

BY-LAWS  
OF  
DECATUR COMMONS PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I  
Association

Section 1.1. Association. Decatur Commons Property Owners Association, Inc. ("Association") has been formed, as a not-for-profit corporation under the General Not-for-Profit Corporation Act of the State of Indiana, and shall be the governing body for all of the Lot Owners for the maintenance, repair, replacement, administration and operation of Decatur Commons Subdivision ("Property"), located in Marion County, Indianapolis, Indiana. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of Lot Owners in accordance with the provisions contained herein. The Association has been established in conjunction with the filing of the Plat of Decatur Commons Subdivision Section One ("Plat") and the Declaration of Covenants and Restrictions ("Declaration") as may be amended by Decatur Commons, Inc. ("Owner") filed as Instrument No. 920053404 in the office of the Recorder of Marion County, Indiana which instrument is incorporated herein by reference.

ARTICLE II  
Membership

Section 2.1. Duration of Membership; Withdrawal. Membership in the Association shall terminate upon the relinquishment, whether voluntarily or otherwise, of Lot Ownership in Marion County. All rights and privileges of a member in the Association shall cease on the termination of membership. Any member withdrawing from membership shall give written notice of such withdrawal to the president. Such notice shall be presented to the Board of Directors. Withdrawal of a member shall be effective upon fulfillment of all obligations of such member to the date of such meeting

Section 2.2. Dues, Fees, and Assessments. The amount of any membership fees, dues, and assessments, or waiver thereof, applicable to membership in the Association or to any class of such membership and the time and manner of payment thereof shall be determined by the Board of Directors.

ARTICLE III  
Meetings of Members

Section 3.1. Quorum. Meetings of the members shall be held at the Property or at such other place in Marion County, Indiana, as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of the members having thirty

percent (30%) of the total votes shall constitute a quorum. Unless otherwise expressly provided by law, the Articles of Incorporation or these By-Laws, any action may be taken at any meeting of the members at which a quorum is present upon the affirmative vote of the members having a majority of the total votes present at such meeting.

Section 3.2. Initial and Annual Meeting. The initial meeting of the members shall be held upon ten (10) days written notice given by the Directors. Thereafter, there shall be an annual meeting of the members on the \_\_\_\_\_ day of \_\_\_\_\_ following such initial meeting, and on the \_\_\_\_\_ day of \_\_\_\_\_ of each succeeding year thereafter at \_\_\_\_\_ p.m., or at such other reasonable time or date as may be designated by written notice of the Board delivered to the members.

Section 3.3. Special Meetings. Special meetings of the members may be called by the president, by a majority of the Board of Directors, or by a petition in writing of at least one-half (1/2) of the members of the Association.

Section 3.4. Notice of Meetings. Written notice stating the place, day and hour of any meeting of members and, in the case of special meetings or when otherwise required by law, the purpose for which any such meeting is called, shall be delivered or mailed by the secretary of the Association to each member of record, at such address as appears upon the records of the Association, and at least ten (10) days before the date of such meeting.

Section 3.5. Waiver of Notice. Notice of any meeting may be waived by any member in writing filed with the secretary of the Association. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 3.6. Voting Rights. Each member of the Association shall have the voting rights specified in the Articles of Incorporation.

Section 3.7. Voting by Proxy. A member entitled to vote at any meeting of members may vote either in person or by proxy executed in writing by the member or a duly authorized attorney-in-fact of such member. (For purposes of this section, a proxy granted by telegram by a member shall be deemed "executed in writing by the member.")

Section 3.8. Voting List. The secretary or assistant secretary of the Association shall at all times keep at the principal office of the Association a complete and accurate list of all members entitled to vote by the Articles of Incorporation. Such list may be inspected by any member for any proper purpose at any reasonable time.

Section 3.9. Conduct of Meetings. Meetings of members, including the order of business, shall be conducted in accordance with Roberts' Rules of Order, Revised, except insofar as the Articles of Incorporation, these By-Laws, or any rule adopted by the Board of Directors or members may otherwise provide. The members may, by unanimous consent, waive the requirements of this section, but such waiver shall not preclude any member from invoking the requirements of this section at any subsequent meeting.

Section 3.10. Action by Consent. Any action required to be taken at a meeting of members, or any action which may be taken at a meeting of members, may be taken without a meeting but with the same effect as a unanimous vote at a meeting, if, prior to such action, a consent in writing, setting forth the action so taken, shall be signed by all members entitled to vote with respect thereto, and such consent is filed with the minutes of the proceedings of the members.

#### ARTICLE IV Board of Directors

Section 4.1. Duties and Qualifications. The business and affairs of the Association shall be managed by the Board of Directors. Each Director shall be a member or designated by a member of the Association.

Section 4.2. Number and Election. The initial Board of Directors designated by the Owner shall consist of four (4) Directors who shall serve without compensation. Such initial Board shall serve for a period commencing on or as soon as possible thereafter the date the Plat and Declaration are recorded and ending upon the qualification of the Directors elected at the initial meeting of voting members held as provided in Section 3.2 hereof. Said initial Board may, on behalf of the Owner, exercise the rights reserved in the Declaration. At the initial meeting of voting members held as provided in Section 3.2 hereof, the voting members shall elect the Board which shall consist of five (5) members. In all elections for members of the Board, each voting member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting five (5) Board members shall be elected. The Board members elected at the annual meeting shall serve for a term of one (1) year or until their successors are duly elected and qualified. The voting members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease such number of persons on the Board or may decrease the term of office of Board members at any annual or special meeting, provided that such number shall not be less than three (3), that the terms of at least one-third (1/3)

of the persons on the Board shall expire annually and that no member of the Board nor officer of the Association shall be elected for a term of more than three (3) years, but that officers and Board members may succeed themselves. Members of the Board shall receive no compensation for their services.

Section 4.3. Vacancies. Any vacancy among the Directors caused by death, resignation, removal or otherwise shall be filled by the remaining Directors. A Director chosen to fill a vacancy shall hold office until the expiration of the term of the Director causing the vacancy and until that Director or his successor shall be elected and qualified.

Section 4.4. Annual Meetings. Unless otherwise agreed upon, the Board of Directors shall meet immediately following the annual meeting of the members, at the place where such meeting of members was held, for the purpose of election of officers of the Association and consideration of any other business which may be brought before the meeting. No notice shall be necessary for the holding of such annual meeting.

Section 4.5. Other Meetings. Regular meetings of the Board of Directors may be held pursuant to a resolution of the Board to such effect. No notice shall be necessary for any regular meeting. Special meetings of the Board of Directors may be held upon the call of the president or of any two (2) members of the Board and upon forty-eight (48) hours' notice specifying the time, place and general purposes of the meeting, given to each Director either personally or by mail, telegram or telephone. Notice of a special meeting may be waived in writing or by telegram. Attendance at any special meeting shall constitute waiver of notice of such meeting.

Section 4.6. Meetings Open to Owners. All meetings of the Board of Directors shall be open to attendance by any Lot Owner.

Section 4.7. Meetings May be Attended by Electronic Voice Communication. Any meeting of the Board of Directors may be attended by means of any form of electronic voice communication, provided that all Directors can simultaneously hear the proceedings and be heard by all the other Directors in attendance at the meeting. A quorum for the meeting so held shall be computed on the basis of all persons in voice contact with each other. Any meeting so held shall be a formal meeting of the Board of Directors for all purposes, and any business may be transacted at such meeting that could be transacted if the Directors were assembled in physical proximity to each other.

Section 4.8. Quorum. A majority of Directors shall be necessary to constitute a quorum for the transaction of any business, and the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the

Board of Directors unless the act of a greater number is required by law, the Articles of Incorporation, or these By-Laws.

Section 4.9. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if prior to such action a written consent to such action is signed by all members of the Board and such consent is filed with the minutes of proceedings of the Board of Directors.

Section 4.10. Committees. The president or the Board of Directors may from time to time create and appoint standing, advisory and special committees of members and other appropriate individuals to undertake studies, make recommendations and carry on functions for the purpose of efficiently accomplishing the purposes of the Association.

Section 4.11. Removal of Director. Any Board member may be removed from office, at any time after the election of Directors at the initial meeting of voting members pursuant to Section 3.2 hereof, by affirmative vote of the voting members having at least two-thirds (2/3) of the total votes, at any special meeting called for the purpose. A successor to fill the unexpired term of a Board member removed may be elected by the voting members at the same meeting or any subsequent meeting called for that purpose.

Section 4.12. General Powers and Duties of the Board. The powers and duties of the Board shall include but are not limited to the following:

(a) The Board shall provide for the operation, maintenance, repair, replacement and improvement of the Common Areas, as and to the extent not otherwise provided herein.

(b) The Board shall prepare, adopt and distribute the annual budget for the Association and provide the manner of assessing and collecting from the Lot Owners their respective shares of the estimated expenses.

(c) The Board shall have the power and duty to provide for the designation, hiring and removal of employees and other personnel, including lawyers and accountants, to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Property and to delegate any such powers to a manager or managing agent (and any such employees or other personnel as may be employees of the managing agent).

(d) The Board shall have the power to own, convey, encumber, lease or otherwise deal with Lots conveyed to or acquired by Association.

(e) The Board by unanimous vote and without approval from any of the voting members except as hereinafter set forth, may adopt and amend such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Property, and health, comfort, safety and general welfare of the Lot Owners and occupants of the Property. Written notice of such rules and regulations shall be given to all voting members; and if within thirty (30) days from the date of such notice: (i) voting members holding at least one-half ( $1/2$ ) of the total number of Lots shall file with the Board a written objection to any rule or regulation which affects any portion of the Property, then (ii) if such written objection shall have been received from the voting members as provided in (i) above, such rule and regulation shall be deemed rescinded until approved by the voting members holding two-thirds ( $2/3$ ) of the total number of Lots.

(f) The Board may engage the services of an agent to manage the portions of the Property for which the Board is responsible pursuant to the Declaration, to the extent deemed advisable by the Board provided, however, that any agreement for professional management or any agreement for services to be provided for by Owner shall provide for termination by either party without cause or payment of a termination fee upon ninety (90) days or less written notice and shall be for a term not to exceed three (3) years.

(g) The Board's powers herein enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any structural alternations, capital additions to, or capital improvements of the Common Areas (other than for purposes of replacing or restoring portions of the Common Areas, subject to all the provisions of the Plat and Declaration or unless required for emergency repair, protection or operation of the Common Areas), requiring an expenditure in excess of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) without in each case the prior written approval of two-thirds ( $2/3$ ) of the Lot Owners.

(h) All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the Treasurer and countersigned by the President of the Board. The managing agent of the Property may be authorized to exe-

cute those documents required to enable it to perform its duties under its management agreement.

(i) The Board shall have the power to exercise all other powers and duties of the Board of Directors or Lot Owners as a group referred to in the Plat and Declaration or these By-Laws.

(j) The Board shall have the authority to perform the duties and assume the obligations required of the Association under the forms of the Declaration, including the assessment of Lot Owners for Common Area and other expenses.

## ARTICLE V Officers

Section 5.1. Officers and Qualifications Therefor. The officers of the Association shall consist of a president, a vice president, and a secretary/treasurer. The officers shall be chosen from among the Directors. Any two (2) or more offices may be held by the same person except that the duties of president and secretary shall not be performed by the same person.

Section 5.2. Terms of Office. Each of the officers of the Association shall be elected by a majority vote of the Board of Directors at its annual meeting and shall hold office for a term of one (1) year and until his successor shall be duly elected and qualified, or until resignation, removal or death.

Section 5.3. Vacancies. Whenever any vacancies shall occur in any of the offices of the Association for any reason, the same may be filled by the Board of Directors at any meeting thereof, and any officer so elected shall hold office until the expiration of the term of the officer causing the vacancy and until his successor shall be duly elected and qualified.

Section 5.4. Removal. Any officer of the Association may be removed, with or without cause, by the Board of Directors whenever a majority of Board shall vote in favor of such removal.

## ARTICLE VI Powers and Duties of Officers

Section 6.1. President. The president, if present, shall preside at all meetings of the members and the Board of Directors. Subject to the general control of the Board of Directors, the president shall perform all of the usual duties of the chief executive officer of an association.

Section 6.2. Vice President. Subject to the general control of the Board of Directors, the vice president shall discharge all the usual functions of the president if the president

is not present and shall have such other powers and duties as these By-Laws or the Board of Directors may prescribe.

Section 6.3. Secretary/Treasurer. The secretary shall attend all meetings of the members and of the Board of Directors, and keep, or cause to be kept, a true and complete record of the proceedings of such meetings, and he shall perform a like duty, when required, for all committees appointed by the president or the Board of Directors. If required, he shall attest the execution by the Association of deeds, leases, agreements and other official documents. He shall attend to the giving and serving of all notices of the Association, and in general shall perform all duties pertaining to the office of secretary and such other duties as these By-Laws or the Board of Directors may prescribe.

The treasurer shall keep or cause to be kept correct and complete records of account, showing accurately at all times the financial condition of the Association. He shall have charge and custody of, and be responsible for, all funds, notes, securities and other valuables which may from time to time come into the possession of the Association. He shall deposit, or cause to be deposited, all funds of the Association with such depositories as the Board of Directors shall designate. He shall furnish at meetings of the Board of Directors, or whenever requested, a statement of the financial condition of the Association, and in general shall perform all duties pertaining to the office of treasurer.

#### ARTICLE VII Miscellaneous

Section 7.1. Corporate Seal. The Association shall have no seal.

Section 7.2. Execution of Contracts and Other Documents. Unless otherwise ordered by the Board of Directors, all written contract and other documents entered into by the Association shall be executed on behalf of the Association by the president and, if required, attested by the secretary.

Section 7.3. Fiscal Year. The fiscal year of the Association shall begin on January 1 of each year and end on the immediately following December 31.

#### ARTICLE VIII Amendments

Subject to law, the Articles of Incorporation, and the Plat of Decatur Commons Subdivision Section One, Declaration of Covenants and Restrictions ("Plat"), filed with the Recorder of Marion County on April 30, 1992 as Instrument Number 920053464 as may be amended, and subsequent plats recorded pursuant to the Plat,

the power to make, alter, amend or repeal all or any part of these By-Laws is vested in the Board of Directors. The affirmative vote of a majority of the entire Board of Directors shall be necessary to effect any such changes in these By-Laws. Where the amendment of the By-Laws would affect the terms and conditions contained in the Plat that are subject to approval by the Lot owners or first Mortgagees, then such amendment of the By-Laws shall be subject to the same percentage requirements of Lot owners or first Mortgagees as contained in the Plat.

## ARTICLE IX Covenant For Maintenance Assessments

Section 9.1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any Lot ("Lot Owner") in the subdivision, except the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and operating deficits, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such 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 property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

Section 9.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Subdivision and for the improvement and maintenance of the Common Areas and improvements, operated or maintained by the Association, and the landscape easements on the Subdivision and other purposes as specifically provided herein.

Section 9.3. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 9.4. Notice and Quorum for Any Action Authorized Under Section 9.3. Written notice of any meeting called for the purpose of taking any action authorized under Section 9.3 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the 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 9.5. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence for each Lot on the date of conveyance to the owner by deed or land contract. Assessments shall be made on an annual basis for the calendar year. The assessment shall be prorated for an initial Lot Owner who owns his Lot for a partial calendar year. No assessments will be made against any Lot until January 1, 1994. Prior to January 1, 1994, the Developer shall be responsible for payment of all expenses of the Association. The initial assessment beginning January 1, 1994 shall be established by the Board of Directors. The Board shall establish the annual assessment based upon a budget adopted at the initial and annual meeting of the members of the Association in accordance with its Bylaws. The Board of Directors shall fix any increase in the amount of the annual assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 9.6. Effect on Non-Payment of Assessments: Remedies of the Association. Any charge levied or assessed against any Lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that Lot until paid in full and shall also be a personal obligation of the Lot Owner or Owners at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either a law or in equity,

by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The Lot Owner or Owners subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorneys' fees, incurred by the Association in collecting the same. Every interest in such Lot, whether as an owner or otherwise is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said Lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become a Lot Owner is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenants to pay the Association all charges that the Association shall make pursuant to this subparagraph.

Section 9.7. Subordination of the Lien to Mortgagee. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

Section 9.8. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member or association member (i) for any period during which any of the Association's charges or any fines assessed hereunder owed by the member or associate member remains unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Subdivision, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws, or regulations of the Association.

#### CERTIFICATE

The foregoing Code of By-Laws constitutes a true record of the Code adopted by the Board of Directors on \_\_\_\_\_, 1993.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

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