

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
THE COMMONS AT CURRY

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS made this 13th day of August, 1993, by The Heartland Group, an Indiana general partnership.

R E C I T A L S

- (A) Declarant is the sole owner of the fee simple title to certain real estate in Monroe County, Indiana ("the Real Estate").
- (B) Declarant plans to improve the Real Estate by constructing twenty-four (24) Townhouses (to be defined hereafter) upon a portion the Real Estate in the initial development phase ("Phase I") and an additional twenty-three (23) Townhouses in the second development phase ("Phase II").
- (C) Phase I and Phase II may be developed in stages or sections.
- (D) Collectively, and individually, Phase I and Phase II are sometimes referred to as the Development, the Project, The Commons at Curry, and/or The Commons.
- (E) Declarant intends to sell individual Lots and Townhouses together with the right to use the Common Areas (to be defined hereafter).

NOW, THEREFORE, Declarant declares that The Commons at Curry, Phase I and any additional stages or phases subjected to the terms of this Declaration shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants and restrictions set forth in this Declaration expressly and exclusively for the use and benefit of the Real Estate and or each and every person or entity who now or in the future owns any Lot within the Project.

Section 1 Definitions. The following terms used in this Declaration shall have the following meanings:

1.1 Asscciation.

"Association" means The Commons at Curry Homeowners' Association, Inc., its successors and assigns, an Indiana not-for-profit corporation which is the incorporated association of Owners, more particularly described in Section 10.

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RECORDER MONROE CO., IN

1.2 Board of Directors.

"Board of Directors" means the governing body of the Association elected by the Owners in accordance with the By-Laws.

1.3 By-Laws.

"By-Laws" means the By-Laws of the Association, providing for the administration and management of the Association, a true copy of which is attached to this Declaration as Exhibit A and which is incorporated in this Declaration by reference.

1.4 Cluster.

"Cluster" means a grouping of two or more Townhouses which are attached by one or more party walls.

1.5 Common Area.

"Common Area" means the ground designated as such on any recorded Plat (to be defined hereafter) of The Commons and more specifically described in any Plat. The Common Area may also be referred to as "Common Open Space."

1.6 Common Expenses.

"Common Expenses" means the expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Area and easements and other costs and expenses incurred by the Association for the common benefit of all Owners; provided, however, that Common Expenses shall not include any costs of initial construction of any Townhouse.

1.7 Declarant.

"Declarant" means The Heartland Group, an Indiana general partnership, developer of the Project, and any successor or assignee of its interest in all or part of the Project or in this Declaration under an instrument or instruments which expressly state that the successor or assignee thereunder shall become the Declarant for purposes of this Declaration.

1.8 Delinquency Date.

"Delinquency Date" means the date which is ten (10) days after the due date of any regular or special assessment instituted by the Association.

1.9 Developer.

"Developer" means Declarant. Both words are used interchangeably in this Declaration and in the By-Laws.

1.10 Easements.

"Easement" or "Easements," some of which are shown on the recorded Plat, refer to permanent, nonexclusive rights to use designated areas for the uses designated, some of which are shown on the Plat. Use rights shall belong to Declarant, Owners, and guests and invitees of Declarant and Owners.

1.11 Lot.

"Lot" means any plot of ground designated as such upon the recorded Plat of The Commons or any part and thing upon which one (1) Townhouse is constructed, is to be constructed, or has existed. Whenever used in the Declaration, "Lot" will be deemed to include the Townhouse, if any, located thereon.

1.12 Mortgagee.

"Mortgagee" means the holder of any recorded first mortgage lien on any Lot.

1.13 Owner.

"Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, which owns the record fee simple title to a Lot (or who is purchasing such fee simple title by an installment contract, if the contract seller so directs); provided that persons or entities owning a single Lot as tenants in common, joint tenants, tenants by the entireties or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration.

1.14 Townhouse.

"Townhouse" means one of the single-family residential living units constructed upon a Lot.

1.15 Phase I Real Estate.

"Phase I Real Estate" means the real property described on Exhibit B, which has been subjected to this Declaration and all of the Property located upon the Phase I Real Estate.

1.16 Phase II Real Estate

"Phase II Real Estate" means the real property described on Exhibit C and all of the Property located upon the Phase II Real Estate, which may be added to The Commons and subjected to this Declaration by Declarant in the future.

1.17 Plat.

"Plat" means the Plat prepared by Tri Co Surveying & Mapping, said Plat of The Commons, Stage 1 of Phase I being on record in the office of the Recorder of Monroe County, Indiana, as Instrument Number 313757 in Plat Cabinet C, Envelope 78. Any additional phase or stage subsequently recorded and subjected to the terms of this Declaration, upon recording of the Plat in the Monroe County Recorder's office, will also be included in such definition.

1.18 Postal Easement.

There shall be a postal easement situated within the planting strip and utility easement as shown on the recorded Plat. Mailboxes for the Project may be located in these areas and may be used by the respective Lot Owners and the United States Postal Service for mail and postal services.

1.19 Project.

"Project" means The Commons, Phases I and II, separately or together.

1.20 Property.

"Property" means the Common Area, Lots, Townhouses, and all other improvements of every kind and nature whatsoever, now or hereafter located upon the Real Estate and used in connection with the operation, use and enjoyment of the Project.

Section 2. Declaration. Declarant hereby expressly declares that the Phase I Real Estate shall be held, conveyed and transferred in accordance with the provisions of the Declaration.

Section 3. Description of The Commons, Phase I. The Commons at Curry, Phase I, consists of twenty-four (24) Lots numbered 1 through 24, inclusive, together with the Common Area shown on the Plat. The sizes of the Lots are designated on the Plat. Phase I may be platted in stages. The first stage to be platted is The Commons at Curry, Stage 1 of Phase I. The legal description for each Lot in The Commons at Curry, Stage 1 of Phase I shall be as follows:

Lot _____ in The Commons at Curry, Stage 1 of Phase I, a subdivision in Monroe County, Indiana, as shown by the plat, which is recorded in Plat Cabinet C, Envelope 7B on August 13th, 1993, in the office of the Recorder of Monroe County, Indiana.

Section 4. Lots and Easements. The boundaries of each Lot in The Commons Phase I shall be as shown on the Plat; provided, however, in the event any vertical boundary line of any Townhouse does not coincide with the actual Lot line because of inexactness of construction, settling after construction or for any other reasons, whether from the initial construction or subsequent reconstruction, the boundary lines shall be deemed to be treated for purposes of occupancy, possession, maintenance, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each affected Lot in and to such base line outside the actual boundary line of the Lot. In addition, the rights of Owners to use their Lots shall be subject to the rights of others to use any easements, whether or not shown on the recorded Plat.

Section 5. Common Area. Common Area includes all the area designated as such on the recorded Plat of the Project, including but not limited to the interior roads, parking area, wooded area, "tot lot" area, and recreational area, but excluding all Lots. Declarant warrants and guarantees to the Association, for one year from the date Declarant executes the deed of conveyance to the Association transferring the Common Area, that all materials and workmanship are free from material defects and that all improvements in the Common Area have been constructed in substantial compliance with the requirements of applicable government ordinances. Upon receipt from any Owner of a written notice specifically identifying the defective condition, Declarant shall, within sixty (60) days thereof, inspect the Common Area and if such inspection discloses material defects in material or workmanship, Declarant will, without cost to the Association, remedy such defects within a reasonable time. Declarant shall not be responsible for any conditions, defects or damage which are the result of ordinary expansion and contraction or caused by acts of God. If no written claim is made as provided herein within one (1) year after the deed is executed by Declarant, all claims

against Declarant are expressly waived by the Association and all Owners with respect to the Common Area.

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

6.1 The right of the Association, upon approval by a written instrument signed by two-thirds of all Class A and B Owners and by two-thirds of all first Mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Association.

6.2 The right of the Association to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Section 11.

6.3 The Common Area for each section in the Project shall be conveyed to or owned by the Association at the time of conveyance of the first Lot in such section.

6.4 Ownership of each Lot shall entitle the Owner thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to the Lot as reasonably possible, together with the right of ingress and egress in and upon the parking area. The Association shall permanently assign two vehicle parking spaces for each Lot.

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

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

Each Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in any other Townhouse or in the Common Area and serving his Townhouse.

Section 9. Easement for Utilities and Public and Quasi-Public Vehicles. All public and quasi-public vehicles including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the Common Area in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repair and maintenance of such utilities, including but not limited to water, sewer, gas, telephone and electricity on the Project, provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines or other utilities, except as initially designed and approved by Declarant on the Plat or as thereafter may be approved by Declarant or by the Board of Directors. By virtue of this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain electrical and telephone wires, circuits and conduits. All utility pipes, conduits, wires or circuits will be installed underground. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement on such Property, to the extent such easement does not conflict with the terms of this section. The easements granted herein shall in no way affect any other recorded easement on the Property.

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

Section 10. Association. In order to provide for the maintenance and repair, replacement, administration, operation and ownership of the Common Area and of the easements shown on the Plat, and to perform such other functions as may be designated to it, there is hereby created a not-for-profit corporation which shall be known as The Commons at Curry Homeowners' Association, Inc. Each Owner shall automatically be a Member of the Association, but membership shall terminate when such person ceases to be an Owner, and will be transferred to the new Owner; provided, however, any person who holds the interest of any Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Association. The Association shall have two classes of Members:

10.1 **Class A.** Class A Members shall be all Owners except Declarant and shall be entitled to one vote for each Lot owned. All persons holding an interest in any Lot shall be Members provided, however, each Lot represented shall have only one vote as the Owners of such Lot may determine.

10.2 **Class B.** The Class B Member shall be Declarant and Declarant shall be entitled to ten (10) votes for each Lot owned. The Class B Membership shall cease and terminate upon the first to occur of: (1) the date upon which the written resignation of the Class B Member as such is delivered to the Resident

Agent of the Association; provided, however, if Declarant, at such time still owns Lots, such membership shall be converted to a Class A Membership; (2) the date Declarant no longer owns any Lots; or (3) December 31, 1997 (the applicable date of the above being herein referred to as the "Applicable Date").

The initial Board of Directors shall be designated in the Articles of Incorporation, and such Directors, notwithstanding any provision in this Declaration or the Articles or the By-Laws to the contrary, shall be Directors until the Applicable Date and in the event of any vacancy or vacancies occurring in the Initial Board for any reason prior to the Applicable Date every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Thereafter, the Association shall elect a Board of Directors annually in accordance with and as prescribed by the By-Laws. The Members shall be entitled to vote for the election of the Board of Directors in accordance with the procedure outlined in the By-Laws. The Board of Directors shall be the governing body of the Association representing all of the Members and being responsible for the functions and duties of the Association including but not limited to the management, maintenance, repair, replacement and upkeep of the Common Area. The Common Area shall be owned, operated and managed by the Association.

Section 11. Right of Board of Directors to Adopt Rules and Regulations. The Board of Directors may promulgate such additional rules and regulations regarding the operation of the Development, including but not limited to the use of the Common Area, as it may deem necessary from time to time. Such rules as are adopted may be amended by vote of a majority of the Board, and the Board shall cause copies of such rules to be delivered and mailed promptly to all Owners.

Section 12. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot, but are assessed and taxed on the Real Estate as a whole, without a breakdown for each Lot, each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Real Estate assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Real Estate assessed as a whole, and shall pay his proportionate share of the real estate taxes assessed as a whole based upon the ratio that the square footage of his improved Lot bears to the total square footage of all improved Lots. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Association and treated as a Common Expense.

Section 13. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities not separately metered shall be treated as paid as part of the Common Expense, unless otherwise determined by the Association. Provided

however, the cost of operating and maintaining water service to each Lot shall be a part of the Common Expense.

Section 14. Maintenance, Repairs and Replacements. Each Owner shall at his expense be responsible for the maintenance, repairs, decoration and replacement within his own Townhouse except as may otherwise be provided in this Declaration. All fixtures and equipment installed within the Townhouse commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Townhouse shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair in his Townhouse, which if neglected, might adversely affect any Townhouse, Common Area or the value of the Property. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, doors, windows, lamps, and all other accessories belonging to the Owner and appurtenant to the Townhouse. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Association, as a part of the Common Expenses.

In addition to the maintenance of the interior of an Owner's Townhouse, such Owner shall provide exterior maintenance upon each Lot and Townhouse for the following: paint, repair, replacement and care of all exterior doors, roofs, gutters, downspouts, exterior building surfaces, the sewer line (lateral) between the Townhouse and the sewer main, and other exterior improvements including, any glass surfaces, screens, window fixtures, other hardware, and any patio. Each Owner shall also maintain any trees, shrubs, grass or walks which the Declarant originally planted or installed upon any Lot. These trees which overhang the Lot of another Owner shall be maintained exclusively by the Owner of the Lot upon which the tree trunk exists; provided however, such Owner shall maintain such tree to a reasonable standard of care or another Lot Owner adversely affected thereby may request that the Association perform such maintenance and charge the cost thereof to the offending Lot Owner in accordance with the terms of this Declaration. Any trees, shrubs or landscaping originally planted or installed by any Owner upon the Owner's Lot shall be maintained by the Owner. Each Lot Owner shall maintain the surface of such portion of the easements as lie within the boundaries of such Owner's Lot for cosmetic purposes (such as mowing, trimming, etc.) and for repairs caused by or for the benefit of such Lot Owner. Each Lot Owner shall also reimburse the Association for maintenance of and repairs to the Common Area and easements outside the boundaries of such Owners' Lot to the extent such maintenance and repairs are the result of the negligence of such Lot Owner.

In the event the need for maintenance and repair results from the willful or negligent act of the Owner, his family, guests or invitees, and is not covered or paid for by insurance on such Lot, or in the event the Owner of a Lot fails to maintain the Lot and/or Townhouse in a manner satisfactory to the Board of Directors of the Association, the cost of such maintenance or repair shall be borne by the Owner, and shall be added

to and become a part of the assessment to which his Lot is subject and be subject to the same method of collection as any Regular Assessment (to be defined hereafter).

The Owner of each Lot shall have an easement across reasonable portions of the other Lot or Lots within the Cluster of which his Lot is a part for the purpose of maintenance of his Lot and his Townhouse. This easement shall include the right of ingress to and egress from the Owner's Lot, and it shall extend to agents and others designated by a Lot Owner to perform maintenance and repairs for the benefit of such Owner's Lot.

During the original construction at the Project (including during the original construction of all Townhouses), the Board of Directors, or its designated agents, shall have the right at reasonable times, and upon reasonable prior notice (except in cases of emergency in which case no notice will be required) to enter into each individual Townhouse for purposes of inspection of the Common Area appurtenant thereto, and replacement, repair and maintenance of the same.

Section 15. Party Walls.

15.1 General Rule of Law to Apply. Each wall which is built as a part of the original construction of the townhouses upon the Property and place on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

15.2 Sharing of Repairs and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by each Owner who makes use of the wall in proportion to such use.

15.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, each adjoining Owner may restore it, and they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

15.4 Weatherproofing. Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

15.5 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

15.6 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

Section 16. Alterations, Additions and Improvements. Without the prior written approval of the Board of Directors, no Owner may make any alterations, additions, improvements, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Lot or Townhouse located thereon from its natural or improved state existing on the date such Lot was first conveyed by Declarant to the Owner except as otherwise expressly provided in this Declaration.

Section 17. Assessments. Regular and Special Assessments shall be determined and collected as follows:

17.1 Annual Accounting. Annually after the close of each calendar year of the Association and prior to the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnished each Owner a financial statement, which statement shall show all receipts and expenses received, incurred or paid during the preceding calendar year.

17.2 Proposed Annual Budget. Annually on or before the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year and furnish a copy of such proposed budget to each Owner prior to the annual meeting. The proposed annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption, and if so adopted shall be the basis for the Regular Assessments for the ensuing calendar year. At the annual meeting of the Owners, the proposed budget may be approved in whole or in part, or may be amended in whole or in part by a majority of the Owners present or represented at the meeting (provided a quorum is present); provided, however, in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owner shall not constitute a waiver or release of the Owner to pay the Common Expenses.

17.3 Regular Assessments. The annual budget as adopted shall, based on the estimated cash requirement of the Common Expenses in the ensuing year as

set forth in said budget, contain a proposed assessment against each Lot based on the total amount of said budget divided by the total number of Lots (herein called the "Regular Assessment"). The Regular Assessment against each Lot shall be paid in four (4) quarterly installments on the first day of each calendar quarter beginning in January following adoption of the budget. Payment of the quarterly installments of the Regular Assessment shall be made to the Board of Directors as directed by the Board of Directors; provided, however, that any Owner may elect to pay Regular Assessments in advance. The Regular Assessment for each year shall become a lien on each separate Lot as of the date of the adoption of the annual budget.

17.4 Special Assessments. In addition to the Regular Assessments authorized above, the Association may levy such Special Assessments as may be necessary for the purpose of defraying, in whole or in part: (1) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto; and, (2) the expense of any other contingencies or events not provided for in the annual budget or the reserves and working capital of the Association; provided that no Special Assessments shall be levied without the assent of a majority of the Owners at a meeting duly called for this purpose. Each Owner shall pay the Association a Special Assessment based on the total sum approved to meet the costs and expenses as heretofore provided divided by the total number of Lots in the Project. The Association may, in connection with the levy of any Special Assessment, specify that the same shall be payable in installments and specify the due dates thereof.

17.5 Adjustments. In the event that the approved budget and Regular Assessment plus the reserves and working capital of the Association provide insufficient funds to meet the Association's actual expenses in any year, such deficiencies may be corrected through one or more Special Assessments. In the event the approved and Regular Assessments exceed actual expenses in any year, such surplus shall be retained and used to offset expenses in the next year(s) or returned to the Owners proportionately as the Board of Directors shall elect.

17.6 Temporary Budget and Assessments. If for any reason an annual budget and the Regular Assessments for any year have not been determined as of January 1 of any such year, the budget and Regular Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and Regular Assessments are determined in accordance with the Declaration and by By-Laws; provided, however, that said preceding budget and Regular Assessments may be increased by up to fifteen percent (15%) as the Board of Directors, by majority vote, may deem necessary in said temporary budget and Regular Assessments.

17.7 Reserve and Working Capital Funds. The Association shall be obligated to establish a reserve fund for the repair of the Common Area based upon good faith estimates of the useful life and replacement cost of such Common Area made or obtained by the Association. The reserve fund shall be funded through the payments by the Owners of Common Expenses and not by an extraordinary or Special Assessment. Extraordinary expenditures not originally included in the annual estimate that become necessary during the year shall be charged first against the reserve fund so established before any Special Assessment is made or levied. In addition to the reserve fund, a working capital fund shall be established and maintained by the Association. At the closing of the initial sale of each Lot from Declarant to an Owner, the purchaser of such Lot shall deposit with the Association an amount equal to the quarterly Regular Assessment pro-rated to the day of closing (based on a 365 day year) plus the sum of Fifty Dollars (\$50.00). No assessment on any Lot in the Phase I Real Estate shall be due until the earlier of the date: (1) such Lot has been conveyed by Declarant; or (2) the Townhouse thereon is occupied by someone other than a representative of Declarant. Amounts paid or deposited into the working capital fund shall not relieve an Owner from responsibility for the Regular Assessments due in accordance with this Section 17. All amounts held by the Association pursuant to this Section 17.7 shall be maintained in a federally-insured, interest-bearing account and all interest thereon shall be added to and deemed a part of such fund.

17.8 Status of Funds Collected by Association. All funds collected pursuant to this Section 16 shall be held and expended by the Association solely for the purposes designated herein, and, except for such adjustments as may be required to reflect delinquent or prepaid Regular or Special Assessments, shall be deemed to be held for the use, benefit and account of the Owners for the payment of Common Expenses.

17.9 Accounting Practices of the Association. The annual budget, the Regular Assessment and all sums assessed by the Association shall be established by using generally accepted accounting principles. The annual budget and the Regular Assessment shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area to the extent such capital expenditures and replacement and repair is the obligation of the Association, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Area. Such replacement reserve fund for capital expenditures and repair of the Common Area shall be maintained by the Association in a separate, federally insured interest-bearing account or accounts selected from time to time by the Board of Directors.

17.10 Collection of Assessments. Each Assessment shall be due and payable on the due date thereof as specified in this Declaration or in the By-Laws, or if not so specified, then on any due date(s) determined by the Board of Directors. Any Regular or Special Assessment which is not paid in full by the Delinquency Date shall be deemed delinquent without further notice or demand to the defaulting Owner, and shall bear interest on the unpaid balance thereof from the Delinquency Date until fully paid, at a rate of interest equal to eighteen percent (18%) per annum. In the event that any costs or expenses, including attorney's fees, are incurred by or on behalf of the Association with respect to the recovery or collection of any delinquent Assessment, all such costs and fees shall be due and payable immediately by such delinquent Owner and shall bear interest from the date incurred until paid in full, at a rate of interest equal to eighteen percent (18%) per annum. All interest and all costs and expenses payable hereunder with respect to a delinquent Assessment shall be added to and deemed a part of such delinquent Assessment and shall constitute a lien on the delinquent Owner's Lot as of the date on which such delinquent Assessment first became a lien. In the event that any Assessment is not fully paid on or before the Delinquency Date, the Association shall be entitled to accelerate and declare due and payable in full all installments of Assessments due for the calendar year in which such delinquency occurs, and to enforce payment of the same by foreclosure of said lien and/or other appropriate legal proceedings in accordance with the laws of the State of Indiana. The Owner and any occupant of the Townhouse shall be jointly and severally liable for the payment to the Association of reasonable rental for such Townhouse, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Townhouse and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board of Directors may at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same.

17.11 Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles of Incorporation of the Association or the By-Laws, the lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, and any sale or transfer of a Lot or Townhouses to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior Owner from personal liability therefor.

Section 18. Insurance. Each Townhouse in the Project will be insured with the same insurance company chosen by the Board of Directors of the Homeowners' Association, if the Board of Directors so directs. The limit of insurance for each Townhouse will be equal to the full replacement cost thereof and each Owner will be responsible for the premium for his individual Townhouse. Such insurance coverage shall be for the benefit of each Owner, the Association and the Owner's Mortgagee (if applicable). In the event of damage or destruction to any Townhouse, the Owner, Mortgagee (if applicable) and Association shall use such insurance proceeds to repair or restore the damaged property. If for any reason an Owner does not pay the premium allocated to such Townhouse, the Association will add such cost to the Owner's Assessment, which will become immediately due and payable.

The Association, acting through its Board of Directors, shall obtain fire and extended coverage insurance insuring all improvements in the Common Area, in an amount equal to full replacement cost thereof. The Association shall also obtain comprehensive public liability in such limits as the Board of Directors shall deem appropriate together with workers' compensation and other liability insurance if deemed necessary and appropriate by the Board of Directors. Such insurance shall also cover any liability claims of any Member of the Association. The premium for the insurance obtained by the Association shall be paid by the Association as part of the Common Expenses.

Each Owner shall have the right to purchase at his own expense any additional insurance he may deem necessary, and each Owner shall be solely responsible for homeowner's liability insurance and for the insurance on the contents of his Townhouse and his personal property stored elsewhere on the Property. All insurance obtained, whether obtained by the Association or the Owners, including but not limited to insurance on the individual Townhouse, insurance on improvements in the Common Area and liability insurance, shall provide that the insurance company providing such insurance waives its right of subrogation, if any, against the Owners, the Association and their agents.

Section 19. Casualty and Restoration. In the event of damage or destruction of any Townhouse by fire or other casualty, the Owner thereof shall cause such Townhouse to be promptly repaired and restored. The proceeds of insurance carried for the benefit of the Owner and Mortgagee for such purpose shall be applied to the cost of such restoration. In the event insurance proceeds are inadequate to cover the costs of reconstruction or in the event there are no proceeds, each Owner of a Townhouse directly affected by the damage shall pay the cost for restoring such Townhouse. A Townhouse shall be deemed directly affected if and only if a part of such Townhouse, including but not limited to, any party wall of such Townhouse, is damaged or destroyed. If any Owner fails or refuses to reconstruct his Townhouse when required, the Association may pursue whatever legal means are available to cause such restoration, including but not limited to the Association completing the restoration and paying the

cost thereof, with the cost attributable to the Owner or Owners who refuse or fail to make the restoration when required becoming a lien on such defaulting Owner's Lot and subject to foreclosure in the same manner as provided for a lien for Common Expenses.

The restoration referred to in this Section 19 shall include the costs of construction incurred rebuilding the Townhouses in the same condition as they existed immediately prior to the destruction or damage and with the same type of architecture. Notwithstanding any other provisions in this Declaration, all Townhouses which are destroyed or damaged shall be restored pursuant to the provisions of this Section 18 of this Declaration, unless a majority vote of the Members of the Association decide that such restoration is not necessary, and all improvements in the Common Area which are damaged or destroyed shall be restored by the Association unless two-thirds of the Class A and B Members of the Association and two-thirds of all first Mortgagees decide not to make such restoration or to make such restoration in a different manner.

In the event the Association has insurance proceeds which are to be used for the benefit of Owners, no distribution of such insurance proceeds shall be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event, any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Area.

In the event of damage to or destruction of any of the Common Area due to fire or other casualty or disaster and in the insurance proceeds, if any, received by the Association as a result of such fire or other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged and destroyed (or the cost thereof in excess of insurance proceeds received, if any) shall be paid by the Association through a Special Assessment of the Owners with each Owner being assessed an equal amount. Such Special Assessment shall constitute a lien from the time the Assessment is made.

Section 20. Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Lots, Townhouses, Common Area and Property are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, by the Association, its successors or assigns. Present or future Owners of Lots and Members of the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation:

20.1 All Townhouses and Lots shall be used exclusively for residential purposes and the occupancy as a private dwelling for Owner, Owner's family, tenants and social guests and for no other purpose. At no time shall there be more than three (3) unrelated adults in occupancy of any Townhouse.

20.2 Except for the initial construction of Townhouses, no additional buildings shall be erected or located on the Phase I Real Estate other than on the Lots or as otherwise shown on the Plat except as originally constructed by Declarant or as approved in writing by the Board of Directors.

20.3 Nothing shall be done or kept in any Townhouse or in the Common Area which will cause an increase in the rate of insurance on any other Townhouse or the contents thereof. No Owner shall permit anything to be done or kept in his Townhouse or in the Common Area which will result in the cancellation of insurance on any other Townhouse or contents thereof, or which would be in violation of any law or ordinance.

20.4 No Owner shall cause or permit anything to be hung or displayed on the outside of the windows, or placed on the outside walls of his Townhouse and no sign, awning, canopy, shutter or radio or television antennae, or other attachment or things shall be affixed to or placed upon the exterior walls or roofs, or on any parts of any Townhouse without prior written consent of the Board of Directors.

20.5 No advertising signs (except one "for sale" or one "for rent" sign per Lot of not more than five square feet), unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot, or Common Area, nor shall any Lot or Common Area be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any other Townhouse or any resident thereof, including, without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loudspeakers, electrical equipment, amplifiers or other equipment or machines. Provided however, no advertising signs of any type may be placed on any Lot until completion of the Project, without the express, written consent of Developer. Notwithstanding any provision in this Section or elsewhere in this Declaration or the By-Laws, Declarant may maintain on the Property during the period of construction of sale of the Townhouses on the Real Estate such facilities as Declarant in its sole discretion deems necessary for the construction and sale of the Lots and Townhouses including but not limited to a business office, storage area, construction yards, signs, model units, construction office, sales office, management offices, and business offices. At no time shall facilities so used and maintained by Declarant be or become part of the Common Area unless so designated by Declarant and Declarant shall have the right to remove the same from the Property at any time.

20.6 No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed from any Townhouse or any Lot where they are visible to other Owners or the public, nor shall any such items be hung out or exposed on any part of the Common Area. All Lots and the Common Area shall be kept free and clear of rubbish, debris, and other unsightly materials, except in those areas designated for the temporary storage thereof.

20.7 Declarant, his agents or assigns during the construction and sale period, and the Association, its successors and assigns, acting in furtherance of its powers and purposes, may engage in trade or commercial activities on the Property.

20.8 All Owners and members of their families, guests or invitees, and all occupants of any Townhouse or any other persons entitled to use the same and to use and enjoy the Common Area or any part thereof shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board of Directors governing the operation, use and enjoyment of the Common Area.

20.9 No boats, campers, trailer of any kind, buses, mobile homes, trucks (except pick-up trucks) or any other unconventional vehicles or motorized conveyances of any description shall be permitted, parked, or stored anywhere within the Property except as expressly designated by the Board of Directors in each instance.

20.10 No Owner shall be allowed to plant trees, landscape or do any gardening in the Common Area except with express written permission from the Board of Directors.

20.11 No animals of any kind shall be raised, bred, or kept in any Townhouse, on any Lot, or on any portion of the Common Area except that small pet dogs, cats, or customary household pets may be kept in a Townhouse, provided that such pet is not kept, bred, or maintained for a commercial purpose, and does not create a nuisance. Pets shall be permitted outdoors only under leash and accompanied by an Owner or other person, and an Owner shall be fully liable for any injury or damage to any person caused by his pet, and shall be responsible for removing from such areas his pet's waste materials. The Board of Directors may adopt such other rules and regulations regarding pets as it may deem appropriate and in the event that in the judgement of the Board of Directors any pet is causing or creating a nuisance or unreasonable disturbance or noise, such pet shall permanently be removed from the Property upon written notice of such determination by a majority of the Board of Directors.

20.12 All Lots, Townhouses and Property are subject to the covenants, restrictions and easements of The Commons Declaration.

Section 21. Notice to Association. Any Owner who places a first mortgage lien upon his Lot or the Mortgagee shall notify the secretary of the Association thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws, or otherwise, shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of the Mortgagee are furnished to the secretary either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage and otherwise.

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

Section 22. Annexation of Phase II Real Estate. In addition to the Phase I Real Estate, Declarant is the fee simple owner of the Phase II Real Estate located contiguous to the Real Estate.

At any time, Declarant without the consent of the Owners may, but is not obligated to, develop the Phase II Real Estate or any part thereof, in substantially the same manner as The Commons, Phase I and file one or more supplemental declarations and Plats for such Phase II Real Estate or part thereof as it desires and convey its Common Area to the Association.

In the event the Phase II Real Estate or any part of it is platted in a manner similar to The Commons, Phase I, the Owners of such Lots in the Phase II Real Estate or parts thereof, shall have the same rights and obligations as the Owners herein, and the Association shall have the same jurisdiction and authority over such Phase II Real Estate or parts thereof as its authority and jurisdiction herein.

In the event Declarant decides not to develop or plat the Phase II Real Estate or any part of it in a manner similar to The Commons, Phase I, Declarant shall file a Declaration stating that the Phase II Real Estate or any part thereof shall not be developed as contemplated herein.

Regardless of the method of development of the Phase II Real Estate, and whether or not all or any part of the Phase II Real Estate comes within the jurisdiction of the Association, Declarant reserves unto itself, its successors and assigns, for the use and benefit of that part of the Phase II Real Estate not coming within the jurisdiction of the Association the right and easement to enter upon the streets and Common Areas of The Commons, Phase I to provide ingress to and egress from the Phase II Real Estate.

Declarant hereby grants to the Owners in The Commons, Phase I the right and easement to enter upon any improved streets and roadways that may exist in the Phase II Real Estate to provide ingress to and egress from The Commons, Phase I as may be necessary.

It is the purpose and intent of the easements herein granted and reserved, to provide free and unrestricted use and access across the roadways and streets of the Phase I Real Estate and Phase II Real Estate for the Owners of the Lots, Phase I Real Estate, and Phase II Real Estate, their guests, invitees, and all public and quasi public vehicles, including but not limited to, police, fire and emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles.

The assessment which the Owner of each Lot in the Phase II Real Estate or part thereof, if within the jurisdiction of the Association, shall be obligated to pay shall be equal to that paid by any Owner herein and shall commence on the date of conveyance of such Lot by Declarant. No assessment on any Lot in the Phase II Real Estate shall be due until the earlier of the date: (1) such Lot has been conveyed by Declarant; or (2) the Townhouse thereon is occupied by someone other than a representative of Declarant.

Section 23. Amendment of Declaration. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

23.1 Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

23.2 Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by a majority of the votes cast by the Owners.

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

23.4 Adoption. Any proposed amendment to this Declaration must be approved by not less than seventy-five percent (75%) of the Class A and Class B

votes cast. In the event any Lot is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed Amendment in the same manner as an Owner, if the Mortgagee has given prior notice its mortgage interest to the Board of Directors in accordance with the provisions of the Declaration.

23.5 Special Amendment. No amendment to this Declaration shall be adopted which changes: (1) the applicable share of an Owner's liability for the Common Expenses or the method of determining the same; or (2) the provisions of Section 18 of this Declaration with respect to casualty insurance to be maintained by the Association; or (3) provision of Section 19 of this Declaration with respect to reconstruction or repair in the event of fire or casualty, or (4) changes any of the provisions of Section 17 of this Declaration with respect to the assessments on any Lot, without in each and any of such circumstances, the unanimous approval of all Owners, all Mortgagees and Declarant.

23.6 Recording. Each amendment to the Declaration shall be executed by the Declarant (so long as applicable) or by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Monroe County, Indiana, and such amendment shall not become effective until so recorded.

23.7 Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in the Articles or in the By-Laws, Declarant shall have the right acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other person, to amend or supplement this Declaration from time to time:

23.7.1 If such amendment is necessary to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Department of Veterans Affairs or any other governmental agency or any other public, or quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entity; or

23.7.2 To induce any of such agencies or entitles to make, purchase, sell, insure, or guarantee first mortgages covering Lots and Townhouses; or

23.7.3 To bring this Declaration into compliance with any statutory requirements; or

23.7.4 To correct clerical or typographical errors in this Declaration any exhibit hereto or any supplement or amendment thereto.

Section 24. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations, as each may be amended from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Lot or the Property as through such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trust, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Property in any manner shall be subject to this Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended from time to time.

Section 25. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of the insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or its appurtenances or of the Common Area.

Section 26. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot.

Section 27. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

Section 28. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to an include all genders. The singular shall include and refer to the plural and vice versa as appropriate.

Section 29. Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

Code of By-Laws
Of
The Commons At Curry Homeowners' Association, Inc.

ARTICLE 1

Identification and Applicability

Section 1.1. Identification and Adoption. These By-Laws are adopted simultaneously with the execution of a certain Declaration to which these By-Laws are attached and made a part. The Declaration is incorporated in these By-Laws by reference, and all of the covenants, rights, restrictions and liabilities contained in the Declaration shall apply to and govern the interpretation of these By-Laws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these By-Laws and reference is specifically made to Section 1 of the Declaration containing definitions of terms. The provisions of these By-Laws shall apply to The Commons At Curry and the administration and conduct of the affairs of the Association.

Section 1.2. Individual Application. All of the Owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy any Lot or any part of the Real Estate which has been or is to be platted as referred to in the Declaration, shall be subject to the rules, restrictions, terms and conditions set forth in the Declaration and these By-Laws.

ARTICLE 2

Meetings of Association

Section 2.1. Purpose of Meetings. At least annually, and at such other times as may be necessary, the meeting of the Owners shall be held for the purpose of electing the Board of Directors, approving the annual budget, providing for the payment of Common Expenses and collection of regular assessments, and for such other purposes as may be required by the Declaration and these By-Laws.

Section 2.2. Annual Meeting. The annual meeting of the members of the Association shall be held on the first Tuesday of April in each calendar year. At the annual meeting the Owners shall elect the Board of Directors of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 2.3. Special Meetings. A special meeting of the members of the Association may be called by resolution of the Board of Directors or upon a written petition of the Owners who have not less than twenty-five percent (25%) of the Class A and Class B (if

any) membership votes. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.4. Notice and Place of Meetings. All meetings of the members of the Association shall be held at any suitable place in Monroe County, Indiana, as may be designated by the Board of Directors. Written notice stating the date, time and place of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each Owner and, if applicable, to any Mortgagee no less than fourteen (14) days prior to the date of such meeting. The notice shall be mailed or delivered to the Owners at their address as it appears upon the records of the Association and to the Mortgagee at the address as it appears on the records of the Association. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 2.5. Substitute Annual Meeting. If the annual meeting shall not be held on the day designated by the By-Laws, a substitute annual meeting may be called in accordance with the provisions of Section 2.4 of this Article. Such a meeting shall be designated and treated for all purposes as the annual meeting.

Section 2.6. Voting.

For the purposes of voting and conducting meetings, the Declarant shall be considered included within the term "Owner" for the purposes of these By-Laws. Voting rights shall be determined in accordance with the Declaration as follows:

Class A - Class A members shall be all Owners except Declarant and shall be entitled to one vote for each Lot owned. All persons holding an interest in any Lot shall be members provided, however, each Lot represented shall have only one vote as the Owners of such Lot may determine.

Class B - The Class B member shall be Declarant and Declarant shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and terminate upon the Applicable Date.

2.6.1. Multiple Owner. Where the Owner of a Lot constitutes more than one person, or is a partnership, there shall be only one voting representative entitled to the vote allocable to that Lot. At the time of acquisition of title to a Lot by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Association a proxy appointing one of such person or partner as the voting representative for such Lot, which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies, such appointment is rescinded by an order of a court of competent jurisdiction, or the Lot which forms the basis of the vote is conveyed. Such appointed voting representative may grant a proxy to another to vote in his

place at a particular meeting or meetings pursuant to paragraph 2.6.3 of this Section 2.6, which shall not constitute a permanent relinquishment of his right to act as voting representative for the Lot.

2.6.2. Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust and the agent or other representative of the corporation duly empowered by the Board of Directors of such corporation shall cast the vote to which the corporation is entitled.

2.6.3. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot; or, upon receipt of notice by the Secretary, or the Board of Directors of the death or judicially declared incompetence of a member; or, upon the expiration of eleven (11) months from the date of the proxy, whichever occurs first. Provided, however, the proxy of a "Multiple Owner" (see paragraph 2.6.1 above) shall not expire by the passage of time unless the proxy specifically states that it shall expire upon a certain date. A form of proxy or written ballot may provide an opportunity to specify approval or disapproval with respect to any proposal.

2.6.4. Quorum. Except as otherwise expressly provided in the Declaration or these By-Laws, the Owners representing fifty percent (50%) of the total votes of all Owners shall constitute a quorum at all meetings. The term majority of Owners or majority of vote, as used in these By-Laws, shall mean more than fifty percent (50%) of the total votes of all Owners in accordance with the Declaration as such may be amended from time to time.

2.6.5. Conduct of Meeting. The Chairman of the meeting shall be the President of the Association. He shall call the meeting to order at the duly designated time and business will be conducted in the following order:

Reading of the Minutes. The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequently.

Treasurer's Report. The Treasurer shall report to the members concerning the financial condition of the Association and answer relevant questions of the members concerning the Common Expenses and financial report for the prior year and the proposed budget for the current year.

Budget. The proposed budget for the current calendar year shall be presented to the members for approval or amendment.

Election of the Board of Directors. Nominations for the Board of Directors may be made by any member from those persons eligible to serve.

Such nominations must be in writing and presented to the Secretary of the Association at least ten (10) days prior to the date of the annual meeting. Voting for the Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each member may cast the total number of votes to which he is entitled for as many nominees as are to be elected; however, he shall not be entitled to cumulate his votes. Those persons receiving the highest number of votes shall be elected. All voting for election of the members of the Board of Directors shall be conducted by secret ballot.

Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Association at least ten (10) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of the vote.

Adjournment. No business shall be conducted after adjournment. Adjournment shall occur after a motion, second, and vote.

ARTICLE 3

Board of Directors

Section 3.1. Board of Directors.

3.1.1. The business and property of the Association shall be managed and directed by the Board of Directors composed of three (3) persons, or by such Committees as the Board may establish pursuant to the By-Laws.

3.1.2. The initial Board of three (3) Directors shall be selected by the Declarant from the date upon which this Declaration is recorded in the Monroe County, Indiana, public records until the Applicable Date and the qualification of successor directors elected at a meeting of voting members.

3.1.3. This paragraph governs directors elected after the term of initial Board of Directors has expired pursuant to 3.1.2. Directors shall be elected at the annual meeting of the Association and those persons who receive the highest number of votes shall be deemed to have been elected. The size of the Board of Directors may be increased or decreased from time to time upon the affirmative vote of seventy-five percent (75%) of all Owners provided that the Board of Directors shall not be less than three (3) in number nor more than five (5). After the Applicable Date, each Director shall be one of the Owners; provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity, other than a natural person, or persons, then an officer or director of such corporation, partner of such partnership, beneficiary of such trust or manager of such other legal entity, shall be eligible to serve as a member of the Board of Directors. Nothing

contained in these By-Laws shall be construed to prevent the election of a Director to succeed himself.

3.1.4. Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board shall be filled by majority vote of the remaining members, except that a vacant position of the Board last filled by a person appointed by the Declarant shall be filled by a person appointed by the Declarant. Any director so elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the director he succeeds. Except as otherwise provided in the Declaration, the Common Area shall be managed by the Board and the Board shall act by majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt. A majority of the total number of members of the Board shall constitute a quorum.

3.1.5. All meetings of the Board shall be open to attendance by any Owner, except that the President may call the Board into executive session on matters of personnel, infractions of the rules and regulations of the Association, and matters of similar sensitivity. Any action taken by the Board in executive session shall be recorded in the minutes.

3.1.6. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, if a written consent to such action is signed by all members of the Board and such consent is filed with the minutes of proceedings of the Board.

Section 3.2. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

3.2.1. to employ a managing agent or a real estate management company (the "Managing Agent") to assist the Board in performing its duties;

3.2.2. to purchase for the benefit of the Owners such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

3.2.3. to procure for the benefit of the Owners fire and extended coverage insurance covering the Common Area, to the full replacement value and to procure public liability and property damage insurance, Directors and officers liability insurance, Workmen's Compensation insurance, and such other insurance as the Board of Directors may determine is necessary for the benefit of the Owners and the Association;

3.2.4. to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;

3.2.5. to include the above costs as Common Expenses and assessments and to pay all such costs as Common Expenses;

3.2.6. to consent to amendment to the Declaration;

3.2.7. to adopt, revise, amend and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation and enjoyment of The Commons At Curry or the Common Areas;

3.2.8. to open and maintain a bank account or accounts in the name of the Association.

Section 3.3 Limitation on Board Action. The authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$3,000.00 without obtaining the prior approval of a majority of Owners, except in the following cases:

3.3.1. contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost is payable out of insurance proceeds actually received;

3.3.2. proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting.

Section 3.4. Compensation. No Director shall receive any compensation for any service rendered to the Association except to such extent as he may be reimbursed for actual expenses incurred in the performance of his duties.

Section 3.5. Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of Directors. The Secretary shall give notice of regular meetings of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meeting.

Special meetings of the Board may be called by the President or any two members of the Board. The person or persons calling such meeting shall give written notice to the Secretary who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place and at such time within Monroe County, Indiana, as shall be designated in the notice.

Section 3.6. Waiver of Notice. Before any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall as to such Director, constitute a waiver of notice of the time, place and purpose. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 3.7. Quorum. At all meetings of the Board of a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Section 3.8. Non-Liability of Directors. The Directors shall not be liable to the Association for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or By-Laws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. Every contract made by the Board shall provide that the Board of Directors, in executing such contract, is acting as agent for the Association and shall have no personal liability.

Section 3.9. Additional Indemnity of Directors. The Association shall indemnify any person, his heirs, assigns and legal representatives, made a part to any action, suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal, except as otherwise specifically provided in these By-Laws in relation to matters as to which it shall be adjudged in such action, suit or proceeding, if it shall be found by a majority of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent of the Association or any of his officers or employees, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness; nor shall a Director be deemed guilty of or liable for negligence or misconduct because he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 3.10. Bond. The Board of Directors shall require any or all officers and employees of the Association handling or responsible for Association funds to be covered by an adequate fidelity bond. The premiums on such bonds shall constitute a Common Expense.

Section 3.11. Informal Action of Directors. Action taken by a majority of the Directors without a meeting is Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action is taken.

Officers

Section 4.1. Officers of the Association. The principal officers of the Association shall be the President, Vice President and Secretary/Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person. Every officer will serve for a term of one (1) year except an officer filling the vacancy created by resignation, death or removal of his successor in which case, the officer shall serve for the unexpired term of his successor.

Section 4.2. Election of Officers. The officers of the Association shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmative vote of a two-thirds (2/3) majority of all members of the Board, any officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4.3. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and the Board, shall have and discharge all the general powers and duties usually vested in the office of president or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including but not limited to, the power to appoint committees from among the Owners as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

Section 4.4. The Vice President. The Vice President shall be elected from among the Directors and shall perform all duties of the President during the absence or disability of the President. The Vice President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 4.5. The Secretary. The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings, shall perform all other duties incident to the office of the Secretary and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provision of these By-Laws.

Section 4.6. The Treasurer. The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incident to the office of Treasurer. He shall be the legal custodian of all monies, notes, securities and other

valuables which may from time to time come into possession of the Association. He shall immediately deposit all funds of the Association coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name of the Association.

Section 4.7. Assistant Officers. The Board of Directors may, from time to time, designate and elect from among the Owners an Assistant Secretary and Assistant Treasurer who shall have such powers and duties as the officer whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board of Directors may prescribe.

Section 4.8. Compensation. No officer shall receive compensation from the Association for acting as an officer.

ARTICLE 5

Assessments

Regular and Special Assessments shall be determined and collected as follows:

5.1. Annual Accounting. Annually after the close of each calendar year of the Association and prior to the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnished each Owner a financial statement, which statement shall show all receipts and expenses received, incurred or paid during the preceding calendar year.

5.2. Proposed Annual Budget. Annually on or before the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year and furnish a copy of such proposed budget to each Owner prior to the annual meeting. The proposed annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption, and if so adopted shall be the basis for the Regular Assessments for the ensuing calendar year. At the annual meeting of the Owners, the proposed budget may be approved in whole or in part, or may be amended in whole or in part by a majority of the Owners present or represented at the meeting (provided a quorum is present); provided, however, in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy to the Owner shall not constitute a waiver or release of the Owner to pay the Common Expenses.

5.3. Regular Assessments. The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Lot based on the total amount of said budget divided by the total number of Lots. The Regular Assessment against each Lot shall be paid in four (4) quarterly installments on the first day of each month beginning in January following adoption of the budget. Payment of the quarterly installments of the Regular Assessment shall be made to the Association as directed by the Board of Directors; provided, however, that any Owner may elect to pay Regular Assessments in advance. The Regular Assessment for each year shall become a lien on each separate Lot as of the date of the adoption of the annual budget.

5.4. Special Assessments. In addition to the Regular Assessments authorized above, the Association may levy such Special Assessments as may be necessary for the purpose of defraying, in whole or in part: (1) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property; and, (2) the expense of any other contingencies or events not provided for in the annual budget or the reserves and working capital of the Association; provided that no Special Assessments shall be levied without the assent of a majority of the Owners at a meeting duly called for this purpose. Each Owner shall pay to the Association a Special Assessment based on the total sum approved to meet the costs and expenses divided by the total number of Lots in The Commons At Curry. The Association may, in connection with the levy of any Special Assessment, specify that the same shall be payable in installments and specify the due dates.

5.5. Adjustments. In the event that the approved budget and Regular Assessments plus the reserves and working capital of the Association provide insufficient funds to meet the Association's actual expenses in any year, such deficiencies may be corrected through one or more Special Assessments. In the event the approved and Regular Assessments exceed actual expenses in any year, such surplus shall be retained and used to offset expenses in the next year(s) or returned to the Owners proportionately as the Board of Directors shall elect.

5.6. Temporary Budget and Assessments. If for any reason an annual budget and the Regular Assessments for any year have not been determined as of January 1 of any such year, the budget and Regular Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and Regular Assessments are determined in accordance with the Declaration and the By-Laws; provided, however, that the preceding budget and Regular Assessments may be increased by up to fifteen percent (15%) as the Board of Directors, by majority vote, may deem necessary in the temporary budget and Regular Assessments.

5.7. Reserve Funds. The Association shall be obligated to establish a reserve fund for the repair of the Common Area based upon good faith estimates of the useful life and replacement cost of such Common Area made or obtained by the

Association. The Reserve Fund shall be funded through the payments by the Owners of Common Expenses and not by an extraordinary or Special Assessment. Extraordinary expenditures not originally included in the annual estimate that become necessary during the year shall be charged first against the Reserve Fund so established before any Special Assessment is made or levied. All amounts held by the Association pursuant to this Section 5.7 shall be maintained in a federally-insured, account and any interest accrued shall be added to and deemed a part of such fund.

5.8 Status of Funds Collected by Association. All funds collected pursuant to this Section 5 shall be held and expended by the Association solely for the purposes designated in these By-Laws, and, except for such adjustments as may be required to reflect delinquent or prepaid Regular or Special Assessments, shall be deemed to be held for the use, benefit and account of the Owners for the payment of Common Expenses.

5.9. Accounting Practices of the Association. The annual budget, the Regular Assessment and all sums assessed by the Association shall be established by using generally accepted accounting principles. The Annual budget and the Regular Assessment shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair is the obligation of the Association, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Area. Such replacement reserve fund for capital expenditures and repair of the Common Area shall be maintained by the Association in a separate, federally insured interest-bearing account or accounts selected from time to time by the Board of Directors.

5.10. Collection of Assessments. Each Assessment shall be due and payable on the due date thereof as specified in the Declaration or in these By-Laws, or if not so specified, then on any due date(s) determined by the Board of Directors. Any Regular or Special Assessment which is not paid in full by the Delinquency Date shall be deemed delinquent without further notice or demand to the defaulting Owner and shall bear interest on the unpaid balance thereof from the Delinquency Date until fully paid, at a rate of interest equal to eighteen percent (18%) per annum. In the event that any costs or expenses, including attorney's fees, are incurred by or on behalf of the Association with respect to the recovery or collection of any delinquent Assessment, all such costs and fees shall be due and payable immediately by such delinquent Owner and shall bear interest from the date incurred until paid in full, at a rate of interest equal to eighteen percent (18%) per annum. All interest and all costs and expenses payable with respect to a delinquent Assessment shall be added to and deemed a part of such delinquent Assessment and shall constitute a lien on the delinquent Owner's Lot as of the date on which such delinquent Assessment first became a lien. In the event that any Assessment is not fully paid on or before the Delinquency Date, the Association shall be entitled to accelerate and declare due and payable in full all installments of Assessments due for the calendar year in which such delinquency occurs, and to enforce payment of the

same by foreclosure of said lien and/or other appropriate legal proceedings in accordance with the laws of the State of Indiana. The Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Townhouse and shall have a lien on any rentals and other profits for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board of Directors may at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same.

5.11. Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in the Declaration, the Articles of Incorporation of the Association or these By-Laws, any sale or transfer of a Lot or Townhouse to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu of foreclosure, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior Owner from personal liability for such unpaid sum.

ARTICLE 6

Rules and Regulations

Section 6.1. Right of Board to Adopt Rules and Regulations. The Board of Directors may promulgate such additional rules and regulations regarding the operation of The Commons At Curry, including but not limited to the use of the Common Areas, as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board, and the Board shall cause copies of such rules to be delivered or mailed promptly to all Owners.

ARTICLE 7

Amendment to By-Laws

Section 7.1. Prior to the Applicable Date, these By-Laws may be amended by majority vote or by written consent of all initial directors. After the Applicable Date, these By-Laws may be amended by a vote of not less than sixty-six and two-thirds percent (66 2/3%) of the vote of the Owners in a duly constituted meeting called for such purpose. Provided, however, that no amendment to these By-Laws which materially impairs the right of any Mortgagee or any party holding, insuring or guaranteeing any mortgage on all or any portion of The Commons At Curry may be made unless the Mortgagee consents in writing to the amendment.

ARTICLE 8

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Mortgages

Section 8.1. Notice to Association. Any Owner who places a first mortgage lien upon his Lot or Townhouse or the Mortgagee being the holder of any such first mortgage lien, shall notify the Secretary of the Association and provide the name and address of the Mortgagee. A record of such Mortgagee and such name and address shall be maintained by the Secretary and any notice required to be given to any Owner pursuant to the terms of the Declaration or these By-Laws shall be given in the same manner and in the same effect to such Mortgagee.

Section 8.2. Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed Mortgagee or purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments against the Lot, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed by subject to a lien for any unpaid assessments in excess of the amount set forth in such statement.

Section 8.3. Notice and Representative. Any and all Mortgagees shall be entitled to receive notice of meetings of the Association and shall receive specific notice from the Association of the intention of the Association to amend any provisions of the Declaration, By-Laws, or Articles of Incorporation of the Association; and any and all Mortgagees shall have the right to designate a representative to attend any meetings of the Association.

ARTICLE 9

Insurance

Section 9.1. Insurance on Individual Mortgaged Lots. The Owner of any Lot or Townhouse shall carry property insurance through a company approved by the Board. This insurance should provide protection against loss or damage from fire and other hazards covered by the standard homeowner coverage, and in the amount equal to the full replacement value (i.e. 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage).

Section 9.2. Minimum Requirements for Association Insurance. The Association shall as a minimum obtain and carry a policy of property insurance in an amount equal to the full replacement value (i.e. 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the common facilities owned by the Association (including all building service equipment and the like) with an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and, if necessary, an "Increased Cost of Construction Endorsement" or

"Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, such insurance to afford protection against at least the following:

9.2.1. loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

9.2.2. such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

Section 9.3. Public Liability Insurance. The Association shall as a minimum carry and maintain in force a comprehensive policy of public liability insurance covering all of the Common Areas located in The Commons At Curry insuring the association with limits not less than \$500,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability for non-owned and hired automobile, liability for property of others, and, if applicable, garage-keeper's liability, host liquor liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

Section 9.4. Minimum Bonding Requirement. The Association shall be required to maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of such Association and all others who handle, or are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements:

9.4.1. all such fidelity bonds shall name the Association as an obligee; and

9.4.2. such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Association, including reserves, unless a greater amount is required by the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), or the Department of Housing and Urban Development ("HUD"); and

9.4.3. such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and

9.4.4. such bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment or premium) without at least 30 days prior written notice.

Section 9.5. Director and Offices Insurance. The Association shall carry Director and Officers liability insurance in order to protect it from many causes of action resulting from the actions or inactions of the Board.

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Section 9.6. Worker's Compensation Insurance. The Association shall carry Worker's Compensation insurance if and to the extent necessary to meet the requirements of law.

Section 9.7. Additional Insurance. The Association shall carry any additional insurance as the Board of Directors may determine or the Declaration may require.

Certified to be the By-Laws adopted by consent of the Directors of The Commons At Curry Homeowners' Association, Inc. dated this 10th day of August, 1993.


Secretary

PHASE I

**THE COMMONS @ CURRY
LEGAL DESCRIPTION
2.09 ACRES**

A part of the Southwest Quarter of Section One (1), Township Eight (8) North, Range Two (2) West, Monroe County, Indiana, and more particularly described as follows:

Commencing at the Southeast Corner of said Quarter Section; thence NORTH 00 08 minutes 23 seconds EAST (assigned bearing basis) 600.00 feet along the East line of said Quarter Section; thence NORTH 89 degrees 38 minutes 23 seconds WEST 25.00 feet to the apparent westerly right-of-way of Curry Pike; thence NORTH 89 degrees 38 minutes 23 seconds WEST 165.00 feet to the point of beginning; thence NORTH 89 degrees 38 minutes 23 seconds WEST 317.36 feet; thence NORTH 00 degrees 08 minutes 23 seconds EAST 93.00 feet; thence SOUTH 89 degrees 38 minutes 23 seconds EAST 3.50 feet; thence NORTH 00 degrees 08 minutes 23 seconds EAST 18.00 feet; thence NORTH 39 degrees 28 minutes 36 seconds EAST 12.89 feet; thence NORTH 00 degrees 08 minutes 39 seconds EAST 27.84 feet; thence NORTH 39 degrees 01 minute 15 seconds WEST 12.94 feet; thence NORTH 00 degrees 08 minutes 23 seconds EAST 18.16 feet; thence NORTH 89 degrees 38 minutes 23 seconds WEST 13.50 feet; thence NORTH 00 degrees 08 minutes 23 seconds EAST 93.79 feet; thence SOUTH 89 degrees 36 minutes 00 seconds EAST 327.36 feet; thence SOUTH 00 degrees 08 minutes 23 seconds WEST 102.56 feet; thence SOUTH 89 degrees 38 minutes 23 seconds EAST 139.90 feet; thence 39.37 feet along a tangent curve concave to the Northwest with a 25.00 foot radius; thence SOUTH 00 degrees 08 minutes 23 seconds WEST 78.00 feet along the Westerly apparent right-of-way of Curry Pike; thence 39.17 feet along a non-tangent curve whose chord bears NORTH 44 degrees 45 minutes 00 seconds WEST 35.28 feet; thence NORTH 89 degrees 38 minutes 23 second WEST 140.10 feet; thence SOUTH 00 degrees 08 minutes 23 seconds WEST 140.00 feet to the point of beginning, containing 2.09 acres, more or less.

EXHIBIT B

Bledsoe Tapp & Co., Inc. BOOK 221 PAGE 451
-Quality Land Surveying and Design Services-

BEN R. BLEDSOE, L.S.
PHILIP O. TAPP, L.S.

1602 West Third Street
Suite F
Bloomington, IN 47404
(812) 336-3277
FAX (812) 336-0817

PHASE II

**THE COMMONS @ CURRY
LEGAL DESCRIPTION
4.83 ACRES**

A part of the Southwest Quarter of Section One (1), Township Eight (8) North, Range Two (2) West, Monroec County, Indiana, and more particularly described as follows:

Commencing at the Southeast Corner of said Quarter Section; thence NORTH 00 08 minutes 23 seconds EAST (assigned bearing basis) 600.00 feet along the East line of said Quarter Section; thence NORTH 89 degrees 38 minutes 23 seconds WEST 25.00 feet to the apparent westerly right-of-way of Curry Pike; thence NORTH 89 degrees 38 minutes 23 seconds WEST 482.36 feet to the point of beginning; thence NORTH 00 degrees 08 minutes 23 seconds EAST 93.00 feet; thence SOUTH 89 degrees 38 minutes 23 seconds EAST 3.50 feet; thence NORTH 00 degrees 08 minutes 23 seconds EAST 18.00 feet; thence NORTH 39 degrees 28 minutes 36 seconds EAST 12.89 feet; thence NORTH 00 degrees 08 minutes 39 seconds EAST 27.84 feet; thence NORTH 39 degrees 01 minute 15 seconds WEST 12.94 feet; thence NORTH 00 degrees 08 minutes 23 seconds EAST 18.16 feet; thence NORTH 89 degrees 38 minutes 23 seconds WEST 13.50 feet; thence NORTH 00 degrees 08 minutes 23 seconds EAST 93.79 feet; thence NORTH 89 degrees 36 minutes 00 seconds WEST 774.05 feet; thence SOUTH 02 degrees 18 minutes 25 seconds EAST 271.62 feet; thence SOUTH 89 degrees 38 minutes 23 seconds EAST 772.41 feet to the point of beginning, containing 4.83 acres, more or less.

EXHIBIT C