

ORDINANCE NO. 04 - 09

TO AMEND CERTAIN PORTIONS
OF THE UNIFIED ZONING ORDINANCE OF TIPPECANOE COUNTY, INDIANA,
DESIGNATING THE TIME WHEN THE SAME SHALL TAKE EFFECT.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE, INDIANA, THAT ORDINANCE NO. 32-97 IS HEREBY AMENDED AS FOLLOWS:

Section 1: Ordinance No. 32-97 of the City of West Lafayette, Indiana, is hereby amended to rezone the following describer real estate, to-wit:

(Doc. No. 9605192) The South Half of Lot Numbered Eleven (11) in Rising's Addition to Chauncey, now West Lafayette, as plotted upon part of the East Half of the Northeast Quarter of Section Nineteen (19) in Township Twenty-three (23) North, Range Four (4) West. Commonly known as 315 North Chauncey Avenue, West Lafayette, Indiana 47906.

Also:

(Doc. No. 02041170) The North half of Lot numbered Eleven (11) in Rising's Addition to Chauncey, now West Lafayette, as plotted upon part of the East half o the Northeast Quarter of Section Nineteen (19) in Township Twenty-three (23) North Range Four (4) West.

Located in Wabash Township, Tippecanoe County, Indiana.

Section 2: Said real estate is hereby rezoned as follows:

FROM: "R3W" District
TO: "PDRS" District

Section 3: This ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

The jurat on this document was not printed on discussion copies, in order to save paper and copying resources. If you would like to have the entire ordinance, please contact Office of the Clerk-Treasurer at clerk@westlafayette.in.gov.

Thank you.

20 NORTH 3RD STREET
LAFAYETTE, INDIANA 47901-1209

(765) 423-9242
(765) 423-9154 [FAX]
www.tippecanoe.in.gov/apc

SALLIE DELL FAHEY
EXECUTIVE DIRECTOR

April 16, 2009
Ref. No.: 09-108

West Lafayette Common Council
609 West Navajo Street
West Lafayette, IN 47906

CERTIFICATION

RE: **Z-2397—STARR ASSOCIATES, LLC (SEI Townhomes ii PD) (R3 to PDRS):**

Petitioner, with consent of owner Surreal Estates, Inc., is requesting rezoning for a new three story building with two side-by-side units, each with four bedrooms. The site is located at the southwest corner of Wiggins and North Chauncey, more specifically 315 North Chauncey Avenue, West Lafayette, Wabash 19 (NE) 23-4.

Dear Council:

As Secretary to the Area Plan Commission of Tippecanoe County, I do hereby certify that at a public hearing held on April 15, 2009 the Area Plan Commission of Tippecanoe County voted 11 yes - 0 no on the motion to rezone the subject real estate from R3 to PDRS. Therefore, the Area Plan Commission of Tippecanoe County recommends to the West Lafayette Common Council that the proposed rezoning ordinance be APPROVED for the property described in the attachment, contingent on meeting all requirements of UZO 2-27-10 for submission of Final Detailed Plans, signed off by those noted in that section to include:

1. All sheets (other than preliminary plat) that make up the approved Preliminary Plan;
2. PD construction plans per UZO Appendix B2-2;
3. A final plat per UZO Appendix B-3-2 as applicable;
4. Appropriate surety submitted with final detailed plans
5. A "No Vehicular Access" statement platted along Wiggins and North Chauncey right-of-way;
6. Plant schedule approved by the West Lafayette Greenspace Administrator;

Restrictive Covenants – The following items shall be part of the planned development's covenants made enforceable by the Area Plan Commission and irrevocable by the lot owners:

7. A restriction limiting one occupant per bedroom
8. A restriction prohibiting conversion of garage space into living space, also enforceable by the Administrative Officer;
9. Inclusion of the statement concerning amendments to the planned development: "Notwithstanding anything to the contrary contained herein, there shall be no amendment of the Declarations, nor any Tippecanoe County Area Plan Commission through the planned development process, which includes the possibility of consideration as a minor modification by the administrative officer."

Public Notice has been given that this petition will be heard before the West Lafayette Common Council at its May 4, 2009 regular meeting. Petitioners or their representatives must appear to present their case.

Sincerely,



Sallie Dell Fahey
Executive Director

SDF/lmu

Enclosures: Staff Report & Ordinances

cc: Todd Starr
Surreal Estates
Terri Griffin, INDOT
Dave Buck, West Lafayette City Engineer
Verizon
Duke Energy
Vectren
Comcast
American Suburban Water

Z-2397
STARR ASSOCIATES, LLC
SEI TOWNHOUSE II PLANNED DEVELOPMENT
R3W TO PDRS

STAFF REPORT
April 9, 2009

REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner, Starr Associates LLC, with consent of owner, Surreal Estates Inc., is requesting rezoning from R3W to PDRS for one lot located at the southwest corner of Wiggins Street and North Chauncey Avenue. The proposal consists of removing two existing older homes and replacing them with a new 3-story residential structure containing two side-by-side condominium units, each with 4 bedrooms. The site is commonly known as 323 and 315 North Chauncey Avenue, West Lafayette, Wabash 19 (NE) 23-4.

ZONING HISTORY AND AREA ZONING PATTERNS:

This site and all surrounding lots are zoned R3W. CBW zoning is located to the southwest along Northwestern Avenue. Chauncey Townhomes is located to the southeast across Chauncey (Z-2216).

AREA LAND USE PATTERNS:

This area of West Lafayette is a mix of multi-family apartment buildings and older homes converted to apartments. Commercial uses are located west along Northwestern Avenue, including a fire station and the West Lafayette Public Library.

TRAFFIC AND TRANSPORTATION:

Both Wiggins Street and North Chauncey Avenue are classified as urban primary arterials. Traffic counts in 2005 and 2007 indicated more than 8,200 cars per day on Wiggins and more than 2,000 cars per day on Chauncey in 2007 respectively. The project will eliminate two existing curb cuts on Chauncey in favor of a new entrance off the alley giving room for additional on-street parking. Eight parking spaces will serve the building, including 4 in garages under the second story. A total of 135 square feet of right-of-way will be dedicated along Wiggins with this application in order to further the requirements of the *Thoroughfare Plan*.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

Public utilities serve the site.

STAFF COMMENTS:

Petitioner's plan includes removing two older homes that have been converted to apartments and building a new 3-story residential structure containing two individual condominiums with four bedrooms each. This consolidation of residential structures into a single building permits both a greater efficiency of land use and an increase in open space. Staff believes the Petitioner's plan is both in character with and an enhancement to the surrounding land uses in the immediate vicinity.

Over the course of the plan review process, APC & West Lafayette staff recommended several changes to the original draft plan that has greatly improved the quality of the project. First, the protection of existing mature street trees along both Chauncey and Wiggins and new landscaping around the new building and perimeter will greatly improve the streetscape appearance. Second, the removal of the existing curb cuts on Chauncey in favor of a single driveway leading off the alley to the south of the property will ensure a more pedestrian friendly sidewalk environment on Chauncey while increasing the on-street parking. Third, the inclusion of a dumpster on the back of the property will improve the efficiency of trash removal. Fourth, an increase in green space from the existing 25% to over 31% will significantly contribute to the natural environment through the reduction in impervious cover. Lastly, the placement of and the architectural treatments to the building, as negotiated by staff, will serve to improve the character of the neighborhood and establish a positive trend for potential redevelopments of a similar nature in the future.

STAFF RECOMMENDATION:

Approval, contingent on meeting all requirements of UZO 2-27-10 for submission of Final Detailed Plans, signed off by those noted in that section to include:

1. All sheets (other than preliminary plat) that make up the approved Preliminary Plan;
2. PD construction plans per UZO Appendix B2-2;
3. A final plat per UZO Appendix B-3-2 as applicable;
4. Appropriate surety submitted with final detailed plans
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Restrictive Covenants – The following items shall be part of the planned development's covenants made enforceable by the Area Plan Commission and irrevocable by the lot owners:

7. A restriction limiting one occupant per bedroom
8. A restriction prohibiting conversion of garage space into living space, also enforceable by the Administrative Officer;
9. Inclusion of the statement concerning amendments to the planned development: "Notwithstanding anything to the contrary contained herein, there shall be no amendment of the Declarations, nor any change in use or exterior design without prior approval of the Tippecanoe County Area Plan Commission through the planned development process, which includes the possibility of consideration as a minor modification by the administrative officer."

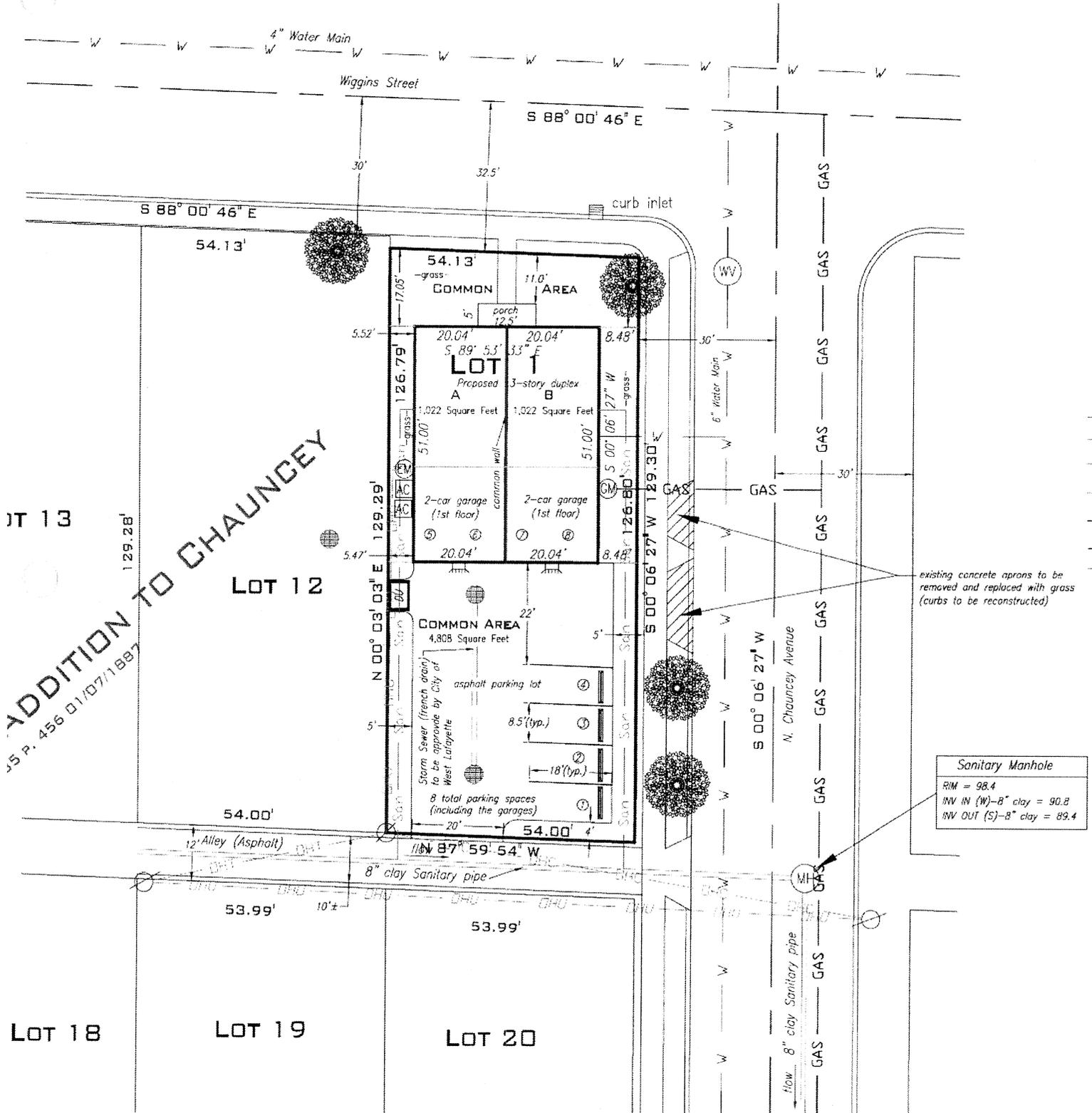
LOT 13

ADDITION TO CHAUNCEY
P. 456 01/07/1987

LOT 18

LOT 19

LOT 20



existing concrete aprons to be removed and replaced with grass (curbs to be reconstructed)

Sanitary Manhole	
RIM	= 98.4
INV IN (W)	-8" clay = 90.8
INV OUT (S)	-8" clay = 89.4

CODE OF BY-LAWS FOR
SEI TOWNHOUSE ii
HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

The name of the corporation is **SEI TOWNHOUSE ii HOMEOWNERS ASSOCIATION, INC.**, an Indiana not-for-profit corporation (the "Corporation"). The principal office of the Corporation shall be located at 1058 Sagamore Parkway West, West Lafayette, Indiana, 47906, but meetings of Members and Directors may be held at such places within the State of Indiana as may be designated by the Board of Directors. These By-Laws are adopted simultaneously with the execution of a Declaration of Covenants Conditions and Restrictions for SEI Townhouse ii (hereinafter referred to as the "Declaration") to which these By-Laws are attached and made a part thereof. The Declaration is incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these By-Laws.

ARTICLE II

DEFINITIONS

Unless otherwise provided herein, any initially capitalized terms used but not defined in these By-Laws will have the meanings for such terms as set forth in the Declaration.

ARTICLE III

MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Corporation, and each subsequent regular annual meeting of the Members shall be held within ten (10) to twelve (12) months after the previous annual meeting, at such day and time as shall be set by the Board of Directors; provided, however, that no annual meeting shall be held on a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President of the Corporation, the Board of Directors, or upon written request of Members who are entitled to vote at least one-fourth (1/4) of all of the votes of either class of Members. Only business within the purpose or purposes described in the written notice of special meeting may be conducted at any such special meeting of the Members.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary of the Corporation or person authorized to call the meeting, by delivering or mailing a copy of such notice, postage prepaid, to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Corporation for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. Such notice shall be given at least seven (7) days before a meeting, except for a special meeting to approve an Extraordinary Action or Material Amendment (as defined in Section 13.4 of the Declaration) in which case notice shall be given at least twenty-five (25) days before such meeting.

Section 4. Waiver of Notice. A Member may waive any notice required by the Articles of Incorporation of the Corporation, these By-Laws or the Indiana Nonprofit Corporation Act of 1991 (the "Act") before or after the date and time of the meeting that is the subject of such notice. In order for any such waiver to be effective, the waiver must be in writing, be signed by the Member entitled to such notice and be delivered to the Secretary for inclusion in the minutes or filing with the Corporation's records. A Member who attends a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

Section 5. Quorum. Except to the extent otherwise provided in the Declaration with respect to voting on matters described in Section 5.5, Section 5.6 and Section 13.4 of the Declaration, or except as otherwise provided in the Articles of Incorporation, the Declaration or these By-Laws, the presence at the meeting of Members or their proxies entitled to cast at least twenty percent (20%) of the votes of

Members shall constitute a quorum for any action to be taken by the Corporation. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting and to call another meeting without notice other than announcement at the meeting prior to adjournment, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 6. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, in the form required by law and otherwise in such form as may be mandated by the Corporation, and filed with the Secretary of the Corporation. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of its Lot.

Section 7. Action Taken without Meeting. Any action which may be taken at a meeting of the Members may be taken without a meeting if, prior to such action, written consents setting forth the action to be so taken shall be signed by a number of Members equivalent to the percentage or number of Members required to approve such action under the Declaration, the Articles of Incorporation and/or these By-Laws. Any and all such written consents shall be filed with the minutes of the proceedings of the Corporation.

ARTICLE IV

BOARD OF DIRECTORS; SELECTION; OFFICE

Section 1. Number and Qualification. The affairs of this Corporation shall be managed by a Board of Directors (on occasion referred to individually as a "Director" and collectively as the "Board") who need not be Members. No Member whose Lot's Annual Assessment and/or Special Assessment (as defined in Section 5.5 of the Declaration) is more than thirty (30) days past due shall be eligible to serve on the Board. Any Director whose Lot's Annual Assessment and/or Special Assessment is more than thirty (30) days past due shall be subject to removal by a majority vote of the other Directors. The initial Board shall be appointed by the Declarant or its designee, and shall serve until the first annual meeting of Members after the date of conversion of the Class B membership to a Class A membership. The initial Board shall consist of three (3) Directors, which number may be increased to as many as five (5) by a majority vote of the Directors so long as there is a Class B membership, or after the conversion of the Class B

membership to a Class A membership, may be changed in accordance with the Declaration and these By-Laws.

Section 2. Election. At the first annual meeting of Members after the termination of the Class B membership, the Members shall elect one (1) Director for a term of one (1) year; one (1) Director for a term of two (2) years; and one (1) Director for a term of three (3) years; and, as the terms of such Directors expire, new Directors shall be elected by the Members at each annual meeting thereafter for terms of three (3) years each. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and the Articles of Incorporation. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 3. Nomination. Nomination for election to the Board of Directors may be made by a nominating committee (the "Nominating Committee"), if one is formed. Nominations may also be made from the floor at the annual meeting. If a Nominating Committee is created, it shall consist of a chairperson, who shall be a member of the Board of Directors, and two (2) or more Members of the Corporation. The Nominating Committee shall be appointed by the Board of Directors sixty (60) to ninety (90) days prior to each annual meeting of the Members, to serve until the close of 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 not fewer than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

Section 4. Replacement. Any Director may be removed from office, with or without cause, by the vote of a majority of the Directors present and voting at a meeting of the Board of Directors called expressly for that purpose. In the event of death, resignation or removal of a Director, that Director's successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of the predecessor.

Section 5. Compensation. No Director shall receive compensation for any service he/she may render to the Corporation in his/her capacity as a Director. However, any Director may be reimbursed for his/her actual, reasonable expenses incurred in the performance of his/her

duties as a Director, as permitted by Indiana law.

Section 6. Action Taken Without a Meeting. The Board shall have the right, in the absence of a meeting, to take any action which they could take at a meeting by obtaining the written approval of all of the Directors in accordance with Indiana law. Any action so taken shall have the same effect as though taken at a meeting of the Board.

Section 7. Indemnification. Each Director, in consideration of his/her services to the Board as a Director shall be indemnified by the Corporation, to the extent provided for under the Articles of Incorporation and otherwise as permitted by law, against expenses and liabilities reasonably incurred by him/her in connection with the defense of any action, suit or proceeding, civil or criminal, to which he/she may be a party by reason of his/her past or present role in the Corporation, unless such action was a result of gross neglect or willful misconduct of the Director.

ARTICLE V

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held on a regular basis and at least one (1) time per year without notice and at such place and hour as may be fixed from time to time by resolution of the Board.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Corporation or by any two (2) Directors after not less than three (3) days' notice to each Director.

Section 3. Quorum. A majority of the Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VI

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to

exercise for the Corporation all powers, duties and authority vested in or delegated to the Corporation, not reserved to the Members by other provisions of these By-Laws, the Articles of Incorporation or the Declaration.

Section 2. Duties. It shall be the duty of the Board of Directors:

(a) to cause to be kept a complete written record of all of its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting, when such statement is requested in writing by at least one-fourth (1/4) of the Class A Members who are entitled to vote;

(b) to supervise all officers, agents and employees of the Corporation in the performance of their respective duties.

(c) as more fully provided herein and in the Declaration:

(i) to fix the amount of Annual Assessments (as defined in Section 5.3 of the Declaration) against each Lot at least thirty (30) days in advance of the Annual Assessment period;

(ii) to fix the amount of any Special Assessment (as defined in Section 5.5 of the Declaration) against each Lot; and

(iii) to send or cause to be sent written notice of each and any such Annual Assessment to every Owner subject thereto at least thirty (30) days in advance of the Annual Assessment period; and

(iv) to send or cause to be sent written notice of each and any such Special Assessment to any Owner subject thereto;

(d) at the request of a Member or Mortgagee, to issue, or cause an appropriate officer or authorized agent to issue, a certificate setting forth whether any such Annual Assessment and/or Special Assessment (as the case may be) has been paid. A reasonable charge may be made by the Board for the issuance of such a certificate. Such certificate shall be conclusive evidence that any Annual Assessment and Special Assessment therein stated to have been paid has been paid.

ARTICLE VII

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of the Corporation shall be a President and Vice President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer and such other officers as the Board may elect from time to time.

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

Section 3. Term. The officers of this Corporation shall be elected annually by the Board and each shall hold office for one (1) year unless such officer shall sooner resign, be removed or otherwise be disqualified or unable to serve.

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

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

Section 6. Vacancies. A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer replaced.

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

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

(a) President: The President shall preside at all meetings of the Board of Directors, see that orders and resolutions of the Board are

carried out, and sign all contracts, leases, mortgages, promissory notes, deeds and other written instruments on behalf of the Corporation;

(b) Vice President: The Vice President shall act in the place and stead of the President in the event of the latter's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him/her by the Board;

(c) Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, serve notice of meetings of the Board and of the Members, keep appropriate current records showing the Members, together with their addresses, and perform such other duties as required by the Board;

(d) Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Corporation and disburse such funds as directed by resolution of the Board of Directors, sign all checks of the Corporation, keep proper books of account, cause an audit of the Corporation books to be made by a public accountant if so required by a Mortgagee, and prepare an annual budget and a statement of income and expenditures to be presented to the Members at their regular annual meeting.

Section 9. Delegation. The officers may delegate any of their duties to an agent hired for that purpose.

ARTICLE VIII

COMMITTEES

The Board of Directors may appoint committees as it deems appropriate in carrying out its responsibilities. It shall be the duty of each committee to receive complaints from Members on any matter involving Corporation functions, duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such committee, Director or officer of the Corporation as is further concerned with the matter presented.

ARTICLE IX

BOOKS AND RECORDS

The Corporation shall keep records of its governing documents (e.g., Corporation documents, rules and regulations, design standards), its actions (e.g., Board resolutions, meeting minutes), and its financial condition (e.g., receipts and expenditures affecting the finances, operation and administration of the Corporation, budget, financial statements). Notwithstanding the foregoing, the Corporation is not required to maintain records in excess of three (3) years, unless otherwise required under applicable law. The Corporation documents and all books and records kept on behalf of the Corporation shall be available for examination and copying by a Member or such Member's authorized agent during normal business hours and upon reasonable notice to the Corporation and for a reasonable charge, except for privileged or confidential information.

ARTICLE X

AMENDMENTS

These By-Laws may be amended at a duly noticed regular or special meeting of the Members where a quorum is present by a majority vote of Members entitled to vote and voting at the meeting in person or by proxy.

ARTICLES XI

SPECIAL AMENDMENTS

Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend these By-Laws for any reason prior to the first conveyance of a Lot to an Owner other than the Declarant, and thereafter may make any amendment required by any of the federal mortgage agencies or by the City of West Lafayette, Indiana, or the County of Tippecanoe, Indiana as a condition of the approval of these By-Laws, and shall give written notice of any such amendments to the Members.

ARTICLE XII

MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the Corporation shall begin on January 1 and end on December 31 of every year, except that the first fiscal year shall begin on the date of incorporation of the Corporation. The dates fixing the fiscal year may be adjusted at the discretion

of the Board.

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

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR SEI TOWNHOUSE ii PLANNED DEVELOPMENT

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SEI TOWNHOUSE II (the "**Declaration**") is made this 15th day of March, 2009 by **Barry Rubin and Surreal Estates, Inc.** (the "**Declarant**").

RECITALS:

WHEREAS, the Declarant is, or at the time of recordation of this Declaration will be, the owner of certain real property located in Tippecanoe County, Indiana, which is more specifically described in **Exhibit A**, which is attached hereto and incorporated herein by reference (the "**Property**").

WHEREAS, the Declarant desires to create on the Property a residential development (the "**Development**") which shall have permanent common facilities for the benefit of the residents of the Development.

WHEREAS, the Declarant desires to provide for the preservation of the values of the Development and such other areas as may be subjected to this Declaration, and to provide for the maintenance of the facilities, and, to this end, declare and publish their intent to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, it being intended that they shall run with title to the Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof.

WHEREAS, the Declarant has deemed it desirable for the efficient preservation of the values of the Development to create an association to be known as SEI Townhouse ii Homeowners Association, Inc., an Indiana not-for-profit corporation (the "**Association**") to which shall be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities, administering and enforcing the covenants and restrictions made in and pursuant to this Declaration and collecting and disbursing the assessments and charges hereafter created.

NOW, THEREFORE, the Declarant, for and in consideration of the premises and the covenants contained herein, grants, establishes and conveys to each owner of each Lot (as herein defined), mutual, non-exclusive rights, privileges and easements of enjoyment on equal terms and in common with all other owners of Lots in and to the use of any common areas and facilities; and further, the Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, easements, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their respective successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1. "**Association**" shall mean and refer to SEI Townhouse ii Homeowners Association, Inc., an Indiana not-for-profit corporation established under the Indiana Nonprofit Corporation Act of 1991 (the "**Act**"), its successors and assigns.

Section 1.2. "**Common Area**" or "**Common Areas**" shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Members, and shall include all of the Property which is not part of a Lot. No part of the Common Area shall be dedicated to the public. The Common Area within the Property shall be what is identified on that certain plat of survey recorded in the Office of the Recorder of Tippecanoe County, Indiana _____, 20__, as Instrument No. _____ (the "**Plat**"), as Common Area "A" and shall comprise two components; namely:

(a) areas specifically identified as parking areas, located behind th building (the "**Parking Areas**"). Parking Areas are further described and defined in Article IX below; and

(b) open space, which shall include all parts of the Common Area not occupied by the Building, and the Parking Areas (the "Open Space").

Section 1.3. "**Declarant**" shall mean and refer to Surreal Estates Inc, an Indiana corporation, and its successors or assigns to whom Surreal Estates Inc, an Indiana corporation, assigns any or all of its rights as Declarant pursuant to this Declaration by assignment recorded in the Office of the Recorder of Tippecanoe County, Indiana.

Section 1.4. "**Declaration**" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for SEI Townhouse ii, which is to be recorded in the Office of the Recorder of Tippecanoe County, Indiana.

Section 1.5. "**Dwelling Unit**" shall mean and refer to any improvement to the Property intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) townhouses .

Section 1.6. "**Lot**" shall mean and refer to any discrete plot of land created by and shown on a Plat upon which a Dwelling Unit is intended to be constructed in accordance with applicable zoning ordinances; provided, however, that where a Dwelling Unit (i) is separated from an adjacent Dwelling Unit by a Party Wall, or (ii) shares a Party Wall with an adjacent Dwelling Unit, the center line of such Party Wall and its vertical extensions shall constitute the common boundary line (lot line) between adjacent Lots, and the closure of the boundary lines of such adjacent Lots shall be accomplished by extending perpendicular lines from the horizontal extremities of such Party Wall to the closest boundary line or lines for such Lots as shown on any Plat or any part thereof; provided, further, that where any exterior wall of a Dwelling Unit is not a Party Wall, but extends outside the boundary lines (lot lines) of any Lot (as shown on any such Plat or part thereof) upon which such Dwelling Unit is primarily located, the boundary lines of such Lot shall be deemed extended to include all of the ground area occupied by such Dwelling Unit. It is the

intent hereof that, in any and all events in which a boundary line as shown on any Plat or part thereof does not coincide with the actual location of the respective wall of the Dwelling Unit because of inexactness of construction, settling after construction, or for any other reason, this Declaration and any Plat or any part thereof shall be interpreted and construed so that all ground area underlying and lying beneath a Dwelling Unit shall be and constitute part of the Lot upon which such Dwelling Unit is primarily located to the end that all of such ground area shall be subject to fee simple ownership by the Owner of such Dwelling Unit; to the extent necessary to accomplish and implement such intention, interpretation and construction, the boundary lines of the Lots shall be determined in accordance with the foregoing definitional provisions and boundary lines as so determined shall supercede the boundary lines for Lots shown on any Plat or part thereof.

Section 1.7. "**Member**" shall mean and refer to every person or entity who holds a membership in the Association, as more particularly set forth in Article II below.

Section 1.8. "**Mortgagee**" shall mean and refer to any person or entity secured by a first mortgage or first deed of trust on any Lot or the Common Area who has notified the Association of this fact in writing.

Section 1.9. "**Owner**" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, including a contract seller but excluding those holding such interest in a Lot solely by virtue of a contract to purchase a Lot or as security for the performance of an obligation. If more than one (1) person or entity is the record owner of a Lot, the term Owner as used herein shall mean and refer to such owners collectively, so that there shall be only one (1) Owner of each Lot.

Section 1.10. "**Party Wall**" shall mean and refer to each wall which is built as part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between Lots. Party Walls are further described and defined in Article X below.

Section 1.11. "**Plat**" shall mean and refer to a final plat or an "as-built" subdivision plat, of all or part of the Property, recorded with the Recorder of Tippecanoe County, Indiana.

Section 1.12. "**Property**" shall mean and refer to that certain real property located in Tippecanoe County, Indiana, which is more specifically described in **Exhibit A**, which is attached hereto and incorporated herein by reference as the same may be duly subdivided and platted, and any additions thereto which, from time to time, may be subjected to the covenants, conditions, restrictions, reservations, easements, charges and liens of this Declaration.

ARTICLE II

MEMBERSHIP

Every Owner of a Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. No Owner shall have

more than one (1) membership in the Association for each Lot it owns.

ARTICLE III

VOTING RIGHTS

Section 3.1. **Classes.** The Association shall have two (2) classes of voting membership as follows:

Class A: Class A Members shall be all Members with the exception of the Class B Member. A Class A Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership pursuant to Article II herein.

Class B: The Class B Member shall be the Declarant. A Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership pursuant to Article II herein. The Declarant's Class B membership interest shall be converted to and shall become a Class A membership interest with one (1) vote for each Lot in which it holds an interest upon the happening of any of the following events, whichever occurs first (the "**Applicable Date**"):

(a) within one hundred twenty (120) days after the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) seven (7) years from the date of recordation of this Declaration; or

(c) sixty (60) days after both (i) the Declarant abandons construction and (ii) any Designated Builder abandons construction. For purposes hereof, the "abandonment of construction" shall not be deemed to have occurred unless and until there is no evidence of continuing construction and no new dwelling construction has been initiated for a period of eighteen (18) months.

Section 3.2. **Multiple Ownership Interests.** If more than one (1) person or entity holds an ownership interest in any Lot, the vote for such Lot shall be exercised as the owners of the Lot among themselves determine and may be exercised by any one (1) of the people or entities holding such ownership interest, unless any objection or protest by any other holder of such ownership interest is made prior to the completion of a vote, in which case the vote for such membership interest shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting. In no event shall more than one (1) vote be cast with respect to any Lot.

Section 3.3. **Board of Directors.** The Board of Directors shall be appointed and/or elected as prescribed by the Association's Articles and Bylaws. The Board of Directors shall manage the affairs of the Association.

ARTICLE IV

PROPERTY RIGHTS

Section 4.1. **Member's Easements of Enjoyment.** Every Member shall have a right and easement of enjoyment in and to the Common Areas, and such easement

shall be appurtenant to and shall pass with the title to every Lot.

ARTICLE V

ASSESSMENTS

Section 5.1. **Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot, except the Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other instrument of conveyance, is deemed to covenant and agree to pay to the Association: (i) Annual Assessments (as hereinafter defined), (ii) Special Assessments (as hereinafter defined), and any other amounts as may be provided for hereunder to be due from any Owner in connection with his, her or its ownership of a Lot in the Development. Such assessments are to be established and collected as hereinafter provided. The Association's Annual Assessments and Special Assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on each applicable Owner's Lot and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due and shall not be the personal obligation of a successor in interest unless expressly assumed by such successor. The Annual Assessments and Special Assessments, when assessed upon resolution of the Board of Directors for each year, shall become a lien on the Lot in the amount of the entire Annual Assessment or Special Assessment, but shall be payable in equal installments, collected on a monthly, bi-monthly, quarterly, semi-annual or annual basis, as determined by the Board of Directors.

Section 5.2. **Purpose of Assessment.** The assessments levied by the Association shall be used for the following purposes:

- (a) the improvement, maintenance, and repair of all Common Areas including the Sidewalks, and the Parking Areas;
- (b) the maintenance, repair, irrigation, and fertilizing of all landscaping located within the Common Area including, without limitation, trees, lawns, shrubbery, and other plantings;
- (c) to fulfill the duties of the Association specified in Article XI below; and
- (d) to carry out such other purposes as the Board of Directors may, in its sole discretion, determine to be appropriate.

Section 5.3. **Establishment of Annual Assessment.**

- (a) The Association must levy in each of its fiscal years an annual assessment (the "**Annual Assessment**"), against each Lot. The amount of such Annual Assessment shall be established by the Board of Directors, subject to the limitations imposed by Section 5.4, below, and written notice of such shall be sent to every Owner at least thirty (30) days in advance of the commencement of each Annual Assessment period. The Annual Assessment shall become applicable as to all Lots (as shown on

a recorded subdivision plat) on the first day of the month following the first conveyance of a Lot to an Owner who is not the Declarant. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year.

(b) The amount of the Annual Assessment shall be determined by the Board of Directors according to its estimate of the cost of providing services or rights of use which are common to all of the Lots.

Section 5.4. **Basis and Maximum Annual Assessment.** Until January 1 of the year immediately following conveyance of the first Lot to an Owner other than the Declarant, the maximum Annual Assessment shall be _____ Dollars (\$_____).

(a) From and after January 1 of the year immediately following the first conveyance of a Lot to an Owner other than the Declarant, the maximum Annual Assessment shall increase, effective January 1 of each year, without the need for a vote of the Members, by an amount equal to (i) the anticipated increase in costs of insurance, taxes, snow removal, recycling, trash and waste removal, plus (ii) an amount equal to the amount of the prior year's Annual Assessment times ten percent (10%).

(b) The Board of Directors may determine not to increase the maximum Annual Assessment to the full extent of the automatic increase provided by subparagraph (a) of this Section, in which case the Board of Directors may determine to increase the Annual Assessment by any lesser amount.

Section 5.5. **Special Assessments.** In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including the fixtures and personal property related thereto, or for any other specified purpose (the "**Special Assessment**"). Any such Special Assessment shall be levied against all of the Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lots benefit, as reasonably determined by the Board of Directors, which determination shall be final. The amount of the Special Assessment shall be the same for each Lot . To be effective, any such assessment shall have the assent of more than 50% (1/2) of the votes of each class of Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which setting forth the purpose of the meeting having been sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 5.6. **Quorum for any Action Authorized Under Sections 5.4 or 5.5.** At the first calling of a meeting under Section 5.4 or Section 5.5 of this Article, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum does not exist at any such meeting, another meeting may be called subject to the notice requirements set forth in Section 5.4 and Section 5.5 and to applicable law, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent

meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.7. Notice of Assessment and Certificate. Written notice of the Annual Assessments and any Special Assessments shall be sent to every Member. The due dates for payment of the Annual Assessments and any Special Assessments shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 5.8. Remedies of the Association in the Event of Default. If any assessment pursuant to this Declaration is not paid within thirty (30) days after its due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. In addition, in its discretion, the Association may:

(a) impose a penalty or late charge as previously established by rule;

(b) bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. A suit to recover a money judgment for nonpayment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without perfecting, foreclosing or waiving the lien provided for herein to secure the same;

(c) suspend a Member's voting rights, right to hold an office within the Association, and right to use nonessential services offered by the Association to the extent that access and the provision of utilities to the Lot through the Common Area are not precluded. An Owner, whose rights have been suspended in this manner, shall have no right to any refund or suspension of his, her or its obligations to pay such assessments for the duration of such suspension or otherwise; and

(d) accelerate the due date of the unpaid assessment so that the entire balance shall become immediately due, payable and collectible.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or facilities, abandonment of its Lot, or the failure of the Association or the Board of Directors to perform their duties.

Section 5.12. Subordination of the Lien to Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any properly recorded first mortgage or deed of trust encumbering a Lot. Notwithstanding anything contained in this Section 5.11 or elsewhere in this Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability

therefore. No such sale, transfer or conveyance shall relieve the Lot, or the purchaser thereof at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien for such assessments.

Section 5.13. **Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all property dedicated to and accepted by a local public authority; and (b) the Common Area; however, no developed or undeveloped Lot, land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 5.14. **Reserves for Replacements.** The Association shall establish and maintain a reserve fund for (a) the maintenance, repair and replacement of the Common Area and improvements located thereon. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any state or by any agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacement of the Common Area may be expended only for the purpose of effecting the replacement of the Common Area, major repairs to, replacement and maintenance of any improvements within the Common Area, including but not limited to sidewalks, parking areas, landscape improvements, street or common area lighting, streets or roadways developed as a part of the Property, equipment replacement, painting of the exterior siding and trim of the Dwelling Units and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Area. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of the Member's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

ARTICLE VI

RESTRICTIVE COVENANTS

Section 6.1. **Residential Use.** The Property shall be used exclusively for residential purposes except as provided in Section 6.19 and Section 6.20 hereof. The Declarant reserves the right, pursuant to a recorded subdivision or re-subdivision plat, to alter, amend, and change any Lot line or subdivision plan or plat. No building shall be erected, altered, placed or permitted to remain on any Lot other than one Dwelling Unit and appurtenant structures, approved by the Association and appropriate Local Governing Authorities, for use solely by the occupant of the Dwelling Unit.

Section 6.2. **Architectural Review Board Approval.** No Structure (as herein defined) or addition to a Structure shall be erected, placed, painted, altered or externally modified or improved on any Lot until the plans and specifications, including design, elevation, material, shape, height, color and texture, and a site plan showing the location of all improvements with grading modifications, shall be filed with and approved in writing by the Architectural Review Board, and, if

required, by appropriate Local Governing Authorities and, where required, appropriate construction permits obtained. As used herein, the term "**Structure**" shall include, but not be limited to, any building or portion thereof, including, without limitation, walls, decks, patios, stairs, windows, window boxes, doors, fences, play equipment, greenhouses, skylights, address markers, mail boxes, name plates, flag poles, lawn ornaments, trees, hedges, shrubbery, solar panels, satellite dishes, antennae, shutters, awnings, fences, pools, hot-tubs, pavement, walkways, driveways, garages and/or garage doors, or appurtenances to any of the aforementioned.

Section 6.3. **Laundry.** No clothing, laundry or wash shall be aired or dried on any portion of the Property within public view.

Section 6.4. **Sight Lines.** No fence, wall, tree, hedge or shrub shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

Section 6.5. **Maintenance.** Other than as specifically and expressly set forth in Section 11.1 below, an Owner shall, at all times, maintain its Dwelling Unit and all appurtenances thereto in good repair and in a state of neat appearance from all exterior vantage points. Prior to landscaping any Lot (other than flowers within approved flower beds), the Owner of such Lot must submit a written landscape plan to the Architectural Review Board for its review and approval or disapproval. The Owner shall not be permitted to remove any trees or shrubs on the Lot without the approval of the Architectural Review Board, except as may be ordered by Local Governing Authorities or by the Architectural Review Board to maintain proper sight lines. No approval for removal of any trees or shrubs will be granted by the Architectural Review Board unless appropriate provisions are made for replacing the removed trees or shrubs.

Section 6.6. **Nuisance.** No noxious or offensive activity shall be carried on upon the Property, nor shall anything be done or placed thereon which is or may become an annoyance or nuisance to the neighborhood. Nothing shall be done or kept or permitted to be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance paid by the Association or any other Owner. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Area or any other Owner, or which would be a violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the Development or which might be a nuisance, annoyance, or inconvenience, or which might cause damage, to other Owners and occupants of Dwelling Units or neighboring property, including, without limiting the generality of the foregoing, noise by the use of any musical instrument, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machinery. No exterior lighting on a Lot shall be directed outside the boundaries of the Lot. No outside toilets shall be permitted on any Lot (except during a period of construction and then only upon obtaining prior written consent of the Architectural Review Board), and no sanitary waste or other wastes shall be permitted to be exposed.

Section 6.7. **Signs.** The only signs permitted on the Property shall be customary home and address signs and real estate sale or lease signs which have received the

prior written approval of the Architectural Review Board ("**Permitted Signs**"). No more than one (1) Permitted Sign shall be displayed to public view on any Lot and must be less than or equal to four (4) square feet in total surface area and may not be illuminated. All Permitted Signs advertising the property for sale or rent shall be removed within three (3) days from the date of the conveyance of the Lot or of the execution of the lease agreement, as applicable. No more than one Permitted Sign may be displayed in the Development by an entity owning multiple Lots. Signs advertising a Lot for "Rent to Own", or any similar transaction or arrangement, are prohibited and may not be placed on any Lot, Dwelling Unit constructed thereon or any other location in the Development. The Declarant and Designated Builder(s) are expressly exempt from the requirements of this Section 6.7 and may post any signs on Common Areas and Lots owned by Declarant and/or Designated Builder(s), as they deem necessary.

Section 6.8. **Animals.** No domesticated or wild animal shall be kept or maintained on any Lot, except for common household pets such as dogs and cats which may be kept or maintained, provided that they are not kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood and are kept in compliance with applicable laws and ordinances of the Local Governing Authority. Pets will not be permitted outside of a Dwelling Unit unless on a leash and any Owner walking a pet within the Development or on any Common Area will immediately clean up any solid animal waste and properly dispose of the same. Law enforcement and animal control personnel shall have the right to enter the Property to enforce local animal control ordinances. Unless permitted by the Board of Directors of the Association, no Owner shall maintain more than two (2) of the same type (dog, cat, bird) of pet nor more than four (4) total pets; provided, however, that fish which are located in indoor aquariums and which pose no risk to public health shall not be considered pets for the purpose of this restriction.

Section 6.9. **Trash Storage.** Trash shall be collected and stored in trash receptacles only and not solely in plastic bags. Trash and garbage receptacles shall not be permitted to remain in public view and shall remain inside of each Owner's garage except on days of trash collection, except those receptacles designed for trash accumulation located in the Common Area. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the exterior of any Dwelling Unit.

Section 6.10. **Antennae Systems.** To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Architectural Review Board. The Architectural Review Board shall adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible and only when fully screened from public view on the rear and above the eave line of any Dwelling Unit. Satellite dishes will not exceed 18 inches in diameter. It is the intent of this provision that the Architectural Review Board shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Architectural Review Board conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

Section 6.11. **Painting.** All Dwelling Units in the Development will, at all times, be painted in a uniform color, without variation.

Section 6.12. **Finished Exteriors.** The exteriors of all Structures, including, without limitation, walls, doors, windows and roofs, shall be kept in good maintenance and repair. No Structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of a Structure shall not be permitted to remain in a damaged condition for longer than three (3) months, unless expressly excepted by the Board in writing. Absent approval from the Architectural Review Board to the contrary, all maintained, repaired, or replaced roofs and other structure exterior shall be the same color and texture as the original roof and other structure exterior.

Section 6.13. **Fences.** Except for any fencing installed by the Developer on any Lot or in any Common Areas, no fence or similar enclosure shall be erected or built on any Lot.

Section 6.14. **Vehicles.** No inoperable, junk, unregistered or unlicensed vehicle shall be kept on the Property. No portion of the Property shall be used for the repair of a vehicle.

Section 6.15. **Commercial Vehicles.** No commercial or industrial vehicle, such as but not limited to moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be regularly or habitually parked or parked overnight on the Property, except upon the prior written approval of the Architectural Review Board.

Section 6.16. **Recreational Vehicles.** No recreational vehicles or equipment, such as but not limited to boats, boating equipment, jet-skis, wave runners, all terrain vehicles ("ATVs"), recreation vehicles ("RVs"), travel trailers, camping vehicles or camping equipment shall be parked on the Property without the prior, written approval of the Architectural Review Board, as to location, size, screening and other relevant criteria. The Association shall not be required to provide a storage area for these vehicles.

Section 6.17. **Towing.** The Board of Directors shall have the right to tow any vehicle parked or kept in violation of the covenants contained within this Article, upon twenty-four (24) hours' notice and at the vehicle owner's sole expense.

Section 6.18. **Garage Usage.** Any conversion of any garage that will preclude the parking of vehicles within that garage is prohibited. Owners shall keep their garages at all times in a manner that will permit the usage of such garage for parking of passenger automobiles, vans and/or trucks.

Section 6.19. **Rental Agreements.** Any rental agreement for a Dwelling Unit must be for an initial period of at least six (6) months, must be in writing and must be subject to the rules and regulations set forth in this Declaration and in the other Association documents. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with the terms of this Declaration shall be a default under the rental agreement, and the Owner shall be responsible for enforcing that provision.

Section 6.20. **Home Occupations.** No Lot or Lots shall be used by an Owner, other than a Designated Builder or Declarant, for any purpose other than as a residence, except that a home occupation, which satisfies the following definition as well as all requirements of the Local Governing Authority, may be permitted: any use conducted entirely within the Dwelling Unit and participated in solely by a member of the immediate family residing in said Dwelling Unit, which use is clearly incidental and secondary to the use of the Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with which there is: a) no sign or display that will indicate from the exterior that the Dwelling Unit is being utilized in whole or in part for any purpose other than that of a dwelling; b) no commodity sold upon the premises; c) no person is employed other than a member of the immediate family residing in the Dwelling Unit; and d) no manufacture or assembly operations are conducted. In no event shall the following or similar activities be conducted or considered to be a permitted home occupation: child day care, barber shop, styling salon, animal hospital, or any form of animal care or treatment such as dog rimming, or any other similar activities.

Section 6.21. **Initial Construction and Marketing.** The Declarant or its assigns, or any Designated Builder, may, during its construction and/or sales period, erect, maintain and operate real estate sales and construction offices, model homes, displays, signs and special lighting on any part of the Property and on or in any building or Structure now or hereafter erected thereon and shall not be bound by the provisions of this Article to the extent application thereof would delay, hinder or increase the cost of construction and/or marketing of Dwelling Units for sale in the Development.

Section 6.22. **Holiday and Seasonal Decorations.** Any holiday or seasonal decorations or ornamentation that is placed on the exterior of a Dwelling Unit or Structure, or that is otherwise visible from the exterior of such Dwelling Unit or Structure, shall be first approved by the Architectural Review Board.

Section 6.23. **Window Boxes.** No window boxes containing flowers or any other vegetation shall be erected or attached to any Dwelling Unit.

Section 6.24. **Mailboxes.** All mailboxes and posts must be approved by the Architectural Review Board and shall be standard as to size, location, post, design, height, material, composition and colors. The Designated Builder upon the initial Lot closing to the homeowner shall install the initial mailbox for each Lot, which meets the above criteria. The Owner shall maintain and paint said mailbox and post in conformance with all other mailboxes.

Section 6.25. **Dusk to Dawn Coach Lights.** Each Owner shall maintain any and all coach lights installed as a part of the initial construction of each Dwelling Unit in good order, condition and repair, including, without limitation, any necessary repairs or maintenance as may be required for the effective operation of all "dusk to dawn" photocell switches and replacement of light bulbs so that those coach lights remain continuously operational from dusk to dawn.

Section 6.26. **Outside Burning.** No trash, leaves or other materials shall be burned upon a Lot. Owners shall use appropriate incinerators and shall at all times be in compliance with all applicable legal requirements for outside burning.

Section 6.27. **General Prohibition.** All swing sets, playground equipment, hot tubs, above and below- ground pools, basketball goals, trampolines, flag poles, outbuildings, storage buildings, exterior storage structures, attached or detached kennels, dog runs, electric bug killers, awnings (except those used by Declarant or a Designated Builder) and temporary storage structures are prohibited.

Section 6.28. **Additional Rules and Regulations.** The Association shall have the authority to adopt such rules and regulations regarding this Article as it may from time to time consider necessary or appropriate.

ARTICLE VII

EASEMENTS AND OTHER AREAS

Section 7.1. **Emergency Easement Rights.** The Declarant hereby grants a blanket easement to the Association, its directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all police, fire, ambulance personnel and all similar persons, to enter upon the Property in the exercise of the functions provided for by this Declaration, Articles of Incorporation, By-Laws and rules of the Association, and in the event of emergencies and in the performance of governmental functions.

Section 7.2. **General Easements.** The Declarant hereby reserves unto itself and its assigns, any governmental or municipal agency, and any public or private utility, a general easement upon all Lots for the installation, maintenance, repair, and use of any drainage, utility, and sewer lines or infrastructure so as to permit the installation, maintenance, repair, and use of all electrical, telephone, water, gas, sanitary and storm sewer and other utility services, including all necessary lines, pipes, wires, cables, ducts, antenna, and other facilities to serve any Dwelling Unit constructed on the Property. This general easement shall be on all areas of a Lot not occupied by a Dwelling Unit, with the exception of areas covered by chimneys or patios. This general easement shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably or adversely affects any Dwelling Unit or portion hereof located upon such Lot, or (ii) unreasonably restricts the right of ingress and egress to such Lot.

Section 7.3. **Limitation on General Easement Rights.** When not an emergency situation or a governmental function, the rights accompanying the easements provided for in Section 8.1 of this Article shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, any Owner or tenant directly affected.

Section 7.4. **Encroachments.** If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (a) the original construction thereof by the Declarant or its assigns, which shall include, but not be limited to, any party wall or driveway which encroaches over a Lot's boundary line and any drainage of stormwater from roofs and gutters, (b) deviations within normal construction tolerances in the maintenance, repair, replacement or reconstruction of any improvement, or (c) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The owner of the encroaching improvement shall also have an easement for the limited purpose of

maintenance of the encroaching improvement. This easement does not relieve any Owner or any other person from liability for such Owner's or other person's negligence or willful misconduct.

Section 7.5. Ingress Egress Easement. The Declarant and its agents and employees, and any Designated Builder and its agents and employees, shall have a right of ingress and egress, as required for construction on and development of the Property and otherwise over (i) Common Areas and (ii) portions of any Lots not occupied by a Dwelling Unit; provided, however, that any person or entity exercising such easement rights upon a Lot shall promptly repair any resulting damage so that the Lot is restored to the condition in which it existed immediately prior to the exercise of such easement rights.

Section 7.6. Reservation of Right to Grant Future Easements. There is reserved to the Declarant a right to grant non-exclusive easements over any Lot or Common Area for the purposes of installing, repairing and/or maintaining utility lines of any sort, including but not limited to storm drains and drainage swales, sanitary sewers, gas lines, electric lines and cables, water lines, telephone lines, telecommunication lines and cables, and the like, and for any purpose necessary for the Declarant or its assigns to obtain the release of any bonds posted with a municipality, governmental agency or regulatory agency, and non-exclusive easements over the Common Area to any municipal agency or private entity for any other purpose consistent with the "open space" designation thereof. This right to grant easements shall automatically expire as to any Lot or Common Area seven (7) years from the date of submission of such Lot or Common Area to this Declaration.

Section 7.7. Bonds and/or Dedication Requirements. There is reserved to the Declarant an easement and the right to grant and reserve easements or to vacate or terminate easements across all Lots and Common Area as may be required by any governmental agency or authority or utility in connection with the release of improvement bonds or the acceptance of public streets for state maintenance with respect to the Property.

Section 7.8. Easements for Corrective Work. There is reserved to the Declarant a non-exclusive easement over all Lots and the Common Area for the purposes of (i) correcting, repairing or maintaining any drainage, drainage infrastructure, utility infrastructure, grading or regrading, maintenance, landscaping, (ii) mowing, (iii) erecting street intersection signs, directional signs, temporary promotional signs, entrance features, lights and wall features, and (iv) executing any of the powers, rights, or duties granted to or imposed on the Association herein. This easement shall automatically expire as to any Lot seven (7) years from the date of submission of such Lot to this Declaration.

Section 7.9. Parking Areas. Parking Areas are not dedicated to the public and are not to be used by the general public; instead, Parking Areas are to be used exclusively by Owners and their family members, guests, invitees, and lessees for the parking of motor vehicles.

Section 7.10. Sidewalks. That portion of the Common Area occupied by Sidewalks is hereby reserved for use by not only the Owners and their family members, guests, invitees, and lessees, but the general public, as well, for pedestrian purposes in the manner in which sidewalks are typically used.

ARTICLE VIII

PARKING

Parking of any type of vehicle in any Common Area is prohibited in areas other than areas specifically identified as parking areas, adjacent to Private Streets within Common Areas. Parallel parking within internal private streets within Common Areas is prohibited. The Board of Directors may promulgate such rules and regulations as it deems appropriate to regulate the use of any Common Areas to permit temporary parking for purposes of loading and unloading passengers and materials. Those rules and regulations may include the towing of any vehicles parked in violation of this Declaration, with no notice of towing required and at the vehicle owner's sole expense. Temporary parking of vehicles on adjacent public rights-of-way will be subject to applicable limitations and fees imposed by the Local Governing Authorities.

ARTICLE IX

PARTY WALLS

Section 9.1. **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 9.2. **Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty.** If any such party wall is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the structural components of such wall, sharing equally the cost thereof, and each individual Owner shall proceed forthwith to rebuild or repair the non-structural components of such wall in proportion to their respective uses of the party wall. Any and all such reconstruction and/or repairs shall be completed immediately to the extent that the failure to commence and/or complete such reconstruction and/or repairs would result in an immediate risk to human health and/or safety. All other reconstruction and/or repairs shall be completed within three (3) months following the casualty or other event that damaged or destroyed such party wall, unless a longer period of time is approved of by the Association. If the damage is of such a nature that it has resulted, or will (if left uncorrected) result in damage or destruction of such party wall, the reconstruction and/or repairs will be completed within a reasonable time, not exceeding six (6) months following the initial discovery of the condition. Any and all such reconstruction and/or repair shall be made in compliance with all requirements of Local Governing Authorities and otherwise in compliance with all applicable laws, to the same or better condition as existed prior to such damage or destruction.

Section 9.3. **Repairs for Damage Caused by One Owner.** If any such party wall is damaged or destroyed through the act of one or more adjoining Owners, or their respective agents, families, households or guests (collectively the "Offending Parties"), whether or not such act is negligent or otherwise culpable, so as to deprive another adjoining Owner of the full use and enjoyment of the wall, then the Owner(s) of the Dwelling Unit(s) from whence the Offending Parties committed the act that caused the damage or destruction, shall forthwith proceed to rebuild and repair the same, in the manner required under Section 10.2, above, without cost to the adjoining Owner.

Section 9.4. **Other Changes.** In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild its Dwelling Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner, whose consent shall not be unreasonably withheld. If the adjoining Owner has not responded in writing to the requesting Owner within twenty-one (21) days of its receipt of any such written request, given by registered or certified mail, return receipt requested, such consent of the adjoining Owner shall be deemed received.

Section 10.5. **Right to Contribution Runs with the Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 10.6. **Dispute.** In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute.

ARTICLE X

POWERS AND DUTIES OF THE ASSOCIATION

Section 10.1. **Discretionary Powers and Duties.** The Association shall have the following powers and duties which may be exercised in its discretion:

(a) to enforce any covenants or restrictions which are imposed by the terms of this Declaration or which may be imposed on any part of the Property. Nothing contained herein shall be deemed to prevent the Owner of any Lot from enforcing any building restriction in its own name. The right of enforcement shall not serve to prevent such changes, releases or modifications of the restriction or reservations placed upon any part of the Property by any party having the right to make such changes, releases or modifications in the deeds, contracts, declarations or plats in which such restrictions and reservations are set forth; and the right of enforcement shall not have the effect of preventing the assignment of those rights by the proper parties wherever and whenever such right of assignment exists. Neither the Association nor the Board of Directors shall have a duty to enforce the covenants by an action at law or in equity if, in its or their opinion, such an enforcement is not in the Association's best interest. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided for; provided, however, that the foregoing authorization to use the

general fund for such enforcement proceedings shall not preclude the Association from collecting such costs from the offending Owner;

(b) to provide such light as the Association may deem advisable on streets and the Common Area and to maintain any and all improvements, Structures or facilities which may exist or be erected from time to time on the Common Area;

(c) to use the Common Area and any improvements, Structures or facilities erected thereon, subject to the general rules and regulations established and prescribed by the Association and subject to the establishment of charges for their use;

(d) to mow and re-sow or re-seed or re-sod lawn areas and fertilize lawn areas within the Common Areas;

(e) to care for, spray, trim, protect, plant, replant and prune trees, shrubs and other landscaping, maintenance and upkeep of the Common Area and to pick up and remove from the Common Area all loose material, rubbish, filth and accumulation of debris; and to do any other thing necessary or desirable in the judgment of the Association to keep the Common Area in neat appearance and in good order, including, but not limited to, cleaning the private streets and maintaining the street lights located in the Common Areas;

(f) to exercise all rights, responsibilities and control over any easements which the Association may from time to time acquire, including but not limited to those easements specifically reserved to the Association in the Article VIII herein;

(g) to create, grant and convey easements and licenses upon, across, over and under all Common Area, including but not limited to easements for the installation, replacement, repair and maintenance of utility lines serving the Property;

(h) to employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;

(i) to retain as an independent contractor or employee a manager of the Association and such other employees or independent contractors as the Board deems necessary, and to prescribe the duties of employees and scope of services of independent contractors;

(j) to enter on any Lot to perform emergency repairs or to do other work reasonably necessary for the proper maintenance or protection of the Property, including without limitation (i) maintenance and repairs of all storm water drainage infrastructure, including without limitation retaining walls, and (ii) all utility repairs, and erosion control repairs.

(k) to enter (or have the Association's agents or employees enter) on any Lot to repair, maintain or restore the Lot, all improvements thereon, and the exterior of the Dwelling Unit and any other improvements located thereon if such is not performed by the Owner of the Lot, and to assess the Owner of the Lot the costs thereof, such assessment to be a lien upon the Lot equal in priority to the lien provided for in Article V herein; provided, however, that the Board of Directors shall only exercise

this right after giving the Owner written notice of its intent at least fourteen (14) days prior to such entry;

(l) to re-subdivide and/or adjust the boundary lines of the Common Area but only to the extent such re-subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

(m) to adopt, publish and enforce rules and regulations governing the use of the Common Area and facilities and with respect to such other areas of responsibility assigned to it by this Declaration, except where expressly reserved herein to the Members. Such rules and regulations may grant to the Board of Directors the power to suspend a Member's voting rights and the Member's right to use non-essential services for non-payment of assessments and to assess charges against Members for violations of the provisions of the Declaration or rules and regulations; and

(n) to declare the office of a member of the Board of Directors vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

Section 10.2. **Mandatory Powers and Duties.** The Association shall exercise the following powers, rights and duties:

(a) to accept title to the Common Area and to hold and administer the Common Area for the benefit and enjoyment of the Owners and occupiers of Lots, and to cause the Common Area and facilities to be maintained in accordance with the standards adopted by the Board of Directors;

(b) to transfer part of the Common Area to or at the direction of the Declarant, for the purpose of adjusting boundary lines or otherwise in connection with the orderly subdivision or development of the Property, but only to the extent such re-subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

(c) after the termination of the Class B membership, to obtain and maintain without interruption liability coverage for any claim against a director or officer for the exercise of its duties and fidelity coverage against dishonest acts on the part of directors, officers, trustees, managers, employees or agents responsible for handling funds collected and held for the benefit of the Association. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in place. The fidelity bond coverage shall be in an amount as may be determined to be reasonably prudent by the Board of Directors;

(d) to obtain and maintain without interruption a comprehensive coverage of public liability and hazard insurance covering the Common Area, private streets and access easements (AE) existing on the Property or shown on any Plat, and other easements of which the Association is a beneficiary, if available at reasonable cost. Such insurance policy shall contain a severability of interest clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all coverage in kinds and amounts commonly obtained with regard to projects similar in construction, location and use as determined by the Board of Directors. Further,

the public liability insurance must provide coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence;

(e) to provide for the maintenance and repair of any and all (i) Common Areas and improvements which may exist or be erected from time to time on the Common Area, including but not limited to street lights (including the payment of utility costs therefor), recreational facilities, entrance features, entrance ways, entrance areas, stormwater management facilities, including sand filters, retaining walls and sound walls, (ii) easement areas of which the Association is the beneficiary and for which it has the maintenance responsibility, (iii) any private streets or access easements (AE) existing on the Property or shown on any Plat; (iv) facilities, including but not limited to fences and signs authorized by the Association and erected on any easements granted to the Association, and (v) street lights that may be constructed within the rights-of-way of any public streets within or adjacent to the Property, including those, if any, required to be maintained by Local Governing Authorities (including the payment of utility costs therefor);

(f) to arrange for plowing and/or removal of snow from (i) private streets located within Common Areas, (ii) development walkways located within Common Areas, and (iii) driveways located upon Lots. It shall be each Owner's responsibility, however, to remove snow from the walkway extending from the development walkways to the front door of the Owner's Dwelling Unit.

(g) to mow, trim, and fertilize grass located on each Lot; provided, however, that the Association shall not be required to maintain, replace, irrigate, or fertilize any flowers, plants, trees, shrubs, or any landscaping other than grass; (h) to maintain, replace, irrigate, and fertilize the flowers, plants, trees and shrubs;

(i) to paint all exterior siding and trim, but shall not be responsible for any other maintenance of the exterior of a Dwelling Unit;

(j) to pay all proper bills, taxes, charges and fees on a timely basis; and

(k) to maintain its corporate status.

Section 10.3. **Board Authority to Act.** Unless otherwise specifically provided in the Association's documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Board of Directors. Notwithstanding anything to the contrary contained herein, any rules or regulations which are promulgated by the Board may be repealed or amended by a majority vote of the Members cast, in person or by proxy, at a meeting convened for such purpose in accordance with the By-Laws.

Section 10.4. **Compensation.** No director or officer of the Association shall receive compensation for services as such director or officer except to the extent expressly authorized by a majority vote of the Class A Members.

Section 10.5 **Non-liability of Directors, Officers and Board Members.** The directors and officers of the Association and members of the Architectural Review Board shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association or members of the Architectural Review Board, except for their own

individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association and members of the Architectural Review Board shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

Section 10.6. Indemnity of Directors and Officers and Members of the Architectural Review Board. The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "**Indemnitee**") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Association or member of the Architectural Review Board, against all costs and expenses, including attorneys fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is guilty of gross negligence or willful misconduct in the performance of his or her duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or for any judgment rendered in any action, suit or proceeding, unless it shall be adjudged in such action, suit or proceeding that such Indemnitee was guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer or member of the Architectural Review Board shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director, officer or member of the Architectural Review Board relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any director or officer of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this Section.

ARTICLE XI

RIGHTS OF MORTGAGEES

Section 11.1. Condemnation and Insurance Awards. In the event that there is a condemnation or destruction of the Common Area or other Association property, to the extent practicable, condemnation or insurance proceeds shall be used to repair or replace the condemned or destroyed property. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property. Should there be excess insurance or condemnation proceeds after the renovation, repair or reconstruction called for

herein, such excess proceeds may be distributed equally to the Owners, apportioned equally by Lot; subject, however, to the priority of a Mortgagee with regard to the proceeds applicable to the Lot securing said Mortgagee and in accordance with Indiana law.

Section 11.2. **Unpaid Assessments.** Any Mortgagee, who obtains title to a Lot pursuant to the remedies provided in its mortgage or deed of trust or foreclosure of the mortgage or deed of trust or deed in lieu of foreclosure, will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to the Lot by the Mortgagee.

Section 11.3. **Books and Records.** A Mortgagee shall have the right to examine and copy at its expense the books and records of the Association during normal business hours and upon reasonable notice to the Association.

Section 11.4. **Notice.** As set forth in this Article, Mortgagees shall have the right, upon request, to receive notice of (a) any amendment to the Declaration, the By-Laws or the Articles of Incorporation, and, (b) if professional management has been required by a Mortgagee, the decision of the Association to terminate such professional management and assume self-management. Additionally, the Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge maybe made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in this Declaration.

Section 11.5. **Termination.** Mortgagees representing at least one hundred percent (100%) of the votes of the mortgaged Lots must consent to the termination of the legal status of the Association for reasons other than substantial destruction or condemnation of the Property.

Section 11.6. **Damage to Common Area.** The Association shall cause the immediate repair, reconstruction or renovation of any damage to the Common Area unless a decision not to repair, reconstruct or renovate is approved by a majority of the Mortgagees.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1. **Enforcement and Declarant's Exemption.** The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration or other Association

documents unless such right is specifically limited. Failure by the Association or by any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association or any Owner pursuant to any term, provision, covenant or condition of the Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Declaration or at law or in equity.

Notwithstanding anything in this Declaration to the contrary, (i) the Declarant and any Designated Builder reserves a right to carry on construction, development, and sales activities, to place equipment, machinery, supplies and signs, construct and maintain models or other structures, and park vehicles of prospective or actual purchasers, lessees, or employees and personnel of the Declarant, on any part of the Property owned by the Declarant, a Designated Builder, or the Association and (ii) none of the terms, conditions, provisions, and restrictions set forth in this Declaration shall be construed, in any manner, to limit any activity of the Declarant or a Designated Builder in the construction, development, and sales activities pertaining to the Property.

Section 12.2. **Severability; Headings; Conflict.** Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles of Incorporation and this Declaration, the Declaration shall control; in the case of any conflict between this Declaration and the By-Laws, this Declaration shall control.

Section 12.3. **Duration.** The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, unless such right is specifically limited, for a term of twenty (20) years from the date this Declaration is recorded, after which time the covenants and restrictions of this Declaration shall be automatically extended for successive periods of twenty (20) years each, unless terminated by a written and recorded instrument approved of in advance by the affirmative and unanimous vote of all Members of the Association and their respective Mortgagees.

Section 12.4. **Amendment.** Amendments to this Declaration shall be approved by at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and voting, in person or by proxy, at any duly called and conveyed meeting, or in writing by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members. Any amendment must be properly executed and acknowledged by the Association (in the manner required by law for the execution and acknowledgment of deeds) and recorded among the appropriate land records.

Section 12.5. **Special Amendment.** Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend this Declaration for any reason prior

to the first conveyance of a Lot to an Owner other than the Declarant and/or a Designated Builder and thereafter may make any amendment required by any federal or state governmental body or by the Local Governing Authorities, as a condition of the approval of this Declaration, by the execution and recordation of such amendment following notice to all Members.

Section 13.6. **Waiver.** The Declarant, as the present most interested party in maintaining the high quality of development which by these covenants is sought to be assured for the Property, hereby expressly reserves unto itself (so long as these restrictions are in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of the Declarant and the then-Owner of the Lot as to which some or all of said restrictions are to be waived or altered; such written consent to be duly acknowledged and recorded in the Office of the Recorder of Tippecanoe County, Indiana.

Section 12.7. **Casualty Insurance.** Notwithstanding anything to the contrary contained in this Declaration, each and every Owner shall maintain a casualty insurance policy affording fire and extended coverage insurance insuring the Dwelling Unit in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Dwelling Unit, including, without limitations any Party Walls. Each Owner of each Lot and/or Dwelling Unit, (regardless of whether or not its ownership is encumbered or is to be encumbered by a mortgage, deed of trust or similar indenture) will furnish to the Association, at or prior to the closing of its acquisition of that Lot or Dwelling Unit, a certificate of insurance, in form and content acceptable to the Association, evidencing the insurance coverage described herein. Each such Owner shall, prior to the expiration of the term of any such insurance policy, procure and deliver to the Association a renewal or replacement policy in form and content acceptable to the Association. If any such Owner fails to provide evidence of such coverage satisfactory to the Association, the Association will have the right, but no obligation, to procure such coverage at the expense of the applicable Owner, and the cost of procuring such insurance will be assessed to that Owner as a Special Assessment and shall be immediately due and payable upon demand.

Section 12.8. **Withdrawable Real Estate.**

(a) Upon the dedication or the conveyance to any public entity or authority of any portion of the Property for public street purposes, this Declaration shall no longer be applicable to the land so dedicated or conveyed.

Section 13.9. **Management Contracts.** For such time as the Declarant has Class B membership status, the Declarant shall have the right to enter into professional management contracts on behalf of the Association for the management of the Property for terms not to exceed one (1) year; provided, however, that the Association shall have the right to terminate such contracts, with or without cause, upon thirty (30) days' written notice to the other party and without payment of a termination fee.

Section 13.10. **Effect on Becoming an Owner.** The Owner(s) of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof, whether from Declarant or a Designated Builder, or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every covenant, condition, and restrictions contained in this Declaration. By acceptance of such deed or execution of such contract each Owner acknowledges the rights and powers of the Declarant, Architectural Review Board, and Association contained in this Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner(s) covenant and agree and consent to and with the Declarant, Architectural Review Board and the Association and to and with the other Owners and subsequent Owners of each of the Lots affected by this Declaration to keep, observe, comply with and perform such covenants, conditions, and restrictions contained in this Declaration.

Section 13.11. **Dissolution.** The Association may be dissolved in accordance with of the Articles of Incorporation of the Association and the Act. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association, both real and personal, shall be offered to an appropriate public agency to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association. In the event that such offer of dedication is refused, such assets shall be then offered to be granted, conveyed or assigned to any non-profit corporation, trust or other organization devoted to similar purposes and in accordance with Indiana law. Any such dedication or transfer of the Common Area shall not be in conflict with then-governing zoning ordinances or the designation of the Common Area as "open space".

WITNESS the following signatures:

DECLARANT:

SEI TOWNHOUSE II, LLC, an Indiana limited liability company

By: _____
(name, title)

STATE OF INDIANA)
)SS:
COUNTY OF TIPPECANOE)

Before me, a Notary Public in and for said County and State, personally appeared _____, by me known be the _____ of SEI Townhouse ii, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing "Declaration of Covenants, Conditions and Restrictions for SEI Townhouse ii" on behalf of said corporation.

Witness my hand and Notarial Seal this _____ day of _____, 20__.

My Commission Expires:

Notary Public

My County of Residence: _____

Printed Signature

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this Document, unless otherwise required. John B. Baxter.

This instrument prepared by, and after recording should be returned to, John B. Baxter, Attorney-at-law, Barnes & Thornburg LLP, 11 S. Meridian St., Indianapolis, IN 46204.

EXHIBIT A

Legal Description

