DECLARATION OF COVENANTS & RESTRICTIONS
for
THE POINTE

THIS DECLARATION, made this 29th day of JUNE, 2006, by WEL II DEVELOPMENT LLC. (hereinafter referred to as the “Developer”).

WITNESSETH:

WHEREAS, the following facts are true:

A. Developer is the owner of all the land contained in the area shown on Exhibit "A," attached hereto and made a part hereof, which lands have been subdivided into two subdivisions known as “DIAMOND RIDGE AT THE POINTE” and “EMERALD RIDGE AT THE POINTE” (hereinafter together referred to as "The Development"); and

B. Developer is about to sell and convey the residential Lots situated within the platted areas of The Development and, before doing so, desires to subject and impose upon all real estate within the platted areas of The Development mutual and beneficial restrictions, covenants, conditions, and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit of the Lots and lands in The Development and the future owners thereof; and

C. Developer desires to provide for the preservation and enhancement of the property values, amenities and opportunities in The Development and for the maintenance of The Development and the improvements thereon, and to this end desires to subject The Development to the covenants, restrictions, easements, and charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in The Development and the future owner thereof; and

D. Developer deems it desirable, for the efficient preservation of the values and amenities in the Development, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, promoting the recreation, health, safety and welfare of the Owners of Lots in The Development performing the duties and obligations required under this Declaration; and

E. Developer shall incorporate under the laws of the State of Indiana a non-profit corporation known as The Pointe Property Owners Association, Inc., for the purpose of exercising such functions.

NOW, THEREFORE, the Developer hereby declares that all of the platted Lots and lands located within The Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved, subject to
the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for
the improvement and sale of said Lots and lands in The Development, and are established and
agreed upon for the purpose of enhancing and protecting the value, desirability, and
attractiveness of The Development as a whole and of each of said Lots situated therein. All of
the Restrictions shall run with the land and shall be binding upon the Developer and upon the
parties having or acquiring any right, title, or interest, legal or equitable, in and to the real
property in The Development or to any part or parts thereof, and shall inure to the benefit of the
Developer and every one of the Developer's successors in title to any real property in The
Development.

1. **DEFINITIONS.** The following are the definitions of terms used in this
Declaration:

"ACC" shall mean the The Pointe Architectural Control Committee established pursuant to this
Declaration for the purposes therein stated.

"Articles" means the Articles of Incorporation of the Association.

"Assessments" means all sums lawfully assessed against the Members of the Association or as
declared by this Declaration, any Supplemental Declaration, the Articles or the By-Laws
of the Association.

"Association" shall mean the The Pointe Property Owners Association, Inc., a not-for-profit
corporation

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

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

"Common Area(s)" means (i) the Drainage System, (ii) the area designated on the Plat
as Common Area, (iii) the Entry Ways, (iv) any utility service lines or facilities not
maintained by a public utility company or governmental agency that are located on, over
or below or through The Development, (v) any areas of land that are devoted to the use
of enjoyment of some, but not necessarily all of the Owners of Lots, (vi) street lights and
street signs, if any installed by Developer, and (vii) Private Streets.

"Developer" means WEL II Development, LLC., its successors and assigns to its interest
in The Development other than Owners purchasing Lots or Residences by deed from
Developer (unless the conveyance indicated an intent that the grantee assume the rights
and obligations of the Developer).

"The Development" means the land described in Exhibit A.
“Diamond Ridge” means the northern section of The Development, which will be identified on the recorded plat as “Diamond Ridge at the Pointe.”

“Drainage Board” means the Marion county Drainage Board

“Drainage System” means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds, and the other structures, fixtures, properties, equipment and facilities located in The Development and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across The Development including but not limited to those shown or referred to on a plat, all or part of which may be established as legal drains subject to the jurisdiction of Marion County.

“Entry Way” means the structures constructed as an entrance to The Pointe or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles) and the traffic islands depicted on the Plat(s).

“Emerald Ridge” means the southern section of The Development, which will be identified on the recorded plat as “Emerald Ridge at the Pointe.”

“Facilities” means the Common Area and all improvements, thereto including the entry way and landscaping and the fencing and posts along Five Points Rd.

“Landscape Easement” means a portion of a Lot or Common Area denoted on a plat as an area to be landscaped and maintained by the Association.

"Lot" shall mean a platted lot as shown on a plat of The Development, which is recorded in the office of the Recorder of Marion County, Indiana.

“Lot Development Plan” means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the ACC may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

“Maintenance Costs” means all of the costs necessary to keep the Facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility, and all expenses related to the performance of the duties of the Association under this Declaration.
"Member" means a Class A or Class B member of the Association and "Members" means Class A and Class B members of the Association.

"Mortgagee" means the holder of a first mortgage on a Residence.

"Non-Access Easement" means the area designated on a Plat over which vehicular ingress and egress is prohibited.

"Owner" shall mean a person, partnership, trust or corporation who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

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

"Plat" means the final plat(s) of The Development recorded in the Office of the Recorder of Marion County.

"Register of Regulations" means the document containing rules, regulations policies, and procedures adopted by the Board of Directors or the ACC, as the same may from time to time be amended.

"Reserve for Replacements" means a fund established and maintained by the Association to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Area.

"Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational Facilities usual and incidental to the use of a single family residential Lot.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental Declarations and the Register of Regulations, as the same may from time to time be amended.

"Supplemental Declaration" means any Plat or supplementary declaration of covenants, conditions or restrictions that may be recorded and which extends the provisions of this Declaration and contains such complementary or supplementary provisions as are required or permitted by this Declaration.

2. **DECLARATION.** Developer hereby expressly declares that The Development shall be subject to these Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot shall accept such deed and execute such contract subject to each restriction.
and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Developer and of the Association with respect to these Restrictions to keep, observe, comply with and perform such Restrictions.

3. **DRAINAGE SYSTEM.** The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to The Development. The Association shall maintain the Drainage System to the extent not maintained by Marion County and the Maintenance Costs thereof shall be assessed against all Lots. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

4. **MAINTENANCE OF ENTRY WAYS AND LANDSCAPE EASEMENTS.** Except as otherwise provided herein, the Association shall maintain the Entry Ways, the Landscaping along Five Points Rd., landscape easements within The Development and the Common Area and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment equally against all Lots in The Development. Grass, trees, shrubs and other plantings located on the Entry Way, a Landscape Easement or within the Common Area shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to The Development or a part thereof or a planting area within The Development. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential subdivision. The Developer and the Association shall, at the written request of the Marion County Department of Development ("Department"), remove any landscaping or signage deemed by the Department to encroach on or impede sight distance for public safety reasons.

5. **CHARACTER OF THE DEVELOPMENT.**

5.1. **In General.** Every numbered Lot platted as part of The Development is for residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential Lots except a single-family dwelling house. No double occupancy dwelling shall be permitted on any part of The Development. All tracts of land located within The Development shall be used in a manner generally consistent with the zoning and use designed in the plan filed by the Developer in a rezoning proceeding before the Metropolitan Development Commission of Marion County, Indiana, under Docket No. 2005-ZON-808 and shall be subject to the commitments in the STATEMENT OF COMMITMENTS recorded as Instrument No. 2005-0112741, a copy of which is attached hereto as "Exhibit A." However, the Developer reserves unto itself the right to change the character of such designated use at any time in the future by applying to the Metropolitan Development Commission and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, re-zoning or variance of use needed to accommodate the Developer's planned use.

5.2. **Prohibited Improvements.** Except as approved by the ACC, and except as otherwise provided herein, no carriage houses, sheds, awnings, statues, outbuildings,
above ground pools, antennae, dog runs, lawn ornaments, artificial vegetation, fountains, flags, fences, retaining walls, clothes lines and similar items shall be erected or placed on any Lot.

5.3. **Occupancy or Residential Use of Partially Completed Dwelling House Prohibited.** No dwelling house constructed on any of the residential Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed.

5.4. **Fencing / shrub planting.** All fences shall be subject to the prior approval of the ACC. All hedge or shrub planting may be no higher than 18 inches between the front property line and the front building set-back line except where such planting is located on a Landscape Easement or is part of Residence landscaping and the prime root thereof is within four feet of the Residence. Trees shall not be deemed “shrubs” unless planted in such a manner as to constitute a “hedge.” No common area planting installed by the Developer may be removed without the prior written consent of the ACC.

5.5. **Animals.** No animal, live stock, or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners. There may be no more than two dogs per Lot.

5.6. **Antennas and Receivers.** No satellite receiver, down-link, or exterior antenna shall be permitted on any Lot without the prior written consent of the ACC. One satellite dish no greater than one meter (39.37 inches) in diameter will be permitted on each Lot so long as it is located in the side or rear of a Dwelling and screened from street view.

5.7. **Exterior Lights.** No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot. Each Owner or his builder shall install and maintain a light in operable condition on his Lot in the front yard at a location, having a height and of a type, style and manufacturer approved by the ACC prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by the ACC to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day.

5.8. **Garage Doors.** All garage doors shall remain fully lowered and closed except when in use for ingress and egress to the garage.

5.9. **Signs.** No signs of any sort may be on a Lot except to declare the house or Lot for sale. One “For Sale” sign per Lot shall be permitted to advertise the re-sale of a home or Lot in the Development. These “For Sale” signs shall be approved by the ACC and shall be specifically designed for Diamond Ridge and Emerald Ridge and shall be
uniform in content, size and the location placed on the Lot. The signs shall contain the name and telephone number of the homeowner/Lot owner or real estate agent. The above restriction shall not apply to the sale of Lots by the Developer, or to the first sale of a spec home by its builder.

5.10. **Driveways.** All driveways shall be constructed of concrete or such other material as shall be approved by the ACC, and shall be maintained free of debris. No motor homes, boats, commercial trucks, motorcycles, or other vehicles other than personal vehicles may be left on a driveway or in front of a home over night.

5.11. **Storage Tanks.** No fuel, gas or oil storage tanks shall be located on The Development.

5.12. **Construction and Landscaping.**

(A) All construction upon, landscaping of and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the ACC. All landscaping specified on the landscaping plan approved by the ACC shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence unless the ACC agrees to alter the landscaping completion date. Unless a delay is caused by strikes, war, court injunction or acts of God, the owner of any Lot which on the date of purchase from Developer is not improved with a Residence shall commence construction of a Residence upon the Lot within 180 days from the date the owner acquired title thereto and shall complete construction of such Residence within 270 days after the date of commencement of the building process. Upon failure of the foregoing to occur, Developer may:

1. re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Marion County the lesser of (i) the same net dollar amount as was received by the Developer from such Owner as consideration for the conveyance of the Lot to the Owner or (ii) the then fair market value of the Lot as determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Marion County Circuit or Superior Court; or

2. obtain injunctive relief to force the Owner to proceed with construction of any Residence, according to a Lot Development Plan which has been approved by the ACC upon application by such Owner; or

3. pursue other remedies at law or in equity as may be available to Developer.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the ACC of a Lot Development Plan shall not relieve such Owner from his obligation to commence and complete construction of a Residence upon the lot within the

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time periods specified herein. For the purposes of this subparagraph construction of a Residence will be deemed “completed” when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, down-spouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

(B) Each home in Emerald Ridge is required to have minimum requirements of:

**Planting Requirements for Front and Side Yard**

| 2 Deciduous shade trees | At least 2 1/4” caliper |
| 1 Flowering tree | 1-1 1/2” caliper |
| 3 Conifer trees | 8-10’ height |
| 6 Shrubs | At least 3-4’ height |
| 10 Shrubs | 18-24” spread |

Two “Aristocrat” pear trees 2 1/4 to 3 inches in diameter along each street front which trees shall be planted between the sidewalk and the street. For a corner lot, there will be four trees with two on each street front.

(C) Each home in Diamond Ridge is required to have minimum requirements of:

**Planting requirements for Front and Side Yard**

| 4 Deciduous shade trees | At least 2 1/4” caliper |
| 2 Flowering tree | 1-1 1/2” caliper |
| 6 Conifer trees | 8-10’ height |
| 10 Shrubs | At least 3-4’ height |
| 20 Shrubs | 18-24” spread |

Two “Aristocrat” pear trees 2 1/4 to 3 inches in diameter along each street front which trees shall be planted between the sidewalk and the street. For a corner lot, there will be four trees with two on each street front.

Each Lot shall be equipped with a functioning irrigation system that provides adequate water to keep all yard areas green in the spring, summer and fall and all plants alive in a manner such that the water coverage does not include the streets, sidewalks or driveways adjacent to the Lot and neighboring Lots.

(D) All yard areas are to be sodded or hydro-seeded as the minimum requirement.
5.13. **Garages Required.** All residential dwellings in The Development shall include a minimum enclosed, two (2) car garage.

5.14. **Sidewalks Required.** Each lot shall have a sidewalk parallel to the street, or streets in the case of corner lots, on which the lot fronts. The sidewalk shall meet Indianapolis Department of Transportation Standards 14-03. Sidewalks must be completed by the Owner of a lot at the time the driveway on the lot is constructed, but in no case later than eighteen (18) months after the lot is first conveyed by Developer.

5.15. **Prohibition of Used Structures.** All structures constructed or placed on any lot in The Development shall be constructed with substantially all new materials, and except for the two houses moved by Developer, no used structures shall be relocated or placed on any such lot.

5.16. **Mailboxes and Address Blocks.** All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacturer approved by the ACC. Such mailboxes shall be installed upon posts approved as to type, size, and location by the ACC. No attachments of any kind shall be permitted to the mailbox or post. All homes in The Development shall have a permanently affixed street address number affixed to the front of the home in a prominent place, utilizing numbers at least three (3) inches in height and approved by the ACC.

5.17. **Solar Panel Installation.** Solar panel installation shall be allowed only when the location, type, and size have been approved by the ACC.

5.18. **Sight Line Obstructions at Street Intersections.** No fence, wall, hedge, shrub planting or other object which obstructs sight lines at elevations between two (2) and nine (9) feet above the street shall be placed or be permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement. No tree shall be permitted to remain within such instances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

5.19. **Water Systems.** No private or semi-private water supply system may be located upon any lot. Each Owner shall connect to the City water main to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto.

5.20. **Drainage.** In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of
water is provided on the Plat. To the extent not maintained by the Drainage Board, the “Drainage Easements” reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within The Development may be included in a legal drain established by the Drainage Board for the cost of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lots. The elevation of the grade of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains, sump pump drains and downsputs shall not be outletted into streets or street rights-of-way. These drains shall be connected whenever feasible into a subsurface drainage tile. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

5.21. **Clotheslines, Garbage Cans, etc., and Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers approved by the ACC and out of public sight, except for the evening prior to and the day of garbage pickup. All equipment for storage or disposal of such materials shall be kept clean and sanitary. Outside clotheslines will not be permitted.

5.22. **Outside Burning.** No trash, leaves, or other materials shall be burned upon a Lot.

5.23. **Electric Bug Killers.** Electric bug killers, “zappers” and other similar devices shall not be installed upon any Lot without the prior written consent of the ACC.

5.24. **Garage Doors.** All garage doors shall remain fully lowered and closed except when in use for ingress and egress to the garage.

5.25. **In General.** No noxious or offensive activities shall be permitted on any lot in The Development, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to any owner of another Lot in The Development.

5.26. **Model Homes.** No owner of any Lot in The Development shall build or permit the building upon said Lot any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.

5.27. **“4-Wheelers” / Off road vehicles.** No “4-wheelers” or other motorized or unmotorized “bikes” or vehicles shall be operated off of the streets within The Development.

5.28 **Air Cooling/ Air exchange Units.** Air cooling units or other like utilities that are outside of the residential structure must be located at the side or rear of the home and except as may be permitted by the ACC. No window air conditioning units may be installed on any Lot.
5.29 **Business Use.** No garage sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an Owner or occupant of a Lot may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent to detection by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Development; (c) the business activity does not involve persons coming onto the Lot who do not reside in the Unit on the Lot or door-to-door solicitation of residents of the Development; and (d) the business activity is consistent with the residential character of the Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development, as may be determined in the sole discretion of the Board.

5.30 **Sales Office.** To the extent deemed necessary or desirable by Developer, Developer shall be permitted to place sales offices and construction and storage facilities for uses attributable to the construction, development, marketing and maintenance of the subdivision on any unsold Lot or on any Common Area in the subdivision until 180 days following the sale, closing and deed transfer to a Lot Owner other than Developer of the last Lot in the Development.

5.31 **Swimming Pools.** Swimming pools must have the approval of the ACC before any work is undertaken. No above-ground pools shall be allowed, provided nothing herein shall preclude installation and use of hot tubs, spas, jacuzzis or similar apparatus with prior approval of the ACC. Permanent backyard pools will be approved by the ACC only after careful consideration of the potential effect of such a pool on neighboring Lots. An application for the construction of a swimming pool will not be considered unless the application is accompanied by an application for acceptable fence or other safety protection and landscape design approval. The design of such fence shall conform to county or municipal regulations for such fencing. Use of plantings in the vivinity of the proposed pool may be required to soften the effect of sound and required pool fencing, on adjacent Lots.

5.32 **Tennis courts, Paddle Ball Courts, Basketball Goals, Etc.** Tennis courts, racquetball courts, paddle ball courts, squash courts, and other recreational or sporting facilities will be approved by the ACC only after thorough consideration of the potential effect of such a structure or use on neighboring Lots. The ACC will not approve non-baffled lighted courts or facilities. An application for the construction of any such facility will not be considered unless the application is accompanied by an application for an acceptable fence and landscape design approval. It is recommended by the ACC that any such fencing be of an open composition in order to blend in with the surrounding Lots and soften the effect on adjacent Lots.

All basketball backboards or any other fixed games and play structures shall be located behind the rear foundation line of the main structure and within Lot set-back lines unless
otherwise approved by the ACC. The ACC must approve the location and type of basketball goals. All basketball backboards must be made of a transparent material.

5.33 **Construction Trash.** All builders will be required to utilize a thirty (30) cubic yard trash receptacle for each home during periods of construction in order to properly dispose of debris and to preserve the overall appearance of the community while under construction.

5.34 **Water Wells.** One water well per lot may be permitted at the discretion of the ACC to be used only for irrigation purposes.

5.35 **Retaining Walls.** Retaining walls must be architecturally compatible with the exterior of the home (i.e., stone, brick, or milled timber). Railroad tie retaining walls will not be approved.

5.36 **Erosion Control and Tree Protection Measures.** The Owner of a Lot shall be responsible for the performance of all requirements of these Covenants and Restrictions by builders and contractors employed or engaged by or through such Owner. During periods of construction of a home or improvements on a Lot, the Owner shall provide adequate physical barriers, such as straw bales or snow fencing, in order to protect trees from damage by construction equipment and related activities. In addition, Owners and builders shall be required to exercise erosion control measures in compliance with “Rule 5” and to prevent silt transportation to main drainage ways. The Owner of a Lot shall provide appropriate temporary seeding of disturbed earth areas and temporary wood, straw bale or other approved dams to restrict silt sediment transportation. In the event that Developer is fined by the City of Indianapolis as a result of Owner's violation of Rule 5, Owner shall indemnify Developer for the amount of such fine and attorney's fees and costs incurred by Developer as a result of such violation.

6. **UTILITY AND DRAINAGE EASEMENTS.** There are areas of ground on the plat of the Developer marked "Drainage Easements" and "Utility Easements" (D. & U.E.), and Sanitary Sewer Easements (S.S.E.) either separately or in combination. The Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies) and governmental agencies for access to and installation, maintenance, repair or removal of poles, mains, ducts, sanitary sewers, storm sewers, drainage swales, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services.

The Drainage Easements are hereby created and reserved: (i) for the use of Developer during the development of The Development for access to and for the installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for The Development and adjoining property and (ii) for the Department of Public Works of the City of Indianapolis for access to maintenance, repair and replacement of such drainage system, provided, however, that the owner of any Lot in The Development subject to a Drainage
Easement shall be required to keep the portion of said Drainage Easement on his Lot free from obstructions so that the surface water drainage will be unimpeded.

The delineation of the Drainage Easement and Utility Easement areas on the plat(s) shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this paragraph. No permanent structures or fences shall be erected or maintained upon said easements. The owners of Lots in The Development shall take and hold title to the Lots subject to the Drainage Easements and Utility Easements herein created and reserved.

It shall be the responsibility of the owner of any Lot or parcel of land within the area of this plat to comply at all times with the provisions of the drainage plan as approved for this plat by the Department of Public Works of the City of Indianapolis and requirements of all drainage permits for this plat issued by said Department.

It shall be the responsibility of every Owner of every Lot in The Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair.

7. **DEDICATION OF STREETS.** The rights-of-way of the entry way streets and streets in the Emerald Ridge section as shown on the plat(s), if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way, subject, however, to a reservation of ingress-egress for the maintenance of medians, if any, in any entry ways to The Development. The streets in Diamond Ridge from the entry way gates into Diamond Ridge shall be and remain private to the Owners of Lots in Diamond Ridge.

8. **OWNERSHIP, USE AND ENJOYMENT OF COMMON AREAS.** Common Areas, if any, depicted on the recorded plat of The Development, shall remain private, and neither the Developer's execution or recording of the plat nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as, a dedication to the public of the Common Areas. Ownership of the Common Areas shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion as provided in the Declaration of Covenants, Conditions and Restrictions of The Pointe. Such conveyance shall be subject to easements and restrictions of record, and such other conditions, as the Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof as upon the recording of a deed or deeds conveying such Common Areas to the Association. Developer hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Areas subject to all of the Restrictions of this declaration, and such easement shall be an easement running with and appurtenant to each Lot.
9. **REAL ESTATE TAXES, UTILITIES**

9.1 **Real Estate Taxes.** Real estate taxes on each Lot, and on any Dwelling Unit or other improvement on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot.

9.2 **Utilities.** Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities which are not separately metered to an Owner’s Lot or Dwelling Unit including utilities (if any) to community identification signage shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Association.

10. **ARCHITECTURAL STANDARDS** Nothing, including any fence, deck, retaining walls, recreational equipment (including basketball goals, or any structure, storage shed, doghouse or other improvements, shall be erected on any Lot, and no construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Declaration until the requirements below have been fully met, and until the approval of the ACC has been obtained pursuant to this Section.

**THIS SECTION SHALL NOT APPLY TO THE ACTIVITIES OF THE DEVELOPER, OR TO CONSTRUCTION OR IMPROVEMENTS OR MODIFICATIONS TO THE COMMON AREAS BY OR ON BEHALF OF THE ASSOCIATION.**

**THIS SECTION MAY NOT BE AMENDED WITHOUT THE DEVELOPER’S WRITTEN CONSENT SO LONG AS THE DEVELOPER OWNS ANY LAND SUBJECT TO THIS DECLARATION.**

10.1. **Architectural Control Committee.** There shall be, and hereby is, created and established the "The Pointe Architectural Control Committee" ("ACC") which shall have exclusive jurisdiction over all construction on any portion of the Properties. **UNTIL 100% OF THE LOTS HAVE BEEN CONVEYED TO PURCHASERS** in the normal course of development and sale, the DEVELOPER, or not more than five, nor less than three, persons designated by it, SHALL CONSTITUTE THE ACC AND SHALL SERVE AT THE DISCRETION OF THE DEVELOPER. **THERE SHALL BE NO SURRENDER OF THIS RIGHT PRIOR TO THAT TIME EXCEPT IN A WRITTEN INSTRUMENT IN RECORDABLE FORM EXECUTED BY THE DEVELOPER.** After the sale of 100% of the Properties, the ACC shall be a standing committee of the Association, consisting of not more than five, nor less than three, persons as may, from time to time, be provided in the Bylaws. If the Bylaws do not at any time provide for the ACC, then the Board shall be and constitute the ACC.
10.2. **Approval Process.** The ACC has prepared and promulgated, on behalf of the Board of Directors, design and development guidelines and application and review procedures. Copies are on file in the office of the Developer (or the Association, as the case may be) which are incorporated into this Declaration by reference. The guidelines and procedures shall be those of the Association, and the ACC shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, builders, and developers who seek to engage in development of or construction, modification, addition or alteration made on or to any existing structure, upon all or any portion of the Properties and such Owners and builders shall conduct their operations strictly in accordance therewith. The ACC, or its designee, must give written approval for any building contractor selected by the Lot Owner for construction.

Prior to any construction on any Lot, the approval of the ACC must be obtained after written application has been made to the ACC by the Owner of the Lot requesting authorization from the ACC. Such written application shall be made in the manner and form prescribed from time to time by the ACC in its guidelines and procedures which will contain requirements to promote the standard of quality of workmanship and design and harmony of external design with existing structures, location in relation to surrounding structures, topography and finish grade elevation as determined by the ACC.

10.3. **Power of Disapproval.** The ACC may refuse to grant permission to construct, place or make the requested improvement, when:

(A) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of these Declarations, the plat restrictions or any rules, regulations or guidelines adopted by the ACC;

(B) the design or color scheme of a proposed improvement or the materials proposed to be used are not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the ACC;

(C) the proposed improvement, or any part thereof, would, in the sole opinion of the ACC, be contrary to the interest, welfare or rights of all or part of other Owners; or

10.4. **Duties of ACC.** The ACC shall approve or disapprove proposed improvements within fifteen (15) calendar days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the ACC for its permanent files. All notifications to applicants shall be in writing, and in the event that such notification is one of disapproval, it shall specify the reason of reasons therefor. In the event that the ACC fails to provide written notice of approval or to request written notice for additional information within 45 days after submission of all required or requested information, the plans shall be deemed and presumed denied.
10.5. **No Waiver of Future Approvals.** The approval of the ACC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

10.6. **Variance.** The ACC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and applicable zoning laws, ordinances and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the ACC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the initiation of work without the required approval of the ACC shall not be considered hardships warranting a variance.

10.7. **Compliance with Guidelines.** Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the ACC may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing procedures contained in the Bylaws. Further, if any approval required by this Declaration is not granted in writing with respect to any item prior to its installation, the respective Owner thereof shall remove promptly the unapproved item or structure, upon request by the Developer or the Association.

10.8. **Non-Liability of Developer, and ACC.** Neither the Developer nor the ACC shall be responsible in any way for any defect in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the ACC or the Developer does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used or as to the compliance of any plans submitted for approval with these Restrictions, any recorded plat governing the Real Estate or any applicable code, regulation or law.

10.9. **Inspection.** The ACC and the Developer may inspect work being performed to assure compliance with these Restrictions, the plat restrictions and applicable regulations. However, neither the ACC; nor any Member thereof, nor the Developer, nor any agent or contractor employed or engaged by the ACC or the Developer, shall be liable or responsible for defects, nonconformity or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or
on behalf of the ACC or the Developer shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

10.10. **No Compensation.** Neither the ACC nor any of its Members shall be entitled to any compensation for performing its duties or obligations set forth in this Declaration.

10.11. **Rules Governing Building on Several Contiguous Lots Having One Owner.** Whenever two or more contiguous Lots shall be owned by the same Person, and such owner shall desire to use two or more of said Lots as a site for a single Dwelling Unit, he shall apply in writing to the ACC for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as, and only so long as, the Lots remain improved with one single Dwelling Unit; provided however, that any dues, fees or other charges shall be assessed against each Lot individually.

11. **MAINTENANCE OF COMMON AREAS/LOTS/ DWELLING UNITS.**

11.1 **Maintenance of Common Area.** Maintenance of the Common Area shall be provided by the Association, however, this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system.

11.2 **Maintenance by Association and Owners Relative to Lots/Dwelling Units.**

Re: Maintenance of Lawns and plants. The Owners shall maintain the lawns, trees and plants on their Lot(s) including fertilizing (a minimum of 2 times per year) and mowing of the grass when necessary. The Association may provide snow removal (but no ice removal) if funding exists for the removal of snow from driveway and sidewalks or the Dwelling Units within the Lot if in the Board's sole determination the accumulation of snow justifies such removal. Any plantings made by Owners in and around sidewalk and driveway areas on which snow removal or de-icing are performed by the Association are planted at the Owner's sole risk with no liability to the Association.

11.3 **Maintenance of Individual Lots.** Except as otherwise noted above, each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon not provided by the Association in a good, clean and sanitary condition, with an appearance which is complementary to the Development. If any Owner shall fail to maintain and keep his property or any part thereof in a good, clean and sanitary condition with an exterior appearance up to the general standards of the Development, the Association may perform any work necessary and charge the Owner thereof for such cost which shall be immediately due, and shall be secured by the Association's lien on the Owner's property in like manner to liens created for Assessments hereunder. Each Owner, by his
acceptance of a deed to any Lot, irrevocably grants to the Association, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work permitted herein.

11.4 **Damage to or Abuse of Common Area or Areas to be Maintained by the Association Under Section 11.1 hereof.** If, due to the willful, intentional or negligent acts or omissions of an Owner, or of a member of the Owner's family, or of a guest, tenant, or invitee or other occupant or visitor of the Owner, damage is caused to Common Areas or repairs and maintenance are accelerated relative to the Association's obligations and some maintenance or repairs are required, the Owner shall be required to pay for such damage. Upon demand by the Board, the cost of such repairs shall be immediately due and payable, and if not paid, a lien in like manner to the lien under Assessments may attach to the Owner's property, and costs of collection and reasonable attorney fees shall be added to any judgment entered on behalf of the Association.

The authorized representatives of the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and items, including, but not limited to, access to any easements reserved, granted or created by any Development subdivision plat or of any portion of the Real Estate for such purposes including the easement for a possible stub street at the west property line of the Real Estate.

11.5 **Maintenance Of Private and Common Utilities and the Private Streets and Gating Systems.** Maintenance of any private and common utilities, the private streets in Diamond Ridge, snow removal in Diamond Ridge beyond the entry way gates/columns into Diamond Ridge and the entry way gates into Diamond Ridge shall be provided by the Association. The cost of this maintenance and snow removal, however, shall be born entirely by the Owners of Lots in Diamond Ridge.

Maintenance of any private and common utilities, the private streets in Emerald Ridge, if any, snow removal in Emerald Ridge beyond the entry way gates/columns into Emerald Ridge and the entry way gates into Emerald Ridge shall be provided by the Association. The cost of this maintenance and snow removal, however, shall be born entirely by the Owners of Lots in Emerald Ridge.

The cost of maintaining the remainder of the Common Areas, including the entry way and all of the Five Points Road frontage including, but not limited to any fountains, signs, lighting, plants, trees, waterfalls, ponds and any fountains therein will be shared equally by each Lot Owner in the Development.

The Assessments against Diamond Ridge Lots will consequently be larger than Emerald Ridge Assessments.

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12. **ASSESSMENTS**

12.1. **Annual Accounting.** Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnish the Owners with a financial statement of operations by the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

12.2. **Proposed Annual Budgets.** Annually, on or before the date of the annual or special meeting of the Association at which the budgets are to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year for both Diamond Ridge and Emerald Ridge. These proposed budgets shall estimate the total amount of the Common Expenses for such next ensuing fiscal year for both Diamond Ridge and Emerald Ridge and shall furnish a copy of such proposed budgets to each Owner at or prior to the time the notice of such annual or special meeting is mailed or delivered to such Owners. The annual budgets shall be submitted to the Owners at the annual or special meeting of the Association for adoption. Any expenses for maintaining private streets and utilities shall be approved only by the Owners of the section involved. All other expenses shall be approved by the Owners of all Lots. The approved budgets shall be the basis for the Regular Assessments (hereinafter defined) for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budgets may be approved in whole or in part or may be amended in whole or in part by a majority vote of the eligible Owners represented at such meeting; provided, however, that in no event shall such annual or special meeting of the Owners be adjourned until the proposed annual budgets or the proposed annual budgets as amended are approved and adopted. The annual budgets, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budgets and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of replacement reserve fund for capital expenditures and replacement and repair of private streets and utilities and the Common Areas, which replacement reserve funds shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve funds for capital expenditures and replacement repair of the Common Areas shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks: or savings and loan associations authorized to conduct business in Johnson County or Marion County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare proposed annual budgets and to furnish copies thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual or special meeting of the Association at which the budgets are to be acted upon, there are no annual budgets approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budgets or, at the option of the Board,
based upon one hundred ten percent (110%) of such last approved budgets, as a temporary budget.

12.3. **Regular Assessments.** The annual budgets as adopted by the Owners shall be based on the estimated cash requirement for the fiscal year covered thereby as set forth in said budgets and contain a proposed assessment against each Lot. Except as otherwise provided herein, the Common Expenses shall be assessed equally against each Lot and immediately following the adoption of the annual budgets, each Owner shall be given notice of the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, each Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budgets by the Owners, to reflect the assessment against each Lot based upon such annual budgets as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budgets, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in full or proratably in quarterly installments payable in advance based on the date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. However, at the option of the Board, the Regular Assessment against each Lot may be paid in advance other than in quarterly installments commencing on the first day of the first month of each fiscal year. Payment of the Regular Assessment, whether in one payment or in any other manner, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget,

(A) if the Regular Assessment based upon the final annual budgets adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether annual or quarterly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

(B) if the Regular Assessment based upon the temporary budgets exceeds the Regular Assessment based upon the final annual budgets adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether annual or quarterly, until the entire amount of such excess has been so credited: provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) above or (b) shall be made by a cash payment by, or refund to, the Owner or the first day of the second month following the determination of the Regular Assessment based upon the annual budgets finally adopted by the Owners.
The Regular Assessment for each fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budgets and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfer his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for the Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 12.2 hereof prior to the final determination and adoption of the annual budgets and Regular Assessment for the year with respect to which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budgets and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same.

The initial Regular Assessment (not including the start up fund provided by paragraph 12.7 hereof) for Lots in each section is as follows:

- Emerald Ridge at The Pointe - $450.00 per Lot annually.
- Diamond Ridge at The Pointe - $600.00 per Lot annually.

This assessment is payable in advance as of the date the deed to a Lot is transferred from the Developer to the Owner as an annual assessment based on a calendar year and is consequently proratable based on the unexpired days left in the calendar year measured from the date of said deed.

(C) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONCERNING DEVELOPER NOT BEING OBLIGATED FOR REGULAR ASSESSMENT, THE DEVELOPER AFTER THE APPLICABLE DATE WILL CONTRIBUTE TWENTY FIVE PERCENT (25%) OF THE REGULAR ASSESSMENT FOR UNIMPROVED LOTS OR FOR IMPROVED LOTS NOT YET READY FOR OCCUPANCY IN DEVELOPER’S NAME, BUT ONLY IF THE APPLICABLE DATE IS NOT EARLIER THAN WHEN DEVELOPER HAS CONVEYED EIGHTY PERCENT (80%) OF THE LOTS ON EXHIBIT B TO OTHERS OR TEN (10) YEARS AFTER THE DATE THIS DECLARATION HAS BEEN RECORDED, WHICHEVER FIRST OCCURS.

12.4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the
approval of the Owners, unless otherwise provided in this Declaration, the Articles, the
Bylaws or the Act, the Board of Directors shall have the full right, power and authority to
make special assessments which, upon resolution of the Board, shall become a lien on
each Lot, but not on Lots owned by Developer, prorated in equal shares (herein called
"Special Assessment"). Without limiting the generality of the foregoing provisions,
Special Assessments may be made by the Board of Directors from time to time to pay for
capital expenditures and to pay for the cost of any repair or reconstruction of damage
caused by fire or other casualty or disaster to the extent insurance proceeds are
insufficient therefor under the circumstances described in this Declaration. THE
DEVELOPER SHALL ONLY BE RESPONSIBLE FOR SPECIAL ASSESSMENTS
AFTER THE "APPLICABLE DATE" OCCASIONED BY EXTRAORDINARY
REPAIRS TO ORIGINALLY INSTALLED INFRASTRUCTURE, BUT SHALL NOT
BE RESPONSIBLE FOR NEW INFRASTRUCTURE OR AMENITIES DESIRED BY
OTHER OWNERS UNLESS DEVELOPER SPECIFICALLY AGREES OTHERWISE
IN WRITING.

12.5. **Failure of Owner to Pay Assessments.**

(A) No Owner may exempt himself from paying Regular Assessments and Special
Assessments, or from contributing toward the expenses of administration and of
maintenance and repair of the Common Areas and items deemed Maintenance Expense
Areas for purposes of maintenance, and toward any other expense lawfully agreed upon,
by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot
belonging to him. Each Owner shall be personally liable for the payment of all Regular
and Special Assessments against his Lot. Where the Owner constitutes or consists of
more than one Person, the liability of such Persons shall be joint and several. Regular and
special assessments should constitute a lien against the Lots and Dwelling Units thereon.
If any Owner shall fail, refuse or neglect to make any payment of any Regular
Assessments or Special Assessments against his Lot when due, the lien for such
Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the
Board for and on behalf of the Association as a mechanic's lien on real property and
enforced in like manner as mechanic liens. Upon the failure of an Owner to make timely
payments of any such Regular Assessments or Special Assessments, when due, the Board
may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare
the same immediately due and payable, notwithstanding any other provisions hereof to
the contrary. The Board may, at its option, bring a suit to recover a money judgment for
any unpaid Regular Assessment or Special Assessment without foreclosing (and without
thereby waiving) the lien securing the same. In any action to recover a Regular
Assessment or Special Assessment, or any other charges due the Association, whether by
foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled
to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and
expenses of such action incurred (including but not limited to reasonable attorneys' fees)
and interest from the date such Assessments or charges were due, until paid, at a rate
equal to the "prime interest rate" then in effect as publicly announced or published by
Bank One or its successors (or if said Bank is no longer in existence, then such rate
charged by another national bank in Marion County, Indiana selected by the Board) plus
4% but in no event more than the maximum rate allowable under applicable usury laws.

(B) Notwithstanding anything contained in this Section or elsewhere in this Declaration, the
Articles or the Bylaws, any sale or transfer of a Lot and Dwelling Unit to a Mortgagor
pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance
to any person at a public sale in the manner provided by law with respect to mortgage
foreclosures, shall extinguish the lien of any unpaid installment of any Regular
Assessment or Special Assessment or other changes as to such installments which
became due prior to such sale, transfer or conveyance; provided, however, that the
extinguishment of such lien shall not relieve the prior Owner from personal liability
therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or
the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu
thereof, from liability for any installments of Regular Assessments or Special
Assessments or other charges thereafter becoming due or from the lien therefor. Such
unpaid share of any Regular Assessments or Special Assessments or other charges, the
lien for which has been divested as aforesaid, shall, if not collected from the party
personally liable therefor, be deemed to be a Common Expense, collectible from all
Owners (including the party acquiring the subject Lot and Dwelling Unit from which it
arose).

(C) In addition to the remedies above stated for failure to pay assessments, the Association
may disqualify a delinquent Owner from his right to vote and to hold office or committee
membership in the Association while Assessment are delinquent in addition to charging a
late fee of $25.00 per month of delinquency to among other things, cover the
administrative expense of addressing the delinquency and also deny such Member the use
of the Common Areas for a period not exceeding 60 days for each separate non-payment.

12.5. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained
herein, in the Articles, in the Bylaws, in the Act or otherwise, until the Applicable Date
the annual budgets and all Regular Assessments and Special Assessments shall be
established by the Initial Board without meetings of or concurrence of the Owners. The
agency, power of attorney and proxy granted to the Developer by each Owner pursuant to
Section 21.2 hereof shall be deemed to cover and include each Owner's right to vote on
and approve the annual budgets and any Regular Assessments and Special Assessments
until the Applicable Date.

Further, until the Applicable Date and notwithstanding the foregoing or anything else contained
herein, no Regular Assessments, Special Assessments or other charges shall be owed or
payable by Developer with respect to any Lot or other portion of the Real Estate owned
by Developer while the same is owned by Developer, nor shall any such Assessments or
Charges become a lien on any such Lot or other portion of the Real Estate owned by
Developer, except as specifically detailed in subsection 3(c) herein. Assessments against
a Lot shall commence to accrue from the date each Lot is conveyed by Developer to
another Person, and a prorated portion of the Regular Assessment for the balance of the

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fiscal year of the Association against each Lot so conveyed by Developer shall be paid by each purchaser upon such conveyance.

12.6 Initial Working Capital and Start-Up fund. Upon the closing of the initial conveyance of each Lot by Developer to another Person, the purchaser of such Lot shall pay to the Association, in addition to any other amount then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount equal to one-sixth (1/6th) of the then current annual Regular Assessment against such Lot, which payment shall be nonrefundable and shall not be considered as an advance payment of any assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Developer for advances made to pay expenses of the Association for its early period of operation of the Real Estate, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

13. MORTGAGES

13.1. Notice to Association. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, may notify the Secretary of the Association thereof and provide the name and address of the Mortgagee. A record of each such first mortgage, and name and address of the Mortgagee, shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record or in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the Bylaws 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 Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Association shall, upon written request of a 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 Bylaws which is not cured within sixty (60) days.

13.2. Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth
in such statement except. as such assessments may be adjusted upon adoption of the final annual budgets, as referred to in Section 12.3 hereof.

14. INSURANCE

Preface

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION (INSURANCE), THE ASSOCIATION WILL SEEK TO OBTAIN THE COVERAGE INDICATED SUBJECT HOWEVER TO THE LIMITATION OF WHAT'S AVAILABLE FROM INSURANCE CARRIERS FOR THE DEVELOPMENT WITH CONSIDERATION AS TO EXCEPTIONS AND EXCLUSIONS. OF COVERAGE, AND DEDUCTABLES TO MAINTAIN CONTROL OF THIS ITEM OF COMMON EXPENSE.

THE ASSOCIATION WELCOMES THE OWNERS' INPUT REGARDING THE BEST COVERAGE FOR THE BEST PRICE AND WILL SUPPLY OWNERS WITH A SUMMARY FROM THE ASSOCIATION'S INSURANCE PROFESSIONAL WHICH WE URGE OWNERS TO SHARE AND CHALLENGE THEIR OWN INSURANCE PROFESSIONAL FOR RECOMMENDATIONS AS TO THEIR REQUIRED INSURANCE AND ANY ADVISABLE ADDITIONAL COVERAGE (GAP OR OTHERWISE) FOR DIRECT PURCHASE BY OWNERS.

14.1. Casualty Insurance. The Association shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Common Areas in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the Common Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Association as the insured, for the benefit of each Owner (to the extent, if any, that individual Owners have an independent interest in the property covered thereby).

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinafore set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not
less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty on the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or distributed by the Association or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Association does not elect to restore.

14.2. Public Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amounts or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of $1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Areas and shall insure the Association, the Board of Directors, Officers, any committee or organ of the Association or Board, any Managing Agent appointed or employed by the Association, the Developer and all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

14.3. Other Insurance. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors may from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Association and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any Managing Agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Association.
14.4. **General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. Upon request of any Owner or Mortgagee whose interest may be affected thereby, the Association shall provide such Owner or mortgagee with a description of the insurance coverage maintained by the Association.

In no event shall any distribution of insurance proceeds 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 Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the Members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

14.5 **Insurance by Owners.** Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association.

15. **CASUALTY AND RESTORATION**

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

If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of these areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing these areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.
For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding the Common Areas and/or maintenance expense areas (if any) to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same architecture and materials.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to replace the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Common Areas shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Common Areas were originally constructed.

16. AMENDMENT OF DECLARATION.

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

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

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

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

(D) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy percent (70% in the aggregate of the votes of all Owners). In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgage shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagor has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(E) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Section 14 of this Declaration.
with respect to casualty insurance to be maintained by the Association, or (3) the provisions of Section 15 of this Declaration with respect to reconstruction or repair of the Common Areas in the event of fire or any other casualty or disaster, or (4) the provisions of this Declaration establishing the ACC and providing for its functions, without, in each or any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the Declaration.

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

16.2. **Amendments by Developer Only.** Notwithstanding the foregoing or anything else contained herein, the Developer shall have and hereby reserves the right and power 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 at any time and from time to time if Developer records the modification in the Office of the Recorder of Marion County, Indiana, and if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any governmental requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) function similar to those performed by such agencies or entities, to subject additional property to these restrictions, (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, (g) to clarify, further define or limit any easement, or otherwise exercise any rights reserved herein, or (h) change the substance of one or more covenants, conditions, terms or provisions hereof but (A) does not materially increase the obligation(s) of any Owner under any covenant, condition, term or provision without such Owner's consent or (B) is necessary to comply with a bona fide governmental requirement, including applicable laws, ordinances, regulations or orders of any municipality or court having jurisdiction. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the Developer to vote in favor of, make, or consent to any amendments described in this Section 2 or behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record any such amendments. The right of the Developer to act pursuant to rights reserved or granted under this Section 2 shall
terminate at such time as the Developer no longer holds or controls title to any part or portion of the Real Estate.

17. ACCEPTANCE and RATIFICATION

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the Bylaws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the ACC, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance of the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws and rules, regulations and guidelines, as each may be amended, or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in an Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the Bylaws, and the rules, regulations and guidelines applicable thereto as each may be amended or supplemented from time to time.

18. 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 his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

19. BENEFIT AND ENFORCEMENT

19.1 Covenants Appurtenant to Land. These covenants are to run with the land, and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless at any time after fifteen (15) years a majority of the then Owners of the Lots in this subdivision agree to change (or terminate) said covenants in whole or in part and on the condition that
an instrument to that effect signed by the Lot Owners voting in favor of such change has been recorded; provided, however, that no change or termination of said covenants shall affect any easement hereby created or granted unless all persons entitled to the beneficial use of such easement shall consent thereto.

19.2 **Prosecution of Violations.** It shall be lawful for the Association, the ACC (as to matters for which it has responsibility) or any other person owning any real property situated in this subdivision to prosecute any proceedings at law or in equity against the person or persons violating, or attempting to violate any covenant, conditions, provisions or restrictions contained herein either to prevent such person or persons from doing so, or to recover damages or other dues for such violation, or to require the removal of structures erected in violation hereof. All costs of litigation and attorneys' fees resulting from violation of these covenants and restrictions shall be the financial responsibility of the Lot Owner or Owners found to be in violation. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect. Failure to enforce any specific requirement of the covenant shall not be considered as a waiver of the right to enforce any covenant herein, thereafter. Notwithstanding the foregoing, any violation of these covenants or the Declaration may be waived by a majority of the then Owners of the Lots in this subdivision.

The Association may as respects an Owner who violates these restrictions and/or Rules and Regulations, after written notice to the Owner detailing the nature of the violation with a time period established, by the Association to cure or conform, disqualify the voting rights and right to hold office while the violation continues and may further in the Board's sole discretion, impose a fine, in whole or in part, with each day after the cure period being a separate violation at a chargeable rate of up to one hundred dollars ($100.00) per violation per day. This fine, if not paid when required, will be processed in the same manner as assessments.

20. **ASSOCIATION; MEMBERSHIP; VOTING; FUNCTIONS**

20.1 **Membership in Association.** Developer and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a Member of the Association and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and membership will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Association.

20.2 **Voting Rights.** The Association shall have the following classes of membership, with the following voting rights:
(A) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be Members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine and as amplified in the By Laws if such determination is unavailable, but in no event shall more than one (1) vote be cast with respect to any such Lot. Otherwise, in the absence of a determination of multiple Owners, the vote shall be equally split between the multiple Owners. Attendance at properly called Association meetings by one Member of a jointly titled Lot shall vest in such sole attending Member the entire one (1) vote.

(B) Class B. Class B Members shall be Developer and all successors and assigns of Developer designated by Developer as Class B Members in a written notice mailed or delivered to the resident agent of the Association. Each Class B Member shall be entitled to four (4) votes for each Lot of which it is the Owner on the recorded subdivision plat of the Real Estate (which is one and the same as the Lot configuration on the conceptual plan [Exhibit C]) on all matters requiring a vote of the Members of the Association. THE CLASS B MEMBERSHIP SHALL CEASE AND TERMINATE UPON THE FIRST TO OCCUR OF:

(i) THIRTY (30) DAYS AFTER THE DATE UPON WHICH THE WRITTEN RESIGNATION OF THE CLASS B MEMBERS IS DELIVERED TO THE RESIDENT AGENT OF THE ASSOCIATION, OR

(ii) THIRTY (30) DAYS AFTER THE DATE WHEN NINETY PERCENT (90%) OF THE LOTS HAVE BEEN CONVEYED BY DEED FROM DEVELOPER TO BUILDERS OR OTHER LOT PURCHASERS.

(iii) TEN (10) YEARS AFTER THE DATE OF RECORDATION OF THIS DECLARATION.

THE DATE APPLICABLE TO THE ABOVE IS HEREAFTER REFERRED TO AS THE APPLICABLE DATE.

After the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B Member shall be entitled to one, (1) Class A membership for each Lot owned.

20.3. Functions. The Association has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration and operation of The Development, including the following:
(A) a storm drainage system for the Real Estate, which includes a Retention Pond/Detention Area, inlet pipes, open ditches, swales, pipes and other structures and drainage courses, and

(B) the Common Areas and/or designated easements of The Development identification signage and landscaping at the single entranceway off of and to Five Points Rd and water and electric service to accommodate same;

and, to pay any other necessary expenses and costs related thereto, and to perform such other functions as may be designated for it to perform under this Declaration.

21. BOARD OF DIRECTORS

21.1 Management. The business and affairs of the Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a Member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, or a person appointed by Developer as provided in Section 21.2.

21.2 Initial Board of Directors. The initial Board of Directors shall be composed of the persons designated or to be designated, in the Articles, to-wit: James K. Wheeler, Margaret Litz and Johnathan Eaton (herein referred to as the "Initial Board"), who has been or shall be appointed by Developer. Notwithstanding anything to the contrary contained in, or any other provision of, this Declaration, the Articles, the Bylaws or the Act (a) the Initial Board shall hold office until the first annual meeting of the Members of the Association occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first annual meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Developer, who shall thereafter be deemed a Member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Developer as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Developer determines, on all matters as to which Members of the Association are entitled to vote under the Declaration, the Articles, the Bylaws, the Act or otherwise. This appointment of Developer as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each Person serving on the Initial Board, whether as an original Member thereof or as a Member thereof appointed by Developer to fill a vacancy, shall be deemed a Special Member of the Association and an Owner solely for the purpose of qualifying to act as a Member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Association nor an Owner of a Lot for any other
purpose (unless he is actually the Owner of a Lot and thereby a Member of the Association).

21.3 **Additional Qualifications.** Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

21.4 **Term of Office, Vacancy and Number of Directors After the Applicable Date.**

(A) **Term.** Subject to the provisions of Section 21.2, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first annual meeting of the Members occurring on or after the Applicable Date provided herein. After the Applicable Date, each Member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified.

(B) **Number of Directors After Applicable Date.** The number of Directors to serve on the Board after the Applicable Date shall be five (5) with representation thereon assured to each of the separately named sections of The Pointe as follows:

- Diamond Ridge at The Pointe – 2 Directors
- Emerald Ridge at The Pointe – 2 Directors.
- And 1 Director elected at large by all Lot Owners

The voting for Directors from each of these separately named sections will solely be determined by the Owners from within the separately named section.

(C) **Vacancies.** Subject to the provisions of Section 21.2 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Members of the Board or by vote of the Owners if a Director is removed in accordance with Section 21.5. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

21.5 **Removal of Directors.** A Director or Directors, except the Members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners or until his successor is duly elected and qualified.
21.6 **Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

(A) procuring of utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);

(B) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;

(C) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;

(D) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budgets for the current year;

(E) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours by reasonable pre-arrangement;

(F) procuring and maintaining for the benefit of the Association, the Owners, any Managing Agent and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

(G) protection, surveillance and replacement of the Common Areas, unless the same are otherwise the responsibility or duty of Owners of Lots, provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

(H) paying any other necessary expenses and costs in connection with the Common Areas; and
(I) all duties and obligations imposed upon the Association or the Board under this Declaration, the Articles, the Bylaws or the Act.

21.7 **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:

(A) to employ a Managing Agent to assist the Board in performing its duties;

(B) to purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

(C) 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;

(D) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas, and to perform all other maintenance, upkeep, repair and replacement duties of the Association and the Board;

(E) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;

(F) to open and maintain a bank account or accounts in the name of the Association;

(G) to promulgate, adopt, revise, amend and alter from time to time such additional Rules and Regulations with respect to use, occupancy, operating and enjoyment of the Real Estate and the Common Areas (in addition to those set forth in this Declaration) including but not limited to charging uniform fees for the use of the Common Areas and to set and charge fees for late payment of assessments and fines for violations of Restrictions and Covenants and Rules and Regulations of the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners;

(H) to grant to such public or private companies, entities or bodies as the Board may approve, such easements as may be necessary to provide the Lots, and Dwelling Units and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and services, provided that such easements are located within or are co-extensive with any one or more utility easements, maintenance and access easement, landscape and maintenance easements, shown upon, and identified as such on, or provided for in, any subdivision plat of the Real Estate, whether such plat is heretofore or hereafter recorded;

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shall have the right to convey title of Common Area to Lot Owners to correct any overlaps or encroachments;

(J) to borrow funds to perform its duties for the benefit of the Association and Owners and use the assessments as collateral, if collateral is required, to secure such financing.

21.8 Limitation on Board Action. After the Applicable Date, the authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than $10,000.00 per year without obtaining the prior approval of a majority of the cumulative vote of the Owners, expect that in the following cases such approval shall not be necessary:

(A) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;

(B) proposed contracts and proposed expenditures expressly set forth in the proposed annual budgets as approved by the Owners at the annual meeting; and

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

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

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

21.11 Additional Indemnity of Directors. The Association shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a 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 therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director the
reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote 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 (if any) or any officer or employee thereof, 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 thereof, nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

21.12 **Bond.** The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful, abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

21.13 **Initial Management.** Notwithstanding anything to the contrary contained in this Declaration, Developer shall have, and Developer hereby reserves to itself, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas, and to perform all the functions of the Association, until the Applicable Date. Developer may, at its option, engage a Managing Agent with it to perform such functions and, in either case, Developer or such Managing Agent shall be entitled to reasonable compensation for its services.

22. **RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER.** Whenever two or more contiguous Lots in The Development shall be owned by the same person, and such owner shall desire to use two or more of said Lots as a site for a single-dwelling house, he shall apply in writing to the ACC for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as the Lots remain improved with one single-dwelling house.

23. **RULES GOVERNING USE OF LAKES ON THE DEVELOPMENT.**

23.1 **Rights To Use Lakes.** Subject to the easement rights with respect to the Lakes described in the recorded plats applicable to The Development, all Owners of Lots
surrounding a Lake together with guests in their presence, shall have the rights to use and 
享受 of such Lake provided they access such Lake only via common areas and not 
through lots owned by others and provided further that they not interfere with the 
drainage system of The Development and comply with the limitations on the use thereof 
and Rules and Regulations adopted relative thereto.

23.2 Limitations on Use of Lakes. No person shall do or permit to be done any action 
or activity which could result in pollution of the Lakes, diversion of water, elevation of 
Lake levels, earth disturbance resulting in silting or any conduct which could result in an 
adverse affect upon water quality, drainage of the subdivision or proper Lake 
management.

The Lakes are and will be an integral part of the storm water drainage system serving The 
Development and are intended to be used for such purpose and primarily as a visual and 
aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made 
of any of the Lakes which in any way interferes with their proper functioning as part of 
such storm water drainage system.

The Lakes shall be kept free and clean of rubbish, debris and other unsightly materials. No 
structure of any kind shall be placed in the Lakes or on the Lake property without the 
prior written consent of the ACC, including but not limited to docks, wharves, etc.

No boating, swimming, diving, skiing ice skating or robot controlled vehicles or devices shall be 
permitted in or on said Lakes, except as permitted by the board of Directors under written 
and promulgated Rules and Regulations. Fishing from the Lakes shoreline or from 
approved docks and wharves is permissible within limits as stated in such Rules and 
Regulations, and subject to compliance with all applicable fishing and game laws, 
ordinances, Rules and Regulations.

No sewage, garbage, refuse or other solid, liquid, gaseous or other materials or items (other than 
normal storm and surface water drainage) shall be put into said Lakes, except the Board 
of Directors may take steps to clear and purify the waters thereof by the addition of 
chemicals or other substances commonly used for such purposes or by providing therein 
structures and equipment to aerate the same.

24. MISCELLANEOUS

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

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

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

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

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

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

24.7 **The Plat.** The Final Plat of The Development, has been recorded as Instrument # in the Office of the Recorder of Marion County, Indiana.

IN TESTIMONY WHEREOF, witness the signature of the Developer this day of , 2006.

WEL II DEVELOPMENT, LLC.

By: 

J & R Eaton Homes, Inc., owner of Lot # 37 by Instrument No. 2005-.
By: Johnathan Eaton / President

STATE OF INDIANA  
COUNTY OF MARION  

Before me, a Notary Public, in and for said County and State, personally appeared JAMES K. WHEELER, as Member of WEL II Development LLC who, having first been duly sworn, stated that he has read the foregoing and that the facts and representations contained therein are true.

WITNESS my hand and Notarial Seal this ___________ day of June __________, 2006.

Anna Bayless  
Notary Public  

Anna Bayless  
Printed  

Johnson  
County of Residence

Page 41 of 43
My Commission Expires:

1/3/2010

STATE OF INDIANA  ] SS
COUNTY OF MARION  ]

Before me, a Notary Public, in and for said County and State, personally appeared
JOHNATHAN EATON, President of J & R Eaton Homes, Inc., who, having first been duly
sworn, stated that he has read the foregoing and that the facts and representations contained
therein are true and agrees that the real estate described as lot No. 37 in the recorded plat of The
Development shall also be bound by the above stated Declaration of Covenants and Restrictions.

WITNESS my hand and Notarial Seal this 29th day of June, 2006.

Anna Bayless
Notary Public

Anna Bayless
Printed
My Commission Expires:

1/3/2010

Prepared By: Gibson Surveying Group, Inc.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Mike Gibson, PLS.

DECLARATION OF COVENANTS & RESTRICTIONS FOR THE POINTE (5-26-06).pdf

FILED
JUL 12 2006
FRANKLIN TOWNSHIP ASSESSOR
CODE OF BYLAWS
for

THE POINTE HOME OWNERS ASSOCIATION, INC.

COMES NOW The Pointe Home Owners Association, Inc., by its Board of Directors, on this 4th day of August, 2015, and states as follows:

WITNESSETH THAT:

WHEREAS, the residential communities in Marion County, Indiana commonly known as Diamond Ridge at The Pointe and Emerald Ridge at The Pointe (collectively “The Pointe”) were established upon the recording of certain documents with the Office of the Recorder for Marion County, Indiana; and

WHEREAS, the Plat for Diamond Ridge at The Pointe was recorded with the Office of the Marion County Recorder on July 17, 2006, as Instrument #2006-0105071; and
WHEREAS, the Plat for Emerald Ridge at The Pointe was recorded with the Office of the Marion County Recorder on December 19, 2006, as Instrument #2006-192797; and

WHEREAS, the Diamond Ridge at The Pointe and Emerald Ridge at The Pointe subdivisions are subject to private property covenants which run with the land, namely the Declaration of Covenants & Restrictions for The Pointe (“Declaration”), recorded in the Office of the Marion County Recorder on July 17, 2006, as Instrument #2006-0105070, which states that by taking a deed to any Lot within either of The Pointe subdivisions, each Owner becomes a mandatory member of The Pointe Home Owners Association, Inc., an Indiana nonprofit corporation (“Association”); and

WHEREAS, the Association was incorporated as described in the Declaration as a nonprofit corporation pursuant to Articles of Incorporation (“Articles”) filed with, and approved by, the Indiana Secretary of State on July 12, 2007; and

WHEREAS, the Association’s Initial Board of Director(s) were to adopt a Code of Bylaws (“Bylaws”), but the Bylaws were either: a) never adopted; or b) lost over time. In either event, the Association no longer has a set of Bylaws; and

WHEREAS, the Indiana Nonprofit Corporation Act of 1991, specifically IC 23-17-3-8, states that the Board of Directors of the Corporation, or Association, shall adopt Bylaws for the Corporation; and

WHEREFORE, pursuant to the authority granted to the Board of Directors by the Indiana Nonprofit Corporation Act of 1991, a majority of the Board of Directors of the Association have voted to adopt this Code of Bylaws, which does not conflict in any manner with any provision contained in the Declaration or the Articles of Incorporation, and it is the intention of the Association that this Code of Bylaws shall replace all formerly adopted Bylaws, if any, and any amendments thereto.

[End of Recitals]

[Remainder of Page Left Intentionally Blank]
CODE OF BYLAWS

for

THE POINTE HOME OWNERS ASSOCIATION INC.

ARTICLE I.

NAME AND LOCATION

Section 1.01 NAME The name of the corporation is THE POINTE HOME OWNERS ASSOCIATION INC. (also referred to as “Corporation” or “Association”).

Section 1.02 PRINCIPLE OFFICE and REGISTERED AGENT The name and post office address of the principal office of the Association is: The Pointe Home Owners Association, Inc., c/o The Law Offices of Ryan Scott Wright, LLC, 2302 E. County Line Rd., Indianapolis, IN 46227, or as updated from time to time with the Indiana Secretary of State’s Office.

The registered agent of the corporation is currently: The Law Offices of Ryan Scott Wright, LLC, 2302 E. County Line Rd., Indianapolis, IN 46227. However, it should be noted that the registered agent may be a member of the Board of Directors, a hired management agent, or other professional representing the Association and can potentially change from year to year. Therefore, the current registered agent of the Association can be determined through the most recent annual business entity report filed with the Indiana Secretary of State’s office.

The principal office of the Association will also serve as the registered place of business of the Association; however, it should be noted that the principal office for the Association can be changed by the Board of Directors and does not have to be the same as the registered place of business of the Association.

Section 1.03 PURPOSE The Association Bylaws (hereinafter “the Bylaws”) shall govern the operation of The Association’s Board of Directors (hereinafter “The Board”) and facilitate the fulfillment of the purposes per the DECLARATION OF COVENANTS & RESTRICTIONS FOR THE POINTE (hereinafter “The Covenants”), or, any amended or subsequent version of such in effect at that time.

ARTICLE II

DEFINITIONS

Section 2.01 “Act” means the Indiana Nonprofit Corporation Act of 1991 and any subsequent amendments thereto.

Section 2.02 “Articles of Incorporation” or “Articles” means the Articles of Incorporation of the Corporation filed with the Office of the Secretary of State of Indiana, and includes any amendments that have been made to the original Articles.

Section 2.03 “Association” or “Corporation” means The Pointe Home Owners Association, Inc.
Section 2.04 “Board of Directors” means the Board of Directors of the Association.

Section 2.05 “Bylaws” means the most current Code of Bylaws, including any amendments or revisions made to it by the Association.

Section 2.06 “Common Expenses” means the expenses shared by the owners on a pro-rata basis for the care and upkeep of the common areas, enforcement of the Declaration, and administration of the Association in The Pointe communities.

Section 2.07 “Declaration” or “Developer” means WEL II Development, LLC., its successors and assigns to its interest in The Development other than Owners purchasing Lots or Residences by deed from Developer (unless the conveyance indicated an intent that the grantee assume the rights and obligations of the Developer).

Section 2.08 “Declaration” means the Declaration of Covenants & Restrictions for The Pointe recorded in the Office of the Marion County Recorder on July 17, 2006, as Instrument #2006-0105070, and any amendments later made to the Declaration, if any.

Section 2.09 “Director” means an individual member of the Board of Directors that has been elected or appointed to the Board of Directors following the procedures outlined in the Bylaws.

Section 2.10 “Owner” also referred to as “Member”, means a person, partnership, trust or corporation who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

Section 2.11 “Property”, “Properties”, “Real Estate”, “The Development” and “Tract” all mean the real estate described on the various recorded Plats for The Pointe Development and any property set forth in “Exhibit A” of the Declaration.

Section 2.12 All other terms used in these Bylaws not listed in this Article are to use the meaning given to them in the Declaration or by Indiana law.

ARTICLE III

MEMBERSHIP VOTING AND MEETING OF MEMBERS

Section 3.01 ACCEPTANCE All present or future Owners of lot(s) in the Development, or any other person who might use the facilities or enter upon property, whether private or common, of the Development, in any manner, are subject to the regulations set forth in these Bylaws and all governing documents of the Association. The mere acquisition of any of the lots of the Development, or the mere act of occupancy of any of the lots, will signify that the Bylaws are accepted, ratified and will be complied with.
Section 3.02 MEMBERSHIP AND VOTING

(A) Membership  Each Owner of a Lot shall, automatically upon becoming an Owner, be a Member of the Association and shall remain a Member until his ownership of a Lot ceases, whereby membership will be automatically transferred to the new Owner of the Lot.

(B) Voting  When more than one Owner holds title, all such Owners collectively shall be the member (for the lot in question). The vote shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. The Board shall be entitled to presume that any ballot tendered by one or more Owners of the lot was the result of agreement by all other Owners. If conflicting ballots are cast by Owners, none will be counted. Cumulative voting is not permitted.

Only persons who are Owners of record as of the date and time of any meeting shall be entitled to vote at that meeting. In a written ballot campaign, the date of record for voting purposes is the date the ballots are first due to be returned to the Association.

(C) Majority of Owners  As used in these Bylaws, the term ‘majority of owners’ shall mean fifty-one percent (51%) of the total votes cast of those Owners entitled & eligible to cast votes.

(D) Suspension of Voting Rights  Following Section 12.4(C) of the Declaration, no member shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due to the Association will be eligible to vote, either in person or by proxy, hold a directorship or committee position, or serve as another Owner’s proxy. In addition, the Owner will have their privileges to use the Common Areas suspended and will accrue a $25.00 late fee per month of delinquency.

For purposes of this provision, the thirty (30) day period begins on the first day of the fiscal year or the due date of the assessment as set by the Board of Directors, whichever is later in time. If the amount due to the Association is for an obligation other than assessments, such as reimbursement for covenant violation or court judgment, then the thirty (30) day period will start on the date the amount became due.

The term “payment” means the payment of all amounts due to the Association, including any assessments, collection fees, interest, late fees, administrative or management company fees, attorney fees, court costs, or other sums that are owed to the Association. As a result, if any owner is paying the Association on a payment plan or agreement, and that payment arrangement does not pay the entire amount due to the Association within thirty (30) days of becoming due, then that owner’s voting rights will stay suspended until the entire amount due to the Association is paid in full.

In addition, payment of delinquent accounts by any method other than cash at a meeting where a vote will be held does not end any suspension under this provision until the funds from the payment are actually received by the Association. The Board
of Directors is free to adopt additional rules regarding the suspension of voting rights as they deem necessary or appropriate for the failure of an owner to pay any sums owed to the Association.

Section 3.03  MEETINGS OF THE OWNERS

(A) Place of Meetings of the Members may be held in Marion or Johnson County, Indiana, at a location picked by the Board of Directors of the Association.

(B) Annual Meeting The Board of Directors of the Association will set a date for the Association’s Annual Meeting to be held each year. The only limitation to setting the date for the Annual Meeting is that the Annual Meeting must be held within fifteen (15) months after the previous annual meeting. However, the specific date, time and place of the Annual Meeting are to be determined by the Board of Directors. At each Annual Meeting, the Members may conduct director elections, unless a separate date for director elections is used, and transact any other Association business to be properly addressed at the meeting.

(C) Special Meetings A Special Meeting of the Lot Owners may be called by: a) the President; b) resolution approved by a majority of the Board of Directors; or c) by written petition signed by at least ten percent (10%) of the lot owners. The petition must be presented to the President or Secretary of the Association and must state the purpose(s) for which the Special Meeting is to be called. A Special Meeting may be called by the membership only to address items that are within the member’s authority to review and vote upon.

The Board of Directors has thirty (30) days from the date the Secretary receives a properly signed petition from the members to send a notice to the membership calling the requested Special Meeting. The purpose(s) of the Special Meeting, along with the date, time and location of the Special Meeting must be stated in the meeting notice sent to the lot owners. No business shall be transacted at a Special Meeting except as stated in the notice of the meeting unless all the lot owners are present.

It should be noted that according to the Act, the members may not call or hold a Special Meeting of the members without first submitting a petition, signed by not less than ten percent (10%) of the members, asking the Board of Directors to call a Special Meeting as set forth above. If the Board refuses to send a notice within thirty (30) days of receiving a proper petition setting a Special Meeting as requested by the members, then the members may call a Special Meeting of the membership on their own.

(D) Notice of Meetings Written notice of each meeting of the Owners shall be given by, or at the direction of, the Secretary or person authorized to call a meeting not less than ten (10) days nor more than sixty (60) days before such meeting. The notice shall specify the place, day and hour of such meeting. Written notice for special meetings must include the purpose of the meeting. This meeting notice will
be sent to the member's last known address as appears upon the records of the Association.

Notices of any meeting may be mailed by first class U.S. Mail. Notices of meetings may also be hand-delivered to an owner's residence. If the owner consents to electronic service, then notice of meetings may be provided to owners by email or postings on the Association’s website, if the Association has one.

The Association does not have a duty to track down new or alternate addresses for an owner. It is the owner’s responsibility to make sure the Association has the owner’s current mailing or contact information.

Notice of any meeting of the members may be waived in writing by any owner or by the owner’s attendance at the meeting in person, by proxy or by ballot.

(E) **Quorum**

At any meeting of the membership, unless otherwise required by the Declaration, the presence of Members, in person or by proxy, entitled to cast twenty percent (20%) of the total number of valid and eligible Owner votes will make up a quorum. For purposes of this Section, the term “eligible” means any Owner whose privileges are not suspended for any reason as set forth in the Declaration, Articles or these Bylaws. If an Owner has had his voting rights suspended pursuant to the Declaration, Articles or these Bylaws, then that Owner’s vote is not considered a valid or eligible vote toward calculating quorum requirements. After an Owner’s vote is represented, either in person or by proxy, for any purpose at a meeting, the Owner’s vote will be considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, even if the Owner leaves the meeting before a vote is taken.

If quorum is not met at the first meeting, then the Board may call another meeting, and at this new meeting, the quorum will be met by the presence of Members, in person or by proxy, entitled to cast ten percent (10%) of the total number of valid and eligible Owner votes. A follow-up meeting(s) may be called without a new notice being sent to the Members if it is called within sixty (60) days following the preceding meeting. If the follow-up meeting is re-set more than sixty (60) days from the previous meeting, then a new meeting notice must be sent to the Members.

(F) **Proxies**

A member may vote either in person or by his duly appointed proxy. When a member wishes to appoint a proxy to vote in his place, the member must designate the name of his proxy in writing and deliver it to the Secretary of the Association. The proxy is effective once it is received by the Association. If the member fails to name a proxy on a general proxy form, the proxy will be counted towards quorum but will not be allowed to be cast or voted on any issue at the meeting. If the member fails to name a proxy on a limited proxy form, the proxy will be counted toward quorum and the Association’s Secretary will cast the member’s vote(s) as directed in the limited proxy.

Unless excused by the presiding officer, all proxies must be received by the Association at least two (2) business days before the date of the scheduled meeting where the proxy is to be counted. That will give the Association sufficient time to verify the validity of the proxy.
A proxy must contain: the member's printed name giving the proxy and his address or Lot number, the member's signature, the name of the person who is to serve as the proxy, the date the proxy is executed (signed), and the date of the meeting for which the proxy is given. The proxy must also contain an affirmation under the penalties for perjury that the individual signing the proxy has the authority to grant the proxy to the individual named in the proxy to exercise the member's proxy.

A proxy is only valid for one hundred eighty (180) days from the date it is signed. A proxy may be revoked in writing by the member prior to being exercised or by the member's personal attendance at the meeting where the proxy appointment was to be used.

If a member signs more than one proxy appointment, the latest in time, if possible to determine, is considered to be valid. If a member signs more than one (1) proxy to be used at a particular meeting, and it cannot be determined which proxy is the latest in time, then none of the member's proxies shall be counted or voted.

Proxy forms must be kept with the records of the meeting at which it is exercised.

(G) Conduct of Meetings All Owners' meetings shall be conducted in a manner consistent with generally accepted procedures of parliamentary procedure.

The order of business of all meetings shall be as follows:

1. Call to Order.
2. The reading of minutes of the preceding annual meeting (if an annual meeting).
3. Reports of officers.
4. Reports of committees.
5. Treasurer's Report and review of Annual Budget (if an annual meeting).
6. Election of director(s) (if an annual or election meeting).
7. Unfinished business.

(H) Action by Written Ballot Any action required or permitted to be taken at any meeting of the Members may be taken by written ballot with or without a meeting if the Association delivers a written ballot to every owner eligible to vote on the matter. To be valid, the ballot must contain:

a) the printed name of the lot owner;
b) the signature of the lot owner;
c) the lot(s) owned or being purchased by the lot owner; and
d) the date the ballot is being signed.

Approval by written ballot is only valid if:

a) the number of votes cast in person and/or by ballot equals or exceeds the quorum required to be present at a meeting authoring such action; and
b) the number of approvals equals or exceeds the number of votes required to approve the matter at a meeting.

The written ballot must set forth each proposed action and provide an opportunity for the owner to vote for or against each proposed action. A solicitation, or request, for votes by written ballot must indicate:

a) the number of responses needed to meet the quorum requirements;

b) the percentage of approvals necessary to approve each matter, other than the election of directors; and

c) specify the time by which a ballot must be received by the Association to be counted.

If a meeting is to be held, then ballots may be mailed to the Association's registered office prior to the meeting date; however, unless otherwise stated on the ballot, all ballots cast by owners NOT attending the meeting must be RECEIVED at the Association's registered office by the end of business at least two (2) business days prior to the date of the meeting in order to be counted. Unless otherwise stated on the ballot, any ballots received less than two (2) business days prior to the meeting date will not be counted.

If a meeting is NOT to be held, then owners must mail their ballot to the Association's registered office by the due date stated on the ballot.

Only official ballots sent to the owners by the Association will be accepted. Unofficial ballots will not be counted. Each owner must fully fill out the ballot, print their name and address and sign the ballot. The Board of Directors may adopt additional voting procedures for submitting and processing ballots.

If an owner signs or submits more than one ballot, the latest in time, if possible to determine, is considered to be valid. However, if an owner signs or submits more than one ballot, and it is not possible to determine which ballot is to be used, the Board may reject all ballots submitted by that owner.

In addition, voting and meeting participation may be held or performed in any manner set forth in the Act or deemed acceptable by the Courts as a practical way to collect votes and allow Members to participate in Association actions.

(I) Action Without Meeting Any action, which under the provisions of the Indiana Code may be taken at a meeting of the Owners, may be taken without a meeting if authorized by a writing signed by all of the Owners who would be entitled to vote at a meeting for such purpose, and filed with the Secretary.

(J) Minutes Minutes of board and annual meetings will be made available to Owners for inspection following IC 32-25.5-3-3(g)(2) and the Act.
ARTICLE IV

THE BOARD

Section 4.01 NUMBER, QUALIFICATIONS & TERM

(A) Number The affairs of the Association will be governed and managed by the Board of Directors (collectively called the "Board" or "directors" and individually called "director"). The Board of Directors will be composed of five (5) persons, with two (2) directors being from Diamond Ridge at The Pointe, two (2) directors being from Emerald Ridge at The Pointe, and one (1) director being an at-large director.

The directors from Diamond Ridge at The Pointe shall be elected by the owners from that subdivision attending the annual meeting. Likewise, the directors from Emerald Ridge at The Pointe shall be elected by the owners from that subdivision attending the annual meeting. The at-large director shall be elected by a vote of all Owners at the annual meeting.

If the number of directors currently serving changes due to the resignation or removal of directors, or if an insufficient number of members from either subdivision volunteer to fill all possible Board positions, the Board will continue to function with the remaining number of directors until those vacancies are filled so long as there are at least three (3) directors serving as required by IC 23-17-12-3.

(B) Qualifications A director must be an Owner, must maintain his primary place of residence in The Pointe community, and cannot have his membership rights in the Association suspended for any reason as set forth in the Declaration, Articles or these Bylaws. No lot may be represented on the Board by more than one person or representative at the same time; nor can an owner, along with a spouse, significant other or family member, hold more than one (1) directorship at the same time, even if the owner, spouse, significant other, or family member owns more than one (1) lot in The Pointe.

No Owner that is a partnership, corporation, trust or other legal entity may be represented on the Board by more than one person or representative at the same time; nor can a partnership, corporation, trust or other legal entity Owner hold more than one (1) directorship at the same time, even if owning more than one (1) lot in The Pointe.

(C) Term The entire membership of the Board of Directors shall be elected at each annual meeting of the Association. Each director will serve his full term and will continue to serve until his successor is properly elected and/or qualified.
Section 4.02  VACANCIES & REMOVAL

(A) Vacancies  Unless a director is removed from the Board by a vote of the Owners, any vacancy or vacancies occurring in the Board will be filled by a vote of a majority of the remaining members of the Board or as detailed in the Declaration Section 21.4(C). A director appointed by the Board or elected by the members to fill a vacancy on the Board will serve the remaining portion of the Board term of the director he is replacing.

(B) Removal  A director or directors may be removed with or without cause by vote of a majority of the voting Members at a special meeting of the Members duly called and constituted. If a director is removed by a vote of the Members, then a successor will be elected at the same meeting from eligible Members nominated at the meeting. The person elected to fill the spot of the removed director will serve the remaining portion of the Board term of the director he is replacing.

Pursuant to Indiana Code 23-17-12-10, as may be amended or re-codified from time to time, and the Articles of Incorporation, Article VI, Section 2, the Board of Directors also may remove a director from the Board by a two-thirds (2/3) vote of the Board for the following specific acts: a) failing to attend three (3) or more consecutive meetings of the Board of Directors; b) becoming ineligible to serve on the Board according to any terms set forth in the Declaration, Articles or these Bylaws; c) acts of fraud, theft, deception, or criminal behavior while performing his duties as a director; d) breach or disclosure of confidential Board or owner information to person(s) not on the Board; or e) performing any action in the name of or on behalf of the Association that is not within the director’s duties as set forth under the Bylaws, was not previously authorized by the Board, or was not subsequently ratified by the Board.

If a director is removed by a vote of the Board, the vacancy will be filled by a majority vote of the remaining Directors and the appointee will serve the remaining portion of the Board term of the director he is replacing.

(C) Resignation  Any director may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later date specified therein. The acceptance of such resignation shall not be necessary to make it effective. Once submitted, the director shall not have the authority to withdraw the resignation without approval by a unanimous vote of the remaining Board.

Section 4.03  COMPENSATION  No Director shall receive compensation for any service he/she may render to the Association in his or her capacity as a Director except to such an extent as may be expressly authorized by a majority vote of the Owners. However, any Director may be reimbursed for his/her actual expenses incurred in the performance of his/her duties which have been approved prior to expenditure by The Board.
ARTICLE V

NOMINATION & ELECTION OF DIRECTORS

Section 5.01 NOMINATION  Nominations for the Board of Directors may be made by any Owner from those persons eligible to serve. Such nominations may be made in writing and presented to the Secretary of the Association prior to the date of the annual meeting. The Board has the authority to set a deadline date for submitting written nominations prior to the annual meeting.

If an insufficient number of written nominations are received prior to the date of the annual meeting to fill all Board positions open for elections at the annual meeting, then oral nominations will be accepted from the floor prior to voting on any open Directorship position.

If a sufficient number of written nominations are received prior to the date of the annual meeting to fill all Board positions open for election at the annual meeting, then the presiding officer of the annual meeting has the sole discretion to either: 1) stand on the submitted written nominations; or 2) accept additional oral nominations from the floor prior to voting on any open Directorship position.

Section 5.02 ELECTION  Voting on each position for the Board of Directors will be by paper ballot containing the signature, printed name and address of the Owner casting the ballot. Written balloting may be waived by proper motion at the annual meeting and voting conducted by a voice vote or show of hands in circumstances where the number of nominees does not exceed the number of Board positions open for election (i.e. 2 nominees for 2 open directorships).

Each Owner, or their proxy, may cast the total number of votes to which he is entitled to cast for as many nominees as are to be elected; however, cumulative voting will not be allowed. Those persons receiving the highest number of votes shall be elected.

If there is a tie for a directorship position(s), the nominees involved in the tie may agree to the end result without the need for a new run-off vote. If the nominees cannot resolve the election dispute by agreement, then the presiding officer will have the sole discretion to decide the issue by either: 1) conducting a run-off ballot vote by the members; 2) draw from a hat; or 3) flip of a coin.

In the event no quorum is present at an annual meeting of the Association, or if a sufficient number of candidates cannot be found to fill all open Board vacancies at the annual meeting, whether by slating, written petition or oral nomination, then the remaining members of the Board of Directors may fill any directorship positions open for elections at the annual meeting. Any Director so appointed to fill an open position on the Board of Directors will serve the same term as if elected by the members at the annual meeting.

Section 5.03 ELECTIONS BY BALLOT  The election of directors may be conducted by ballot so that owners may select their nominees and send in their votes prior to the annual or election meeting. If the number of written nominations received by the Association before the deadline date exceeds the number of open board positions to be filled at the annual or election meeting, then a ballot will be mailed to each owner for voting on new board members. If the election of directors is conducted by ballot voting, then NO write-in nominations or nominations
from the floor of the meeting will be accepted so everyone has a chance to vote on the same list of candidates.

Of the number of written nominations received by the Association before the deadline date matches the number of open board positions to be filled at the annual or election meeting, then there is no reason to incur the expense of a mailed ballot since all submitted nominees will be elected by default. In this situation, the Board may simply waive ballot voting and accept the submitted nominations by voice vote at the annual or election meeting.

If an insufficient number of written nominations are received by the deadline date to fill all Board positions open for election at the annual or election meeting, then ballot voting will not be conducted and oral nominations will be accepted from the floor of the meeting prior to voting on any open Directorship position.

ARTICLE VI

MEETINGS OF DIRECTORS

Section 6.01  REGULAR MEETINGS  Regular meetings of the Board shall be held no less than quarterly at such place and hours as may be fixed from time to time by majority vote of the Board. Notice shall be given to each Director, at least 48 hours, personally, by telephone, by email or at least four (4) days by mail, prior to the meeting or any rescheduling of a meeting. THE SECRETARY SHALL BE REQUIRED TO KEEP MEETING MINUTES OF ALL REGULAR MEETINGS, TO BE SUBMITTED TO THE BOARD NO LATER THAN THE NEXT REGULAR MEETING FOR APPROVAL. Meetings shall not be held outside of Marion or Johnson Counties without a reasonable basis.

Section 6.02  SPECIAL MEETINGS  Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) Directors, after not less than seventy-two (72) hours notice to each Director in the manner prescribed by Section 6.01. THE SECRETARY SHALL BE REQUIRED TO KEEP MEETING MINUTES OF ALL SPECIAL MEETINGS OF THE BOARD, TO BE SUBMITTED TO THE BOARD NO LATER THAN THE NEXT REGULAR MEETING FOR APPROVAL. Meetings shall not be held outside of Marion or Johnson Counties without a reasonable basis.

Section 6.03  IRREGULAR MEETINGS (e.g. email, phone, etc.)  Any action required or permitted to be taken at a meeting of the Board of Directors or any committee may be taken without a meeting if the action is approved by a majority of the entire Board in writing or via email. If an action is approved via writing or email, evidence of the written or email approval must be made part of the corporate Board minutes or records. However, failure to keep documentation of the approval does not automatically invalidate the decision.

Section 6.04  EMERGENCY MEETINGS  In a situation where action is needed and either a special, regular or irregular meeting will not suit the purpose, due only to a situation that can reasonably be determined to be an emergency relevant to Association business, The Board may handle the action as follows:
(A) The Director first notified shall make a good faith attempt to notify each and every other Director and call a meeting at the earliest possible reasonable time.

(B) If it appears sufficient Directors are not available for a meeting, said contact person shall attempt to get a "consensus" from the Directors as to the action needed, depending on the circumstances. If the Director making the contacts is unable to schedule a meeting with at least a quorum present, in a reasonable time (consistent with the circumstances) the "consensus" shall determine what action is to be taken, and shall be the subject of a request for ratification at a later Board meeting.

(C) The contact Director shall make every possible attempt to achieve at least a majority "consensus" before taking any specific action.

(D) THE SECRETARY OR CONTACT DIRECTOR IF THE SECRETARY IS NOT IN ATTENDANCE, SHALL BE REQUIRED TO KEEP MEETING MINUTES OF ALL EMERGENCY MEETINGS, TO BE SUBMITTED TO THE BOARD NO LATER THAN THE NEXT REGULAR MEETING FOR APPROVAL.

Section 6.05 QUORUM A majority of the number of existing Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors (subject to voting restrictions under 7.04 of The Bylaws) present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 7.01 POWERS The Board of Directors will have the powers that are reasonable and necessary to perform its duties. Some of these powers include the power to:

(a) hire a managing agent to assist the Board in performing its duties;
(b) purchase, lease or obtain for the Association any equipment materials, labor and services that will help the Board perform its functions and duties;
(c) employ legal counsel, architects, contractors, accountants and others to help advise the Board on the business and affairs of the Association;
(d) hire, oversee, and discharge personnel that the Board decides is necessary to help perform the maintenance, upkeep, repair and replacement of the Common Areas and those duties that are part of the Common Expenses;
(e) assess the Owners for the costs of performing all of the functions, duties and obligations of the Association as Common Expenses and to pay all such costs from those assessments;
(f) open and maintain a bank account or accounts in the name of the Association;
(g) create, adopt, revise, amend or alter from time to time such additional rules and regulations with respect to use, occupancy, operation, enjoyment, and architectural additions or modifications of the Real Estate and the Common Areas
(in addition to those set forth in the Declaration), including the individual lots and streets (whether public or private), as the Board in its discretion deems necessary or advisable, with these rules and regulations being in addition to or supplementing the provisions set forth in the Declaration; provided, however, that copies of any such additional rules and regulations so adopted by the Board must be promptly delivered to all Owners at the Owner’s last known address;

(h) take any and all appropriate action, including legal action, if necessary, to enforce or gain compliance by all Owners of the provisions, restrictions or requirements within the Declaration, Articles, Bylaws, or rules and regulations of the Association;

(i) grant to such public or private companies, entities or bodies as the Board may approve, such easements as may be necessary to provide the Lots, Dwelling Units and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and service; provided that such easements are located within or are co-extensive with any one or more utility easements, maintenance and access easements, landscape and maintenance easements, or Common Areas shown upon, and identified as such on, or provided for in, any subdivision plat of the Development, whether such plat is heretofore or hereafter recorded.

Section 7.02 DUTIES The Board of Directors is the governing body of the Association. The Board is responsible for overseeing the functions and duties of the Association, which includes such things as the administration of the Real Estate; the enforcement of the Declaration and Rules and Regulations, if any; providing lawn care, pond care or other forms of Common Area maintenance and upkeep within the community and collecting assessments and paying the common expenses of the Association.

The Board is to carry out these duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar conditions, and in a manner the Board believes to be in the best interest of the Association. The availability of funds, the unforeseen or unexpected nature of expenses caused by natural, administrative, or regulatory reasons, or any other factor or factors which may hinder or prevent the Board from taking action to fulfill any of these duties will be considered in determining the reasonableness of the Board’s actions or failure to provide certain services or maintenance as required.

The Board may hire a managing agent. The managing agent, if one is hired, will help the Board in carrying out its duties, which may include such things as:

(a) procuring of utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);

(b) maintaining, repairing, replacing, landscaping, painting, decorating, and furnishing the Common Areas;

(c) assessment and collection from the Owners of their respective share of the Common Expenses and creation and maintenance of such accounts (including without limitation accounts for reserves for replacement of Common Areas) as the Board deems necessary to conduct the business of the Association;
(g) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;

(h) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior fiscal year; if possible, such accounting shall be delivered to each Owner at the same time as the proposed annual budget;

(i) keeping a current, accurate and detailed record of receipts and expenditures for the Common Expenses and the business and affairs of the Association (i.e. an income/expense report), itemizing the Common Expenses when possible;

(j) obtaining and maintaining for the benefit of the Association, the Owners, any Managing Agent and the Board the insurance coverage required under this Declaration and such other insurance coverage as the Board, in its sole discretion, decides is necessary or advisable;

(k) protection, surveillance of the Common Areas, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

(l) paying any taxes and other necessary costs that are part of the Common Expenses;

(m) enforcing the covenants, restrictions, bylaws and rules and regulations set forth in the Declaration, Articles, Bylaws or adopted rules and regulations;

(n) all duties and obligations imposed upon the Association or the Board in the Declaration, the Articles, the Bylaws, the Act, or any recorded plat of the Real Estate.

Section 7.03 LIMITATION ON BOARD ACTION After the Applicable Date, the authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than $10,000.00 per year without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;

(b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the owners at the annual meeting; and

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

Section 7.04 CONFLICTS OF INTEREST

(A) Directors with any professional or personal interest or connection to a third party (individual or business/corporate) whom the Board is contracting or hiring for goods or services shall recuse themselves from voting on any matters involving the third party. However, the Director may participate in any discussions the Board has prior
to the actual voting on the relevant issue, providing the Director voluntarily discloses such conflict of interest.

(B) If a Director does not voluntarily disclose such a conflict of interest, the Board, based on reasonable evidence of such conflict, may deem the Director to have a potential or actual conflict of interest in regard to the specific issue and force the Director to recuse himself by a majority vote of the Board. If a Director is recused under these circumstances, then the recused Director will not be allowed to participate in any Board discussions or decisions regarding the third party so long as a Board majority deems such conflict of interest to be ongoing.

Section 7.05 UNANIMOUS VOTE REQUIREMENTS

The Board, or any committee or sub-committee created by it, may take any of the following actions with a unanimous vote ONLY:

(A) Changes or Amendments to the Bylaws.

(B) Variance of any of the guidelines and procedures of the ACC (including, but not limited to, as described in Sections 10.2 & 10.6 of the Declaration) or variation of the Declaration (where a variance of such is stated may be authorized). IN NO INSTANCE SHALL ANY WAIVER OR VARIANCE BE ISSUED WHERE NOT SPECIFICALLY ALLOWED UNDER THE DECLARATIONS.

(C) Reduction of the minimum finished living area square footage requirements of the ACC Guidelines.

(D) Incurring Loans or Debt (outside of regular maintenance and service contracts for things such as lawn care, snow removal, etc.) which The Pointe would be liable for.

(E) Make a Special Assessment as provided in Section 12(c) of the Declaration.

(F) Reinstatement of a Director who has resigned as described in Section 4.02(C) of this document.

ARTICLE VIII
OFFICERS AND THEIR DUTIES

Section 8.01 ENUMERATION OF OFFICERS

The term “Officer” is the name given to the particular position a director may be serving on the Board. Each officer position carries different duties on the Board. The officers of the Corporation must be members of the Board of Directors and may consist of a President, a Vice President, a Secretary, a Treasurer, etc.

Section 8.02 ELECTION OF OFFICERS

The election of officers shall take place at the first meeting of the Board following each annual meeting of the Owners.
Section 8.03 TERM

At the first Board meeting held after the election of directors at the annual meeting, the Board of Directors will assign each officer position to a member of the Board of Directors. Each officer will hold that officer position until: a) the next annual meeting of the Board; b) the expiration of the director’s term on the Board of Directors; or c) the director’s removal or resignation from the Board, whichever occurs first.

Section 8.04 SPECIAL APPOINTMENTS

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

Section 8.05 MULTIPLE OFFICES

The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 8.04 of this Article.

Section 8.06 DUTIES

The duties of the officers are as follows:

(A) PRESIDENT

(1) The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and may co-sign all checks and promissory notes.

(B) VICE PRESIDENT

(1) The Vice President shall have the authority to act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board, and may co-sign all checks written on behalf of the Association.

(C) SECRETARY

(1) The Secretary SHALL RECORD THE VOTES AND KEEP THE MINUTES OF ALL MEETINGS AND PROCEEDINGS OF THE BOARD AND OF THE MEMBERS; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board, and may co-sign checks.

(D) TREASURER

(1) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and may disburse such funds as directed by resolution of the Board; may co-sign all checks and promissory notes of the Association; keep proper books of account; cause an annual review of the Association books to be made by a public accountant at the completion of each fiscal year; and may prepare an annual budget and a statement of
income and expenditures to be presented to the membership at its regular annual meeting. If the Association engages the services of a CPA or managing agent to undertake any of these asks, the treasurer is relieved of those specific duties delegated to such person or entity.

(E) The duties of the officers shall not be limited as enumerated above, but they may discharge in addition such duties as are authorized to be assigned by the Association.

**ARTICLE IX**

**COMMITTEES**

Section 9.01 The Board may appoint an Architectural Control Committee ("ACC") as provided in Section 10 of the Declaration. In addition, The Board may appoint other committees as deemed appropriate in carrying out its purpose. Any member of a committee may be removed, with or without cause, by a majority vote of the Board.

**ARTICLE X**

**LIABILITY OF DIRECTORS AND OFFICERS**

Section 10.01 IN GENERAL The Directors and Officers of the Association will not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association will indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract was made in bad faith. It is intended that the Directors will have no personal liability with respect to any contract made by them on behalf of the Association.

Section 10.02 GROUNDS FOR INDEMNIFICATION If a director is made a party to a proceeding based upon his actions as a director, the Association may indemnify the director against liability incurred in the proceeding if:

1. the individual's conduct was in good faith; and
2. the individual reasonably believed:
   A. in the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in the corporation's best interests; and
   B. in all other cases, that the individual's conduct was at least not opposed to the corporation's best interests; and
3. in the case of any criminal proceeding, the individual:
   A. had reasonable cause to believe the individual's conduct was lawful; or
   B. had no reasonable cause to believe the individual's conduct was unlawful.

The termination of a proceeding by judgment, order, settlement, or conviction is not determinative that a director did not meet the required standard of conduct.
Section 10.03 SUCCESSFUL DEFENSE

Unless limited by the articles of incorporation, the Association will indemnify a director who was wholly successful, on the merits or otherwise, in the defense of a proceeding to which the director was a party, because the director is or was a director of the Association, against reasonable expenses actually incurred by the director in connection with the proceeding.

Section 10.04 ADVANCED EXPENSE PAYMENTS

The Association may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if the following occur:

1. The director furnishes the Association a written affirmation of the director's good faith belief that the director has met the standard of conduct described in Section 2 of this Article.
2. The director furnishes the Association a written undertaking, executed personally or on the director's behalf, to repay an advance if it is ultimately determined that the director did not meet the standard of conduct.
3. A determination is made that the facts then known to those making the determination would not preclude indemnification under this chapter.

The written undertaking described in #2 above:

1. must be an unlimited general obligation of the director;
2. is not required to be secured; and
3. may be accepted without reference to financial ability to make repayment.

Determinations and authorizations of payments under this Section will be made in the manner specified in Section 6 of this Article.

Section 10.05 COURT ORDERED INDEMNIFICATION

Unless the Association's articles of incorporation provide otherwise, a director of the Association who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court may, after giving any notice the court considers necessary, order indemnification in the amount the court considers proper if the court determines one (1) of the following:

1. The director is entitled to mandatory indemnification under Section 3 of this Article, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court ordered indemnification.
2. The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in Section 2 of this Article.

Section 10.06 AUTHORIZATION OF INDEMNIFICATION

The Association may not indemnify a director under Section 2 of this Article unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section 2 of this Article.

The determination must be made by one (1) of the following procedures:

1. By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.
(2) If a quorum cannot be obtained under subdivision (1), by majority vote of a committee designated by the board of directors consisting solely of at least two directors not at the time parties to the proceeding. Directors who are parties may participate in the designation.

(3) By special legal counsel:

(A) selected by the board of directors or a committee of the board of directors in the manner prescribed in subdivision (1) or (2); or

(B) if a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board of directors. Directors who are parties may participate in the selection.

(4) By the members. However, memberships voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

Authorization of indemnification and evaluation as to reasonableness of expenses will be made in the same manner as the determination that indemnification is permissible. However, if the determination is made by special legal counsel, authorization of indemnification and evaluation as to the reasonableness of expenses will be made by those entitled in #3 above to select counsel.

Section 10.07 INDEMNIFICATION OF OFFICERS, AGENTS, AND OTHERS

Unless the Association’s articles of incorporation provide otherwise:

(1) an officer of the Association, whether or not a director, is entitled to:

(A) mandatory indemnification under Section 3 of this Article; and

(B) apply for court ordered indemnification under Section 5 of this Article in each case;

to the same extent as a director;

(2) the Association may indemnify and advance expenses under this chapter to an officer, employee, or agent of the Association, whether or not a director, to the same extent as to a director; and

(3) the Association may indemnify and advance expenses to an officer, employee, or agent, whether or not a director, to the extent and consistent with public policy that may be provided by articles of incorporation, bylaws, general or specific action of the Association’s board of directors, or contract.

Section 10.08 OTHER RIGHTS TO INDEMNIFICATION

The indemnification and advance for expenses provided for or authorized by this Article does not exclude other rights to indemnification and advance for expenses that a person may have under the following:

(1) The Association’s articles of incorporation or bylaws.

(2) A resolution of the board of directors or of the members.

(3) Any other authorization, whenever adopted after notice, by a majority vote of all the voting members of the Association.

If the articles of incorporation, bylaws, resolutions of the board of directors or of the members, or other duly adopted authorization of indemnification or advance for expenses limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles of incorporation, bylaws, or resolution of the board.
of directors or of the members, or other duly adopted authorization of indemnification or advance for expenses.

This Article does not limit the Association’s power to pay or reimburse expenses incurred by a director, an officer, an employee, or an agent in connection with the person’s appearance as a witness in a proceeding at a time when the person has not been made a named defendant respondent to the proceeding.

Section 10.09 BOND OR INSURANCE The Board of Directors may provide surety bonds (or an equivalent form of coverage) and may require the managing agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary, to provide surety bonds (or an equivalent form of coverage), indemnifying the Association against larceny, theft, embezzlement, forged, misappropriation, wrongful, abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond (or equivalent form of coverage) must specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds (or equivalent form of coverage) will be a Common Expense.

ARTICLE XI

BOOKS AND RECORDS

Section 11.01 Current copies of the Declaration, the Articles, the Bylaws, rules and regulations, other corporate documents concerning the Real Estate or the Association and its operation required to be kept and made available for inspection will be available for inspection by any member or other properly designated party at the principal office of the Association or other designated location selected by the Board during reasonable business hours or under other reasonable circumstances, where copies of the same may be purchased at reasonable cost.

The Association will keep detailed books of account showing all expenditures and receipt of administration which will specify the Common Expenses incurred by or on behalf of the Association and the members. The accounts, books, records, financial statements, and other papers of the Association will be open for inspection by any member upon written request submitted to the Board at least five (5) days in advance of the inspection date, and said inspection is to be made during reasonable business hours or under other reasonable circumstances. Any holder, insurer, or guarantor of a first mortgage on a Lot will be entitled upon written request to receive a financial statement for the immediately preceding fiscal year. The Association is entitled to reimbursement from the party requesting to inspect records any reasonable administrative or reproduction expenses incurred by the Association as a result of the records request.

The Association reserves the right to require any member to request inspection of the accounts, books, records, financial statements, and other papers of the Association according to the requirements set forth under the Indiana Nonprofit Corporation Act of 1991, specifically Indiana Code 23-17-27 et seq., IC 32-25.5-3-3(g) through (m), and any amendments or changes to these laws. The Association reserves the right to deny an owner access to any records that are not required to be opened for inspection under Indiana law. The Association also reserves the
right to charge owners requesting inspection of Association records reasonable copy and search charges and other charges as allowed or not prohibited by law.

Section 11.02 Directors have an absolute right of inspection of all books and records of the HOA.

Section 11.03 Except for ballots voting on a covenant amendment, the Association must keep ballots for a period of ninety (90) days following the meeting date where an election or vote was held. After ninety (90) days has passed, any vote taken at the meeting will be presumed valid and accepted by the membership and the ballots may be destroyed by the Board or their designated agent. Ballots voting on an amendment to the covenants must be permanently retained in the corporate records unless they are attached to the recorded document.

In addition, other records of the Association not essential for tax purposes, such as meeting minutes, must be kept for a period of two (2) years before being destroyed. Financial records essential for a state or federal tax audit, if one is ever conducted, must be kept for seven (7) years before being destroyed.

ARTICLE XII
EXECUTION OF INSTRUMENTS

Section 12.01 CHECKS, DRAFTS, ETC. All checks, drafts, or other orders for the payment of money, obligations, notes or other evidences of indebtedness of the Association must be signed or endorsed by two (2) parties consisting of either: a) two (2) officers; or b) one (1) officer and the managing agent.

Signatories on each account held by the Association must be designated and approved by a majority vote of the Board, and the signatories may be removed and/or replaced at any time by a majority vote of the Board.

Section 12.02 CONTRACTS All contracts, agreements, deeds, conveyances, mortgages and similar instruments authorized by the Board of Directors must be signed, unless otherwise directed or permitted by the Board of Directors, by the President and attested by the Secretary or another officer.

Except as provided in these Bylaws, no officer, agent, or employee has the power to bind the Association or to render it liable for any purpose or amount unless the act is previously authorized or later ratified by the Board of Directors.
ARTICLE XIII

RULES AND REGULATIONS; ENFORCEMENT

Section 13.01 RULES AND REGULATIONS  The Board has the authority to create, adopt, revise, amend or alter from time to time such additional rules and regulations with respect to use, occupancy, operation, enjoyment, and architectural additions or modifications of the Real Estate and Common Area (in addition to those set forth in the Declaration), including the individual lots, streets (whether public or private), and any other portion of the Real Estate, including the personal conduct of the members and guests thereon, as in the sole discretion of the Board are deemed necessary or advisable. Copies of any rules and regulations adopted by the Board must be delivered to all owners at their last known address.

All rules, regulations, policies, procedures and guidelines are binding and enforceable upon each and every lot and member, including all occupants, guests and invitees of any lot or member in the Development the same as if it were expressly set forth in the Declaration itself. Any rules, regulations, policies, procedures and guidelines adopted by the Board may be specifically overruled, cancelled, or modified by the Board or at a duly called and constituted regular or special meeting of the members by a majority vote of all eligible members of the Association.

Section 13.02 ENFORCEMENT  Any party subject to the Declaration or these Bylaws, including the Association or any individual owner, may proceed at law or in equity to prevent the occurrence, recurrence or continuation of any violation of the Declaration, these Bylaws, or any properly adopted rules, regulations, policies, procedures or guideline of the Association. However, the Association may not be held liable for damages of any kind, including legal fees and costs, to any owner or person for failing to enforce or carry out any of the provisions of the Declaration or these Bylaws.

No delay or failure on the part of the Association or any owner to seek any available remedy regarding a violation of any provision of the Declaration or adopted rule of the Association will be a waiver by the Association or any owner (or any estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of a violation of the Declaration or rule adopted by the Association. Likewise, no delay or failure of the Association or any owner to enforce any particular provision of the Declaration or rule adopted by the Association will be a waiver or estoppel of the Association or owner to enforce any other provision of the Declaration or rule adopted by the Association.

ARTICLE XIV

AMENDMENTS & CONFLICTS

Section 14.01 The Board of Directors of the Association may alter, amend, repeal the Code of Bylaws or adopt a new Code of Bylaws for the Association, without the approval of the Members, by a unanimous vote of the Board of Directors of the Association.
Section 14.02  In the case of any conflict between the Articles of Incorporation and the Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and the Bylaws, ACC Guidelines or Articles, the Declaration shall control.

Section 14.03  If a provision of the Bylaws is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:
1. the validity or enforceability in that jurisdiction of any other provision of the Bylaws; or
2. the validity or enforceability in other jurisdictions of that or any other provision of the Bylaws.

ARTICLE XV
FISCAL YEAR

Section 15.01  The fiscal year of The Association shall begin on the first day of January and end on the 31st day of December every calendar year, except that the first fiscal year shall begin on the date of incorporation.

ARTICLE XVI
APPLICABLE INDIANA LAWS

Section 16.01  The provisions of the Indiana Nonprofit Corporation Act of 1991, as amended, along with Indiana Code 32-25.5-3-3(m) through (p) and any other laws applicable to the Association or any matter not herein specifically covered by these Bylaws, are hereby incorporated by reference in and made a part of these Bylaws.

[End of Bylaws]

We certify that this Code of Bylaws of The Pointe Home Owners Association, Inc. was approved by a majority vote of the Board of Directors of the Association.

THE POINTE HOME OWNERS ASSOCIATION, INC.

[Signature]
President

[Signature]
Printed Name of Director

Date 8/4/15
ARREST:

[Signature]

Date 8/4/15

Secretary

[Signature]

Printed Name of Director

STATE OF INDIANA

COUNTY OF MARION

Before me a Notary Public and for said County and State, personally appeared

[Signature] Amy Wright and [Signature] Ronald Perkins, the President
and Secretary, respectively, of The Pointe Home Owners Association, Inc., who acknowledged execution of the
foregoing Code of Bylaws for The Pointe Home Owners Association, Inc. and who, having been duly sworn, stated
that the representations contained herein are true.

Witness my hand and Notarial Seal of this 4th day of August, 2015.

[Signature] Dawn Marie Highbaugh
Notary of Public – Signature

[Signature] Marion
County of Residence

[Signature] January 4, 2021
Printed
Date Commission Expires

I hereby affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security
number in this document, unless required by law. –Ryan Scott Wright

This document was prepared by and should be returned to:

Ryan Scott Wright
THE LAW OFFICES OF RYAN SCOTT WRIGHT
2302 E. County Line Rd.
Indianapolis, IN 46227

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MARION, IN
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