the several Lots within the Subdivision. Membership in the Property Owners' Association shall commence immediately upon becoming an Owner and continue for so long as ownership of a Lot or Lots continues. At such time as an Owner conveys title and ceases to be an Owner, membership in the Association shall terminate. A new Owner of a Lot shall automatically become a member. The Developer shall act as the Property Owners Association until the organization of the resident Owners of Lots as the Property Owners Association. Until such time that administration of the Property Owners Association is turned over to the resident Owners of Lots, the Developer shall establish the amount of general assessments, the dates that such general assessments are due and the manner in which the same shall be paid;

however, the amount of general assessments collected by the Developer acting as the Property Owners Association shall not exceed the amount of three thousand dollars (\$3,000) per year. The provisions of this declaration for uniform assessment shall not be deemed to require that all assessments against vacant Lots or Lots improved with residences be equal, and Developer may determine that the liability for assessments shall begin upon completion of a residence upon a Lot. Although an Owner need not participate in the administration of the Subdivision, all Owners and the ownership of any Lot or Lots shall be subject to any and all rules and regulations duly established by the Property Owners' Association (as well as being subject to the rights of Developer and the terms and provisions of this Declaration) and shall be liable for the payment of all assessments levied by the Property Owners' Association. The Property Owners' Association may assign or otherwise transfer its rights, responsibilities and duties under this Declaration to any legal entity, which may be formed as a successor thereof. Any such assignment or transfer shall be in writing and shall be effective when written evidence thereof is duly recorded with reference to this Declaration in the office of the Recorder of Boone County, Indiana.

Section 4.02. Rights and Duties of the Property

Owners' Association: The Property Owners' Association shall be responsible for the following:

- (a) The landscaping, maintenance and upkeep of the fencing installed by the

Developer within the area shown on the plat and contained within the drainage and utility easements ("D" and "U") as well as all other common areas shown on the plat. The Property Owners' Association shall also be responsible for maintenance and upkeep of the signage for Mulberry Place located within the drainage and utility easement at the entrances of the Subdivision. The Property Owners' Association shall also be responsible for maintenance and upkeep of the retention lake and water fountain (Lake #1) shown as "Common Area" (CA). In addition, all individual lawns shall be maintained with mowing and fertilizing and snow removal shall be provided for sidewalks, drives and streets.

- (b) Procuring of utilities used in connection with the Lots, single family residences and common areas to the extent the same are not provided and billed directly to owners of Lots by utility companies. Further, it shall be the responsibility of the Property Owners' Association, if they choose to exercise that responsibility, to provide for common snow removal throughout the Subdivision and bill the members accordingly.
- (c) Payment of insurance (if any may be required under other sections to this declaration).
- (d) Determination of general and special assessments levied against the Owners. The Association shall have the ability to waive any general and special assessments levied against the Developer, Member and/or their assigns.

- (e) Promulgation and enforcement of the rules and regulations in this Declaration or as otherwise duly promulgated by the Owners.
- (f) Arrange for the common pick up and removal of garbage and waste so as to assure that one waste hauler will be utilized to serve the Subdivision.
- (g) Exercise of the powers vested in the Property Owners' Association by this Declaration or by Articles of Incorporation and Bylaws of any successor corporation thereto.

Section 4.03. Meetings of the Property Owners' Association and

Voting Rights: Business of the Property Owners' Association shall be conducted at meetings of this Association. The then current Chairman or Secretary/Treasurer of the Property Owners' Association or upon request of the Owner(s) of at least five (5) Lots may call meetings of the Association. Written notice of any meeting of the Lot Owners shall be personally delivered or mailed by first class United States mail by the Secretary-Treasurer to all Owners at least twenty (20) days prior to any proposed meeting. The Corporation shall have the following classes of membership with the following voting rights:

- (a) Class A. Class A members shall be all Owners of Lots in the Subdivision. 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 Association, 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.

- (b) Class B. Class B members shall be Developer and all successors
and assigns of Developer designated by Developer as Class B
members in a written notice mailed or delivered to the resident
agent of the Association. Each Class B member shall be entitled
to five (5) votes for each Lot of which it is the Owner on all
matters requiring a vote of the members of the Association.
The Class B membership shall cease and terminate on the date
upon which the written resignation of the Class B members as
such is delivered to the Association or successor thereto or the
date Developer no longer owns any Lots in the Subdivision,
whichever occurs first. After the above, Class B memberships
shall be converted to Class A memberships, and each former
Class B member shall be entitled to one (1) Class A membership
for each Lot owned in the Subdivision.

Section 4.04. Assessments: The Property Owners' Association shall
have the power to levy uniform, general and special assessments against each
Owner and each Lot, without regard to the size thereof relative to any other Lot

in the Subdivision.

Section 4.05. Creation of a Lien and Personal

Obligation of Assessments: Developer hereby covenants and each Owner of each Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Property Owners' Association general and special assessments, such assessments to be established and collected as provided in this Article. Until paid in full, an assessment not paid when due, together with interest thereon (at a percentage rate per annum equal to the then current Indiana statutory maximum annual interest rate) and costs of collection (including reasonable attorneys' fees and court costs) shall be a continuing lien upon the Lot against which such assessment is made. Each assessment, together with interest and costs of collection as aforesaid, shall also become and remain, until paid in full, the personal obligation of the one or more persons or entities in ownership of the Lot at the time when the assessment first became due and payable. If any Owner fails, refuses or neglects to make payment of an assessment when due, the lien for such assessment on such Owner's Lot may, at any time following notice thereof by first class United States mail of the amount thereof to an owner and the expiration of ten (10) days from the date such notice is sent, be foreclosed by the Property Owners' Association in the same manner in which a Mechanic's Lien is foreclosed from time to time under Indiana law, or in any other manner otherwise from time to time permissible or provided by law. The Property Owners Association may, at

its option, bring a suit against the Owner (and if more than one, either jointly or severally) to recover a money judgment for any unpaid assessment without foreclosing the lien for such assessment or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Property Owners' Association shall be entitled to recover interest as aforesaid and the costs and expenses of such action, including, but not limited to, reasonable attorneys' fees and court costs.

Section 4.06. Purpose of Assessment: General or special assessments levied by the Property Owners' Association shall be used exclusively to exercise those powers and advance those purposes for which the Property Owners' Association has been formed by this Declaration.

Section 4.07. Basis for Assessment: Except as provided in Section 4.09 hereof, general or special assessments levied by the Property Owners' Association shall be assessed uniformly against each Lot (and the Owner(s) thereof), regardless of whether any such Lot is improved or unimproved and without regard to the type of improvements constructed on any Lot, or the extent of use of the facilities and improvements for which any assessment, general or specified, is made.

Section 4.08. Annual Meeting, Adoption of Budget and General Assessment: Between May 1st and July 10th of each year, the Association shall hold an annual meeting with notice to all Owners in the manner required by 4.03 of this Declaration. At the annual meeting, the

Owners shall elect a Chairman and a Secretary-Treasurer to coordinate and handle the day-to-day affairs of the Property Owners' Association and shall adopt a proposed annual budget. The budget, adopted by the Property Owners' Association, shall provide for allocation of anticipated expenses in such a manner that the obligations imposed by this Declaration will be met and shall further outline all anticipated expenses and obligations for the period covered thereby. Following approval of the budget, the Chairman and Secretary-Treasurer shall fix a uniform general assessment against each Lot (and the Owner(s) thereof) in an amount necessary to defray the expenses and obligations budgeted, together with an amount, if any, approved by the Owners to permit establishment of and/or contribution into a reserve account in order to defray anticipated future capital expenditures. The Secretary-Treasurer shall send notice of the uniform general assessment to each Lot Owner as soon as practicable following the annual meeting. Unless otherwise determined by majority vote of the Owners, the general assessment established shall be paid in full to the Secretary/Treasurer of the Property Owners' Association in one (1) installment on or before August 31st next succeeding. Upon receipt of payment, the Secretary-Treasurer shall deposit the amount involved in an account opened and maintained in the name of the Property Owners' Association at a state or national bank having its principal banking offices in either Lebanon, Zionsville or Indianapolis, Indiana. Withdrawals from such account shall be made only upon the approval of both the Chairman and Secretary-Treasurer signing jointly

and only for a purpose or purposes set forth in this Declaration.

Section 4.09. Special Assessments: In addition to the general assessment, the Property Owners' Association may levy in any calendar year one (1) or more uniform special assessments against each Lot (and the owners(s) thereof) for the purpose of defraying, in whole or in part, any unanticipated expenses or obligations or the costs of any major reconstructions, repair, replacement or maintenance required, **PROVIDED THAT** the levy of any such special assessment must be approved by the owner(s) of at least two-thirds (2/3's) of the Lots who are voting in person or by written proxy at a special meeting of Owners duly called for such purpose, subject to written notice delivered in person or sent by first class United States mail at least fifteen (15) days in advance to each Owner of the time, place and purpose of such meeting. Following approval of the levy of any such special assessment, the vote of the owner(s) of at least a majority of the Lots shall establish the date or dates any such special assessment shall become due, and the manner in which it shall be paid to the Secretary-Treasurer for deposit in the Property Owners' Association account established and maintained in accordance with Section 4.08 hereof, for use consistent with the purpose or purposes for which such special assessment was levied.

Section 4.10. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein against a Lot shall be subordinate to the lien of a recorded bona fide first mortgage covering such Lot and subordinate to any

tax or special assessment lien of such Lot in favor of any governmental taxing or assessing authority. The sale or transfer of a Lot shall not affect the assessment lien. The sale or transfer of a Lot pursuant to bona fide mortgage foreclosure proceedings or any other bona fide proceeding in lieu thereof shall, however, extinguish the lien of such assessment as to any payment, which became due prior to such sale or transfer. No such sale or transfer shall release a Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.11. Duties of Chairman and Secretary-Treasurer of the Property Owners' Association: The Chairman and Secretary-Treasurer of the Property Owners' Association, or their designee, shall have the duties set forth in this Declaration, shall attend to and handle the day to day affairs of the Property Owners' Association and shall attend to handle such other duties delegated to them by the Owners. All acts taken and things done shall be measured by a standard of reasonableness and neither the Chairman nor the Secretary-Treasurer shall have any liability to an Owner, Owners or the Property Owners' Association unless acting in bad faith in a manner inconsistent with the terms and provisions of this Declaration. Notwithstanding the foregoing, in no event (except in the case of a bona fide emergency involving a total expenditure not exceeding One Thousand Dollars (\$1,000) or such other amount from time to time established by the Owners), shall either the Chairman or Secretary-Treasurer have any right, privilege or authority to contract for, solicit, hire or otherwise obtain services or materials which are not included

within and covered by the budget then applicable or which are otherwise funded by a special assessment levied in accordance with Section 4.09 hereof.

Section 4.12. Receipt For Payment: The Property Owners' Association shall, within twenty (20) days after demand made at any time, furnish a receipt in writing signed by the Secretary-Treasurer of the Property Owners' Association, specifying that the assessment respecting a Lot has been paid or that certain assessments remain unpaid, as the case may be. Such receipts shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 4.13. Initial Capital Assessment. On an earlier of (i) the date of a Lot is conveyed by Developer to an Owner (other than the holder of a first mortgage on such Lot in a conveyance which constitutes a deed in lieu of foreclosure), (ii) the date a Residence constructed on the Lot has been certified for occupancy by the Zoning Authority or (iii) the date a Residence on the Lot is first occupied by an Owner upon completion of construction thereof, there shall be due and payable to the Corporation by the Owner of such Lot the sum of Five Hundred Dollars (\$500.00). All such sums shall be deposited in a Reserve Account maintained by the Corporation. In addition, the monthly assessment sum of Two Hundred Dollars (\$200.00) shall be pro-rated from date of closing through the next upcoming quarter. All such sums shall be deposited in an Account maintained by the Corporation with funds to be used for expenses of the Association.

Section 4.14. Monthly Assessments. The Board of Directors shall have prepared an Annual Budget and the total operation expenses shall be allocated on an evenly proportional basis. It is anticipated that initially the monthly payment due shall be Two Hundred Dollars (\$200.00). Said monthly assessment may be invoiced to each property owner either monthly or on a quarterly basis. The annual budget shall not increase by more than 25% unless ratified by 2/3 of the Owners.

Section 4.15. Common Area. The Common Area (designated on the plat as C.A. #1) shall remain private and neither Developer's execution or recording of an instrument portraying the Common Area, nor the doing of any other act by Developer is, or is intended to be, or shall be construed as, a dedication to the public of such Common Area. Developer or the Corporation may, however, dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for use as roads, utilities, or other public purposes. The Common Area so designated on the plat shall remain open space in perpetuity so that no buildings or structures shall be allowed in the Common Area except by approval of the Zionsville Plan Commission after a Public Hearing held in accordance with Zionsville Plan Commission Rules and Procedure.

Section 4.16. Management Company. The Corporation and Developer reserve the right to employ a professional Management Company to administer the business of the Corporation.

Section 4.17. Architectural Control. The Class B Member shall appoint an Architectural Review Board consisting of Three (3) persons as provided in the By-Laws. At such time as there is no Class B Member, the Architectural Review Board shall be appointed by the Board of Directors.

ARTICLE V

Lot Development

Section 5.01. Lot Development: Prior to the development, improvement or alteration of, or the construction on or addition to, a Lot or Lots, the Owner(s) thereof shall first obtain written approval from Developer of the Lot Development Plans as required by Article III of this Declaration. Any improvement, development or alteration of a Lot or Lots, and any construction thereon or addition thereto, shall strictly comply with this Article V. In the event of a conflict between a set of duly approved Lot Development Plans and the terms and provisions of this Article V, the terms and provisions of Article V shall control.

Section 5.02. Type, Size and Nature of Construction

Permitted: No structure or building shall be erected, planned or constructed in the areas designated "Common Area" (CA). No single family dwelling house, garage, driveway, accessory building, fence, swimming pool or other recreational facility permitted by this Declaration shall be erected, placed or altered on any Lot without the prior written approval of Developer or Property Owners' Association, respectfully, as required by this Declaration. Such

approval shall be obtained prior to the commencement of construction and shall be subject to the following minimum standards:

- (a) No structure or building shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling not exceeding one and one-half (1½) stories in height, one private attached garage for a minimum of two (2) vehicles, and such other accessory buildings or structures related to swimming pools, and other recreational facilities, which are usual and incidental to the use of the Lot for single family residential purposes.
- (b) The minimum finished first floor area of a dwelling house constructed on a Lot, exclusive of open or screened porches, attached garages and basements or below grade levels, shall be Eighteen Hundred (1,800) square feet for a one story dwelling. No dwelling house shall have less than Eighteen Hundred (1,800) square feet of total finished floor area
- (c) No single family dwelling house, garage or structure of any kind shall be moved onto any Lot and all materials incorporated into the construction thereof shall be new, except that used brick or interior design features utilizing other than new materials, may be approved by Developer. No structure shall be placed or constructed on any Lot at any time for use as either a temporary

or permanent residence or for any other purpose, except as reasonably required in connection with the construction of a single family dwelling on a Lot.

- (d) No accessory buildings shall be constructed on any Lot.

Provided that an accessory pool house may be allowed with written permission of developer so long as the structure is made out of the same materials, or combination thereof, out of which the single family dwelling house on the same Lot is constructed.

- (e) The concrete or block foundation of any single-family dwelling house or accessory structure constructed on a Lot shall be covered on the exterior with wood, brick or stone veneer.

- (f) Each attached garage shall be designed as a part of the single-family dwelling house to which it is attached and shall be a side-loaded garage. Further, garage doors shall remain closed except when entering, exiting or otherwise having the need to access the garage. The garage door opening shall be designed and constructed in such a manner to minimize, to the extent possible, any direct viewing from the dedicated public streets.

- (g) No open loop geothermal heat pumps shall be allowed.

Section 5.03. Tree Preservation: Existing mature trees (having a trunk in excess of six (6) inches in diameter measured at a point three (3) feet from

undisturbed ground) shall be preserved to the extent the removal thereof is not mandatory in connection with the construction of an approved single family dwelling house unless the removal thereof is otherwise specifically approved by Developer or any such tree is dead or decayed and dangerous.

Section 5.04. Completion of Construction: All construction upon a Lot shall be completed in strict accordance with the Lot Development Plans approved by Developer. The exterior of any dwelling house built upon a Lot or combination of Lots shall be completed within eighteen (18) months after the date of commencement of the foundation and the site graded and any areas to be covered with grass shall be sodded. Each Lot shall be kept and maintained in a sightly and orderly manner during the period of construction. All builders will be required to utilize and pay for a thirty (30) cubic yard trash receptacle for each home during period of construction in order to properly dispose of debris. Every builder or owner shall be required to furnish a Port-o-Let for his or her workers during construction. However, multiple builders or owners may combine to provide Port-O-Lets to their workers provided there are at least two (2) Port-O-Lets for a combined number of twenty (20) workers. During construction, owner is responsible for any damage to curbs previously installed in the Subdivision by Developer. In the event of damage to a curb by Owner, or Owners' builders, which requires said curb to be repaired or replaced, then, and in that event, the Developer shall cause said curb to be replaced and the costs of repair shall be paid by the Owner causing said damage. The Developer

and Property Owners' Association may utilize any and all assessment and collection remedies available under Article IV.

Section 5.05. Storage Tanks: No storage tanks, of any nature, for any use, shall be allowed on or be buried on any Lot.

Section 5.06. Mailboxes: All mailboxes installed throughout the Subdivision will be uniform and will be constructed and installed by the Owner in a material and design suitable to Developer at his sole discretion. Mailboxes shall be maintained by Owner and in good working order at all times.

Section 5.07. Driveways: No Lot shall be permitted to contain more than one driveway and each Lot shall be allowed only one cut onto a public road adjoining the property. A driveway constructed on any Lot to and from the Public Road shall be constructed and maintained so as to provide the sole means of ingress and egress to such Lots for vehicular traffic.

The driveway on each Lot shall be cut and stone or gravel placed thereon prior to development or improvement of the Lot to the extent necessary to avoid the transmittal of mud from construction traffic to the Public Roads. Upon substantial completion of construction, each driveway shall be constructed of either hard mixed aggregate, concrete, brick or other material acceptable to Developer.

Under no conditions shall driveways be constructed over curb inlets of the storm sewer system within the right-of-way of the public road. No asphalt or concrete driveway shall be placed behind a curb containing these inlet grates.

Section 5.08. Fences, Walls, Hedges or Shrub Plantings: No fence, wall, hedge or other screening shall be erected, placed, altered or permitted to remain on any Lot other than as approved (as to location, type, materials, design and height) by Developer under Article III of this Declaration. In no such situation shall these structures or plantings be placed within platted drainage, utility and landscape easements or within the right-of-way of a public street.

Section 5.09. Sewage Disposal Systems:

- a) **Installation:** Private sewage disposal systems (septic systems) are prohibited on all Lots in the Subdivision, as this development will be served by the Town of Zionsville Municipal Sanitary Sewage Treatment System.

Section 5.10. Ditches and Swales: The Owner of any Lot on which any part of a drainage tile, open storm drainage ditch or swale is situated shall keep such portion thereof as may be situated upon his Lot or Lots continuously unobstructed and in good repair, and shall provide for the installation of such culverts upon said Lots as may be reasonably necessary to accomplish the purposes of this subsection, all at each such Owner's own cost and expense.

Section 5.11. Ponding and Runoff: No owner shall cause or permit any pond to be created on any Lot, including without implied limitation, from any swale, ditch, stream or creek located on the Real Estate. Further, each owner shall prevent water run-off and the depositing of soil and mud from the Lot onto the street through the use of silt fences installed during the home

building process. To the extent that an Owner permits, causes or allows mud to enter onto the streets or private roadways in the Subdivision, during construction or otherwise, the Developer reserves the right to clean the streets and bill or assess the Owner for said costs. The Owner shall pay or reimburse to Developer the reasonable charge for street cleaning and maintenance within thirty (30) days after being billed or assessed thereto. The Developer and Property Owners' Association may utilize any and all assessments and collection remedies available under Article IV. Owner shall comply with all soil erosion plans and conditions as set out in 327 I.A.C. 15 and shall indemnify and hold the Developer harmless from any and all violations by owner or owners, designated employees, representatives, contractors or sub-contractors.

Section 5.12. Antenna Discs or Other Similar Structures: Satellite dishes may be erected and placed within the single family residence constructed on the Lot provided that said antenna disc, tower or structure does not exceed eighteen inches (18") in diameter and it is concealed from external view and placed within the structure itself.

Section 5.13. Subsurface Drains: Each Lot in the Subdivision has been provided with a four (4) inch tile drainage outlet for the purpose of accepting the flow from sump pumps and downspout drains. These tiles flow into six (6) inch diameter interceptor drains located under the street curb and eventually they outlet into the storm sewer manholes. In no situation shall sump pump or downspout drains be outletted directly to the surface of the street. Gravity

drainage from downspouts may be drained into ravines at the rear of Lots only in situations where the downspout is located below the elevation of the street drain. All floor drains shall drain into the sewage disposal system of the home. In no situation shall sump pumps be outletted into the sanitary sewer system of the home or in a ravine behind the home.

Section 5.14. Pond Fountains: The retention pond shown "Lake #1" and "Common Area" (CA) on the plat may contain pump fountains which shall be paid for and maintained by the Property Owners' Association.

Section 5.15. Compacted Fill Material On Lots: Lots may contain compacted fill material. This soil, although it has been properly compacted, may not contain similar engineering properties of undisturbed soil for the purpose of foundation construction. Owners shall be solely responsible for soil compaction, or lack thereof, and each Owner shall hereby relieve the Developer of any and all responsibility or liability for disturbed or undisturbed soil as it relates to the Owner's construction process, or any other. Developer makes no promises, representations or warranties, either express or implied, as to the nature, quality or compaction of the soil on any individual Lot as each owner is responsible for testing and determining the quality and characteristics of soil on their respective Lot.

Section 5.16. Treehouses and Playground Equipment. No tree houses, basketball goals, or playground equipment will be allowed on any Lot in the Subdivision.

Section 5.17. Yard Lights. The Builder shall install one (1) dawn-to-dusk yard lights in operable condition in the front yard of each lot. The Architectural Review Board prior to the installation thereof shall of a type; style and height approve these lights. The Lot Owner thereafter shall maintain the yard light in proper working condition and power to the light shall be supplied by the electrical system of the home.

Section 5.18. Outside Burning. No trash, leaves, or other materials shall be burned upon any Lot.

Section 5.19. Lot Landscaping. The front sidewalk area of each Lot shall have a minimum of two (2) shade or flowering trees. Each front yard shall have a minimum of twenty (20) ornamental plantings of which the Architectural Review Board must approve species and caliber. Each lot is to be sodded and irrigated.

**Section 5.20. INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT Rule 327IAC 15-5 and U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)
AND INDIANA OCCUPATIONAL SAFETY HEALTH**

ADMINISTRATION (IOSHA) REGULATIONS. All Lot Owners and their respective General Contractors, Building Contractors or Sub-Contractors hired on their behalf, expressly agree to comply with the "IDEM Rule 327IAC 15-5" and to conform to OSHA,IOSHA Standards, as they may be modified from time to time and agree to pay for any costs, including reasonable attorneys'

fees, relating to the Developer having to enforce said Rule. Copies of these regulations may be obtained from the appropriate governmental agency.

ARTICLE VI

Use and Maintenance of Lots

Section 6.01. Vehicle Parking: No camper, motor home, truck, trailer or boat may be parked or stored overnight or longer on any Lot in open public view. Further, no vehicles as set out above, including automobiles, light trucks or pickups, shall be parked or stored on the private roadways or common areas throughout the Subdivision.

Section 6.02. Home Occupations: No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location, which is away from such Lot. No signs of any nature, kind or description shall be erected, placed or permitted to remain on any Lot advertising a permitted home occupation.

Section 6.03. Signs: No sign of any kind shall be displayed to public view on any Lot except that one two-sided sign (not exceeding six (6) square feet per side) may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a builder to advertise during construction, provided that, said sign is submitted and approved in writing by

Developer.

Section 6.04. Maintenance of Tracts and Improvements: The Owner of any Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, each such Owner shall:

- (i) Mow such portion of the Lot or Lots upon which grass has been planted at such times as may be reasonably required;
- (ii) Remove all debris or rubbish,
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance;
- (iv) Keep the exterior of all improvements in such a state of repair and maintenance as to avoid their becoming unsightly.

Section 6.05. Animals: Only dogs, cats and similar animals generally and customarily recognized as household pets, not exceeding in the aggregate two (2) in number, may be kept or maintained on any Lot as household pets. All animals kept or maintained on any Lot in this Subdivision shall be kept reasonably confined by means of leash, invisible fencing, or other products similar thereto, so as not to become an annoyance or nuisance. No animal shall be kept or maintained on a Lot for commercial purposes or primarily for breeding purposes.

Section 6.06. Garbage, Trash and Other Refuse: The outside burning of garbage or other refuse shall not be permitted on any Lot, nor shall any outside accumulation of refuse or trash be permitted on any Lot. Each single-

family dwelling house built shall be equipped with a garbage disposal unit of a type, kind and capacity approved by Developer, and once installed, each such unit shall be kept and maintained in good working order so as to be and remain environmentally acceptable. Trash receptacles will be supplied by the Property Owners' Association under a contract with a waste removal company and be paid for by each individual Owner so to have common trash receptacles and collection throughout the neighborhood. In no event shall any owner allow a trash receptacle to remain outside for longer than a twenty-four (24) hour period of time.

Section 6.07. Nuisances: No noxious or offensive activity shall be conducted upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or another Owner.

Section 6.08. Maintenance of Undeveloped and Unoccupied

Lots: Owners of undeveloped or unoccupied Lots shall at all times keep and maintain such Lots in an orderly manner, causing weeds and other growths to be reasonably cut and shall prevent the accumulation of rubbish and debris thereon.

Section 6.09. Property Owners' Association's Right To Perform

Certain Maintenance: In the event that the Owner of any Lot in this Subdivision fails to reasonably maintain such Owner's Lot and any improvements situated thereon in accordance with the provisions of this Article VI, or as otherwise required by this Declaration, the Property Owners' Association, by and through its agents, employees or contractors, shall have

the right, but not the obligation, following notice in writing to such Owner of an intention to do so unless reasonable maintenance as detailed in such notice is performed and the expiration of twenty (20) days thereafter without such maintenance being done, to enter upon such Lot without being a trespasser to repair, mow, clean, or perform such other acts as may be reasonably necessary to make such Lot and the improvements situated thereon, conform to the requirements of this Article VI, or as otherwise set forth in this Declaration. The out-of-pocket costs incurred by the Property Owners' Association in connection therewith shall be collectible from the Owner(s) of any such Lot and shall represent a lien against any such Lot until paid in full together with interest thereon, cost of collection and attorneys fees, all without relief from valuation and appraisal laws, as if constituting an unpaid general assessment levied under Article IV of this Declaration. Neither the Developer or Property Owners' Association nor any of its agents, employees or contractors shall be liable for any damage, which may result from any maintenance work performed hereunder.

Section 6.10. Retention Ponds, Common Areas: Certain Common Areas of the platted Subdivision consist of a retention pond that provide for the accumulation of water throughout the Subdivision. These retention ponds will be maintained by the Property Owners' Association with the association to have specific easement rights to access the retention ponds for maintenance purposes. Ice fishing, ice-skating or other water activities shall be specifically prohibited

on any of the retention ponds. Further, swimming, boating and canoeing are similarly prohibited on the retention ponds

ARTICLE VII

Easements

Section 7.01. Easements: The strips of ground shown on the survey of Lots attached hereto and designated Drainage and Utility Easements (“DE”, “UE” or “D” & “UE”) either separately or together, are hereby created for the use (including required ingress and egress necessary as a part thereof) of public utility companies, the Town of Zionsville, Mulberry Place Property Owners’ Association, and the owners of Lots herein as follows:

“Drainage Easements” (D.E.) and “Lake Maintenance Access Easements” (L.M.A.E.) are created to provide paths and courses for area and local storm drainage, overland or in adequate underground conduit, to serve the needs of this and adjoining ground and/or the public drainage system. No structures, including fences, shall be built on a Drainage Easement which obstruct flow from the area being served, nor shall any changes be made in the finished grade elevations of any Lot, whether in connection with the construction of improvements thereon or otherwise, so as to modify, alter or change the location or depth of any drainage swales, ditches or creeks located within any such Drainage Easement without the approval of all Federal, State, County or Municipal authorities from whom approvals are required by law, or which would in any way prohibit, impede, restrict or alter the natural flow of surface water drainage.

“Utility Easements” (U.E.) are created for the use of public utility companies, not including transportation companies, for the installation, operation and maintenance of sanitary sewers and water mains, ducts, poles, lines and wires necessary to provide utility service

to a Lot or Lots, subject to the condition that following any installation or maintenance, the affected area within such Utility Easement shall be returned to the condition existing prior thereto at the cost and expense of the party responsible for having such work performed.

The Owners shall take title to the Lots subject to the foregoing easements rights in, along and through the strips of ground properly designated as hereinabove set forth on the recorded survey of the Lots for the purposes herein stated.

ALL EASEMENTS MENTIONED HEREIN INCLUDE THE RIGHT OF REASONABLE INGRESS AND EGRESS FOR THE EXERCISE OF OTHER RIGHTS RESERVED. NO STRUCTURE, INCLUDING FENCES, SHALL BE BUILT ON ANY DRAINAGE, SEWER OR UTILITY EASEMENTS, BUT A PAVED DRIVEWAY NECESSARY TO PROVIDE ACCESS TO A LOT FROM A PUBLIC STREET OR ROADWAY SHALL NOT BE DEEMED A "STRUCTURE" FOR THE PURPOSE OF THIS RESTRICTION.

ARTICLE VIII

General

Section 8.01. Waiver of Damages: Neither the Developer, their nominees, representatives or designees, shall be liable for any claim for damages whatsoever arising out of or by reason of any acts taken (or not taken)

or things done or performed (or not done or performed) pursuant to any authorities reserved, granted or delegated pursuant to this Declaration.

Section 8.02. Enforcement: The right to enforce the restrictions contained in this Declaration and all covenants and restrictions contained herein including, but not limited to, the right of injunctive relief, or the right to seek the removal by due process of law of structures erected or maintained in violation of this Declaration, is hereby given and reserved to Developer, Property Owners' Association and the Owners from time to time of Lots and all parties claiming under them, the Zionsville Plan Commission, Town of Zionsville, all of whom shall have the right, individually, jointly or severally, to pursue any and all remedies, in law and equity available under applicable Indiana law, without being required to show actual damage of any kind whatsoever, and shall be entitled to recover, in addition to appropriate monetary damages, if any, reasonable attorneys' fees and other legal costs and expenses incurred as a result thereof.

Section 8.03. Severability: The provisions of this Declaration shall be severable and no provision shall be affected by the invalidity of any other provision to the extent that such invalidity does not also render such other provision invalid. In the event of the invalidity of any provision, this Declaration shall be interpreted and enforced as if all invalid provisions were not contained herein.

Section 8.04. Non-Liability of Developer: Developer shall not have any liability to an Owner or to any person or entity with respect to drainage on, over, under or through a Lot. Upon the improvement and development of a Lot, the proper handling of storm and surface water drainage shall be the responsibility of the Owner of such Lot, and each Owner by the acceptance of a deed to a Lot, shall be deemed to and does thereby release and forever discharge Developer from, and shall indemnify and hold harmless Developer against, any and all liability arising out of or in connection with the handling, discharge, transmission, accumulation or control of storm or surface water drainage to, from, over, under or through the Lot described in such deed.

Section 8.05. Public Liability and Property Damage

Insurance: Each Owner shall obtain and pay for such public liability and property damage insurance as may be desired to provide protection against loss, cost and expense by reason of injury to or the death of persons or damage to or the destruction of property occurring on or about each such Owner's Lot.

Section 8.06. Binding Effect: This Declaration, and the covenants, conditions and restrictions herein contained shall be binding upon Developer, each Owner and any person, firm, corporation or other legal entity now or hereafter claiming an interest in any Lot and their or its respective successors or assigns.

Section 8.07. Duration: This Declaration and the restrictions imposed hereby shall run with the Real Estate and shall be binding on all Owners and all

persons claiming under them for an initial period of twenty-five (25) years from the date of recordation, and shall automatically extend for successive periods of ten (10) years each, unless prior to the expiration of the initial period of any ten (10) year period they are amended or changed.

Section 8.08. Amendments to Declaration: Notwithstanding the above, Developer hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration prior to December 31, 2003. Such amendments shall be in writing, executed by Developer, and recorded with the Recorder of Boone County. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interest of Mortgagees holding first mortgages on residences at the time of such amendment. Developer shall not have the right at any time to grant or establish any easement through, across or over any Lot, which Developer has previously conveyed without the consent of the Owner of such Lot. This Declaration may be amended or changed at any time with approval in writing by a vote of at least Sixty Percent (60%) of all members entitled to vote as set out in Section 4.03. The amendments shall not become binding and effective until the date of recordation in the Office of the Recorder of Boone County, Indiana. Notwithstanding the right to amend these Declarations, Section 4.15 may not be amended without the express permission of the Zionsville Plan Commission after a Public Hearing in accordance with

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Maryln J. Smith, Boone County Recorder

**This instrument prepared by Michael J. Andreoli, DONALDSON, ANDREOLI & TRUITT
1393 West Oak Street, Zionsville, Indiana 46077 (317) 873-6266.**

29th E. Carol England
Colony Village
⑪

ARTICLES OF INCORPORATION

OF

MULBERRY PLACE PROPERTY OWNERS ASSOCIATION, INC.

The undersigned incorporator, desiring to form a corporation pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991, executes the following Articles of Incorporation:

ARTICLE I

Name

Section 1.01. Name. The name of this Corporation shall be **Mulberry Place Property Owners Association, Inc.**

Section 1.02. Type of Corporation. The Corporation is a mutual benefit corporation.

ARTICLE II

Purposes and Powers

Section 2.01. Primary Purposes. The purposes for which this Corporation is formed are to own, manage, maintain, reserve, repair and reconstruct the Community Area and provide architectural control of the Lots at Mulberry Place, a subdivision in Eagle Township, Boone County, Indiana, and to exercise all of the power and privileges and to perform all of the duties and obligations of the Corporation as set forth in the Declaration and all Supplementary Declarations.

Section 2.02. Additional Purposes. In addition, the Corporation is formed for the promotion of the health, safety and welfare of the residents of Mulberry Place and other non-profitable purposes that are authorized by the Act and permitted to be carried on by an organization exempt from Federal income taxation under the provisions of Section 528 of the Internal Revenue Code of 1986 (hereinafter referred to as the "Code") and the Regulations issued pursuant thereto, as amended.

Section 2.03. Specific Powers. Subject to any specific written limitations or restrictions imposed by the Act, by the Code, by other law, or by the Declaration or the Articles, and solely in furtherance of but not in addition to the purposes set forth in Section 2.01 and 2.02 of these Articles, the Corporation shall have the following specific powers:

(a) **To Manage, ect.** To manage, maintain, repair and replace the Property for the benefit and use of the members of the Corporation subject to such restraints or suspensions of use and voting rights of members as are provided herein, in the By-Laws and in the Declaration.

(b) **To Make Assessments.** To fix, levy and collect assessments and to enforce payment thereof by all lawful means.

(c) **To Promulgate Rules.** To promulgate such rules and regulations and perform such deeds as are deemed necessary to achieve the aforesaid purposes.

(d) **To Insure.** To secure from insurers licensed and approved in the State of Indiana, appropriate fire/property damage coverage, comprehensive general liability coverage and such other forms of insurance as may be deemed necessary or appropriate.

(e) **To Secure Services.** To secure professional managerial services by employing a professional manager, contracting with a professional management service or entity, or otherwise, which services may include administrative, managerial, bookkeeping, legal, architectural, engineering, maintenance, repair, construction and other services.

(f) **To Acquire and Dispose of Property.** To acquire by give, purchase or other means, to own, hold, enjoy, lease, operate, maintain, convey, sell transfer, mortgage or otherwise encumber or dedicate for public use, real or personal property in connection with the business of the Corporation subject to the provisions of the Declaration.

(g) **To Borrow.** To borrow money and, subject to the provisions of the Declaration, to give, as security therefore, a mortgage or other security interest in any or all real or personal property owned by the Corporation, or a pledge of monies to be received pursuant to the provisions of the Declaration or any Supplemental Declaration, and to assign and pledge its right to make Assessments and its rights to claim a lien thereof.

(h) **To Appoint a Fiscal Agent.** To appoint any person as its fiscal agent to collect all Assessments and charges levied by the Corporation and to enforce the Corporation's liens for unpaid Assessments and charges or any other lien held by the Corporation.

(i) **To Make Contracts.** To enter into, perform, cancel and rescind all kinds of contractual obligations, including the guarantee of the obligations and performance of others.

(j) **To Act With Others.** To perform any act which the Corporation acting alone has the power and capacity to perform by acting as a partner or

otherwise in association with any Person or Persons, whether legally constituted or informally organized.

(k) **To Pay.** To pay all operating expenses, including all licenses, taxes or governmental charges levied or imposed against the property.

(l) **To Merge.** To participate in mergers and consolidations with other nonprofit corporations organized for the same purpose or annex additional real estate as provided in the Declaration.

(m) **To Otherwise Act.** To have and to exercise any and all powers, rights and privileges which a corporation organized under the Act may now or hereafter have or exercise.

Section 2.04. Limitations Upon Powers.

(a) **Earnings.** No member of the Corporation shall have or receive any earnings from the Corporation, except a member who is an employee of the Corporation, in which even he may receive fair and reasonable compensation for his services as an employee, and a member may also receive payments of principal and interest at a rate not exceeding that from time to time permitted by the Act on funds loaned or advanced by him to the Corporation.

(b) **Loans to Directory.** The Corporation shall make no advancements for services to be performed in the future, nor any loan of money or property to any director or officer of the Corporation.

(c) **Dissolution.** In the event of dissolution of the Corporation, all assets remaining after payment of all debts of the Corporation, including advances and loans of members of the Corporation, and, if so authorized by the Board of Directors, distribution to members of the Corporation of such amounts as may be authorized by the Act, shall be dedicated by the Board of Directors to an appropriate public agency to be used for purposes similar to those for which this corporation was organized. In the event such dedication is refused acceptance, such assets shall be transferred by the Board of Directors to the State of Indiana or any instrumentality or subdivision thereof exclusively for public purposes, or to any nonprofit corporation whose purposes are substantially the same as those of the Corporation and which, at the time of transfer, is exempt from Federal taxation under Sections 501(c)(3), 501(c)(4) or 528 of the Code of the corresponding provisions of any future United States Internal Revenue Law. Any such assets not so dedicated or transferred by the Board of Directors shall be disposed of in accordance with the Act. No member, director or officer of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the assets of the Corporation on dissolution of the Corporation, except as otherwise provided in these Articles or in the Act.

(d) **Prohibited Activities.**

(i) No part of the net earnings of the Corporation shall inure to the benefit of any member, director or officer of the Corporation, or to any private individual;

(ii) No substantial part of the activities of the Corporation shall be devoted to attempting to influence legislation by propaganda or otherwise within the meaning of the prospective provisions of the Code;

(iii) The Corporation shall not directly or indirectly participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of, or in opposition to, any candidate for public office;

(iv) Notwithstanding any other provision of these Articles, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by any organization exempt from Federal taxation under Section 528 of the Code and Regulations issued pursuant thereto, as amended, or the corresponding provisions of any future United States internal revenue law, if the effect thereof is to subject the gross income of the Corporation to federal income taxation at rates established for corporations engaged in business for profit unless the purposes of the Corporation set forth in Section 2.01 of these Articles cannot otherwise be achieved.

ARTICLE III

Period of Existence

Section 3.01 Period of Existence. The period during which the corporation shall continue is perpetual.

ARTICLE IV

Registered Agent and Registered Office

Section 4.01 Registered Agent. The name and address of the Registered Agent in charge of the Corporation's principal office is Judith J. Barnes, 1060 Park Place, P O Box 489, Zionsville, Indiana 46077.

Section 4.02 Registered Office. The post office address of the registered office of the Corporation is 1060 Park Place, P O Box 489, Zionsville, Indiana 46077.

ARTICLE V

Membership

Section 5.01. Classes of Membership. The Corporation shall have two (2) classes of members of follows:

(a) Class A. Class A members shall be all Owners of Lots, with the exception of the Declarant prior to termination of Class B membership, and shall be entitled to one (1) vote for each lot owned 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 person holds title to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to vote at such meeting, unless such co-Owner or other persons have filed a general voting authority with the Secretary applicable to all votes until rescinded.

(b) Class B Class B members shall be the Declarant and all successors and assigns of the Declarant designated by the Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled, on all matters requiring a vote of the membership of the Association, to ten (10) votes for each Lot owned by them or it and then (10) votes for each single numbered parcel of land shown upon and identified as a Lot on any recorded plat of the Real Estate. The Class B membership shall cease and terminate upon the first to occur of (a) the date upon which the written resignation of the Class B members as such is delivered to the resident agent of the association; (b) one hundred twenty (120) days after ninety-five percent (95%) of the Lots in the Property have been conveyed to Owners other than Declarant; (c) six (6) years after the date of recording of the first conveyance of a Lot to an Owner other than Declarant; (the applicable date being herein referred to as the "Applicable Date").

Section 5.02 Termination of Membership

(a) Class A Members. Membership in the Corporation shall lapse and terminate when a Class A member ceases to be an Owner.

(b) Class B Member. Membership in the Corporation shall lapse and terminate when the Class B member resigns, when all of the Development Area has been developed into Lots and all such Lots have been sold, or on Developer's Termination, whichever first occurs.

Section 5.03. Suspension of Membership Rights. No Class A or Class B member may be expelled from membership in the Corporation for any reason. The

Board of Directors shall have the right to suspend the voting rights of a Class A member for a period during which any Assessment or charge owed by the Member remains unpaid in excess of thirty (30) days.

Section 5.04 Meetings of Members. All meetings of the Members shall be held at such place within the state of Indiana as may be designated by the Board of Directors pursuant to the provisions of the By-Laws.

Section 5.05 No Preferences, ect. There shall be no other preferences, limitations, or restrictions with respect to the relative rights of the Members.

Section 5.06 Board of Directors. Following the Applicable Date, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Until the Applicable Date, the Board shall consist of two (2) persons designated by Declarant, as long as it shall own one or more lots.

ARTICLE VI

Directors

Section 6.01. Number of Directors. The initial Board of Directors of the Corporation shall consist of three (3) members. The number of Directors of the Corporation shall be specified from time to time in the By-Laws, but the minimum number shall be three (3) and the maximum number shall be five (5) and, if the By-Laws fail to specify the number, then the number shall be three (3).

Section 6.02. Names and Post Office Addresses. The names and post office addresses of the initial members of the Board of Directors are as follows:

Judith J. Barnes
1060 Park Place
P O Box 489
Zionsville, Indiana 46077

Carol England
7523 Meadow Violet Court
Avon, Indiana 46123

James McKenzie
418 Burlington Lane
Carmel, Indiana 46032

ARTICLE VII

Incorporator

Section 7.01. Name and Address of Incorporator. The name and post office address of the incorporator is Judith J. Barnes, 1060 Park Place, P O Box 489, Zionsville, Indiana 46077.

ARTICLE VIII

Statement with Respect to Property

Section 8.01 Property of Corporation. The Corporation, upon its incorporation, has no property value.

ARTICLE IX

Provision for Regulation and Conduct of the Affairs of the Corporation

Section 9.01. Management of Corporation. The affairs of the Corporation shall be managed by the Board of Directors.

Section 9.02. Code of By-Laws. The Board of Directors of the Corporation shall have the power, without the assent of the Members, to make, alter, amend, or repeal the By-Laws.

Section 9.03. Officers. The officers of the Corporation shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as may be prescribed by the By-Laws or prescribed by resolution of the Board of Directors in the manner specified in the By-Laws. The offices of President and Secretary shall not be occupied by the same Person.

Section 9.04. Initial Board. The initial Board of Directors, named in Section 6.02 hereof, shall serve as the Board of Directors of the Corporation until the Applicable Date and, in the event of any vacancy or vacancies occurring in the Initial Board of any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by an individual appointed by Developer. Any such individual appointed by Developer shall thereafter be deemed a member of the Initial Board.

Section 9.05. Term of Office of Directors and Officers. Each officer and director shall hold his office for the term specified in the By-Laws, but no term shall end until a successor is elected and qualified for the office to be vacated.

Section 9.06. Removal of Member of the Board of Directors. After the Applicable Date, any member of the Board of Directors may be removed, with or without cause, at a meeting of the Members called for such purpose by the affirmative vote of

two-thirds (2/3) of all the votes allocated to Members. Prior to the Applicable Date, any Director may be removed by the Developer.

Section 9.07. Amendment of Articles of Incorporation. The Corporation reserved the right to amend, alter, change or repeal any provisions contained in the Articles or any amendment hereto, in any manner now or hereafter prescribed or permitted by the Act or any amendment thereto; but such power of amendment does not authorize any amendment that would permit any part of the net earnings of the Corporation to inure to the benefit of any private individual, that would modify the provisions of Section 2.04 if such modification would have the effect of disqualifying this Corporation as an organization exempt from Federal income taxation under the provisions of Section 528 of the Code, as amended, or such equivalent provision as may hereafter exist from time to time, or that would be in conflict with the provisions of the Declaration or any Supplemental Declaration.

ARTICLE X

Definitions

Section 10.01. Terms. The following terms, as used in these Articles, and in the By-Laws, unless the context clearly requires otherwise, shall mean the following:

- (a) "Act" means The Indiana General Nonprofit Corporation Act of 1991, as amended from time to time.
- (b) "Applicable Date" means the date the Class B membership terminates as specified in Section 5.04(b) of these Articles.
- (c) "Architectural Review Board" means that entity established pursuant to Paragraph 13 of the Declaration for the purposes therein stated.
- (d) "Articles" means the Articles of Incorporation of the Corporation, as amended from time to time.
- (e) "Assessment" means all sums lawfully assessed against the Members by the Corporation or as declared by the Declaration, any Supplementary Declaration, the Articles or the By-Laws.
- (f) "Board of Directors" means the governing body of the Corporation.
- (g) "By-Laws" means the Code of By-Laws of the Corporation, as amended from time to time.
- (h) "Community Area" means any areas of land: (1) shown on the Plat, (2) described in any recorded instrument prepared by Developer or its agents, or, (3) conveyed to or acquired by the Corporation, together

with all improvements thereto, which are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

- (j) "Corporation" means Mulberry Place Property Owners Association, Inc., an Indiana non-profit corporation.
- (j) "Declaration" means the Declaration of Covenants, Conditions and Restrictions of Mulberry Place, L.P., which was recorded in the Office of the Recorder of Boone County, Indiana, on 1-13-03, as Instrument Number # 0300936, as the same may be amended from time to time.
- (k) "Development Area" means the real estate described in Exhibit A to the Declaration.
- (l) "Developer" means Colony Village, LLC, its successors and assigns to its interest in the Development Area other than Owners purchasing Lots or Residences by deed from Developer (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Developer).
- (m) "Initial Board" means those individuals appointed by Developer as Directors pursuant to the power granted to Developer in Section 9.04 of these Articles.
- (n) "Lot" means a platted lot as shown on a Plat.
- (o) "Member" means a Class A or Class B member of the Corporation and "Members" means Class A or Class B members of the Corporation.
- (p) "Operating Expenses" means expenses of administration of the Corporation and expenses for the upkeep, maintenance, repair and replacement of the Community Area and other Property.
- (q) "Owner" means a Person, including Developer, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.
- (r) "Person" means an individual, firm, corporation, partnership, association, joint venture, trust or other legal entity, or any combination thereof.
- (s) "Plat" means a final secondary plat of a Part of the Development Area recorded in the Office of the Recorder of Hamilton County, Indiana.

- (t) "Property" mean the Community Area and appurtenant easements, improvements and other property of every kind and nature whatsoever, real, personal or mixed, located upon the Community Area or used or held for use in connection with the business or operation of the Corporation.
- (u) "Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.
- (v) "Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.
- (w) "Section" means that Part of the Development Area depicted on a Plat and identified thereon as a "Section."
- (x) "Supplemental Declaration" means any Plat or supplemental declaration of covenants, conditions or restrictions that may be recorded and which extends the provisions of the Declaration to a Section and contains such complementary or supplementary provisions fro such Section as are required or permitted by the Declaration.
- (y) "Tract" means the land described in Exhibit A to the Declaration and such other real estate as may from time to time be annexed thereto pursuant to the Declaration.
- (z) "Mulberry Place" means the name by which the Tract is known.

Section 10.02. Other Terms. Any undefined term used herein or in the By-Laws shall, unless the context required otherwise, have the meaning set forth in Paragraph 1 of the Declaration.

The undersigned, being the sole Incorporator designated in Article 7, does hereby adopt these Articles of Incorporation, representing by his execution hereof to the Secretary of State of the State of Indiana, and all persons whom it may concern that a membership list of the Corporation for which a Certificate of Incorporation is hereby applied for has heretofore been opened in accordance with the Act and that at least one (1) person has signed such membership list.

IN WITNESS WHEREOF, the undersigned executes these Articles of Incorporation and verifies, subject to penalties of perjury, that the facts contained herein are true this 10th day of December, 2002.

Judith J. Barnes
Judith J. Barnes

STATE OF INDIANA)
) SS:
COUNTY OF BOONE)

Before me, a Notary Public in and for said County and State, personally appeared Judith J. Barnes who after having been duly sworn acknowledged the execution of the foregoing Articles of Incorporation.

Witness my hand and notarial seal this 10th day of December, 2002.

Erskin England
Notary Public
County of Residence: *Hendricks*

My Commission Expires:

2-23-07



Prepared by:

Bruce E. Smith, ESQ.
500 South Meridian Street
Suite 700
Indianapolis, Indiana 46204
317/638-2400

F. Carol England
Colony Village
9

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Maryln J. Smith, Boone County Recorder

BY-LAWS

OF

MULBERRY PLACE PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I

NAME AND PRINCIPAL OFFICE

Section 1. The name of the corporation is MULBERRY PLACE Property Owners Association, Inc. (hereinafter referred to as the "Association").

Section 2. The principal office of the Association shall be located at 1060 Park Place, P O Box 489, Zionsville, Indiana 46077, until and unless changed in accordance with law by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of Mulberry Place which was recorded in the Office of the Recorder of Boone County, Indiana, and all subsequent amendments.

Section 2. "Association" shall mean and refer to this corporation, which is also referred to as the "Association" in the Declaration and the "Corporation" in the Articles of Incorporation of this the Association.

Section 4. "Applicable Date" shall mean and refer to the date the Class B membership terminates as specified in Section 5.01 (b) of the Articles of Incorporation of this Association.

Section 5. All of the terms as defined and used in the Declaration shall have the same meanings in these By-Laws and reference is specifically made to of the Declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership, Transfer, Voting Rights. Reference is hereby made to the Declaration which sets forth terms, provisions and conditions governing and relating to membership in the Association transfer of membership and voting rights of classes of members, all of which terms, provisions, and conditions are incorporated herein by reference.

Section 2. Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting of the members of the Association. Cumulative voting shall not be permitted.

Section 4. Majority Required. A majority of the votes of members present (in person or by proxy) at the meeting at which a quorum is present shall be sufficient for the transaction of all business of the Association except on matters where a greater vote is required by the Declaration, the Articles or Incorporation, the By-Laws or by statute.

Section 5. Meetings. Meetings of the members of the Association shall be in accordance with the following provisions:

- A. Place. Meeting of the members shall be held at such place in Boone County, Indiana, as may be designated by the Board of Directors of the Association.
- B. Annual Meetings. The first annual meeting of the members shall be held within six (6) months after the close of the first fiscal year of the Association, the exact date to be decided by the Board of Directors. At such first annual meeting of the members, the members may designate a regular day or date for successive annual meetings, which date shall be not more than six (6) months after the close of each fiscal year of the Association. If the members fail to designate such a regular day or date, the Board of Directors may continue to designate the day or date of the next annual meeting until such a designation is made by the members. If any designated day or date falls upon a legal holiday, the actual date of the meeting shall be the next business day succeeding such a designated day or date.
- C. Special Meetings. Special meetings of the members shall be called by the president of the Association, by resolution of the Board of Directors of the Association or upon a written petition signed by members of the Association who are entitled to vote sixty percent (60%) of all votes of the membership. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof.

No business shall be transacted at a special meeting except as stated in the notice.

- D. Notice of Meetings. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.
- E. Order of Business. The order of business at all meeting of the members shall, to the extent applicable, be as follows:
1. Roll call.
 2. Proof of notice of meeting or waiver of notice.
 3. Reading of minutes of preceding meeting.
 4. Reports of officers.
 5. Reports of committees.
 6. Election of directors.
 7. Unfinished business.
 8. New business.

ARTICLE IV

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. The initial Board of Directors, named in Section 6.02 of the Articles of Incorporation of this Association, shall serve as the Board of Directors of the Corporation until the Applicable Date and, 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 an individual appointed by Declarant. Any such individual appointed by Declarant shall thereafter be deemed a member of the Initial Board. After the Applicable Date, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of the members of the Association. The nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors at each annual meeting of the members and shall serve until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made only from among members of the Association, or persons deemed to be members eligible to serve as directors thereof or

otherwise eligible to serve on the Board of Directors in accordance with the Declaration and the Articles of Incorporation of the Association.

Section 2. Election. After the Applicable Date, election to the Board of Directors shall be by secret written ballot at the annual meeting of the members of the Association. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE V

BOARD OF DIRECTORS

Section 1. Number and Qualification. The affairs of the Association shall be governed by Board of Directors composed of three (3) persons.

Section 2. Additional Qualifications. Where an Owner consists of more than one person, or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or partner, officer or trustee, as the case may be, of the partnership, corporation, trust or other entity, Owner shall be eligible to serve on the Board of Directors of the Association, except that no Lot may be represented on the Board of Directors by more than one person at a time.

Section 3. Initial Board of Directors. The initial Board of Directors named in the Articles of Incorporation (the "Initial Board" shall maintain, manage and administer the affairs and the property of the Association until the Applicable Date as that term is defined in the Articles of Incorporation.

Section 4. Term of Office Generally. At such first annual meeting of the members of the Association, the members required by the Declaration, other provisions of these By-Laws, the Articles of Incorporation, or statute.

Section 5. Duties. The Board of Directors shall have the following duties:

A. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by members holding twenty-five percent (25%) of the total votes of the membership entitled to vote;

B. To supervise all officers, agents and employees of the Association;

C. To establish the annual assessment period and fix the amount of the annual assessment against each member for each Lot owned, all in accordance with the terms of the Declaration and these By-Laws;

Section 6. Vacancies. Any vacancy in the Board of Directors shall be filled by vote of the majority of remaining directors, even though they may constitute less than a quorum. Each person so elected shall be a director for the unexpired term of his

D. To fix the amount of any special assessment against each member for each Lot owned, all in accordance with the terms of the Declaration and these By-Laws;

E. To send written notice of each assessment to each Owner in accordance with the Declaration;

F. To foreclose the Association's lien for assessments against any property for which assessments are not paid within thirty (30) days after the due date thereof or to bring an action at law against the Owner or other person personally obligated to pay the same;

G. To issue, or to cause an appropriate officer to issue, upon demand by any person or entity, a certificate setting forth whether or not any assessment has been paid;

H. To procure and maintain the insurance coverages required by the Declaration and such other insurance coverages as the Board of Directors, in its sole discretion, deems necessary or advisable;

I. To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, and at least as required by the Declaration; and,

J. To perform the Association's responsibilities as provided in the Declaration.

Section 6. Vacancies. Any vacancy in the Board of Directors shall be filled by vote of the majority of remaining directors, even though they may constitute less than a quorum. Each person so elected shall be a director for the unexpired term of his predecessor, or until his successor is elected.

Section 7. Compensation. No director shall receive compensation for any service he may render to the Association as such director. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties, and any director may be paid and compensated for services to the Association in capacity other than as a director.

Section 8. Removal of Directors. After the Applicable Date, any director may be removed with or without cause by a majority vote of the members of the Association.

Section 9. Regular Meetings. Regular meetings of the Board of Directors shall be held at such regular intervals, without notice, at such place and hour as may be determined from time to time by resolution of the Board of Directors. Should said

meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each director, given personally, by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two-thirds (2/3) of the directors.

Section 11. Waiver of Notice. Before or at any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent of the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall be deemed a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Quorum. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which quorum is present shall be the acts of the Board of Directors except as otherwise provided in or required by the Declaration, Articles of Incorporation, these By-Laws or statute. If, at any meeting of the Board of Directors, there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE VI

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be members of the Board of Directors, and such other officers as the Board of Directors may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members of the Association.

Section 3. Term. The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year or until his successor is elected and qualified unless he shall sooner resign, be removed or otherwise disqualified to serve.

Section 4. Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or Secretary, such resignation shall take effect on the date of receipt of such notice or at any time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of the Article.

Section 8. Duties. The duties of the officers are as follows:

A. President. The President shall preside at all meetings of the Board of Directors. He shall see that orders and resolutions of the Board are carried out. He shall have the power to appoint committees from among the members of the Association from time to time as he may in his discretion deem appropriate to assist in conducting the affairs of the Association. The President shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of an Association or a stock corporation organized under the laws of the State of Indiana.

B. Vice-President. The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him by the Board of Directors or as are delegated to him by the President.

C. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and the members; keep the corporate seal of the Association (if any is adopted) and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the members; keep

appropriate current records showing the members of the Association, together with their addresses, and shall perform such other duties as required by the Board of Directors.

D. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account, and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE VII

COMMITTEES

The Board of Directors shall appoint the committees provided for in the Declaration and the Nominating Committee referred to in Article IV of these By-Laws. In addition, the Board of Directors or the President may appoint various other committees to carry out the purposes of the Association. Except as otherwise expressly provided in Article IV of these By-Laws with respect to the Nominating Committee, members of such committees may, but need not, be members of the Board of Directors.

ARTICLE VIII

BOOKS OF ACCOUNT AND FISCAL YEAR

Section 1. Books of Account. The Association shall keep detailed books of account showing all expenditures and receipt of administration which shall specify the maintenance and repair expenses of the Common Areas and the Lake Easement, Landscape Easement, Drainage Easement and Utility Easement Areas and any other expenses incurred by or on behalf of the Association and the members. Such accounts, books, records, financial statements, and other papers of the Association shall be open for inspection by the members and other persons having an interest in any Lot, including any Owner, any lender and any holder, insurer or guarantor of the first mortgage on any Lot, during reasonable business hours or under other reasonable circumstances and shall be audited annually by qualified auditors. The cost of such audits shall be a Common Expense. Any holder, insurer or guarantor of a first mortgage on a Lot shall be entitled upon written request to receive an audited financial statement for the immediately preceding fiscal year free of charge to the requesting party and within a reasonable time of such request. Current copies of the Declaration, the Articles of Incorporation, and the By-Laws of the Association, and other rules concerning the real estate, shall be available for inspection by any Owner and lender, and to holders, insurers or guarantors of any first mortgage at the principal office of the Association during normal business hours or under other reasonable circumstances, where copies of the same and of audits may be purchased at reasonable costs.

Section 2. Fiscal Year. The fiscal year of the Association shall commence January 1, and end the following December 31 each year; provided, however, that the fiscal year for purposes of assessments may be different than the general fiscal year of the Association.

ARTICLE IX

CONTRACTS, LOANS & CHECKS

Section 1. Authorization. The Board of Directors may authorize any officer or officers or agent or agents of the Association to enter into any contract or execute any instrument on its behalf. Such authorization may be general or confined to specific instances. Except as provided in these By-Laws, no officer, agent or employee shall have any power to bind the Association or to render it liable for any purpose or amount unless so authorized by the Board of Directors

Section 2. Checks. All checks, drafts, or other orders for payment of money by the Association shall be signed by the President, Secretary, Treasurer or such other person as the Board of Directors may from time to time designate by resolution.

ARTICLE X

AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members of the Association, by a vote of a majority of a quorum of members present in person or by proxy:

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.