

**TOWN HOME SECOND ADDENDUM TO THE MASTER DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR
DOUBLETREE LAKE ESTATES**

THIS DECLARATION OF SECOND ADDENDUM TO THE MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS (the "Addendum") is made this 30 day of March, 1998, by DBL Residential L.P., an Indiana Limited Partnership (hereinafter referred to as "Declarant"); and Declarant certifies that it is the owner of all real estate subject to said Declaration of Covenants.

This Declaration affects the land and all improvements thereon of the following described real estate to be known as DBL Town Homes, hereinafter referred to as "The Town Homes" and described as follows:

Lots Numbered 535, 536, 537, 538, 539, 540, 541, 542, 543, 527 (A, B, C, D, E), 528 (A, B, C, D), 531 (A & B), 532 (A, B, C, D) 533 (A, B, C, D), and 534 (A, B, C, D) in DBL Tree Estates, as per plat thereof recorded in the Office of the Recorder of Lake County, Indiana.

ARTICLE I

All of the covenants, conditions, restrictions, and easements provided in the Master Declaration of Restrictive Covenants dated February 6, 1998, shall apply to the hereinabove described property. In the event of a conflict between the heretofore recorded covenants and this document, then the heretofore recorded Restrictive Covenants shall control. It is the purpose of this document to provide covenants which are unique to Town Home living. Town Home owners shall be members of the DoubleTree Lake Estates Homeowners' Association through DoubleTree Lake Estates Homeowners' Association and shall be entitled to all of the rights and privileges and subject to the duties which redound of Purchasers of numbered lots in DoubleTree Lake Estates.

**ARTICLE II
Definitions**

- A. Act: "Act" mean the Horizontal Property Act of the State of Indiana, Acts 1963, Chapter 349, Sections 1 through 31 as amended. The Act is incorporated herein by reference.
- B. Assessments: "Assessment" shall be that portion of the Common Expenses which is to be paid by each owner, including but not limited to common insurance, property maintenance, management, repairs and security costs, each owner's assessment representing

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Recorded by the Lake County Recorder on May 12, 1998 as Document No. 98034636.

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LAKE COUNTY AUDITOR

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MICHAEL A. BROWN
RECORDER
STATE OF INDIANA
LAKE COUNTY
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his share of the total expenses in direct proportion to his share of the total ownership, except in those exceptions provided for elsewhere in the documents.

C. ASSOCIATION: "Association" shall be the DBL Town Homes Association, Inc., a not for profit corporation, organized under the laws of the State of Indiana.

D. BOARD: "Board" shall mean the Board of Directors of the Association provided for in the By-Laws.

E. BUILDING: "Building" shall mean a structure having a roof, supported by columns or walls, for the shelter, support, or enclosure of persons, property, or animals; and when separated by division walls from the ground up without openings, each portion of such building shall be deemed as a separate building.

F. COMMON AREAS AND FACILITIES: "Common Areas and Facilities" shall mean all portions of the Property, except the units, as defined more particularly in Article IV.

G. COMMON EXPENSES: "Common Expenses" shall mean the actual and estimated cost of:

1. All sums lawfully assessed against the owners by the Association;
2. Expenses for maintenance, repair or replacement of the Common Areas and Facilities;
3. Expenses agreed upon as Common Expenses by the Association;
4. Expenses for management and administration, including but not limited to compensation paid by the Association to managing agents, accountants, attorneys and other employees, if any;
5. Expenses for property taxes, garbage and trash removal, snow plowing and lawn maintenance for the Units and Common Areas if the Board elects to provide such services pursuant to this Declaration;
6. Expenses declared Common Expenses by provisions of this Declaration or the By-Laws.

H. DECLARANT: "Declarant" shall mean DBL Residential, L.P., an Indiana Limited Partnership.

I. OWNER: "Owner" shall mean a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who owns the fee simple title to any unit.

J. PERCENTAGE INTEREST: "Percentage Interest" means the

percentage of undivided interest in the fee simple title to the Common Areas and Facilities appurtenant to each Unit as specifically expressed in Article XIV of this Declaration.

K. PERCENTAGE VOTE: "Percentage Vote" means that percentage of the total vote accruing to all of the Units which is appurtenant to each particular Unit and accrues to the owner thereof. The Percentage Vote to which each owner shall be entitled on any matter upon which the co-owners are entitled to vote shall be the same percentage as the Percentage Interest appurtenant to each such owner's Unit.

L. PHASE: "Phase" means a part of DoubleTree Lake Estates as per plats thereof, recorded in Lake County, Indiana, upon which buildings containing Units are or are to be constructed and annexed to DoubleTree Lake Estates as provided in Article XIV.

M. PLANS: "Plans" means the floor and building plans and landscaping, etc. of the Town Homes as approved by the P.O.A.

N. P.O.A.: "P.O.A." as used herein refers to the DoubleTree Lake Estates Homeowners' Association, Inc.

O. UNIT: "Unit" shall be described as an enclosed space consisting of one or more rooms occupying all or part of a floor or floors in a building of one or more floors or stories, with a direct exit either to a thoroughfare or a common space leading to a thoroughfare together with the land conveyed with the building to the Owner designed for residential use and purposes and as more particularly described in Article III herein, and for which a Certificate of Occupancy has been issued.

ARTICLE III Description of the Units

A. TOWN HOME UNIT OWNERSHIP: Each Unit Owner shall be seized fee simple title to and the exclusive ownership and possession of his Unit, including the space within, and all the appurtenances thereto, and an undivided interest in the Common Areas and Facilities. A Unit may be individually conveyed and encumbered, and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos and causa Mortis, as if it were sole and entirely independent of the other Units in the building of which it forms a part.

All conveyances and acts of and to the Units by the Owners are

subject to the Act, this Declaration, the By-Laws and any amendments thereto together with all duly adopted ordinances, including subdivision control ordinances, zoning ordinances and building codes of the Town of Winfield, which ordinances, if adopted, will supersede the authority granted herein.

B. **LEGAL DESCRIPTION:** The legal description of each Unit shall consist of identifying Unit and building number as shown on the Plans. Every deed, lease, mortgage or other instrument shall describe a Unit by its identifying Unit and building designation as shown on the Plans, and every such description shall be deemed good and sufficient for all purposes. The acceptance of a deed, lease, or mortgage, as to any Unit by any person or persons or other legal entity, shall constitute the acceptance and ratification by same of this Declaration, the Act, the By-Laws and all existing or future rules and regulations of the Board.

C. **BOUNDARIES:** The boundary lines of each unit shall be as described and shown on the plat of survey.

The boundaries of each Building shall be as shown on the plans without regard to the existing construction measured between the interior unfinished surface of the floors, ceilings, and perimeter walls of each Unit. In the event any horizontal or vertical boundary line as shown on the plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Unit because of inexactness of construction, settling after construction or for any other reasons, the boundary lines of each Unit shall be deemed to be and treated for purposes of occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the owner of each Unit in and to such space lying outside of the actual boundary line of the Unit, but within the appropriate wall, floor, or ceiling surfaces of the Unit. Such Unit shall constitute an entire, separate residential entity, and shall not be partitioned, subdivided or separated into multiple parcels by any deed, plat or other instrument causing such division.

D. **ENCROACHMENTS AND EASEMENTS FOR COMMON AREAS AND FACILITIES:** Whenever the Common Areas and Facilities encroach upon any Unit by reason of location, construction settling, or shifting of a building, an easement shall be deemed to exist and run to the Association for the maintenance, use and enjoyment of such Common Areas and Facilities.

E. **APPURTENANCES:** Any instrument of conveyance of a Unit shall pass all rights, title and interest in and to the following appurtenances, whether or not such instrument mentions said appurtenances:

1. Undivided interest in the Common Areas and Facilities;
2. Membership in the Association and all rights therein, as set forth in the Declaration and By-Laws, and funds and assets held by the Association for the benefit of the Owner;
3. Easements for structural support, ingress and egress, and utilities;
4. Special, limited easements for emergency ingress and egress and for maintenance, repair and replacement of the Units.

F. UTILITIES: Each Owner shall pay for his own telephone, electricity, water, sewer, gas, cable TV, and other utilities which are separately metered or billed to each user by the respective utility company. Utilities which are not separately metered or billed shall be treated as part of the Common Expenses, unless otherwise determined by the Board.

ARTICLE IV

Common Areas, Limited Common Areas and Easements

A. OWNERSHIP OF COMMON AREAS AND FACILITIES: Each Town Home Unit Owner shall be entitled to and own an undivided interest in the Common Areas and Facilities as a tenant-in-common with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Areas and Facilities for all purposes incident to the use and occupancy of such Owner Unit as a place of residence, and such other incidental uses permitted by this Declaration, which right shall be appurtenant to and run with his Unit. An equal percentage of undivided interest in the Common Areas and Facilities shall be appurtenant to each Unit, as more particularly set forth in Article XIV, of this Declaration.

B. COMMON AREAS AND FACILITIES DESCRIBED: Common Areas and Facilities as defined in Article II, Section F, shall include but not be limited to the following:

1. The land on which this Horizontal Property Regime is located, excepting Units conveyed to Owners;
2. The foundation, columns, girders, beams, supports, main walls, roofs, and structural columns within the boundaries of the Unit;
3. The yards, driveways, common lights and walks;
4. Facilities and installations located outside of buildings and providing electricity, gas, sewer, cable TV, sanitary and storm sewers, water and communication lines, pipes, ducts, wiring and conduits and other utility installations;
5. All other parts of the property necessary and convenient

to its existence, maintenance and safety, or normally in common use.

C. NO PARTITION OF COMMON AREAS AND FACILITIES: Except by Declarant there shall be no partition of Common Areas and Facilities through judicial proceedings or otherwise until this Declaration is terminated and the property is withdrawn from its term or from the terms of any statute applicable to Town Home ownership. This provision shall in no way limit Declarant's right to incremental development of this project.

D. USE OF THE COMMON AREAS AND FACILITIES: Subject to the provisions of subsection E, hereinbelow, each Owner shall have the right to use the Common Areas and Facilities in common with all other Owners, as may be required for the purpose of ingress and egress to, and use, occupancy and enjoyment of, the respective Unit owned by each Owner.

Such rights shall extend to the Owner and the members of such Owner's immediate family and guests and other occupants and visitors. The use of the Common Areas and Facilities and the rights of the Owners with respect thereto shall be subject to and governed by the provisions of this Act, this Declaration and the By-Laws, and rules and regulations of the Board.

E. EASEMENTS FOR UTILITIES AND ACCESS: All cable TV suppliers and private or public utilities serving the property are hereby granted the right to install, lay, construct, operate, maintain, renew, repair or replace conduits, cables, pipes and wires and other equipment into, over, under, along and on any portion of the Common Areas and Facilities for the purpose of providing the property with utility services, together with the reasonable right to ingress to and egress from the property for said purpose; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines, or other utilities, except as initially designed and approved by Declarant or as thereafter may be approved by the Board. By virtue of this easement the utilities are expressly permitted to erect and maintain the necessary equipment on the property and to affix and maintain wires, pipes, circuits and conduits on, above, across and under the roofs and exterior walls of the buildings. The Board may hereafter grant other or additional easements for utility purposes for the benefit of the property, over, under, along, and on any portion of said Common Areas and Facilities, and each Owner hereby grants the Board an irrevocable power of Attorney to execute, acknowledge and record or register for and in the name of such Owner, such instruments as may be necessary or appropriate to effectuate the foregoing. Easements are also hereby declared and granted to

install, lay, operate, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components running through a Unit, whether or not such installations lie in whole or in part within the Unit boundaries.

In addition to the easements provided above, it may become necessary for the Declarant to provide access roads for the benefit of other phases of DoubleTree Lake Estates. The Board or Declarant may hereafter grant other or additional access or roadway easements across the Common Areas and Facilities and each Owner likewise grants the Board an irrevocable power of Attorney to execute in the name of the Owner such instrument as may be necessary to effectuate such easements provided, however, that roadway easements shall not be located on any Unit property. The Board or Declarant reserves the right to convey roadways or portions of roadways to the P.O.A. provided, however, that all the provisions of this article shall be subject to all duly adopted ordinances, including subdivision control ordinances, zoning ordinances and building codes of the Town of Winfield, which ordinances, if adopted, will supersede the authority granted herein.

ARTICLE V

Maintenance, Repairs and Replacements

A. COMMON AREAS: Maintenance, repair and replacement of the Common Areas shall be according to the following provisions:

1. The Board shall be responsible for the maintenance, repair and management of the Common Areas. They shall be empowered to hire, retain or employ any person, partnership or corporation to attain the fulfillment of those responsibilities, subject, however, to the provisions of the By-Laws;

2. Common Expenses shall be assessed among the Owners. Each Owner's proportionate share of the Common Expenses shall be in the same ratio as the percentage of ownership in the Common Areas as set forth in Article XIV and subject to the provisions thereof. Payment thereof shall be according to the By-Laws and the rules and regulations of the Board. Failure of an Owner to pay such proportionate share when due shall operate as a default, and thereupon the amount due shall become a lien on the interest of such Owner in the Property pursuant to the terms of the Act. This paragraph is specifically made subject to the terms of Articles XIV and XV of this Declaration;

3. If, due to the negligent act or omission of an Owner, or of a member of his family or household pet, or of a guest or other authorized occupant or visitor of such Owner, damage

shall be caused to the Common Areas and Facilities or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board, subject to the rules, regulations and By-Laws of the Board;

4. The authorized representatives of the Board, or of the manager or managing agent for the Buildings, shall be entitled to reasonable access to the individual Units as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and Facilities or any equipment, facilities or fixtures affecting or serving other Units or the Common Areas and Facilities, and the use thereof by the individual Owners shall be subject to the rules and regulations of the Board;

5. No alterations of any Common Areas and Facilities or any additions or improvements thereto, shall be made by any Owner without the prior written approval of the Board.

B. GARBAGE AND TRASH REMOVAL, RECYCLING, SNOW REMOVAL, LAWN/YARD MAINTENANCE, AND LANDSCAPING: The Board may grant exclusive contracts for garbage and trash removal, and/or recycling, snow removal, and lawn/yard maintenance and/or landscaping for the Common Areas and/or Units and the cost thereof shall be a Common Expense included in the assessment.

C. TOWN HOME UNITS: Maintenance, repair and replacement of individual Units shall be according to the following provisions:

1. The Board, as a Common Expense, shall be responsible for the maintenance, repair and replacement of those portions of each Unit which contribute to the support of the Buildings, excluding, however, all utilities located within a building (other than a building on a common area), plaster or dry wall on the interior walls and ceilings, and floor surfaces, and including but not limited to, roofing, building exteriors, siding, outside walls, structural slabs, walls of the building, walls of the Units, load bearing walls and that part of the wall between each Unit excepting plaster or dry wall. In addition, the Board shall maintain, repair and replace all pipes, conduits, ducts, plumbing, wiring and other facilities of utility services which may be located within the Unit boundaries but outside the Building as specified in Article III, paragraph C, exclusive of any portions of the foregoing which may be located at or beyond the wall, ceiling or floor outlets, or which may be the responsibility of an individual

Owner under any other provision of this Declaration. The Board may replace and repair any window glass, window frames and doors, in the event any Owner fails to do so as provided in subparagraph 2 of this paragraph, but the expense of the same shall be paid by the defaulting Owner;

2. Except as otherwise provided in subparagraph 1 above, each Owner shall furnish, at his own expense, and be responsible for the following:

(a) All of the maintenance, repairs and replacements within his own Unit and all of the window glass, screens, window frames and doors appurtenant thereto, and all internal installations of such Unit, such as refrigerators, ranges and other kitchen appliances, lighting fixtures, appliances, pipes, conduits, ducts, wiring and other utilities within his/her building, and heating, plumbing and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the Unit boundaries as specified in Article III, paragraph C, provided, however, such maintenance, repairs and replacements as may be required for the bringing of water, gas, sewer, or electricity to the Unit, shall be furnished by the Board as part of the Common Expenses. The Board may provide, by its rules and regulations, for ordinary maintenance and minor repairs and replacements to be furnished to Unit as a Common Expense. No owner shall make any alterations or additions to his Unit which affect the structural integrity of any other Building or Unit.

(b) All of the decorating within his own Unit from time to time including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. Each Owner shall be entitled to the exclusive use of his Unit and such portions of the perimeter walls, floors and ceilings as lie within the boundaries of his Unit as shown on the Plans, and such Owner shall maintain such portions in good condition and repair at his sole expense; all such maintenance and use shall be subject to the rules and regulations of the Board. The interior and exterior surfaces of window glass in all windows forming part of a perimeter wall of a unit shall be cleaned or washed at the expense of each respective Owner. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades or other items visible on the exterior of the building, shall be subject to the rules and regulations of the Board. Decorating of the Common Areas and Facilities (other than interior surfaces within the Units as above provided), and any redecorating of Units to the extent made necessary by any damage to existing decorating of

such Units caused by maintenance, repair or replacement work on the Common Areas and Facilities by the Board, shall be furnished by the Board as part of the Common Expenses. Nothing herein contained shall be construed to impose a contractual liability upon the Board of maintenance, repair and replacement, but the Board's liability shall be limited to damages resulting from negligence as covered by insurance. The respective obligations of the Board and Owners set forth in this Declaration shall not be limited, discharged or postponed by reason of the fact that such maintenance, repair or replacement is required to cure a latent or patent defect in material or workmanship in the construction of the property.

(c) By purchase of a Town Home Unit, the Owner shall be deemed to authorize the management agent of the Declarant, or any other person authorized by the management agent or the Board of Directors of the Association to enter the Owner's Unit without prior permission, in case of any emergency originating in or threatening the Owner's Unit, whether the Owner is present at the time or not. In such emergency, the right of entry by said authorized personnel shall be immediate.

ARTICLE VI Covenants and Restrictions

A. COVENANTS AND RESTRICTIONS OF THE P.O.A.: The property is part of DoubleTree Lake Estates, as shown in plat recorded in the Recorder's office of Lake County, Indiana and future phases may be made subject to the Declaration. Certain powers or regulations of the DoubleTree Lake Estates subdivision and the facilities therein have been vested in DoubleTree Lake Estates Homeowners Association (hereinafter called the "P.O.A.") by virtue of prior deed restrictions affecting the Property. Also, the Declarant has entered a specific agreement with the P.O. A. governing membership of Owners in the P.O.A., their rights and duties as members and construction upon and future use of the Property. Each Owner, by accepting a conveyance of his Unit and the undivided percentage interest appertaining thereto, expressly takes subject to and agrees to abide by the above Agreement and restrictions set forth therein. Similarly, the Association in its management and maintenance of the Common Areas and Facilities shall abide by the above Agreement.

B. PURPOSE: The Units shall be used for single family residences only. The Common Areas and Facilities shall be used for the furnishing of services and facilities for which the same are reasonably intended, and for the enjoyment of the Units.

C. APPROVAL OF ASSOCIATION: No Unit shall be occupied by any person not approved in advance by the Board of Directors of the Association pursuant to Article XII herein, except for an Owner and his immediate family, and guests and invitees staying in such Unit less than 30 days in any one (1) calendar year.

D. NUISANCES: No Nuisance shall be allowed upon the Property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its residents. Nothing shall be done on the Property either willfully or negligently which may be or become, in the judgement of the Board, an annoyance or nuisance to the other Owners or occupants. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No Owner shall permit any use of his Unit or make any use of the common elements which will increase the rate of or will result in the cancellation of insurance upon the Property.

E. LAWFUL USE: No immoral, improper, offensive or unlawful use shall be made of the Property nor any part of it. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of the governmental bodies which require maintenance, modification or repair of the Property shall be the same as the responsibility for other maintenance and repair of the property concerned.

F. OBSTRUCTION OF COMMON AREAS AND FACILITIES: There shall be no obstruction of the Common Areas and Facilities, nor shall anything be stored in the Common Areas and Facilities without the prior written consent of the Board, except as herein expressly provided. Each Owner shall be obligated to maintain and keep in good order and repair his own Unit.

G. EXTERIOR EXPOSURE OF BUILDING: Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the Buildings, or in the Common Areas and Facilities and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof of any part thereof, without the prior written consent of the Board.

H. ANIMALS: No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas and Facilities, except that not more than a total of two (2) dogs, cats, or other domesticated household pets may be kept in Units, subject to rules and regulations adopted by the Board, provided that they are not kept, bred or maintained for any

commercial purpose; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property subject to these restrictions upon three (3) days written notice from the Board.

I. IMPAIRMENT OF STRUCTURAL INTEGRITY OF BUILDING: Nothing shall be done in any Unit or in, on, or to the Common Areas and Facilities which will impair the structural integrity of a building or which would structurally change the Building except as is otherwise provided herein. No Owner shall overload the electric wiring in a Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgement of the Board, an annoyance or nuisance to the other Owners or occupants.

J. LAUNDRY OR RUBBISH: No clothes, sheets, blankets, laundry, of any kind, or other articles shall be hung out or exposed on any part of the Common Areas and Facilities, all of which shall be kept free and clear of rubbish, debris and other wastes which shall be kept only in enclosed sanitary containers (of such type, color, composition and design as may be determined by the Board), and shall be disposed of in a clean, sightly, healthy and sanitary manner, and as may be prescribed from time to time by the rules and regulations of the Board. No stripped down, derelict or "junk" car shall be kept on any Unit or the Common Areas and Facilities.

K. PROHIBITED ACTIVITIES AND SIGNS: No industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational or otherwise, shall be conducted, maintained or permitted on any part of the Property. No signs, including political signs, shall be displayed on any lot other than house numbers; provided, however, that the Declarant shall be entitled to place For Sale signs, model home signs, open house signs, and direction signs on lots with the development at the Declarant's discretion; and provided further that General Contractors building dwelling units shall have the right to display a sign on the property setting out its name and telephone number, which sign shall not exceed one (1) foot in height by three (3) feet in width. General Contractors' signs shall be permanently removed not more than six (6) months after the date of substantial completion of the dwelling. No boats, campers, trucks or other vehicles, except for automobiles, shall be parked or stored on the Property, except in garages or areas specifically specified for such storage by the Board. No vehicle shall be parked on any street dedicated to the P.O.A.

L. ALTERATIONS OF COMMON AREAS AND FACILITIES: Nothing shall be altered or constructed in or removed from the Common Areas and Facilities except upon the written consent of the Board.

M. DISPLAY OF MODEL UNITS: During the period in which the original sale of newly constructed Units continues, Declarant or his successors or assigns may occupy or grant permission to any person or entity to occupy, with or without rental, as it determines, one or more Units for business or promotional purposes, including clerical activities, sales offices, model Units for display and the like.

N. RULES AND REGULATIONS: Rules and regulations concerning use of the property may be promulgated by the Association as hereinabove set forth; provided, however, that copies of the rules and regulations so adopted shall be furnished to the Owner prior to such time that the same become effective. Such regulations shall not impair or limit the rights of mortgagees as elsewhere recited.

O. SET BACK REQUIREMENTS: No building shall be placed on any lot subject to these covenants except in compliance with the following set back requirements:

1. Front Yard Set Back. No building shall be located within thirty (30) feet of the front property line;

2. Side Yard Set Back. No building shall be located closer to either side property line than eight (8) feet;

3. Rear Yard Set Back. No building shall be located within twenty (20) feet of the rear property line.

4. Minimum dwelling size shall be not less than the minimum dwelling sizes set forth in all applicable duly adopted ordinances, including subdivision control ordinances, zoning ordinances, and building codes, of the Town of Winfield, which ordinances, if adopted, will supersede the authority granted herein.

F. TOWN HOME UNIT INSURANCE PROCEEDS: All Town Home Unit Casualty Insurance proceeds shall be used only to repair or correct the casualty loss and the Association may take reasonable steps to insure that the proceeds are used for that purpose. Upon completion of the repairs or corrections, any remaining proceeds shall be the property of the owner. All such proceeds shall also be subject to the provisions of Article VIII hereof.

ARTICLE VII Insurance

A. PURCHASE: The insurance, for Common Areas and common insurable occurrences, other than title insurance and Declarant's "builder risk" coverage, shall be purchased by the Association through an

insurance company having authority to do business in the State of Indiana and having been in existence for a minimum of three (3) years. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Proof of payment shall be available to all Owners and Mortgagees upon reasonable and proper request. In all negotiations, purchase and settlement procedures, the Board shall represent the Association. Said insurance shall provide coverage as listed in paragraph B hereinbelow.

B. COVERAGE: The Board shall be required to obtain and maintain, to the extent obtainable, the following insurance:

1. Casualty insurance for Common Areas against loss or damage from fire or other hazards covered by a standard extended coverage endorsement and such other risks as from time to time shall be customarily covered with respect to buildings or improvements of a similar nature, including vandalism, malicious mischief, flood, windstorm and water damage.

Said Casualty insurance shall insure all buildings and other improvements upon the Common Areas and all personal property as may be owned by the Association. The above described property shall be insured for the full insurable replacement value of such property.

All policies of physical damage insurance shall contain waivers of subrogation and waivers of any reduction of pro-rata liability of the insurer as a result of any insurance carried by Unit Owners or of invalidity arising from any acts of the insured or any Unit Owners, and provide that such policies may not be cancelled or substantially modified without at least thirty (30) days prior written notice to all of the insured, including all mortgagees of Units.

All policies of physical damage shall provide for the issuance of certificates of insurance mortgage endorsements to the holders of the first mortgage on the Units.

2. Public liability insurance in such amounts and with such coverage as shall be required by the Board, including coverage for each member of the Board, the managing agent, the manager and each Owner and providing for cross-liability endorsements to cover liabilities of the Unit Owners as a group to an individual Unit Owner.

3. Workmen's compensation policy to meet the requirements of law.

4. Such other insurance as the Board may from time to time determine to be desirable.

C. **BENEFICIARY:** The beneficiary of said insurance policies shall be the Association individually and as an agent for the Owners without naming them, and shall include the mortgagees of the Units as such appear of record. Such policies shall provide that payment for losses thereunder by the insurer shall be paid to the Association. The Secretary of the Association shall hold all policies and endorsements.

D. **DISTRIBUTION OF PROCEEDS:** Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial Owners in the following manner:

1. All expenses of the Association shall be first paid or provisions made therefore.

2. If the damage for which the proceeds are paid is to be repaired or reconstructed according to the provisions of this Declaration, the remaining proceeds shall be used to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to an Association Reserve Fund, or at the option of the Board, divided among the Owners in proportion to their common Ownership percentages.

3. If it is determined in the manner elsewhere provided in this Declaration that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners.

E. **TOWN HOME UNIT:** Each Owner shall purchase insurance covering their individual unit. The cost of such insurance shall be borne by the Owner and shall contain a loss payable clause to the Association as a co-insured, subject only to loss payable clauses to mortgagees of record. Coverages, to the extent obtainable, shall be as follows unless changed by the Board:

1. Casualty insurance against loss or damage from fire or other hazards covered by a standard extended coverage endorsement and such other risks as from time to time shall be customarily covered with respect to buildings or improvements of a similar nature which the Owner is required to insure, including vandalism, malicious mischief, flood, windstorm and water damage.

Said Casualty insurance shall insure all buildings and other improvements which the Owner is required to insure upon the land and all personal property as may be owned by the Owner. The above described property shall be insured for the full insurable replacement value of such property. Said insurance shall cover each Unit, bearing

and air conditioning units and all bathroom and kitchen fixtures originally installed by Declarant.

All policies of physical damage insurance shall contain waivers of subrogation and waivers of any reduction of prorata liability of the insurer as a result of any insurance carried by Unit Owners or the Association arising from any acts of the insured or any Unit Owners, and provide that such policies may not be cancelled or substantially modified without at least thirty (30) days prior written notice to all of the insured, including all mortgagees of Units and the Association.

All policies of physical damage shall provide for the issuance of certificates of insurance mortgage endorsements to the holders of the first mortgage on the Units and to the Association.

2. Public liability insurance in such amounts and with such coverage as shall be required by the Board, including coverage for each Owner and providing for cross-liability endorsements to cover liabilities of the Unit Owners as a group to an individual Unit Owner.

ARTICLE VIII

Reconstruction of Repair of Casualty Loss

A. **COMPULSORY RECONSTRUCTION AND REPAIR:** Whenever portions of the Common Areas and Facilities or any Unit or Units suffer casualty damage, reconstruction of said damaged areas shall be compulsory unless the damage is equal to or exceeds two-thirds (2/3) of all the Units. However, should the total damage from a single casualty or disaster be limited to one Town Home structure and should said damage render seventy-five percent (75%) or more of the Units therein untenable, the members of the Association may call a meeting prior to commencement of reconstruction and, by a unanimous vote, preclude reconstruction of said Town Home Unit provided the following conditions are met:

1. The minutes of said meeting show that the Owners of all Units within said Town Home structure were present at said meeting and voted on the proposal to not reconstruct the damaged Town Home Unit, and;
2. The minutes of said meeting contain proof that all mortgagees having a recorded interest in those Units within the damaged Town Home Unit were given notice 48 hours prior to said meeting of the Association's intent to vote on the

reconstruction of the damaged Town Home Units;

3. All mortgagees named in item 2 hereinabove agree in writing to abide by the outcome of said vote.

B. **OPTIONAL RECONSTRUCTION AND REPAIR:** Whenever portions of the Common Areas and Facilities suffer casualty damage which renders two-thirds (2/3) or more of all the Units untenable, reconstruction and repair shall not proceed unless at a meeting which shall be called within one hundred twenty (120) days after the occurrence of the casualty the Unit Owners whose voting percentages total seventy-five percent (75%) or more of the total voting percentages, vote in favor of such reconstruction or repair. In the event that said meeting is not held within one hundred twenty (120) days from the date of damage and destruction, the Property may be deemed necessary of reconstruction and the provisions herein shall be subject to the specific provisions of the Act. Any result of such vote should be certified, and said certification should be presented to the Association as soon as practicable. The Association may rely upon the certification as to whether or not the damaged property is to be reconstructed.

C. **MANNER OF RECONSTRUCTION AND REPAIR:** Reconstruction or repair pursuant to the Article shall be substantially in accordance with the Plans and Specifications, and of the same quality and in the same style of the original construction. Encroachments upon or in favor of the Units which may be created as a result of said reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the Plans and Specifications or as the building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the building stands.

D. **PROCEDURES FOR RECONSTRUCTION AND REPAIR:** Reconstruction and repair after casualty shall be the responsibility of the Association acting through its Board, except where the damage is to portions of only one Unit which the Owner is responsible for maintaining and repairing as provided in Article V, paragraph C, in which case said Owner shall be responsible for reconstruction and repair after casualty. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to replace the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board desires.

E. **ASSESSMENTS FOR RECONSTRUCTION AND REPAIR:** If proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, or if at any time during or upon

completion of said reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments shall be in proportion to each Owner's percentage of ownership in the Common Areas.

F. COMPLIANCE: Any reconstruction or repair pursuant to this Article shall comply with all requirements of all duly adopted ordinances, including subdivision control ordinances, zoning ordinances, and building codes, of the Town of Winfield, which ordinances, if adopted, will supersede the authority granted herein.

ARTICLE IX Assessments

A. SHARE OF EXPENSES: Each Unit Owner shall be liable for an equal percentage share, that percentage being the same as his percentage ownership of the Common Areas and Facilities, of the common expenses, and any common surplus shall be owned by each Unit in like share. Any assessments levied by the Association against an Owner pursuant to other provisions of the Town Home documents authorizing such Assessments shall be borne by that Owner individually or in such proportion with other Owners as the Board shall deem appropriate.

B. DETERMINATION OF COMMON EXPENSES AND FIXING OF COMMON CHARGES: The Board shall from time to time, and at least annually, prepare a budget for the Association to determine the amount of the common charges payable by the Owners and assess such common charges against the Owners according to their respective common interests as defined in Article XIII. The Assessment shall include, among other things, the cost of all insurance premiums on all policies of insurance required by the Board pursuant to the Declaration. The Assessment may also include such amounts as the Board may deem proper for the operation and maintenance of the Property, including, without limitation, an amount for the working capital of the Association, for a general operating reserve; for a reserve fund for replacements, and to make up any deficit in the Common Expenses for any prior year. The Declarant will pay common expenses allocable to any Units completed and owned according to the provisions of Article XIV herein. The assessments may also include such amounts as may be required for the purchase or lease by the Board on behalf of all Owners, of any Unit whose Owner has elected to sell or lease such Unit or of any Unit which is to be sold at a foreclosure or other judicial sale. The Board shall advise all Owners, promptly in writing, of the amount of the Assessment payable by each of them, respectively, as determined by

the Board, as aforesaid and shall furnish copies of each budget on which such Assessments are based, to all Owners and upon request, to their mortgagees.

C. PAYMENT OF ASSESSMENTS: All Owners shall be obligated to pay the Assessment by the Board pursuant to the provisions of paragraph A hereinabove. Said Assessments shall be due and payable in equal monthly payments, with the first of such payments due on the first of the month following the determination of the annual Assessment.

D. ASSESSMENT ROLL: The Assessments against all Unit Owners shall be set forth upon a roll of the units which shall be available in the Office of the Association for inspection at all reasonable time by Unit Owners or their duly authorized representatives. Such roll shall indicate for each unit the name and address of the Owner or Owners, the Assessments for all purposes and the amounts of all Assessments paid and unpaid. A certificate made by the Association to the status of an Unit Owner's Assessment account shall limit the liability of any person for whom made other than the Unit Owner. The Association shall issue such certificate to such persons as an Unit Owner may request in writing. The Books of Account of the Association shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, or any holder of a Mortgage, by appointment, at such reasonable time or times during normal business hours, and upon reasonable fees which the Board may impose to cover administrative costs, when requested by an Owner or Mortgage holder.

E. LIABILITY FOR ASSESSMENTS: The Owner of a Unit and his grantees shall be jointly and severally liable for all unpaid assessments due and payable. Such liability may not be avoided by a waiver of the use or enjoyment of any Common Area and Facilities or by abandonment of the unit for which the Assessments are made or by a sale of the unit.

F. COLLECTION OF ASSESSMENTS: The Board shall assess common charges against the Owners from time to time (at least annually) and shall take prompt action to collect any Assessment due from any Owner which remains unpaid for more than 30 days from the due date for payment thereof. The Board may assess a reasonable late fee to encourage prompt payment of Assessments.

G. DEFAULT IN PAYMENT OF ASSESSMENTS: In the event of default by any Owner in paying to the Board the Assessments as determined by the Board, such Owner shall be obligated to pay interest at the legal rate or 18% per annum, which ever is greater, on such Assessment from the date due thereof, together with all expenses, including attorney's fees, incurred by the Board in any proceeding brought to collect such unpaid Assessment. The Board shall have the right and duty to attempt to recover such Assessments, together with interest thereon, and the expenses of the

proceeding, including attorney's fees, in an action to recover the same brought against said Owner, or by foreclosure of any resulting lien pursuant to paragraph below.

H. LIENS FOR UNPAID ASSESSMENTS: Assessments which become due and remain unpaid shall be secured by a lien upon both the Unit and its appurtenances, said lien attaching at the time the Assessment was first due. The Assessment liens shall be prior in right to all other charges whatsoever except Assessments, liens and charges in favor of the State of Indiana for taxes past due and unpaid on such Unit and the amounts and liabilities secured by mortgage instruments duly recorded. Assessment liens shall become perfected by the Board filing notice of the same not less than 60 days after the date such Assessment was due, in the Recorders Office of the County in which the property is located. Thereafter the Board may foreclose said lien pursuant to the laws of the State of Indiana governing mechanics and materialmen's liens. In any action brought by the Board to foreclose an Assessment lien, the Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board, acting on behalf of all the Owners, shall have the power to purchase such Unit at the foreclosure sale and to acquire, hold, lease and sell the same, provided, the Board may in no way exercise as its own the voting rights belonging to said Unit. Such foreclosure shall in no way preclude or prohibit a suit to recover a money judgment for unpaid Assessments.

ARTICLE X Taxes and Assessments

Taxes, Assessments, and other charges of the State of Indiana or of any political subdivision, or of any assessing authority shall be assessed against and collected on each individual Unit, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not the building or property as a whole. No forfeiture or sale of any unit for delinquent taxes, assessments or charges shall ever divest or in anyway affect the title to any other individual Unit so long as taxes, Assessments and charges on said individual Unit are currently paid.

If the taxes and special assessments are not, for any period of time, assessed against the individual Units as hereinabove mentioned, said taxes and Assessments shall be a Common Expense and be paid by the Association.

Compliance and Default

Each Owner shall be governed by and shall comply with the terms of the Declaration, and the By-Laws and the regulations adopted pursuant to those documents, and all of such documents and regulations as they may be amended from time to time. Failure of an Owner to comply with such shall entitle the Association or other Owners to the following relief in addition to the remedies provided by the Act.

A. **NEGLIGENCE:** An Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guest, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association.

B. **ENFORCEMENT OF THE COVENANTS AND RESTRICTIONS:** Enforcement of the Covenants and Restrictions herein shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain the violation or the recovered damages, and against the Unit to enforce any lien created by these covenants.

C. **COST AND ATTORNEYS' FEES:** In any proceeding arising because of an alleged failure of an owner or the Association to comply with the terms of the Declaration, Articles of Incorporation of the Association, the By-Laws, or Regulation adopted pursuant to them, and such documents and regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the Court.

D. **CONTINUING COVENANT VIOLATIONS:** If any Owner (either by his own conduct or by the conduct of any other Occupant of his Unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the regulations adopted by the Board, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall recur more than once after such notice, then the Board shall have the power to issue to the defaulting Owner a ten (10) day notice in writing to terminate the rights of said defaulting Owner to continue as an Owner and to continue to occupy, use or control his Unit and thereupon an action in equity may be filed by the members of the Board against the defaulting Owner for a decree of mandatory injunction against the Owner or Occupant or, in the alternative, a decree declaring the termination of the defaulting Owner's right to occupy, use or control the Unit owned by him on account of the breach of covenant,

and ordering that the right, title and interest of the Owner in the Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Owner from re-acquiring his interest in the Property at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charge and any unpaid assessments hereunder or any or any liens, shall be paid to the Owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Unit Ownership and, subject to the Board's rights as provided in Article X, to immediate possession of the Unit sold and may apply to the court for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall provide, that the purchaser shall take the interest in the Property sold subject to this Declaration.

E. The Board may assess the damages caused by the willful violation of the restriction and covenant set forth herein against the Owner in violation. Any such assessment properly levied may be collected and shall become a lien as any other assessment provided for in Article IX herein.

F. NO WAIVER OF RIGHTS: The failure of the Association or any Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the By-Laws of the Association or the regulations shall not constitute a waiver of the right to do so thereafter.

ARTICLE XII Sale and Lease of Town Home Unit

In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the Town Home Units, the transfer or lease of Units by any Owner shall be subject to the following provisions so long as the Town Home exists.

A. MEMBERSHIP IN P.O.A: Admission to the P.O.A. shall be a condition precedent to becoming an Owner of a fee simple to a Unit as hereinabove described. Said Owner shall pay the annual charge fixed by the P.O.A. by remitting the sum assessed when due. Upon acceptance of membership in good standing by the Owner, the Owner shall be entitled to all rights and privileges of a P.O.A. member in good standing as defined in the above referenced Agreement.

B. TRANSFERS SUBJECT TO APPROVAL: No Owner may dispose of a Unit

or any interest therein by sale, sale on contract, or lease without approval of the Association. If any Owner shall acquire his title by gift, devise or inheritance or by any other manner not mentioned herein, the continuance of his ownership of his Unit shall be subject to the approval of the Association.

C. APPROVAL BY ASSOCIATION: The approval of the Association that is required for the transfer of Ownership of Units shall be obtained in the following manner:

NOTICE TO BOARD: An Owner intending to make a bona fide sale or lease of his Unit or any interest unit shall give the Board notice of such intention together with the name and address of the intended purchaser or lessee and such other information concerning the intended purchaser as the Board may reasonably require.

Any Owner who has attained his title by gift, devise or inheritance or any other manner not herein mentioned shall give the Board notice of acquiring of his title, together with such information concerning the Owner as the Board any reasonably require.

Upon failure to provide notice to the Board as required hereinabove, the Board at its election and without notice, may approve or disapprove the transaction or Ownership. If the Board disapproves the transaction or Ownership, the Board shall proceed as if it had received the required notice on the date of such disapproval.

The Board shall not, under any circumstances, disapprove any transfer of ownership or lease for any reason prohibited by law, and the Board shall state, in writing, the reason for any disapproval.

D. CERTIFICATE OF APPROVAL: Within fifteen (15) days of the receipt of such notice and information, the Board must either approve or disapprove of the proposed transaction or continuance of ownership. If approved, the approval shall be stated in a certificate of approval signed by the President and Secretary of the Association. Failure of the Board to approve or disapprove within fifteen (15) days shall constitute an approval.

E. LEASE OF TOWN HOME UNITS: All leases of Town Home Units by Owners shall contain a provision that the lessee shall be subject to all terms of the Declaration, the By-Laws, and any rules and regulations governing the Town Home property. In no event shall the number of Units approved for occupancy by lessees exceed 10% of the total Units completed. The Board shall be empowered to implement rules and procedures necessary to regulate the leasing of

Units. This restriction on leased Units is in compliance with the Agreement with the P.O.A. set forth in paragraph A of this Article.

F. DISAPPROVALS: In the event the Board does not approve a lease, the Owner shall be advised of the disapproval in writing and the lease shall not be made. The Board shall not, under any circumstances, disapprove any transfer of ownership for any reason prohibited by law, and the Board shall state, in writing, the reason for any disapproval.

Any lease whether oral or written made without the approval of the Board, is void and the Unit Owner shall be in default and be subject to the remedies as provided in Article XI.

In the event the Board disapproves and deems it advisable to exercise the right to purchase the Unit, then it shall, within fifteen (15) days following the receipt of such notice from the Owner wishing to sell, call a meeting of all the Owners for the purpose of voting upon the proposed purchase. If the recommendation of the Board to purchase such Unit is approved by no less than seventy-five (75) percent in the aggregate of the total votes, then the Board shall proceed to purchase the Unit from the Owner upon the same terms and conditions contained in the offer or, in the case of an Owner who took by gift, devise or heirship, for the fair market value on reasonable terms. The purchase price for the Unit shall be considered to be a Common Expense for the Unit and borne by the Owners; provided, however, that the Owner of the Unit shall not be assessed for or required to pay his pro-rata share of the expense incurred in the purchase of his unit.

Legal title to the Unit shall be conveyed to the Association as an entity or to those persons then serving as Board, as Trustees for the benefit of the Owners, whichever the Board, in their sole discretion, deems appropriate.

In the event that the proposed purchase is not approved by the required percentage of the Owners as set out above, then the Board, through the president and Secretary, shall promptly deliver a certificate thereof of in recordable form to the Owner who may proceed to sell his Unit under the same terms, and conditions as if the Board had not elected to recommend the exercise of the right of the Association to purchase.

If, for any reason, either the Board or the Owners shall fail to act on the right of first refusal within the time periods herein provided, then the right of first refusal shall be deemed to have been waived.

G. PURCHASE BY THE BOARD: If the Board shall purchase a Unit in accordance with this Article, the Board shall have the authority at

any time thereafter to sell or lease the Unit upon the terms and conditions as the Board shall, in their sole discretion, deem desirable, without application to or approval of the Owners. The proceeds of any such sale shall be returned to the Owners in the same percentage as they had contributed to the purchase. In the event the Board elects to lease such Unit, then the lease rental payments shall be applied against the Common Expense.

H. FAILURE TO COMPLY: Any sale or attempted sale by an Owner of his Unit, except in accordance with the provisions of this Article, shall be void; provided however, that any certificate waiving the right to purchase executed by the Board and delivered to an Owner as provided by this Article may be relied upon by any purchaser or mortgagee and shall, with respect to such purchaser or mortgagee, be absolutely binding upon the Board and the Owners unless such purchaser or mortgagee has actual knowledge that the certificate was procured fraudulently or by reason of a misrepresentation of a material fact.

I. APPLICABILITY TO MORTGAGEES: With respect to a mortgagee that is a bank, life insurance company, saving and loan association, finance company, or other recognized institutional lender, the provisions of this Article shall be limited to such mortgagees as follows:

1. The provisions shall not apply to any conveyance of a Unit to such mortgagee as a result of a foreclosure of its mortgage or a conveyance in lieu thereof or to the conveyance of a Unit to any person at a judicial sale in the manner provided by law.

2. These provisions shall apply to any subsequent sale of those persons or mortgagees who acquire title through one of the conveyances named in subparagraph 1 hereinabove.

ARTICLE XIII Owner's Association

In order to provide for the maintenance, repair, replacement, administration and operation of the Property, there shall be created a not-for-profit corporation, DBL Town Homes Association, Inc., which shall fulfill its functions according to the following provisions:

A. POWERS: The Association shall have all of the powers and duties set forth in the Act, except as limited by this Declaration and the By-Laws, and all of the powers and duties reasonably necessary to operate the town home as set forth in this Declaration and the By-Laws as they may be amended from time to time.

B. MEMBERS:

1. **Qualifications :** The members of the Association shall consist of all the record Owners of Town Home Units;

2. **Change of Membership:** After receiving the approval of the Association elsewhere required, change of membership shall be established by the delivery to the Secretary of the Association, satisfactory proof that the transaction has been completed, the Owner designated by such proof hereby becoming a member of the Association. The membership of the prior Owner shall be thereby terminated;

3. **Designation of Voting Representative:** If a Unit is owned by one person his right to vote shall be established by the record title to his Unit. If a Unit is owned by more than one person, or is under lease, or is being purchased on contract, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record Owners of the said Unit and filed with the Secretary of the Association. A certificate designating the person entitled to cast the vote of a Unit may be revoked by any Owner thereof prior to the vote being cast;

4. **Approval or Disapproval of Matter:** Whenever the decision of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such Owner at an Association meeting, unless the joinder of record Owners is specifically required by this Declaration;

5. **Restraint Upon Assignment of Shares in Assets:** The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

C. BOARD OF DIRECTORS: The affairs of the Association shall be conducted by a Board of Directors who shall be designated in the manner provided in the By-Laws.

D. INDEMNIFICATION: Every Director and every Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved by Association, or any settlement thereof, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of provided that in the event of a settlement the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being for the best interest of the Association. The foregoing rights of indemnification shall be in addition to and

not exclusive of all other rights to which such Director or Officer may be entitled.

E. LIMITATION UPON LIABILITY OF ASSOCIATION:

Notwithstanding the duty of the Association to maintain and repair part of the town home property, the Association shall not be liable for injury or damage, other than the cost of maintenance and repair, caused by any intent condition of the property to be maintained and repaired by the Association, or by the elements or other Owners or persons.

F. PROPERTY IN TRUST: All funds and titles of all properties acquired by the Association and the proceeds thereof shall be held for the benefit of the members in accordance with the provisions of the Declaration of Town Homes and the By-Laws.

ARTICLE XIV

Incremental Development and Ownership Percentages

To allow the most economical and logistically feasible development of the town home project, and to prevent undue Assessments for insurance, maintenance and upkeep of the Units, the Owners, their successors and assigns, realize, understand and agree that Declarant plans to develop this project in a number of Phases or increments. Pursuant to this understanding, each Owner, for himself, his successors and assigns, consents to the following provisions:

A. THE FIRST INCREMENT: The first increment shall be comprised of all the land described as follows:

Lots 535 to 543

Deeds of conveyance and purchase agreements for any Unit in the first increment shall pass right, title and interest in and to only those Common Areas and Facilities lying with the first phase. Owners of Units in the first phase shall be subject to the provisions of Article XV which shall govern transition from Declarant's control to Owner control.

The first increment may consist of one (1) or two (2) story buildings consisting of not more than eight (8) units. Each Unit shall possess a percentage of undivided interest in the Common Areas and Facilities, for all purposes, including but not limited to assessments and voting rights equal to every other Unit in the phases/increments as may be approved by the Declarant in the future.

3. ADDITIONAL INCREMENTS:

1. Development of additional increments: Development of additional increments to the town home project may include the erection of additional structures and Units. All additional land which may be added to the project shall be within DBL Tree Lake Estates.

As each additional phase is added, the percentage of undivided interest in the Common Areas and Facilities of each Unit shall be adjusted so that each Unit possesses a percentage interest in the Common Areas and Facilities equal to that of every other unit established under this Declaration, and that the sum of the percentage interests of all the units equal 100 percent.

All additional increments must be added within twenty (20) years of the recording of this Declaration, and no further increments shall be added thereafter.

2. Amendments to Declaration: Declarant shall record the Amendments to this declaration necessary to effect the inclusion of successive phases in the Recorder's Office in Lake County, Indiana, as may be appropriate. Said amendment shall include the legal description of the land included within the new phase, a schedule of the Units within the new phase and the percentage of undivided interest of each Owner in the Common and Facilities of the developed phases. Said amendment shall be signed by Declarant.

3. Consent of Owners: Each Owner, for himself, his successors and assigns, consents to development of the town home project in the phases described, and no further form of consent shall be required from said Owners for the amendment of this Declaration to reflect addition of the described increments. Any amendment to include successive phases shall be regulated by the provisions of this Article and shall in no way be affected by the provisions of Article XVII.

4. Option of Declarant: The addition of any further phases as described shall be entirely at the option of the Declarant, and nothing herein may be construed as a covenant or commitment on the part of Declarant to make any particular expansion of the town home project, neither shall ~~this Declaration create an interest or right of an Owner in the above described additional land.~~

Transition from Declarant to Owner Control

Transition from the Declarant's Control during the development stage to operational stage, and expansion into later increments shall be pursuant to the following provisions:

A. TRANSITION OF MANAGEMENT AND CONTROL:

1. Control and Management: Control and Management of the Town Home project shall be vested in the Declarant until such time as Declarant is no longer seized of title to any Unit or multi-family lot within DBL Tree Lake Estates and Declarant's option to add additional Units to town home project has expired, or Declarant has, at its option and discretion, advised the Owners by written notice that Declarant intends to divest itself of control and management and transfer this responsibility to the Association.

Until the first meeting of the Association, Declarant shall be subject to the same terms, provisions and limitations as the Board would be subject to and shall possess all powers and functions delegated to the Association or the Board by this Declaration or the By-Laws. These powers shall include, but not be limited to, the powers to formulate from time to time rules and regulations respecting the use of the town home property in order to insure the quiet enjoyment of the premises.

The first meeting of the Association shall be on the first Tuesday of the month after the occurrence of any of the above preconditions to transfer of control and management. The calling to order of the first meeting shall terminate Declarant's control and management, except as provided for in subparagraph 3 hereinbelow.

2. Assessments During Transition: Owners shall pay such monthly assessments during the period of Declarant's control as the Declarant shall deem as reasonable and necessary to provide for maintenance, management, and repair. As soon as practical after the first meeting of the Association, the Common Expenses shall be assessed among the Owners in amounts proportionate to each Owner's percentage of undivided interest, as defined in Article XIV, and subsequent amendments.

3. Until such time as Declarant is no longer seized of title to any unit or multi-family lot within the DBL Tree Lake Estates, and Declarant's option to add additional units to the town home project has expired, Declarant shall be able to elect two-thirds (2/3) of the Directors. Declarant shall also have the right to replace, at any time and for any reason, any Board member appointed by Declarant.

B. SUCCESSIVE INCREMENT TRANSITION:

1. Control and Managements: Successive Phases and increments shall be deemed included in the town home project from the time of Amendment to include such increment as recorded, and shall be subject to the same provisions concerning control and management as previous Phases.

2. Assessments: Declarant shall estimate the Common Expenses for the new increment and combine them with those Common Expenses of the previously completed Phases, the total being the new total Common Expense which should be assessed among all Units in the new and previously developed increments. Declarant shall give each Owner at least thirty (30) days notice prior to any change in Assessments due to the addition of a new Phase to the town home. Declarant shall not be liable for Assessments on Units in the new increments until such Units are sold and conveyed to an Owner. Nothing herein shall be construed to create liability in the Association, the Board or the Owners for costs of unfinished original construction or cleanup.

ARTICLE XVI
Termination

The Town Home Plan shall be terminated, if at all, in the following manner:

A. BY AGREEMENT: The termination of the Town Home Plan may be effected by the agreement of all Owners and first mortgagees, which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyances of land. The termination shall become effective when such agreement has been recorded in the Office of the Recorder of Lake County, Indiana.

B. DESTRUCTION: If it is determined in the manner elsewhere provided that the property shall not be reconstructed after

casualty, the Town Home Plan of Ownership will be terminated and the Town Home Documents revoked. The determination not to reconstruct after casualty shall be evidenced by a certificate of the Association certifying as to the facts effecting the termination, which certificate shall become effective upon being recorded in the Office of the Recorder of Lake County, Indiana.

C. SHARES OF UNIT OWNERS AFTER TERMINATION: After termination of the Town Home Plan, the Owners shall own the common property as tenants in common, in undivided shares, and the holders of mortgages and liens against the unit or units formerly owned by such unit owners shall have mortgages and liens against the respective undivided shares of the unit Owners. Such undivided shares of the Owners shall be one equal undivided share per Unit owned, as provided above. All funds held by the Association and insurance proceeds, if any, shall be and continue to be held jointly for the Owners and their first mortgagees in proportion to the amount of the assessments paid by each Owner. The costs incurred by the Association in connection with a termination shall be a common expense.

D. SALE AFTER TERMINATION: Following termination the property may be partitioned and sold upon the application of any Owner. If the Association following a termination by not less than three-fourths (3/4ths) vote of the Owners, determines to accept an offer for the sale of the property, each unit Owner shall be bound to execute such deeds and other documents reasonably required to effect such sale at such times and in such forms as the Board of Directors directs. In such event any action for partition or other division of the consummation thereof shall be discontinued by all parties thereto.

E. AGENTS OF OWNERS: The members of the Board of Directors may act collectively as agents for all unit Owners notwithstanding the fact that the Association itself may be dissolved upon a termination.

ARTICLE XVII Amendment

A. AMENDMENTS OF THE DECLARATION: Amendments of the Declaration shall be proposed and adopted by the members in the following manner:

1. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered;
2. Prior to conveyance of the first Unit, the Developer may amend the Town Home documents unilaterally. After conveyance of the first Unit, an amendment shall be approved by a vote

of the Owners whose percentage interests and facilities total, in the aggregate, of at least 75%. Owners not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary of the Association prior to the meeting.

3. No amendments shall make any changes in the qualifications for membership nor the voting rights and percentage of ownership or members nor in the provisions for rebuilding the units and common area after casualty without approval in writing by all Owners and the joinder of all record owners or mortgages upon the Units or the Property. No amendment shall be made that is in conflict with the Act.

4. Every amendment to this Declaration, once approved and signed by two (2) officers, shall be recorded in the Recorder's Office in Lake County, Indiana.

5. Nothing herein shall affect, limit, prohibit or restrain the Amendment of this Declaration pursuant to Article XIV provisions except as provided in Paragraph XVIIIA6 below.

6. No provision of these covenants or any amendment thereto which relates to building setback lines, minimum lot size, minimum square footage applicable subdivision control ordinances, zoning ordinances, or building codes, for dwellings or other buildings may be amended or changed without the prior written consent of the governmental entity having zoning jurisdiction over the development.

B. AMENDMENTS OF THE ARTICLES OR BY-LAWS: Amendments of the Articles or By-Laws shall be according to the provisions of those documents.

ARTICLE XVIII Construction of Declaration

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

ARTICLE XIX
Duration of the Restrictions

The foregoing covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2018, at which time said covenants and Restrictions, shall be automatically extended for successive periods of 10 years unless changed in whole or in part by vote of those persons who then are the owners of a majority of the Units.

IN WITNESS WHEREOF, Declarants have caused this Declaration to be executed this 30th day of MARCH, 1998.

DBL Residential, L.P.,
an Indiana Limited Partnership

By: DBL Residential, Inc.
General Partner

By: _____

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

MARIA E. VILLARREAL
Notary Public
State of Indiana
My Commission Expires May 28, 2001

Subscribed and sworn to before me this 30th day of MARCH, 1998.

Maria E. Villarreal
Notary Public

My Commission Expires:
Resident County:

This Instrument Prepared By: Theodore A. Fitzgerald,
Attorney No. 6903-64
P.O. Box 98
Hebron, IN 46341

Declaration

This form is to be signed by the preparer of a document and recorded with each document in accordance with IC 36-2-7.5-5(a)

I, the undersigned preparer of the attached document, in accordance with IC 36-2-7.5, do hereby affirm under the penalties of perjury:

1. I have reviewed the attached document for the purpose of identifying and, to the extent permitted by law, redacting all Social Security numbers;
2. I have redacted, to the extent permitted by law, each Social Security number in the attached document.

I, the undersigned, affirm under the penalties of perjury, that the foregoing declarations are true.


Joanne Garrett-Hansen, Declarant