

## **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR SAWGRASS**

This Declaration of Covenants, Conditions, Restrictions and Easements for Sawgrass (this "Declaration") is made by Diamond Peak Group, LLC, an Indiana limited liability company ("Declarant") as of this 17th day of October, 2018.

### **WITNESSETH:**

**WHEREAS**, Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference ("Property"). Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Property. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property as is now or may be subjected to this Declaration.

**NOW, THEREFORE**, Declarant hereby declares that all real property described in Exhibit "A" shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, and easements which are for the purpose of protecting the value and desirability of and which shall run with the Property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, successors-in-title and assigns and shall inure to the benefit of each owner thereof.

### **ARTICLE 1** **DEFINITIONS**

Section 1.01 "Assessments" shall mean Assessments for Common Expenses provided for herein or by any amendment which shall be used for the purposes of promoting health, safety, common benefit and enjoyment of the Owners and Occupants of the Residential Units against which the Assessment is levied and of maintaining the Residential Units and Common Areas, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below. Except as set forth herein, the Assessments shall be levied equally against Owners of Residential Units for such purposes that are authorized by this Declaration or by the Board of Directors from time to time.

Section 1.02 "Association" shall mean and refer to Sawgrass Homeowners Association, Inc., an Indiana non-profit corporation, and its successors and assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Indiana Law. The Association shall be organized and governed in accordance with the Articles of Incorporation, By-laws, and Rules and Regulations, attached hereto as Exhibits "B", "C" and "D".

Section 1.03 "Builder" shall mean Diamond Peak Homes, LLC, an Indiana limited liability company, or its nominee.

Section 1.04 "Common Areas" shall mean those parts or parcels of the Property the title to which are conveyed from time to time by deed from Declarant to the Association, to be thereafter held and owned by the Association for the common benefit of the Owners and the Residential Units. Common Areas also includes the improvements located on those parts or parcels of the Property which are Common Areas.

Section 1.05 "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association; the cost of owning, maintaining, repairing and replacing the Common Areas; the costs of the Association; and the costs of meeting the obligations of the Association under this Declaration, including any reasonable reserves for performing the obligations, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-laws and the Articles of Incorporation of the Association.

Section 1.06 "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Project. Such standard may be more specifically determined and set forth by the Architectural Review Committee, or by the Board of Directors.

Section 1.07 "Declarant" shall mean Diamond Peak Group, LLC, an Indiana limited liability company, or its nominee.

Section 1.08. "Member" shall mean and refer to a person or entity entitled to Membership in the Association, as provided herein.

Section 1.09 "Mortgage" shall mean an instrument given as security to perform obligations, including a deed of trust.

Section 1.10 "Mortgagee" shall mean the Person to whom a mortgage is granted, including a beneficiary or holder of a deed of trust.

Section 1.11 "Mortgagor" shall mean the Person who grants a Mortgage, including the Trustor of a deed of trust.

Section 1.12 "Occupant" shall mean and refer to one or more Persons or entities which may at any time be entitled to the use and possession of a Residential Unit, or any part thereof, by license contract or any other means, whether or not unlawful, and shall include without limitation, Owners and their guests and invitees.

Section 1.13 "Owner" shall mean and refer to one or more Persons or entities who are record owners of a fee simple title to any Residential Unit which is a part of the Property, including contract purchasers, but excluding those having any interest merely as security for the performance of an obligation, and excluding the Declarant or Builder.

Section 1.14 "Person" means a natural person, trustee or any other legal entity.

Section 1.15 "Project" shall mean the Property owned by Declarant and the development thereof.

Section 1.16 "Property" shall mean and refer to all of the real property described in Exhibit "A" attached hereto, as amended from time to time.

Section 1.17 "Residential Unit" shall mean one of the parcels and the zero lot line (to the side(s)) townhome located or to be located thereon, which is a part of the Property intended for independent ownership for use and occupancy as a single family residence. The boundaries of Residential Units shall be the lot lines for the parcels of the Property conveyed by Declarant or Builder to the Owners. For the purposes of this Declaration, a Residential Unit shall come into existence when substantially complete or upon the issuance of a certificate of occupancy by the appropriate agency of the City of Crown Point, Indiana or other local government entity.

Section 1.18 "Subsequent Amendment" shall mean an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of this Declaration.

Section 1.19 "Turnover Date" shall mean the date on which the right of Builder to select and designate all of the members of the Board of Directors is terminated pursuant to Section 15.01 hereof.

## **ARTICLE 2**

### **PROPERTY RIGHTS AND OBLIGATIONS**

Section 2.01 Party Wall Rights, Restrictions and Easements. Subject to any other or additional provisions contained in any written agreement between the parties affected, each wall which is built as part of the original construction of a Residential Unit and placed on the lot line of a Residential Unit shall constitute a party wall and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and of liabilities for property damage due to negligence or willful acts or omissions shall apply thereto. In the event and to the extent that the center of any wall between Residential Units on and over such adjoining Residential Units shall encroach into or onto the adjacent Residential Unit, the Owner utilizing said party wall will have a perpetual exclusive easement appurtenant to his or her Residential Unit on and over such adjoining Residential Unit for the maintenance, repair and restoration of such wall and his or her Residential Unit to the extent that the same shall occupy such adjoining Residential Unit, and such wall shall be deemed a party wall for all purposes of this Declaration. The cost of reasonable repairs and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. If a party wall is destroyed or damaged by fire or other casualty, the Owner who has shared the wall may restore it, and if the other Owner(s) thereof shall contribute equally to the cost of the restoration thereof, without prejudice however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. Notwithstanding any other provisions of this Declaration, any Owner who by his or her negligence or willful act, or the negligence or willful acts of his or her occupancy, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contributions from any other Owner under this Declaration shall be appurtenant to the land and shall pass to such Owner's successor in title. Easements

are hereby declared and granted to Owners having a party wall to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components through the party walls of two or more Residential Units, whether or not such walls lie all or in part within the boundaries of a Residential Unit. Every portion of a Residential Unit shall be burdened with an easement of structural support for the benefit of the other Residential Units.

Section 2.02 Easements of Ingress and Egress for Maintenance. The Association, each Owner, as well as the lawful residents and Occupants of each Residential Unit, and their agents and contractors shall have and enjoy an easement over and upon the lawn and landscaped areas of all Residential Units within a building which are connected in succession by party walls as provided in this Declaration, for the purpose of providing access to all parts of such Residential Unit for all purposes and activities associated with the normal and reasonable maintenance, repair and replacement of the exterior of the building located on the Residential Unit and all lawn and landscaped areas, fences and sidewalks which are a part of the Residential Unit.

Section 2.03 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each adjacent Residential Unit due to the unintentional placement or setting or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance necessary to encompass any constructed encroachment, either now existing or arising in the future; provided, however in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner or Occupant.

Section 2.04 Easements for Utilities. Etc. Declarant hereby reserves for itself and Builder and their respective designees (including without limitation, the City of Crown Point and any utility companies), and further grants to the Association, and easement upon, across, over and under the Residential Units and Common Areas for ingress, egress, installation replacing, repairing and maintaining cable television systems, master television antenna systems, and similar systems, walkways, fences, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas and electricity. This reserved easement may be assigned by Declarant by written agreement upon such terms and conditions as are acceptable to Declarant. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the Property.

Without limiting the generality of the foregoing, there are hereby reserved for the City of Crown Point, Indiana, easements across all Residential Units for ingress, egress, installation, reading, replacing, repairing and maintaining utilities and their appurtenant equipment.

Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on Residential Units, except as may be approved by the Association or as provided in the development and sale by Declarant or Builder. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Association shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this Section shall in no way adversely affect any other recorded easement on the Property.

Section 2.05 Easement on Common Areas. Declarant hereby declares the following non-exclusive easements are hereby created with respect to the Common Areas, if any:

- A. Each Owner and their respective Occupants, guests, invitees and employees shall have a non-exclusive easement for use and enjoyment in and to the Common Areas subject to the following: (i) right of the Association to pass reasonable rules and regulations relating to such use and enjoyment, (ii) the right of the Association to suspend an Owner's right to use or enjoy such easement for any period during which such Owner may be in violation of this Declaration, (iii) the right of the Association to levy assessments as herein provided, and (iv) any and all rights reserved to Declarant or Builder and the Association as herein provided.
- B. A non-exclusive easement for the installation and maintenance of drainage facilities and utility easements is hereby granted to the Association and reserved by the Declarant or Builder over, under, across and through the Common Areas. If any such drainage or utility facilities are not installed or in any easements for such purposes are not created with respect to a lot or Residential Unit or any portion thereof prior to delivery of a deed to an Owner, said Owner hereby grants to the Declarant and the Association a power of attorney to execute and record any such easements with respect to any lots or Residential Units owned by said Owner for the benefit of the Property. The foregoing power of attorney is hereby coupled with an interest and is therefore irrevocable.

The Declarant, Builder, Association and any of their respective agents, employees and independent contractors shall have the right to enter upon the Common Areas and any lot or Residential Unit to the extent necessary for the purpose of maintaining, repairing and replacing the Common Areas as herein provided or for performing any of their respective obligations herein provided. In any such case, the Declarant, Builder, Association, or any of their agents, employees or independent contractors shall not be guilty of trespass.

Section 2.06 Right of Entry. The Association shall have the right and license, but shall not be obligated, to enter into any Residential Unit for emergency, security and safety reason, which right may be exercised by the Association's Board of Directors, officers, safety employees, managers, and all police, fire and ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Residential Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Association. There is hereby granted to the Association, and its agents, employees, managers and independent contractors, a license to enter upon all Residential Units to the extent necessary or appropriate for the conduct of the Association's responsibility under Article 4, if any.

Section 2.07 Easement for Construction and Development. All of the Property shall be subject to easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities for the convenient use and enjoyment of the Property. In addition, there is hereby reserved by the Declarant or Builder and their respective agents and employees, an easement for right of ingress, egress and regress on and across all of the Property for the purpose of construction of the improvements within the Property, including the right of temporary storage of construction materials. Declarant reserves blanket easements and the right to grant such specific easements

over all of the Property as may be necessary in conjunction with the orderly development of the Property described in Exhibit A or any Subsequent Amendment to this Declaration.

Section 2.08 Cross-Easement for Certain Residential Units on Lots 1, 14 and 15. The following Residential Units have or will have a driveway configuration wherein there is a single entrance from the street to the driveways and garages owned by and servicing each of such Units which have been or will be established: Lot 1 Units A, B, C and D; Lot 14 Units A, B, C and D; and Lot 15 Unit A of the Property (each, a "Cross-Easement Unit" and collectively, the "Cross-Easement Units"). Each Owner of a Cross-Easement Unit grants to every other owner of a Cross-Easement Unit, its successors and assigns, an Easement and Right of Way for ingress and egress, together with full right for each Owner, its tenants, servants, visitors, invitees and licensees, in common with all others having the like right, to pass upon such Cross-Easement Unit Owner's driveway as necessary for ingress and egress to a Cross-Easement Unit Owner's driveway and garage; maneuvering into and out of an individual Owner's garage; accessing a Cross-Easement Unit; and to maintain each Cross-Easement Owner's respective driveway and Cross-Easement Unit. Each Owner may nonetheless use for motor vehicle parking the driveway immediately in front of the garage of such Owner's Cross-Easement Unit, provided such parking does not block or materially restrict other Owners' access as described in this Section 2.08. Each deed of record to a Cross-Easement Unit shall contain reference to this easement and right of way, which shall run with the land in perpetuity and shall not be subject to amendment or modification except with the written consent of all affected Cross-Easement Unit Owners.

Section 2.09 Easement for Snow and Ice Removal. For the purpose of snow and ice removal, the Association and each Owner, and their contractor's and agents, are granted an easement over and across the driveway areas of each Residential Unit between the garage of the Residential Unit and the public street; and over and across the sidewalk and lawn areas in the front of each Residential Unit.

Section 2.10 Easement for Lawn Maintenance. The Association, its agents and contractors shall have and enjoy an easement over and upon the front lawn and landscaped areas of all Residential Units for the purpose of lawn maintenance.

Section 2.11 Ingress and Egress Easements. The ingress and egress easements are depicted on the recorded Plat of Survey of the Property.

### **ARTICLE 3** **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

Section 3.01 Membership. Each Owner shall be deemed a "Member" having a membership in the Association. In the event the Owner of a Residential Unit is more than one (1) person or entity, votes and rights of use and enjoyment shall be as provided herein. In no event shall more than one (1) vote be cast for each Residential Unit.

The first annual meeting of the Association shall not be held until such time as the rights of the Declarant to appoint directors and to thereby control the Association shall have expired as provided in Section 3.03 of this Declaration or at such earlier time or times as may be determined by the Declarant. The next annual meeting shall be set by the Board of Directors so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent annual meetings shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board of Directors. Subject to the foregoing,

the annual meeting of the Members shall be held at a date and time as set by the Board of Directors. Subject to the foregoing, the Owners shall, at each annual meeting, elect the Board of Directors of the Association in accordance with the provisions of the By-Laws and transact such other business as may properly come before the meeting.

Section 3.02 Voting. The Association shall have one (1) class of membership. Members shall be entitled on all issues to one (1) vote for each Residential Unit in which they hold an interest. There shall be only one (1) vote per Residential Unit, and the vote for such Residential Unit shall be exercised as those Persons themselves determine and they shall advise the Secretary of the Association prior to any meeting as to that determination. In the absence of such determination, the Residential Unit's vote shall be suspended in the event more than one (1) Person seeks to exercise it. The voting rights of Members shall be subject to the Declarant's Rights as set forth herein.

Section 3.03. Number Terms and Selection of Board of Directors. The initial Board of Directors shall consist of three (3) directors appointed by the Declarant who may but need not be Owners, and who shall serve those terms of office as established by the By-Laws. The Declarant shall have the right to select and designate all of the directors, and accordingly therefore the right to operate and control the Association, until the Turnover Date. Thereafter, directors shall be elected as otherwise required by the Articles of Incorporation and By-Laws of the Association and must be Owners.

Notwithstanding any other provision of this Declaration, the Articles of Incorporation, or the By-Laws, from and after the date of the recording of the Declaration until the Turnover Date, the Association shall be governed by the Board of Directors appointed from time to time by Declarant. Such Board of Directors so appointed shall exclusively hold all rights and powers which a Board of Directors or the Association would have under this Declaration, the Articles of Incorporation, or the By-Laws, except as specifically limited herein. Such Board of Directors may appoint from time to time from among the Owners of Residential Units, one or more committees to advise and assist it in the performance of its functions. The rights and powers of such Board of Directors shall be limited as follows:

- A. All assessments shall be made in accordance with this Declaration.
- B. Such Board shall have no power to reallocate the voting power among the Owners in any manner contrary to this Declaration.
- C. Such Board shall not take any action requiring the vote or consent of any Mortgagee unless the vote or consent of such Mortgagee is obtained.

Declarant shall have the right to waive, on behalf of the Association, the annual meeting and annual accounting provided for in this Declaration, so long as Declarant retains control of the Association. At the time of turnover of control by Declarant, a meeting of the Association will be called, at which time the rights and powers of the Declarant appointed Board of Directors shall terminate and the Association shall thereafter be governed in accordance with the other provisions of this Declaration, the Articles of Incorporation and the By-Laws. Each Owner shall be deemed to have given to Declarant an irrevocable proxy to vote on any and all matters on which such Owner is entitled to vote under this Declaration, or under the Articles of Incorporation or the By-Laws of the Association. The proxy hereby granted to Declarant shall be

deemed to be coupled with an interest and irrevocable. Such proxy shall terminate as of the Turnover Date as set forth above.

#### **ARTICLE 4**

#### **MAINTENANCE, REPAIR AND REPLACEMENT OF PROPERTY**

**Section 4.01** Association's Responsibility. The Association's responsibility for maintenance, repair and replacement of the Property shall be limited to the providing of maintenance, repair and replacement of:

- A. Common Areas owned by the Association, including detention/retention ponds if not maintained by the City of Crown Point. In this regard, the Association is authorized at any time to convey to the City of Crown Point, without consideration, the portions of the Common Areas which include the detention/retention ponds.
- B. Snow and ice removal upon the driveways of the Residential Units in accordance with guidelines established by the Board of Directors.
- C. Lawn mowing, landscaping and fertilization of the Common Areas, front, side and rear yards of the Residential Units and parkway areas.
- D. Maintenance, repair and replacement of any mailboxes and public road and Common Area lights and signage installed by the Association or Declarant or Builder.
- E. Other matters within the Property as may be determined by the Board of Directors on a community-wide basis.

**Section 4.02** Owners Responsibility. Except as specifically provided in Section 4.01, all maintenance, repair and replacement of the Residential Unit and all structures, and other improvements located within the Residential Unit and Owner's lot shall be the sole responsibility of the Owner thereof who shall perform such maintenance in a manner consistent with the Community-Wide Standard of the Project and the applicable covenants, except as and to the extent otherwise required by this Declaration, and the Articles of Incorporation, By-laws and Rules and Regulations of the Association. It shall be the obligation and responsibility of each Owner of a Residential Unit to cooperate in full and in good faith with each of the other Owners of Residential Units which are a part of the same building, with regard to performance of all maintenance, repair and replacement of portions of the building commonly shared but not maintained by the Association (e.g., the roof, party walls, etc.), including the cost thereof. By way of example: if a main utility line (such as sanitary sewer line) is shared, the cost of maintenance, repair and replacement not caused by the negligent or intentional conduct of less than all of the Owners sharing the line shall be borne equally. In the event of any dispute between or among Owners as to the foregoing obligation and responsibility, any one Owner shall have the right to require that such dispute be submitted to a simple majority decision of the Board of Directors of the Association, which decision shall be final and binding on all the Owners involved in that building.

**Section 4.03** Failure to Maintain. In the event that Declarant or the Board determines that: (i) any Owner has failed or refused to discharge properly its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which it is responsible hereunder, or

(ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his/her family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event Declarant, except in the event of an emergency situation, shall give such Owner written notice of Declarant or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner, as the case may be, and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. Except in the event of emergency situations, such Owner, as the case may be, shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner, as the case may be, and said cost shall be added to and become a part of the assessment to which such Owner and that Owner's Residential Unit are subject and shall become a lien against such Residential Unit. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

## **ARTICLE 5**

### **INSURANCE AND CASUALTY LOSSES**

**Section 5.01** Insurance. The Association shall obtain insurance on the Common Areas, and the Owners shall obtain insurance on the Residential Units. Insurance obtained by the Owners on the Residential Units shall be adequate blanket all-risk casualty insurance for the full replacement cost of the Residential Unit.

The Association may elect, but shall not under any circumstances be obligated, to obtain and continue in effect adequate blanket all-risk casualty insurance in such forms as the Board of Directors deems appropriate for the full replacement cost of all structures and the Residential Units, as well as public liability insurance, after written notice is given to the Owners. At the time this Declaration has been executed, the Association has elected not to obtain such insurance, and each Owner shall obtain such insurance in accordance with this Article. Each Owner shall assume that the Association has elected not to acquire all-risk casualty insurance unless it has written notice to the contrary. All provisions of this Article shall apply to all policy provisions, loss adjustment and all other subjects of all policies of insurance whether such policies are obtained by the Association or the Owners, or both.

Each Owner shall also obtain a public liability policy covering the Residential Unit owned by such Owner, and shall name the Association and all of its members as additional insureds for all damages or injury caused by the negligence of such Owner. The public liability insurance policy shall have at least Five Hundred Thousand Dollars and 00/100 (\$500,000.00) limit for bodily injury and property damage. Premiums for insurance obtained by the Association shall be a Common Expense of the Association and shall be included in the General Assessment, as defined herein. Premiums for insurance obtained by Owners shall be paid by such Owners.

All casualty insurance coverage obtained by the Association or by any Owner shall be for the respective benefit of the parties, as further identified in subsection B below. Such insurance shall be governed by the provisions hereinafter set forth.

- A. All policies shall be written with a company licensed to do business in Indiana and holding a rating of A or better in the Financial Category as established by A.M. Best Company, Inc., if reasonably available, or if not available, the most nearly equivalent rating, and shall be for the full replacement cost. Each Owner upon request of the Association shall provide the Association with a copy of all such policies of such Owner or certificates of insurance for such policies.
- B. All policies on Residential Units shall be for the benefit of the Residential Unit Owners and their Mortgagees as their interests may appear. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.
- C. Exclusive authority to adjust losses under policies in force on Residential Units shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having any interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- D. In no event shall any insurance coverage obtained and maintained by the Association's Board of Director's hereunder be brought into contribution with insurance purchased by individual Owners, Occupants or their Mortgagees.
- E. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and a full replacement cost reviewed by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with the construction in the Lake County area.
- F. The Association's Board of Directors and the Owner shall be required to make reasonable efforts to secure insurance policies that will provide the following:
  - 1. A waiver of subrogation by the insurer as to any claim against the Association, its Board of Directors and managers, the Owners and their respective tenants, servants, agents and guests;
  - 2. A waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
  - 3. That no policy obtained by the Association may be canceled, invalidated or suspended on account of any one or more individual Owners;
  - 4. That no policy obtained by the Association may be canceled, invalidated or suspended on account of the conduct of any Director, officer or employee of the Association or its duly authorized manager without prior demand in writing

delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its managers, any Owner or Mortgagee;

5. That any "other insurance" clause in any policy exclude Association and individual Owner's policies from consideration; and
6. That no policy may be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

In addition to the other insurance required by this section, the Board shall obtain, as a Common Expense, worker's compensation insurance (if and to the extent reasonably necessary), a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, and public liability insurance for all Common Areas with at least the same minimum coverage and limits as are required hereby for public liability insurance to be carried by Owners. The amount of fidelity coverage shall be determined in the Board of Director's best business judgment, but may not be less than three (3) months' Assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least (10) days' prior written notice to the Association.

Section 5.02 Individual Insurance. By virtue of taking title to a Residential Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all-risk casualty insurance on the Residential Units and structures constructed thereon as provided for in this Article, unless the Association carries such insurance, which it is not obligated to do and only after written notice to the Owners. Each individual Owner further covenants and agrees that in the event of any loss or damage and destruction the proceeds of such insurance shall be used only in accordance with this Declaration. In the event that the structure is totally destroyed and by a vote of three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum), it is determined, subject to the further requirements of Section 4 of this Article, not to rebuild or to reconstruct, the individual Owner shall clear the Residential Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. A decision not to rebuild or reconstruct shall under no circumstances relieve or discharge an Owner from the obligation to pay Assessments to the Association. Absent such decision not to rebuild or reconstruct, the Owner shall rebuild or reconstruct the Residential Unit.

Section 5.03 Disbursement of Proceeds. Proceeds of insurance policies shall be paid to the Insurance Trustee to be disbursed as follows:

- A. If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repair or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction or, in the event no repair or reconstruction is made, shall be disbursed to the affected Owner or Owners and their Mortgagee(s) as their interests may appear. This is a covenant for the benefit of any Mortgagee of a Residential Unit and may be enforced by such Mortgagee.

- B. If it is determined, as provided for in Section 5.02 of this Article, that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for in Section 5.03 (A) of this Article.

Section 5.04 Damage and Destruction.

- A. Immediately after the damage or destruction by fire or other casualty to all or any part of a Residential Unit, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Residential Units to substantially the same condition in which they existed prior to the fire or other casualty.
- B. Any damage or destruction shall be repaired or reconstructed unless by a vote of at least three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum) a decision is made within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction shall be repaired or reconstructed.
- C. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the Residential Unit shall be restored to its natural state by the Owners thereof and maintained as an undeveloped portion of the Project by the Association in a neat and attractive condition.

Section 5.05 Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against the Owner or Owners of Residential Units affected by such damage or destruction. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Section 5.06 Appointment of Insurance Trustee. The Association, as Insurance Trustee, shall have the right to appoint any Federal or State bank which is qualified to offer trust services to the public as Insurance Trustee hereunder, and upon such appointment shall be relieved of all liability and responsibility as Insurance Trustee hereunder.

**ARTICLE 6**  
**NO PARTITION**

Section 6.01 No Partition. Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of a Residential Unit or any part thereof, nor shall

any person acquiring any interest in any Residential Unit or any part thereof seek any such judicial partition unless the Property has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring title to real property which may or may not be subject to this Declaration.

## **ARTICLE 7** **CONDEMNATION**

Section 7.01 Condemnation. Whenever all or any part of a Residential Unit shall be taken (or conveyed in lieu of and under threat of condemnation by the Owner) by any authority having the power of condemnation or eminent domain, each Owner and the Association shall be entitled to notice thereof. The award made for such taking shall be payable to the Insurance Trustee to be disbursed as follows:

If the taking involved a portion of a Residential Unit on which improvements have been constructed, then, unless within sixty (60) days after such taking a vote of at least three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum), the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Residential Unit to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article 5 hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Residential Unit, or if there is a decision made not to repair or restore, or if there are net funds remaining after such restoration or replacement is completed, then such net funds shall be disbursed to the Owner and its Mortgagee as their interests may appear. This is a covenant for the benefit of any Mortgagee of a Residential Unit and may be enforced by such Mortgagee.

## **ARTICLE 8** **RIGHTS, OBLIGATIONS AND POWERS OF THE ASSOCIATION**

Section 8.01 Creation of General Assessments. There are hereby created General Assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors to be commenced at the time and in the manner set forth herein. General Assessments shall be allocated equally among all Residential Units within the Association and shall be for expenses determined by the Board to be for the benefit of the Association and Owners as a whole. Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay such Assessments, together with an interest rate of twelve percent (12%) per annum, costs and reasonable attorneys' fees, and the same shall be a charge on the Residential Unit and shall be a continuing lien upon the Residential Unit against which each Assessment is made.

Each Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligations of the person who was the Owner of such Residential Unit at the time of the Assessment, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual Assessment for delinquent Owners. Unless the Board otherwise provides, the Assessments shall be paid in monthly installments.

Section 8.02 Computation of General Assessment. It shall be the duty of the Board, at least thirty (30) days before the beginning of the budget year (the budget year shall initially be the calendar year from January 1 through December 31) and ten (10) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming budget year. The budget shall include the maintenance and Common Expenses and appropriate reserves. The Board shall cause a copy of the budget, and the amount of the Assessments to be levied against each Residential Unit for the following budget year to be delivered to each Owner at least seven (7) days prior to the meeting. The budget and the Assessments shall become effective when adopted by the Board of Directors.

Notwithstanding the foregoing, however, in the event the Board fails for any reason to determine the budget for the succeeding budget year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current budget year shall continue for the succeeding budget year.

The Board may not without the vote or written consent of a majority of the votes of the Association, impose a General Assessment per Residential Unit which is greater than one hundred fifty percent (150%) of the amount for the previous fiscal year, except for the General Assessment levied for the first time and except for an Assessment caused by violation of this Declaration or the negligence or intentional misconduct of an Owner, its licensees or invitees.

The initial Assessment as of the time this Declaration is recorded is One Hundred Forty-Five Dollars (\$145.00) per month per Residential Unit or as otherwise authorized and directed by the Board of Directors, payable in accordance with Section 8.01 above.

Section 8.03 Special Assessments. In addition to the General Assessments authorized in Section 8.01, the Association may levy a Special Assessment or Special Assessments in any year applicable to that year provided such Special Assessment for any purpose other than as a sanction against an Owner shall have the vote or written assent of more than fifty percent (50%) of a quorum of Members entitled to vote at a meeting called for that purpose.

The Association may also levy a Special Assessment as a sanction against any Owner and Occupant to reimburse the Association for costs incurred in bringing a Member and his or her Residential Unit into compliance with the provisions of the Declaration, amendments thereto, the Articles of Incorporation, the By-laws and Rules and Regulations, which Special Assessment may be levied upon the majority vote of the Board.

Section 8.04 Liens for Assessments. The Association may record a notice of lien on a Residential Unit for unpaid Assessments of any kind. When a notice of the lien has been recorded such Assessment shall constitute a perfected lien on each Residential Unit prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Residential Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the

same. During the period the Residential Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no Assessment shall be assessed or levied on it, and (c) each other Residential Unit shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessments that would have been charged such Residential Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Assessments and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall be entitled to file suit to recover a money judgment and to prohibit use and enjoyment of the Common Areas while assessments are delinquent.

Section 8.05 Capital Budget and Contributions. In the event that the Association becomes the owner of any capital asset, or is charged with the duty for the upkeep, maintenance and repair of a capital asset, the Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both the amount and timing by Assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and Assessment, as provided in Section 8.02 of this Article. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

Section 8.06 Date of Commencement of Assessments. The initial General Assessments provided herein shall commence as to each Residential Unit on the day of the conveyance of title to an Owner by Declarant or Builder. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first Assessment shall be adjusted according to the number of months then remaining in that budget year. None of Declarant or Builder shall be obligated to pay any Assessments.

Section 8.07 Subordination of the Lien to First Date of Trust and First Mortgages. The lien of the Assessments, including interest, late charges subject to the limitations of Indiana law, and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any prior Mortgage upon any Residential Unit. The sale or transfer of any Residential Unit shall not affect the Assessment lien; however the sale or transfer of any Residential Unit pursuant to judicial or non-judicial foreclosure of a first mortgage may extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Unit from lien rights for any Assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Residential Unit obtains title, his or her successors and assigns shall not be liable for the share of Common Expenses or Assessments by the Association chargeable to such Residential Unit which became due prior to the acquisition of title to such Residential Unit by such acquirer. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Residential Units, including such acquirer and his or her successors and assigns.

Section 8.08 Initial Assessment Payment and Payment Upon Transfer. Upon acquisition of record title to a Residential Unit from Declarant or Builder or upon transfer of title from an Owner, each such Owner/Transferee shall pay to the Association an amount equal to the monthly Assessment for the remaining portion of that month and the following months remaining in the current Assessment period, which amounts shall be applied in satisfaction of

the General Assessment. Any adjustment to that Assessment amount shall be made upon determination of the actual amount due. Additionally, upon the acquisition of record title to a Residential Unit from Declarant or Builder, each Owner shall pay to the Association an amount of One Thousand Dollars (\$1,000.00) or as otherwise determined by the Board for reserves which shall not be credited against the regular monthly Assessment at the time of payment.

Section 8.09 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation, the By-Laws, or the Rules and Regulations, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## **ARTICLE 9**

### **ARCHITECTURAL STANDARDS**

Section 9.01 General Authority. The Board of Directors and Declarant shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, decisions of the Architectural Review Committee ("ARC") established in this Article 9. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

No construction, which term shall include within its definition staking, clearing, excavation, grading and other site work; no plantings or removal of plants, trees or shrubs; and no modifications, additions or alterations to the Property, lawns, landscaping or Residential Units shall take place except in strict compliance with this Article, until the requirements thereof have been fully met and until the approval of the ARC has been obtained. Modifications, additions, and alterations include, but are not limited to, storage sheds, fencing, decorative animals, sun globes, flags, statutes, figurines, fountains, signs, awnings, decorative ironworks and decorative lawn sprinklers, whether attached to a structure or placed in the lawns and landscaping.

Section 9.02 Architectural Review Committee. The ARC shall consist of at least two (2) and no more than five (5) members, all of whom shall be appointed by the Board of Directors. The ARC shall have exclusive jurisdiction over all new or original construction, and all modifications, additions or alterations (including color) made on or to existing Residential Units, lawns, landscaping, the open space, if any, appurtenant thereto, and Common Areas.

Section 9.03 Review Procedure. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such new or original construction and such modifications, additions or alterations shall be submitted to the ARC for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography and finish grade elevation. In this regard, the garage doors and front doors of the Residential Units shall remain the same unless the ARC decides to change such doors for all Residential Units. No fencing shall be allowed on the exterior of any Residential Unit other than wrought iron or equivalent fencing near the public road in front of a Residential Unit. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her residence, or to paint the interior of his or her residence any color desired; provided, however that all window coverings must be

white or beige or show a white or beige appearance when viewed from the exterior of the Residential Unit. In the event the ARC fails to approve or to disapprove such plans within sixty (60) days after submission, the plans shall be deemed disapproved.

Refusal or approval of plans and specifications by the ARC may be based upon any ground, including purely aesthetic ones. The ARC reserves the power to make exceptions to these restrictions and covenants as it deems proper. Whether or not a provision specifically states in any conveyance of any Residential Unit or lot by the Declarant, its successors or assigns, the Owners and Occupants of any Residential Unit, by acceptance of title thereto or by taking possession, covenants and agrees to adhere to all of the covenants, restrictions, duties, obligations and procedures as set forth in this Declaration.

None of the Declarant, Builder, the Association, the ARC, or their respective representatives, or any member thereof, shall be liable for any damage, loss, or prejudice suffered or claimed by any contractor or Owner or Occupant which submits such a plan or specification on account of:

- A. Any effects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Article IX;
- B. Any structural defects in any work done according to the plans and specifications;
- C. The approval or disapproval of any plans, drawings and specifications, whether or not defective;
- D. The construction or performance of any work, whether or not done pursuant to approved plans, drawings and specifications; or
- E. The development of any real estate within the Property.

Any person or entity submitting plans or specifications to the Declarant or the ARC, or their representatives, or any member thereof, shall hold them harmless from all damage, loss, or prejudice suffered or claimed by any third party, including attorney's fees incurred.

Section 9.04 Permitted Additions. Potted plants are permitted on front porches and rear porches and patios. Rear patios may have acceptable patio furniture, umbrellas and electric grills provided they are maintained in good condition. Christmas decorations are permitted from Thanksgiving through January 10 of the following year, and they must be removed at all other times. Christmas decorations must be moderate and tasteful, as determined by the Board. Additional trees or minor landscaping around the side or rear yard must be pre-approved by the Board in writing, and the Owner shall submit a written plan for review by the Board. Any additional landscaping shall be consistent with the original landscaping.

## **ARTICLE 10** **USE RESTRICTIONS**

Section 10.01 Residential Restrictions. The Property shall be used only for residential, personal, recreational and related purposes as may more particularly be set forth in this Declaration and amendments thereto. Home offices, which do not increase traffic within the

Property, shall be considered residential uses and related purposes if the Residential Unit is occupied as a residence by the persons using it as a home office. Notwithstanding the foregoing, home office use is subject to the ordinances of the City of Crown Point.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Residential Units shall continue, it shall be expressly permissible for Declarant and/or Builder to maintain and carry on such facilities and activities as, in the sole opinion of Declarant and/or Builder, may be reasonably required, convenient or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model units and sales offices, and the Declarant and/or Builder shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Residential Units owned by the Declarant and/or Builder as models and sales offices. This Section may not be amended without the express written consent of the Declarant; provided, however the rights contained in this Section 10.01 shall be terminated upon the earlier of ten (10) years from the date this Declaration is recorded, or upon the Declarant's recording a written statement that all sales activity has ceased.

Section 10.02 Nuisances. No nuisances shall be allowed upon any Residential Unit nor shall any use or practice be allowed which would annoy residents or interfere with the peaceful possession and proper use of the Residential Units by its residents, or which will obstruct or interfere with the rights of other Owners or the Association. This provision shall not be construed to prohibit or limit the enforcement of any provision of the Declaration which does not constitute a nuisance, or to prohibit the Association from adopting Rules and Regulations prohibiting conduct which does not constitute a nuisance.

Section 10.03 Immoral, Improper, Offensive and Unlawful Uses. No immoral, improper, offensive or unlawful use shall be made of any Residential Unit or any part thereof and all laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

Section 10.04 Uses Affecting Insurance Rates. An Owner shall not permit or suffer anything to be done or kept in a Residential Unit which will increase the insurance rates on any other Residential Unit.

Section 10.05 Signs and Other External Items. No Owner shall display any sign (including "for sale" signs except as provided below), advertisement or notice of any type on the exterior of a Residential Unit. No Owner shall erect any exterior antennae, satellite dishes of any size, aerials or awnings upon any Residential Unit. No clothesline or any similar device shall be allowed on any portion of any Residential Unit. "For sale" signs may be displayed after the Turnover Date.

Section 10.06 Animals. An Owner may not keep, raise or breed any animals, livestock or poultry in or on a Residential Unit; provided, however, that two (2) dogs or cats shall be allowed to be kept in a Residential Unit, subject to the Rules and Regulations of the Association, including but not limited to nuisance and regulations. The Association may impose a Special Assessment against any Owner for: (A) repairs or replacements required to be made to the exterior of the Residential Unit or the landscaped areas as a result of damage created by the Owner's animal, and/or (B) the Owner's failure to clean up after said pets. Every person owning or having possession, charge, care, custody or control of any permitted animal shall keep such animal exclusively upon his or her own premises; provided, however, that whenever such

animal is outside of a Residential Unit it must be kept under the control of a competent person and restrained by a chain, leash or other means of adequate physical control and in compliance with the ordinances of the City of Crown Point. No animals shall be allowed to run loose at any time and no dog be allowed to continuously bark, yelp, whine or howl by the Owner of any Residential Unit.

Section 10.07 Vehicles. No (A) commercial vehicles, (B) motor homes, (C) recreational vehicles, (D) campers, (E) trailers, (F) boats of any kind, (G) trucks or vans in excess of  $\frac{3}{4}$  ton capacity, or (H) trucks or vans in excess of  $\frac{1}{2}$  ton capacity which have exterior commercial lettering or designs (collectively, "Restricted Vehicles"), shall be parked at any time on any Residential Unit, except inside closed garages in a manner that shall allow the garage door to close entirely. No Restricted Vehicles may be parked for more than twenty (20) hours on public parking lots located within the Property, and no other motor vehicles may be parked for more than fourteen (14) days per year on public parking lots located within the Property. All motor vehicles parked anywhere on the Property must be properly licensed, titled and insured at all times. No parking is allowed on public roadways within the Property.

Section 10.08 No Renting or Leasing. The Residential Units shall be for Owner occupancy only. Owner occupancy includes ownership by a trust of which the Occupant is settlor, grantor, trustee or beneficiary. No renting or leasing of the Residential Units shall be permitted. No Persons other than the Owner or the Owner's immediate family may reside in a Residential Unit, and no other Persons may stay as a guest visiting such Owner and/or Owner's immediate family for more than two (2) weeks per year.

Section 10.09 Basketball Equipment. No basketball hoops or backboards are permitted on any Common Area, lot, garage or Residential Unit.

Section 10.10. Rubbish Trash, Garbage and Nuisance. No rubbish, trash, garbage or other waste materials shall be kept or permitted on the exterior of any Residential Unit or any portion thereof. All trash and recycling receptacles shall be kept within the garage of a Residential Unit when not placed at the curb within twenty-four (24) hours of waste and recycling pickup. No firewood, scrap wood, limbs, branches, compost, composters, paper, bottles, tires or similar substances, filth, rubbish trash or noxious substance shall be collected or remain outside of any Residential Unit or any part thereof which causes damage, prejudice or discomfort to others or the public or creates a breeding ground for insects or vermin.

Section 10.11. Storage Sheds. No free standing structures, detached garages, metal, prefab or steel storage sheds of any kind shall be erected on any lot or Residential Unit.

Section 10.12. Outdoor Furniture, Play Facilities. Outdoor furniture, equipment, and facilities shall be maintained in good "like new" condition and shall not be stored or maintained so as to create an eyesore or nuisance to neighboring houses or residents. No more than two (2) chairs may be kept on the exterior deck, and all grills must be stored inside other than when in use. All other items must be stored in the exterior storage room, if any. No Owner may keep or maintain swing sets, slides or other children's play equipment, bikes or toys on the exterior of Residential Unit.

Section 10.13. Discharge of Contaminants. The discharge or dumping of any harmful chemicals, paper, boxes, metal, wire, junk or other refuse on or in any area shall be prohibited and the cost of removing same shall be borne by the party depositing or causing the same to be

deposited thereon. In the event the responsible person or party cannot be determined, then the Owner shall be responsible for the removal and cleaning of the Parcel. Garbage containers may not be stored outside.

Section 10.14. Swimming Pools. No swimming pools, either above or below ground, or hot tubs shall be permitted on any lot or Residential Unit.

Section 10.15 Rules and Regulations. Rules and Regulations concerning the use of the Residential Units and Common Area may be promulgated and amended by the Association acting by and made through its Board of Directors each of which shall be deemed to be incorporated herein by reference and made a part hereof, as amended from time to time; provided, however, copies of all such Rules and Regulations shall be furnished to each Owner prior to the time that the same become effective. The initial Rules and Regulations are attached hereto, made a part hereof, and marked Exhibit "D". The Rules and Regulations set forth on Exhibit "D" and all rules and regulations promulgated from time to time shall be deemed to be reasonable and enforceable, so long as they bear any relationship to the safety, health, happiness and enjoyment of life of all the Owners; are in furtherance of a plan to provide for the congenial occupation of the Residential Units; promote and protect the cooperative aspects of ownership and the value of the Residential Units, or; facilitate the administration of the community as a first class, safe, healthy, happy, quiet and restful residential community. The Board of Directors of the Association is hereby granted the specific power and authority to enforce said Rules and Regulations in accordance with the provisions of this Declaration.

## **ARTICLE 11** **ENFORCEMENT**

Section 11.01 Association Authority. The Association, acting through the Board of Directors, shall have standing and the power and obligation to enforce the use restrictions contained herein and in any Rule or Regulation adopted by the Board, by the imposition of fines and special assessments, and by any other lawful means.

Section 11.02 Member and City Authority. Notwithstanding any power or obligation of the Association herein, any Member and/or the City of Crown Point shall have standing and power, but not the obligation, to seek injunctive relief against an Owner or Occupant in violation of such restrictions or regulations, to enforce the use restrictions contained herein or in any Rule or Regulation adopted by the Board. Each Owner and Occupant of a Residential Unit shall be governed by and shall comply with the terms of the Declaration and the Articles of Incorporation, By-laws, and the Rules and Regulations of the Association adopted pursuant thereto as they may be amended from time to time. The Declarant and Builder shall have no personal or other liability, obligation or responsibility to enforce this Declaration or any part thereof. In addition to the Fines under Article 8, Section 9, a default or violation by an Owner or Occupant of a Residential Unit shall entitle the Association, Declarant or any other Owner or Occupant to the following remedies:

Section 11.03 Association Authority, Enforcement and Procedures.

- A. Authority. Residential Units shall be used only for those uses and purposes set out this Declaration, and subject to the Covenants, Conditions, Restrictions and Easements set forth herein, and in the By-laws and Rules and Regulations of the Association. The Board of Directors shall have the power and authority to impose

reasonable Special Assessments in accordance with this Declaration, which shall constitute a lien upon the Owner's Residential Unit and to suspend an Owner's right to vote or use the Common Areas, and to approve other appropriate sanctions in the event that it is determined that an Owner or Occupant has violated any provisions of this Declaration, the By-laws, or the Rules and Regulations.

B. Procedure. The Board of Directors shall not impose a Special Assessment as a sanction, suspend the right to vote, or infringe upon any other rights of an Owner or Occupant for any such violations unless and until the following procedure is followed:

1. Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (a) the alleged violation; (b) the action required to abate the violation; and (c) a time period during which the violation may be abated without further sanction.
2. Notice. If the violation continues past the period allowed in the demand for abatement without sanction, the Association shall serve the alleged violator with written notice of a hearing at the address of the alleged violator's Residential Unit. The notice shall contain; (a) the nature of the alleged violation; (b) the time and place of the hearing, which time shall not be less than ten (10) days from the giving of the notice; (c) an invitation to attend the hearing and produce any statements, evidence and/or witnesses in his/her behalf and (d) the proposed sanction to be imposed.
3. Hearing. The hearing shall be held in executive session by the Board of Directors pursuant to the notice, affording the violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice, the invitation to be heard, the written result and statements of the sanction shall be placed in the minutes of the meeting. The notice requirements shall be deemed satisfied if an alleged violator appears at the meeting.

C. Sanctions. The Board of Directors' sanctions shall be governed by the following provisions:

1. All Special Assessments imposed upon a violator under this Article shall bear a reasonable relationship to the violation, considering all the circumstances, which may include, but shall not be limited to the following:

- a. The actual costs and expenses incurred by the Board of Directors and the individual directors in the exercise of the power and authority under this Article 11, and in otherwise attempting to remedy the violation.
- b. The amount of actual damage done to the other Owners and Occupants and/or their Residential Units and/or to the Association arising out of the violation or the efforts to remedy the effects of the same.
- c. The amount which would be reasonably required to compensate the Association for the disruption of and inconvenience to, the community, the Association or any Member thereof, or Occupant of a Residential Unit.

d. The flagrancy of the violation and the extent to which the violator cooperated or hindered in any effort to remedy the violation.

e. The amount reasonably calculated to deter similar, future or other violations.

2. All Special Assessment amounts imposed hereunder as a sanction shall be deemed to be a part of the General Assessment attributable to the Residential Unit occupied by the Violator, and shall be assessed against said Residential unit and its Owner as a Special Assessment to be due and payable on the date the next General Assessment would be due, and any such Special Assessments which are not paid as of the date shall become a lien on such Residential Unit, and shall be collected and enforced in the same manner as General Assessments.

3. Nothing herein contained shall be construed as granting to the Board of Directors the power to impose a Special Assessment which is punitive in nature beyond having a reasonable deterrent effect, or to suspend an Owner's right to vote, unless the Board of Directors finds, by specific findings of fact in accordance with the foregoing procedure, that the violator's conduct was willful, malicious, oppressive, or outrageous in nature.

4. All other sanctions imposed shall be reasonably related to the violation found.

5. The decision of the Board of Directors made in accordance with the foregoing procedures shall be final.

Section 11.04 Legal Remedies. In addition to the administrative remedies set forth above in this Article, the legal remedies of the Association may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, an action to enforce the sanctions imposed by administrative procedure, or any combination thereof. The prevailing party shall be entitled to recover the costs of any proceeding including reasonable attorney fees.

Section 11.05 No Waiver of Rights. The failure of the Association, Declarant, Builder, or an Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration, Articles of Incorporation, By-law's and Rules and Regulations or by law, shall not constitute a waiver of the right to enforce such right, provision, covenant or condition in the future.

Section 11.06 No Election of Remedies. All rights, remedies and privileges granted to the Association, Declarant, Builder, Occupant or any Owner pursuant to any terms, provisions, covenants or conditions of the Declaration, Articles of Incorporation, By-laws and Rules and Regulations or by law, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges.

## **ARTICLE 12** **AMENDMENT**

Section 12.01 Declaration. Subject to Articles 14 and 15, amendments to the Declaration shall be proposed and adopted as follows, provided however, that no amendment

may revoke, remove or modify any right or privilege of the Declarant or Builder, without the Declarant's written consent.

- A. Notice. Notice of the subject matter of any proposed amendment may be included in the Notice of any meeting of the Board of Directors or Owners at which any proposed amendment is to be considered.
- B. Resolution. Except as provided in subparagraph D hereof, a resolution to amend the Declaration may be adopted by the affirmative vote of not less than three-fourths (3/4) of the members (not three-fourths (3/4) of a quorum) at any regular or special meeting of the Members called and held in accordance with the By-laws; provided, however, that any such amendment must also be approved and ratified by not less than three-fourths (3/4) of the Board of Directors (not three-fourths (3/4) of a quorum).
- C. Recording. The amendment shall not be effective until a certified copy thereof is recorded in the Office of the Recorder of Lake County, Indiana. A copy of any such amendment shall also be sent to each Owner and his or her Mortgagee by registered or certified mail; provided, however, the mailing of such amendment shall not constitute a condition precedent to the effectiveness of such amendment.
- D. Amendments by Declarant. Notwithstanding any other provision of the Declaration, and in addition to any other right to amend elsewhere set forth herein, the Declarant alone may amend this Declaration, or the Articles of Incorporation, By-laws, and Rules and Regulations, without the consent of the Owners, the Association, the Board of Directors or any Mortgagee, or any other person, (1) to correct scrivener's errors, minor defects or omissions, or (2) to comply with the requirements of Indiana law, or (3) to comply with the requirements of any governmental agency, public authority, or title insurance company, or (4) to comply with the requirements of the Federal Home Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, 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 each such entity, (5) to add additional real estate by Subsequent Amendment or replat any real estate pursuant to Article 16 hereof, or (6) to make any other change which does not materially affect the right of the Owners to use and enjoy their Residential Unit.

This subparagraph D shall constitute an irrevocable special power of attorney to Declarant on behalf of all Owners, Mortgagees, and any and all other persons having an interest of any kind in the Property, for so long as Declarant owns any of the Property and/or the Residential Units. In such event, the amendment shall be signed by the Declarant and it shall become effective upon the recording of a copy thereof in the Office of the Recorder of Lake County, Indiana. A copy of such amendment shall also be sent to all Owners and their Mortgagees in the manner provided in subparagraph C hereof.

Section 12.02 Articles of Incorporation, By-laws, and Rules and Regulations. The Articles of Incorporation, By-laws, and Rules and Regulations of the Association shall be amended in the manner provided by such documents or by law.

### **ARTICLE 13** **GENERAL PROVISIONS**

Section 13.01 Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall insure to the benefit of and shall be enforceable by the respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding and the beginning of each successive period after (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 13.02 Indemnification. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceedings (including settlement of any suit or proceedings, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, continuously maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 13.03 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 13.04 Perpetuities. If any of the covenants, conditions, restrictions, easements or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the Governor of the State of Indiana and the President of the United States.

Section 13.05 Disclaimer of Other Entities. All Owners and the Association acknowledge and understand that their relationship is with the Declarant, pursuant to the written terms of this Declaration, and no other entity notwithstanding anything to the contrary in advertising, promotional or other materials. Owner and the Association acknowledge that they have no claim against any entity including affiliates, subsidiaries, parents or otherwise under common control of Declarant or Builder, and Owner and the Association waive and release any such claims, if any.

Section 13.06. Restrictions, Conditions, Covenants, Liens and Charges. Each grantee of Declarant or Builder, by taking title to a Parcel and each purchaser under any contract for a deed of conveyance pursuant to which said grantee will take title, accepts said title subject to all restrictions, conditions, covenants, reservations, liens and charges and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance, or in any mortgage or trust deed or other evidence of obligation, and the rights described in this Section or described in any other part of this Declaration shall be sufficient to create and reserve such rights to the respective grantees, mortgagees and trustees of such Parcel as fully and completely as though such rights were recited fully and set forth in their entirety in any such documents.

Section 13.06. Enforcement of Covenants. Declarant and each Owner from time to time shall have the right jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the covenants and obligations herein set forth, or any of them, in addition to the right to bring a legal action for damages. Whenever there shall have been built (or whenever there is being built) on any Parcel any improvement which is and remains in violation of the covenants set forth, or any of them, for a period of thirty (30) days after delivery of written notice thereof from Declarant or the Association to the Owner of any such Parcel, then Declarant or the Association shall have, in addition to the foregoing rights, the right to enter upon the property where such violation exists and summarily to abate or remove it at the expense of the Owner, and such entry and abatement or removal shall not be deemed a trespass. In no event shall the failure of Declarant and the Owners to enforce any of the covenants or obligations herein provided due to a particular violation be deemed to be a waiver of the right to do so respecting any such violation or any subsequent violation.

Section 13.07. Ownership Under a Trust. In the event title to any Residential Unit is conveyed to a title holding trust, under the terms of which all powers of management, operation and control of the Residential Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants, obligations and undertakings chargeable or created under this Declaration against any such Residential Unit. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply, in whole or in part, against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon said Residential Unit and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to any such Residential Unit.

Section 13.08. Owner's Obligation to Maintain and Repair. Each Owner shall, at Owner's sole cost and expense, maintain and repair Owner's residence and structures keeping the same in a condition comparable to the condition of such residence and structures at the time of its initial construction.

Section 13.09. Self Help. In addition to any other remedies provided for herein, the Declarant, the Association, or their respective duly authorized agents shall have the power to

take such remedial action, activity or otherwise perform or take such action or obligation of a defaulting Owner to bring a Residential Unit into compliance with this Declaration. The Declarant, the Association, or their respective duly authorized agents may enter upon a Residential Unit any portion of the Property (including Common Areas) to abate or remove, using such force as may be reasonably necessary, any construction, erection, thing or condition which violates this Declaration, the Architectural Guidelines, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Declarant or the Association, as the case may be, shall give the violating Owner thirty (30) days' written notice of its intent to exercise remedial activity (self help). All costs of the Declarant or the Association's remedial activity (self help), together with interest at the rate of twelve percent (12%) per annum, including attorneys' fees actually incurred shall be assessed against the violating Owner and shall be collected as provided for herein. No liability shall be assumed or imposed by the Declarant and/or the Association's exercise or failure to exercise such remedial activity. Notwithstanding the foregoing, in the event of an emergency or the blockage or material impairment of the easement rights granted hereunder, the Declarant or Association may immediately cure the same and be reimbursed by the defaulting Owner upon demand for the reasonable cost thereof together with interest as above described.

Section 13.10. Notices. Any notices required to be sent to any Owner under any provision of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the Person who appears as owner on the records of the Lake County Auditor's official property tax records at the time of such mailing.

Section 13.11. Usage. Whenever used the singular shall include the plural and singular, and the use of any gender shall include all genders.

Section 13.12. Effective Date. This Declaration or any amendment hereto shall become effective upon its recordation in the Office of the Recorder of Lake County, Indiana.

Section 13.13. Severability of Invalid or Unenforceable Provisions. If any term, covenant, provision, phrase or other element of this Declaration, the Articles of Incorporation, the By Laws or the Rules and Regulations is held to be invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to affect, alter, modify or impair in any manner whatsoever any other terms, covenant, provision, phrase or other element of this Declaration, the Articles of Incorporation, the By Laws or the Rules and Regulations. If any part of this Declaration, or any term, covenant, provision, phrase or other element, or the application thereof in any circumstances be judicially held in conflict with the laws of the State of Indiana, then the said laws shall be deemed controlling and the validity of the remainder of the Declaration and the application of any other term, covenant, provision, phrase or other element in other circumstances shall not be affected thereby.

Section 13.14. Captions. Captions used in this Declaration, the Articles of Incorporation, the By Laws and the Rules and Regulations are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration, the Articles of Incorporation, the By Laws and the Rules and Regulations.

Section 13.15. Binding Effect. This Declaration shall be binding upon and inure to the benefit of each Owner, its successor, grantees, assigns and the legal representatives thereof.

Section 13.16. Recitals. The recitals set forth at the beginning of this Declaration are hereby made a part of and incorporated into this Declaration by reference.

## **ARTICLE 14** **MORTGAGEES' RIGHTS**

Section 14.01 Mortgagee's Benefit. The following provisions are for the benefit of holders, insurers, or guarantors of first Mortgages on Residential Units. To the extent applicable, necessary, or proper, the provisions of this Article 14 apply to both this Declaration and to the By-laws of Sawgrass Homeowners Association, Inc. Where indicated, these provisions apply to "Eligible Holders", as hereinafter defined; provided, however, voting percentages set forth herein are subject to and controlled by higher percentage requirements, if any, set forth elsewhere in this Declaration for specific actions.

Section 14.02 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request (such request to state the name and address of such holder, insurer or guarantor and the Residential Unit address), to the Association (therefore becoming an "Eligible Holder"), will be entitled to timely written notice of:

- A. Any proposed termination of the Association;
- B. Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Residential Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- C. Any delinquency in the payment of Assessments or charges owed by an Owner of a Residential Unit subject to the Mortgage of such Eligible Holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;
- D. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- E. Any proposed action which would require the consent of Eligible Holders, as required in Section 14.03 of this Article.

Section 14.03 Mortgagee's Rights Respecting Amendments to the Declaration. To the extent possible under Indiana law, and notwithstanding the provisions of Article 11, any amendment of a material nature must be approved by Eligible Holders representing more than fiftypercent (50%) of the votes of Residential Units that are subject to Mortgages held by Eligible Holders. An amendment to any of the following shall be considered material:

- A. Voting rights;
- B. Subordination of Assessment liens;
- C. Boundaries of any Residential Unit;
- D. Convertibility of Residential Units into Common Areas or vice versa;
- E. Expansion of the Project (to include real estate not described in Exhibits "A" or not adjacent thereto), or the contraction of the Project or withdrawal of property to or from the Project;
- F. Insurance or fidelity bond requirements;
- G. Leasing of Residential Units;
- H. Imposition or any restrictions on an Owner's right to sell or transfer his or her Residential Unit;
- I. Any provisions that expressly benefit mortgage holders, insurers or guarantors; or

- J. Any action to terminate the legal status of the Project after substantial destruction of condemnation occurs, provided however, that any action to terminate the legal status of the Project for reasons other than substantial destruction or condemnation shall require the consent of Eligible Holder's representing sixty-seven (67%) percent of the votes of Residential Units.

Section 14.04 Special FHLMC Provision. If required by the Federal Home Loan Mortgage Corporation (FHLMC), the following provisions apply in addition to and not in lieu of the foregoing Sections of this Article. Unless two-thirds (2/3) of the first Mortgagees or Owners give their consent, the Association shall not:

- A. Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;
- B. By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residential Units and of any Common Area;
- C. Fail to maintain fire and extended coverage insurance, as required by this Declaration; or
- D. Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement or reconstruction of such.

The provisions of this Section 14.04 shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a large percentage vote is otherwise required for any of the actions contained in this Section.

Section 14.05 Mortgagee's Right to Cure. First Mortgagees may jointly or singly pay taxes or other charges which are in default and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of the policy and first Mortgagees making such payment shall be entitled to immediate reimbursement from the Association.

## **ARTICLE 15** **DECLARANTS RIGHTS**

Section 15.01 Control by Declarant. In addition to any other right or privilege given or granted or reserved to Declarant and/or Builder under this Declaration, the Declarant shall have the right to elect all members of the Board of Directors of the Association, and all members of the ARC, for as long as the Declarant has any ownership in any of the Residential Units or until the expiration of ten (10) years after the date on which this Declaration is recorded, whichever is later (the "Turnover Date"). The members elected by the Declarant need not be Owners, Members or Occupants.

Section 15.02 Absence of Warranty. THE DECLARANT AND BUILDER EACH SPECIFICALLY DISCLAIMS ANY WARRANTY OR REPRESENTATION IN CONNECTION WITH THE PROPERTY OR THIS DECLARATION EXCEPT AS SPECIFICALLY SET FORTH HEREIN; AND NO PERSON SHALL RELY UPON ANY WARRANTY OR REPRESENTATION SET FORTH HEREIN. ANY ESTIMATES OF ASSESSMENTS ARE BELIEVED TO BE ACCURATE, BUT NO WARRANTY OR GUARANTY IS MADE OR INTENDED, NOR MAY ONE BE RELIED UPON. DECLARANT AND BUILDER EACH HEREBY DISCLAIM AND EXCLUDE ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED (INCLUDING, WITHOUT

LIMITATION, ANY IMPLIED WARRANTY OF HABITABILITY, MERCHANTABILITY, QUALITY OR FITNESS FOR PARTICULAR PURPOSE), WITH RESPECT TO THE PROPERTY, COMMON ELEMENTS AND THE RESIDENTIAL UNITS. THE ASSOCIATION AND ANY OWNER KNOWINGLY AGREE TO WAIVE ANY AND ALL RIGHTS THAT THEY MAY HAVE PURSUANT TO THE IMPLIED WARRANTY OF HABITABILITY. THE ASSOCIATION AND OWNERS ACKNOWLEDGE AND AGREE THAT THE SOLE WARRANTIES THAT APPLY TO THE PROPERTY, COMMON ELEMENTS AND THE RESIDENTIAL UNITS ARE SOLELY CONTAINED WITHIN THE PURCHASE AGREEMENT FOR THE ACQUISITION OF THE RESIDENTIAL UNIT.

Section 15.03 Assessment Exemption. Declarant and Builder shall each be exempt from any Assessment levied by the Association on any or all Residential Units owned by the Declarant and/or Builder, including those Residential Units which are unoccupied and offered by the Declarant and/or Builder for the first time for sale or used as a model or sales office.

Section 15.04 Right to Amend Declaration. The Declarant shall have the right to amend the Declaration, and the Articles of Incorporation, By-laws and Rules and Regulations, in accordance with Article 12.

Section 15.05 Transfer of Rights. Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Official Records of Lake County, Indiana.

Section 15.06 Litigation against Declarant and/or Builder. The Association shall not commence any litigation against the Declarant and/or Builder until at least seventy-five (75%) percent of the Members have approved of that action in a meeting of the Members or in a written consent of the Members.

Section 15.07 Declarant's Right of First Refusal.

- A. As used in this Section 15.07, the term "Transfer" shall mean any proposed sale, exchange, assignment or other conveyance or transfer, whether voluntary or involuntary, of a Residential Unit or any portion thereof or improvements thereon, or all or any portion of the legal and/or equitable title thereto or any interest therein, but excluding: (i) any sale, exchange, assignment, conveyance or transfer to an "Affiliate" of the Owner of such Residential Unit, and (ii) any sale, exchange, assignment or transfer to any "Institutional lender or Investor" which is consummated as part of a mortgage foreclosure or similar action involving such Residential Unit. For purposes of this Section 15.07: (x) the term "Affiliate" shall mean an immediate family member of such Owner (e.g., spouse, parents or children) as well as any corporation, trust or other entity controlled by the Owner of such Residential Unit or in which such Owner is the primary beneficiary; (y) the term "control" shall mean the power to direct or cause the direction of the management and policies of the controlled entity through the ownership of or the right to vote more than fifty percent (50%) of the voting securities in such controlled entity; and (z) the term "Institutional Lender or Investor" shall mean a bank, savings and loan association, credit company or other entity not related to the Owner of such Residential Unit.

- B. Until the Turnover Date, Declarant shall have a right of first refusal with respect to any and all Transfers. Declarant's right of first refusal shall be on the same terms and conditions as shall be contained in any bona fide written offer submitted and acceptable to the Owner of such Residential Unit subject to a potential Transfer. Not more than five (5) days after such Owner's acceptance of any such offer (which acceptance shall be subject to the terms of this Section 15.07), the Owner of such Residential Unit shall deliver true and correct copies of such offer and acceptance to Declarant. Declarant shall have thirty (30) days after the receipt thereof to notify such Owner of its election to acquire the interest being conveyed or otherwise transferred in accordance with the terms and provisions of such third party offer. If Declarant declines its right of first refusal or fails to respond to such Owner within such thirty (30) day period, then such Owner may consummate the Transfer with the third party purchaser on the same terms and conditions contained in the bona fide offer. Upon Declarant's exercise of such right of first refusal as aforesaid, Declarant and such Owner shall proceed to consummate the Transfer in accordance with the applicable terms and conditions contained in the bona fide written offer, but in no event less than ninety (90) days from the date Declarant receives the written notice of the bona fide offer. Regardless of whether such Transfer is consummated, Declarant's right of first refusal as aforesaid shall apply to all subsequent offers of Transfer received by all Owners or their successors, assigns or transferees from third parties.

## **ARTICLE 16**

### **LIMITATION OF LIABILITY**

Section 16.01. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IT IS EXPRESSLY AGREED, AND EACH OWNER, BY ACCEPTING TITLE TO A RESIDENTIAL UNIT AND BECOMING AN OWNER ACKNOWLEDGES AND AGREES, THAT NONE OF DECLARANT OR BUILDER (INCLUDING WITHOUT LIMITATION ANY ASSIGNEE OF THE INTEREST OF DECLARANT OR BUILDER HEREUNDER), NOR ANY MEMBERS OR MANAGERS OF DECLARANT OR BUILDER (OR ANY MEMBER, PARTNER, OFFICER, DIRECTOR OR SHAREHOLDER IN ANY SUCH ASSIGNEE) SHALL HAVE ANY LIABILITY, PERSONAL OR OTHERWISE, TO ANY OWNER OR OTHER PERSON, ARISING UNDER, IN CONNECTION WITH, OR RESULTING FROM (INCLUDING WITHOUT LIMITATION RESULTING FROM ACTION OR FAILURE TO ACT WITH RESPECT TO) THIS DECLARATION EXCEPT, IN THE CASE OF DECLARANT OR BUILDER (OR ITS RESPECTIVE ASSIGNEE), TO THE EXTENT OF ITS INTEREST IN THE PROPERTY (AS DEFINED HEREIN); AND, IN THE EVENT OF A JUDGMENT NO EXECUTION OR OTHER ACTION SHALL BE SOUGHT OR BROUGHT THEREON AGAINST ANY OTHER ASSETS, NOR BE A LIEN UPON SUCH OTHER ASSETS OF THE JUDGMENT DEBTOR.

## **ARTICLE 17**

### **ANNEXATION OF ADDITIONAL PROPERTY**

Section 17.01 Annexation Without Approval of Membership. As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option, from time to time at any time until the end of the twentieth (20th) year after the recording of this Declaration, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of real estate within a one (1) mile radius by filing in the Official Records of Lake County, Indiana, an amendment to this Declaration (each, a

"Subsequent Amendment") annexing such real estate. Any such annexation shall be effective upon the filing for record of such Subsequent Amendment unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other person this said right, provided that such transferee or assignee shall be the developer of at least a portion of said real estate described in this Section and that such transfer is memorialized in a written, recorded instrument.

Section 17.02. Effect of Amendment. Upon the recording of a Supplemental Amendment by Declarant which annexes and subjects added property to this Declaration, as provided in this Article, then:

- A. The restrictions, conditions, covenants, reservations, lien, charges, rights, benefits and privileges set forth and described herein shall run with and bind the added property and inure to the benefit of and be the personal obligation of current and subsequent Owners of any portion of the added property in the same manner, to the same extent, and with the same force and effect that this Declaration applies to the Property and Owners of any portion of the Property which was initially subjected to this Declaration.
- B. Every Person who is an Owner of a Residential Unit on any portion of the added property shall be a Member of the Association on the same terms and subject to the same qualifications and limitations as those Members who are Owners of original Residential Units.
- C. Each Owner of a Residential Unit on any portion of the added property shall pay the same monthly Assessment as the Owner of an original Residential Unit; provided, however, the Owner of a Residential Unit on any portion of the added property shall not be required to pay any installment of a Special Assessment levied to cover a deficit under a prior year's budget.
- D. The amount of the lien for Assessments, charges or payments levied against an existing Residential Unit prior to the recording of the Supplemental Amendment shall not be affected.
- E. All or any portion of the added property may be deemed Common Areas by the Declarant to be maintained by the Association in the same manner as other Common Areas.

Section 17.03 Amendment to this Article. This Article shall not be amended without the written consent of Declarant so long as the Declarant owns any Property described in Exhibit "A".

Section 17.04 Re-platting. Declarant shall have, and hereby reserves, the right at any time or from time to time, to file a re-plat of all or any part of the Property which is owned by Declarant, or all or any real estate which is added to the Property by Subsequent Amendment.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed as of this 17 day of OCTOBER, 2018.

DIAMOND PEAK GROUP, LLC

  
Name Scott T. Crook

Member  
Title

STATE OF INDIANA )  
                                  )  
COUNTY OF LAKE )      SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared Diamond Peak Group, LLC, an Indiana limited liability company, by SCOTT CROOK, its MANAGER and acknowledged the execution of the foregoing instrument to be its free and voluntary act.

Given under my hand and notarial seal this 17<sup>th</sup> day of OCTOBER, 2018.

T - K  
TODD C. KLEVEN, Notary Public

My Commission Expires: June 2, 2022  
County of Residence: LAKE

This instrument prepared by: Mark R. Anderson, #21524-53  
Anderson & Anderson, P.C.  
9211 Broadway  
Merrillville, IN 46410  
(219) 769-1892



**EXHIBIT A**  
**LEGAL DESCRIPTION**

A PARCEL OF LAND LYING IN THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 34 NORTH, RANGE 8 WEST OF THE SECOND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, SAID PARCEL DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT 1 IN MS CROWN POINT SUBDIVISION AS SHOWN IN PLAT BOOK 107, PAGE 05 IN THE OFFICE OF THE RECORDER OF SAID COUNTY, THENCE NORTH 89 DEGREES 46 MINUTES 22 SECONDS WEST (BASIS OF BEARINGS IS PER SAID MS CROWN POINT PLAT), 791.31 FEET ALONG THE NORTH LINE OF SAID SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE SOUTH 00 DEGREES 01 MINUTES 43 SECONDS EAST, 661.18 FEET ALONG LAST SAID WEST LINE TO THE NORTH LINE OF THE REGENCY - UNIT NO. 1 - PHASE 1 AS SHOWN IN PLAT BOOK 103, PAGE 13 IN SAID RECORDER'S OFFICE, EXTENDED WEST; THENCE SOUTH 89 DEGREES 45 MINUTES 48 SECONDS EAST, 788.25 FEET ALONG SAID WEST EXTENSION, LAST SAID NORTH LINE, AND THE NORTH LINE OF THE REGENCY - UNIT NO. 1 - PHASE 4 AS SHOWN IN PLAT BOOK 109, PAGE 69 IN SAID RECORDER'S OFFICE TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 00 DEGREES 14 MINUTES 11 SECONDS EAST, 661.31 FEET ALONG LAST SAID WEST LINE TO THE POINT OF BEGINNING, CONTAINING 11.99 ACRES MORE OR LESS.

**EXHIBIT B**  
**ARTICLES OF INCORPORATION**

**State of Indiana**  
**Office of the Secretary of State**

Certificate of Incorporation  
of

**SAWGRASS HOMEOWNERS ASSOCIATION, INC.**

I, CONNIE LAWSON, Secretary of State, hereby certify that Articles of Incorporation of the above Domestic Nonprofit Corporation have been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Nonprofit Corporation Act of 1991.

NOW, THEREFORE, with this document I certify that said transaction will become effective  
Wednesday, May 10, 2017.



In Witness Whereof, I have caused to be affixed my  
signature and the seal of the State of Indiana, at the City  
of Indianapolis, May 10, 2017

*Connie Lawson*

CONNIE LAWSON  
SECRETARY OF STATE

201705101195181 / 7596861

To ensure the certificate's validity, go to <https://bsd.sos.in.gov/PublicBusinessSearch>

APPROVED AND FILED  
CONNIE LAWSON  
INDIANA SECRETARY OF STATE  
05/10/2017 03:27 PM

#### ARTICLES OF INCORPORATION

Formed pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991

#### ARTICLE I - NAME AND PRINCIPAL OFFICE ADDRESS

BUSINESS ID 201705101195181  
BUSINESS TYPE Domestic Nonprofit Corporation  
BUSINESS NAME SAWGRASS HOMEOWNERS ASSOCIATION, INC.  
PRINCIPAL OFFICE ADDRESS 1299 White Hawk Dr., Crown Point, IN, 46307, USA

#### ARTICLE II - REGISTERED OFFICE AND ADDRESS

NAME T. Scott Crook  
ADDRESS 1299 White Hawk Dr., Crown Point, IN, 46307, USA

#### ARTICLE III - PERIOD OF DURATION AND EFFECTIVE DATE

PERIOD OF DURATION Perpetual  
EFFECTIVE DATE 05/10/2017

#### ARTICLE IV - PRINCIPAL(S)

No Principal on record.

#### ARTICLE V - INCORPORATOR(S)

NAME T. Scott Crook  
ADDRESS 1299 White Hawk Dr., Crown Point, IN, 46307, USA

#### ARTICLE VI - GENERAL INFORMATION

##### STATEMENT OF PURPOSE

See attached.

TYPE OF CORPORATION Mutual benefit corporation (all others)

WILL THE CORPORATION HAVE MEMBERS? Yes

##### DISTRIBUTION OF ASSETS

See attached.

**APPROVED AND FILED**  
**CONNIE LAWSON**  
**INDIANA SECRETARY OF STATE**  
05/10/2017 03:27 PM

**SIGNATURE**

THE SIGNATOR(S) REPRESENTS THAT THE REGISTERED AGENT NAMED IN THE APPLICATION HAS CONSENTED TO THE APPOINTMENT OF REGISTERED AGENT.

THE UNDERSIGNED, DESIRING TO FORM A CORPORATION PURSUANT TO THE PROVISIONS OF THE INDIANA NONPROFIT CORPORATION ACT, EXECUTE THESE ARTICLES OF INCORPORATION.

IN WITNESS WHEREOF, THE UNDERSIGNED HEREBY VERIFIES, SUBJECT TO THE PENALTIES OF PERJURY, THAT THE STATEMENTS CONTAINED HEREIN ARE TRUE, THIS DAY **May 10, 2017**

**SIGNATURE**            T. Scott Crook  
**TITLE**                    Incorporator

Business ID : 201705101195181  
Filing No : 7596861

**ARTICLES OF INCORPORATION OF NONPROFIT CORPORATION:  
SAWGRASS HOMEOWNERS ASSOCIATION, INC.**

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**ATTACHMENT**

**DISTRIBUTION OF ASSETS ON DISSOLUTION OR FINAL LIQUIDATION**

Upon this dissolution of this corporation, the Board of Directors shall, after paying or making provisions for the payment of all liabilities of the corporation, dispose of all the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for the charitable, educational, religious, civic or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) and/or Section 528 of the Internal Revenue Code of 1986 (or the corresponding provisions of any future IRC Law, as the Board of Directors shall determine).

This corporation does not afford pecuniary gain, incidental or otherwise to its members.

**ARTICLES OF INCORPORATION OF NONPROFIT CORPORATION:  
SAWGRASS HOMEOWNERS ASSOCIATION, INC.**

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**ATTACHMENT**

**PURPOSE**

Section 1 To form an organization for the owners and residents of Sawgrass, a development located in Lake County, Indiana, to primarily provide for the acquisition, management, maintenance and care of association common area property and to promote the recreation, health, safety and welfare of said owners and residents.

Section 2 To own, maintain and administrate community properties and facilities, to administrate and enforce covenants and restrictions applying to property within the development known as Sawgrass, located in Crown Point, Indiana, and to collect and distribute assessments and charges therefor.

Section 3 To engage in any and all activities related or incidental to the foregoing including but not limited to the powers to acquire, own, hold, use, sell, lease, mortgage or pledge any property, real or personal, tangible or intangible, legal or equitable; to loan or invest its own money upon such security or in such securities as may from time to time be determined by its Board of Directors.

Section 4 To do any and all things necessary, convenient or expedient, as permitted by the "Act" for the accomplishment of any of the purposes or the furtherance of any of the powers hereinabove set forth either alone or in association with other corporations, firms or individuals.

Section 5 No part of the net earnings of the corporation (other than by acquiring, constructing, or providing management, maintenance and care of association property and other than by a rebate of excess membership dues, fees or assessments) shall inure to the benefit of, or be distributable to its members, trustees, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these articles.

Section 6 Notwithstanding any other provision of these articles, the corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 528 of the Internal Revenue Code of 1986 or corresponding provisions of any future provisions of the Internal Revenue Code.

**EXHIBIT C  
BY-LAWS  
FOR  
SAWGRASS HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

**NAME, MEMBERSHIP, APPLICABILITY AND DEFINITIONS**

**Section 1. Name.** The name of the Association shall be Sawgrass Homeowners Association, Inc. (hereinafter sometimes referred to as the "Association").

**Section 2. Principal Office.** The principal office of the Association in the State of Indiana shall be located at 1299 White Hawk Drive, Crown Point, Indiana 46307. The Association may have such other officers, either within or without the State of Indiana, as the Board of Directors may determine or as the affairs of the Association may require.

**Section 3. Definitions.** The words used in these By-Laws shall have the same meaning as set forth in that Declaration of Covenants and Restrictions for Sawgrass Townhomes (said Declaration, as amended, renewed or extended from time to time is hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.

**ARTICLE II**

**ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES**

**Section 1. Membership.** The Association shall have one (1) class of membership, as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

**Section 2. Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors.

**Section 3. Annual Meetings.** The first annual meeting shall not be held until such time as the rights of the Declarant to appoint all of the Board of Directors and to thereby control the Association shall have expired as provided in the Declaration, or at such earlier time or times as may be determined by the Declarant. The next annual meeting shall be set by the Board of Directors so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent annual meetings shall be held at a date and time as set by the Board of Directors. Subject to the foregoing, the Members shall, at each annual meeting after the Turnover Date, elect the Board of Directors of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

**Section 4. Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by at least ten percent (10%) of the total votes of the Association. The notice of any special meeting

shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as state in the notice.

**Section 5. Notice of Meetings.** Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally or by first class mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

**Section 6. Waiver of Notice.** Waiver of notice of meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed a waiver by such member of notice of the time, date and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted there at unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

**Section 7. Adjournment of Meetings.** If any meetings of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that at least twenty-five percent (25%) of the total votes of the Association remains present in person or by proxy, and provided further that any action taken shall be approved by at least a majority of the Members required to constitute a quorum.

**Section 8. Voting.** The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

**Section 9. Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Lot or upon receipt of notice by the Secretary of the Board of the death or judicially declared incompetence of a Member or upon the expiration of eleven (11) months from the date of the proxy.

**Section 10. Majority.** As used in these By-Laws, the term “majority” shall mean those votes, owners, or other group as the context may indicate, totaling more than fifty percent (50%) of the total number.

**Section 11. Quorum.** Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by proxy of forty percent (40%) of the votes of the Members shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

**Section 12. Conduct of Meetings.** The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transaction occurring there at.

**Section 13. Action without a Meeting.** Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Members.

### **ARTICLE III**

#### **BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS**

##### **A. Composition and Selection.**

**Section 1. Governing Body; Composition.** The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, the Directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time.

**Section 2. Directors during Declarant Control.** The Directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant until such time as is specified in the Declaration, unless the Declarant shall earlier surrender this right to select Directors. The Directors selected by the Declarant need not be Owners or residents in the Subdivision. After the period of Declarant appointment, all Directors must be Members of the Association.

**Section 3. Number of Directors.** The Board of Directors shall consist of three (3) persons.

**Section 4. Nomination of Directors.** Except with respect to Directors selected by the Declarant, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to

the Board of Directors as it shall in its discretion determine, but in no event less than the number of vacancies or terms to be filled. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members or solicit votes.

**Section 5. Election and Term of Office.** Notwithstanding any other provision contained herein:

At the first annual meeting of the membership after the termination of the Declarant's right to select all of the Board of Directors and at each annual meeting of the membership thereafter, Directors shall be elected. All Directors shall be elected at-large. All Members of the Association shall vote upon the election of Directors. The term of each Director's service shall be for a period of three (3) years and extending thereafter until his successor is duly elected and qualified or until he is removed, provided, however, that the terms of the members to the initial Board of Directors shall be for periods of three (3) years, two (2) years, and one (1) year, such that there shall be only one vacancy each year on the Board of Directors occasioned by the expiration of the director's term.

**Section 6. Removal of Directors and Vacancies.** Unless the entire Board is removed from office by the vote of the Association Members, and individual Director shall not be removed prior to the expiration of his or her term of office, except by the votes of a majority of the votes of the Members. In the event of death or resignation of a Director, his or her successor shall be selected by a majority of the remaining members of the Board and shall serve for the unexpired term of the predecessor.

**Section 7. Voting Procedure for Directors.** The first election of the Board shall be conducted at the first meeting of the Association after the Turnover Date. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

**B. Meetings.**

**Section 8. Organization Meetings.** The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

**Section 9. Regular Meetings.** Regular meetings of the Board of Directors may be held as such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

**Section 10. Special Meetings.** Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President, or Secretary of the Association, or by any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to

each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by electronic mail. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone or electronic mail shall be delivered, telephoned or emailed at least seventy-two (72) hours before the time set for the meeting.

**Section 11. Waiver of Notice.** The transactions of any meetings of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**Section 12. Quorum of Board of Directors.** At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 13. Compensation.** No Director shall receive any compensation from the Association for acting as such unless approved by a majority vote of the total vote of the Association at a regular or special meeting of the Association.

**Section 14. Conduct of Meetings.** The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

**Section 15. Open Meeting.** All meetings of the Board of Directors shall be open to all Members, but Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board.

**Section 16. Executive Session.** The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

**Section 17. Action without a Formal Meeting.** Any action to be taken at a meeting of the Directors of any action that may be taken at a meeting of the Directors may be taken

without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

**C. Powers and Duties.**

**Section 18. Powers.** The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of all Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles of Incorporation or these By-Laws directed to be done and exercised exclusively by the Members.

The Board of Directors shall delegate to one of its Members the authority to act on behalf of the Board of Directors on all matters related to the duties of the managing Agent or Manager, if any, which might arise between meetings of the Board of Directors. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;
- (b) making Assessments to defray the Common Expenses, establishing the means and methods of collecting such Assessments, and establishing the period of the installment payments of the annual Assessment, provided otherwise determined by the Board of Directors, the annual Assessment against the proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;
- (c) providing for the operation, care, upkeep, and maintenance of any Common Area;
- (d) designating, hiring, and dismissing the personnel or independent contractors necessary for the maintenance, operation, repair and replacement by the Association of its property and any Common Area, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel or independent contractors in the performance of their duties;
- (e) collecting the Assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;
- (f) making and amending rules and regulations;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of any common area in accordance with the other

provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable to Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and Mortgagees, their duly authorized agents, accountants, or attorneys during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners.

(m) make available to any prospective purchaser of a Residential Unit, any Owner of a Residential Unit, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage or any Residential Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, Rules and Regulations, and all other books, records, and financial statements of the Association; and

(n) permit utility supplies to use portions of the Property reasonably necessary to the ongoing development or operation of the lots and Residential Units.

#### **Section 19. Management Agent.**

(a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the power set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 18 of this Article. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager.

(b) No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee on ninety (90) days' or less written notice.

**Section 20. Accounts and Reports.** The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) cash basis accounting shall be employed;

(b) accounting and controls should conform with established AICPA guidelines and principles, which require, without limitation, (i) a segregation of accounting duties, (ii) disbursements by check requiring two (2) signatures, and (iii) cash disbursements limited to amounts of Twenty-five Dollars (\$25.00) and under;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the Managing Agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the Managing Agent may have in any firm providing goods and services to the Association shall be disclosed promptly to the Board of Directors; and

(f) commencing at the end of the month in which the first Residential Unit is sold and closed, quarterly financial reports shall be prepared for the Association containing:

(i) an Income and Expense Statement reflecting all income and expense activity for the preceding three (3) months on a cash basis;

(ii) a Balance Sheet as of the last day of the Association's fiscal year and an Operating Statement for said fiscal year, which shall be distributed within ninety (90) days after the close of a fiscal year;

(iii) a Delinquency Report listing all Owners who have been delinquent during the preceding three (3) month period in paying the monthly installments of Assessments and who remain delinquent at the time of the report and describing the status of any action to collect such installments which remain delinquent on the fifteenth (15th) day of each month); and

(iv) an annual report consisting of at least the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet as of the end of the fiscal year; (2) an operating (income) statement for the fiscal year; and (3) a statement of changes in financial position for the fiscal year. If said report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

**Section 21. Borrowing.** The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of any Common Area and facilities without the approval of the Members of the Association; provided, however, the Board shall obtain membership approval in the same manner provided in Section 10.03 of the Declaration of Special Assessments in the event that the proposed borrowing is for the purpose of modifying,

improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five percent (5) of the budgeted gross expenses of the Association for that fiscal year.

**Section 22. Rights of the Association.** With respect to any Common Areas or other Association responsibilities owned, and in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Directors of the Association.

## **ARTICLE IV**

### **OFFICERS**

**Section 1. Officers.** The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The Board of Directors may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

**Section 2. Election, Term of Office and Vacancy.** The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

**Section 3. Removal.** Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

**Section 4. Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

**Section 5. Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by at least two (2) officers or by the President and Treasurer or by such other person or persons as may be designated by resolution of the Board of Directors.

## **ARTICLE V**

### **COMMITTEES**

Committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

## **ARTICLE VI**

### **MISCELLANEOUS**

**Section 1. Fiscal Year.** The calendar year shall be the fiscal year. The initial fiscal year of the Association shall be a short year ending on December 31.

**Section 2. Parliamentary Rules.** Except as may be modified by Board resolution establishing modified procedures *Robert's Rules of Order*, (current edition) shall govern the conduct of Association proceedings when not in conflict with Indiana law, the Articles of Incorporation, the Declaration or these By-Laws.

**Section 3. Conflicts.** If there are conflicts or inconsistencies between the provisions of Indiana law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Indiana law, the Declaration, the Articles of Incorporation and the By-Laws (in that order) shall prevail.

**Section 4. Books and Records.**

(a) **Inspection by Members and Mortgagees.** The Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Subdivision as the Board shall prescribe.

(b) **Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents at the expense of the Association.

**Section 5. Notices.** Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, first class postage prepaid:

(a) if to Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such owner; or

(b) if to the Association, the Board of Directors, or the Managing Agent, at the principal office of the Association or the Managing Agent, if any, or at such address as shall be designated by the notice in writing to the Owners pursuant to this Section.

**Section 6.** **Amendment.** The Declarant may amend the By-Laws in accordance with the Declaration. These By-Laws may be amended otherwise only by the affirmative vote (in person or by proxy) or written consent of Members representing two-thirds (2/3) of the total votes of the Association (not a majority of a quorum).

**EXHIBIT "D"**

**RULES AND REGULATIONS  
FOR  
SAWGRASS HOMEOWNERS ASSOCIATION, INC.**

The following rules and regulations shall apply in addition to the terms and conditions governing the Subdivision as set forth in the Declaration of Covenants and Restrictions for Sawgrass (the "Declaration"):

1.      Occupancy. No more than one (1) family may occupy one (1) Residential Unit with no more than two (2) persons per bedroom.

2.      Noise. Loud music or television or any other sound which may be objectionable to any other Occupant is prohibited at all times.

3.      No Renting or Leasing. The Residential Units shall be for Owner occupancy only. Owner occupancy includes ownership by a trust of which the Occupant is settlor, grantor, trustee or beneficiary. No renting or leasing of the Residential Units shall be permitted. No Persons other than the Owner or the Owner's immediate family may reside in a Residential Unit, and no other Persons may stay as a guest visiting such Owner and/or Owner's immediate family for more than two (2) weeks per year.

4.      Definitions. The capitalized words and phrases used in these Rules and Regulations shall have the same definition and meaning as those set forth in the Declaration.