

ORDINANCE NO. 2024- 42

**AN ORDINANCE OF THE CITY OF HOBART, INDIANA
PROVIDING THAT THE ZONING ORDINANCE OF THE CITY OF HOBART,
LAKE COUNTY, INDIANA BE AMENDED BY CHANGING AN
ESTABLISHED PUD ZONE TO A NEW PUD ZONE CLASSIFICATION**

WHEREAS, THE HOBART CITY PLAN COMMISSION by a majority vote recommended that its **Petition No. 24-31** be adopted and that the Council rezone this property, and

WHEREAS, The Regulations and Design Standards for the PUD, as recommended by the Commission, are attached hereto and made a part hereof as Exhibit "A".

NOW THEREFORE, BE IT ORDAINED by the Common Council of the City of Hobart, Indiana:

SECTION 1. That, the City Zoning Ordinance No. 93-59 as amended and readopted as amended under Ordinance No. 2001-41 and entitled "Zoning Ordinance of the City of Hobart, Indiana", and particularly the zone maps which are made a part of said Ordinance No. 93-59, be and the same is hereby amended by making certain changes as follows:

By changing the following described real estate on the zone maps from its established zoning PUD (Planned Unit Development) zoning classification to a new PUD (Planned Unit Development) zoning classification:

Harbor Club Subdivision, Lots 1 thru 17, 33 & 36

SECTION 2. The City Council now finds that the above zone change will not be injurious to the public health, safety, morals and general welfare of the community and the use or value of the area adjacent to the property included in this Ordinance will not be affected in a substantially adverse manner and the need for the change in zoning herein arises from a condition peculiar to the property involved and the condition is not due to the general condition of the neighborhood. The Council further finds that the strict application of the terms of the zoning ordinance will constitute an unusual and unnecessary hardship if applied to the property herein if this rezoning were not granted and this rezoning does not interfere substantially with the comprehensive plan.

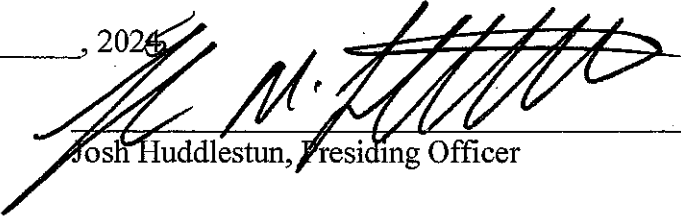
SECTION 3. The Common Council of the City of Hobart finds the zone change will take effect upon the following conditions being fulfilled by the owner:

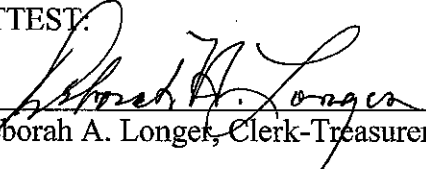
All buildings or uses permitted and placed upon said described real estate shall fully conform with all the provisions of the Zoning Ordinance of the City of Hobart, Indiana and shall have obtained the proper permits.

SECTION 4. That the City Engineer and/or Zoning Administrator is hereby authorized and directed upon the enactment and approval of this Ordinance, to cause a change to be made on the zone maps, to make certain notations in ink thereof and to record the date of passage of this Ordinance.


SECTION 5. Since an emergency exists for the immediate taking effect of this Ordinance, the same shall be in fully force and effect from and after its passage by the Common Council of the City of Hobart; upon the approval of the Mayor of the City of Hobart Indiana; and as soon thereafter as otherwise provided for by law.

PASSED and ADOPTED by the Common Council of the City of Hobart, Indiana on this

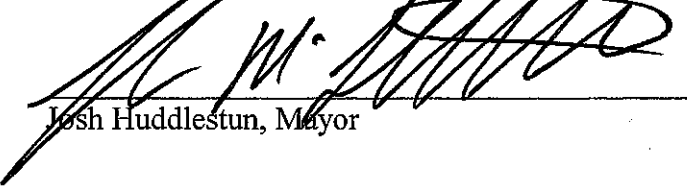
15th day of JANUARY, 2024

Josh Huddlestun, Presiding Officer

ATTEST:

Deborah A. Longer, Clerk-Treasurer

Presented by me to the Mayor of the City of Hobart, Indiana, for her approval and signature this

15th day of JANUARY, 2024 at 7:30 o'clock P. M.

Deborah A. Longer, Clerk-Treasurer

APPROVED and SIGNED by me, the Mayor of the City of Hobart, this 15th day of

JANUARY, 2024

Josh Huddlestun, Mayor

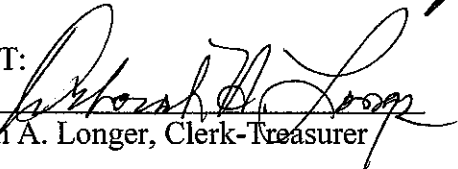
ATTEST:

Deborah A. Longer, Clerk-Treasurer

EXHIBIT "A"

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

HARBOR CLUB SUBDIVISION

HOBART, INDIANA

DEVELOPED BY

HARBOR CLUB PARTNERS, LLC

TABLE OF CONTENTS

Page Number

Article I Definitions

Section 1 - Association	6
Section 2 - Board	6
Section 3 - Committee	6
Section 4 - Developer	6
Section 5 - Lot	6
Section 6 - Maintenance	6
Section 7 - Outlots	7
Section 8 - Owner	7
Section 9 - Member	7
Section 10 - Subdivision	7

Article II Property Subject to This Declaration; Additions Thereto, Deletions Therefrom

Section 1 - Legal Description	7
Section 2 - Platting and Subdivision Restrictions	8
Section 3 - Additional Real Estate	8
Section 4 - Retractable Real Estate	8
Section 5 - Easements	8

Article III Property Rights

Section 1 - Title to Out Lots	9
Section 2 - Owners' Easements of Enjoyment	9
Section 3 - Right of Entry	10
Section 4 - Developer's Sales Activities	10
Section 5 - No partition	11

Article IV Membership and Voting Rights in the Association

Section 1 - Purpose of the Association	11
Section 2 - Creation of the Association	11
Section 3 - Membership	11
Section 4 - Classes and Voting	11
Section 5 - Board of Directors	11
Section 6 - Powers and Duties of the Association	12

Article V Covenant for Maintenance Assessments

Section 1 - Creation of Lien and Personal Obligation of Assessment	13
Section 2 - Purpose of Assessment	13
Section 3 - Annual Assessments	14
Section 4 - Uniform Rate of Assessment	14
Section 5 - Special Assessments for Capital Improvements and Major Repairs	14
Section 6 - Date of Commencement of Annual Assessments: Due Date	14
Section 7 - Duties of the Board of Directors	15
Section 8 - Effect of Non-Payment of Assessment: The Lien, Personal Obligation,	

Remedies of Association	15
Section 9 - Subordination to Lien of Mortgages	16
Article VI Exterior Maintenance Assessment	
Section 1 - Exterior Maintenance	16
Section 2 - Assessment of Cost	16
Section 3 - Access at Reasonable Hours	16
Article VII Architectural Control Committee	
Section 1 - Power of Committee	17
Section 2 - Duties of Committee	18
Section 3 - Liability of Committee	18
Section 4 - Inspection	18
Article VIII Use Restrictions	
Section 1 - Residential Use	19
Section 2 - No Temporary Building	19
Section 3 - Antennae and Solar Heat Panels	19
Section 4 - Boats and Motor Vehicles	20
Section 5 - Trees and Yard Grass	20
Section 6 - Artificial Vegetation	20
Section 7 - Automobile Storage Areas	20
Section 8 - Street Parking Prohibited	20
Section 9 - Use of Yard	20
Section 10 - Animals	21
Section 11 - Rubbish, Trash and Garbage	21
Section 12 - Fences, Hedges and Walls	21
Section 13 - Trash Receptacles	21
Section 14 - Nuisances	21
Section 15 - Signs	22
Section 16 - Out Lots	22
Section 17 - Miscellaneous	22
Section 18 - Size Requirements	22
Section 19 - Residential Setback Requirements	22
Section 20 - Yard Lights	23
Section 21 - Standard Mail Box	23
Section 22 - Exterior Construction	23
Section 23 - Swimming Pools	24
Section 24 - Certain Motorized Vehicles Permitted	24
Section 25 - Septic and Wells	24
Section 26 - Owner's Obligation to Maintain Lot	24
Section 27 - Heating Plants	25
Section 28 - Diligence in Construction	25
Section 29 - Time in Which to Build Structures	25
Section 30 - Prohibition of Used Structures	25
Section 31 - Necessary Exceptions for Development	25
Section 32 - Firearms	26
Article IX Transfer of Unimproved Lots	
Section 1 - Developer's Right of First Refusal	26
Section 2 - Notice to a Developer	26
Section 3 - Certificate of Waiver	26
Section 4 - Unauthorized Transactions	26

Section 5 - Exceptions

26

Article X General Provisions

Section 1 - Duration and Remedies for Violation	27
Section 2 - Owner's Obligation to Maintain and Repair	27
Section 3 - Compliance with Soil Erosion Control Plan	27
Section 4 - Notices	28
Section 5 - Severability	28
Section 6 - Amendment	28
Section 7 - Usage	28
Section 8 - Effective Date	28
Section 9-Remedies for Breach of Covenants	28
Section 10- Waiver of Damages	29
Section 11- Tree and Landscaping Disclaimer	29
Section 12- Indemnity to Board and Committee Members	30

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

HARBOR CLUB SUBDIVISION HOBART, INDIANA

THIS DECLARATION, made this 24th day of September, 2024 by HARBOR CLUB PARTNERS, LLC., an Indiana limited liability company (hereinafter referred to as the "Developer").

WITNESSETH

Whereas, the Developer is the owner of the real estate legally described herein and commonly known as HARBOR CLUB, of the Lake County Code; and

Whereas, the Developer desires HARBOR CLUB to develop as a residential community; and

Whereas, the Developer desires to promote the orderly development of the subdivision and to provide for the maintenance of Out Lots by subjecting the real estate owned by the Developer to the covenants, restrictions, conditions, reservations, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the subdivision and real estate comprising the development; and

Whereas, the Developer acknowledges the authority of the City of Hobart and the City of Hobart Municipal Code to regulate the development of the subdivision and the real estate comprising the development in addition to the covenants, restrictions, conditions, reservations, easements, charges and liens, hereinafter set forth; and

Whereas, the Developer deems it desirable to subject the real estate to the said covenants, restrictions, conditions, reservations, easements, charges and liens for the mutual benefit of the real estate and under a general plan and scheme of development and improvement of the subdivision; and

NOW THEREFORE, the Developer hereby declares that all of the platted lots and real estate located within the Subdivision as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, restrictions, conditions, reservations, easements, charges and liens, all of which are declared and agreed to be in furtherance of a plan for the improvement of the real estate and sale of the said lots in the Subdivision, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of the said lots situated therein.

Article I

DEFINITIONS

The following terms or words, when used in this Declaration, shall have the meanings attributed below:

Section 1. "Association" shall mean and refer to HARBOR CLUB PROPERTY OWNERS' ASSOCIATION, INC., an Indiana corporation.

Section 2. "Board" shall mean the Board of Directors of the Association.

Section 3. "Committee" shall mean the Architectural Control Committee for the Subdivision which is created and shall have the authority and duties as provided for herein.

Section 4. "Developer" shall mean HARBOR CLUB PARTNERS, LLC, an Indiana limited liability company, its successors and assigns, if any such successor or assignee acquires the undeveloped portion of HARBOR CLUB, from the Developer for the purpose of development.

Section 5. "Lot" shall mean and refer to any lot or other tract in the Subdivision, together with all improvements thereon, as shown on the plat or plats thereof and designated thereon with a number for identification on which a residential structure could be constructed, whether or not one has been constructed.

Section 6. "Maintenance" shall mean the exercise of reasonable care, including buildings, roads, easements of ingress and egress, drainage easements, water detention or retention easements, utility easements, parks, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition.

Section 7. "Out Lots" shall mean all real estate, whether in one or more separate parcels, which the Association or the Developer owns for the non-exclusive common use and enjoyment of the Owners of Lots shown on the recorded Subdivision plat or plats.

Section 8. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Subdivision, including the Developer, and including contract sellers, but not including contract purchasers.

Section 9. "Member" shall mean every person or entity holding membership in the Association.

Section 10. "Subdivision" shall mean and refer to all such existing properties, and additions thereto and less and excepting any retractions therefrom, as are subject to this Declaration and any supplemental Declaration or Declarations, under the provisions of Article II hereof, and shall initially include the real property described in Article II, Section 1. The Subdivision is also sometimes referred to herein as HARBOR CLUB, a development pursuant to the Lake County Code.

Article II

PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERE TO, DELETIONS THEREFROM

Section 1. Legal Description. The real property which is and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration, is located in Lake County, Indiana, and comprises all of the Lots, tracts and easements shown and/or platted within or upon the property legally described as follows:

150 HARBOR CLUB DRIVE, HOBART, INDIANA 46342, LEGALLY DESCRIBED AS:

<u>Key #</u>	<u>Site Address</u>
<u>Harbor Club Phase I</u>	
45-09-29-304-001.000-018	285 Lakewood Dr. Hobart, IN 46342
45-09-29-304-004.000-018	215 Lakewood Dr. Hobart, IN 46342
45-09-29-303-011.000-018	150 Harbor Club Dr. Hobart, IN 46342
45-09-29-303-010.000-018	120 Harbor Club Dr. Hobart, IN 46342
45-09-29-303-009.000-018	90 Harbor Club Dr. Hobart, IN 46342
45-09-29-303-008.000-018	60 Harbor Club Dr. Hobart, IN 46342
45-09-29-303-007.000-018	30 Harbor Club Dr. Hobart, IN 46342
45-09-29-303-001.000-018	51 Shore Side Dr. Hobart, IN 46342

45-09-29-303-002.000-018	91 Shore Side Dr. Hobart, IN 46342
45-09-29-303-003.000-018	131 Shore Side Dr. Hobart, IN 46342
45-09-29-303-004.000-018	161 Shore Side Dr. Hobart, IN 46342
45-09-29-303-005.000-018	264 Lakewood Dr. Hobart, IN 46342
45-09-29-303-006.000-018	244 Lakewood Dr. Hobart, IN 46342
45-09-29-302-006.000-018	190 Shore Side Dr. Hobart, IN 46342
45-09-29-302-005.000-018	170 Shore Side Dr. Hobart, IN 46342
45-09-29-302-004.000-018	150 Shore Side Dr. Hobart, IN 46342
45-09-29-302-003.000-018	120 Shore Side Dr. Hobart, IN 46342
45-09-29-302-002.000-018	80 Shore Side Dr. Hobart, IN 46342
45-09-29-302-001.000-018	40 Shore Side Dr. Hobart, IN 46342

<u>Key #</u>	<u>Site Address</u>
Harbor Club Phase II	

45-09-29-351-002.000-018	400 BLK Lake Park Ave. Hobart, IN 46342
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Section 2. Platting and Subdivision Restrictions. The Developer shall be entitled at any time and from time to time, to plat, replat or vacate existing plattage of all or any part of the real estate subjected to this Declaration, and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion, or portions of, or additions to the Subdivision.

Section 3. Additional Real Estate. Developer may, but shall have no obligation to, add at any time or from time to time to the scheme of this Declaration additional real estate, provided only that (a) any portion of the real estate from time to time added to the scheme of this Declaration shall be contiguous to property then subject to the scheme of this Declaration, (b) any portion of such real estate shall, at the time of addition to the scheme of this Declaration, be platted as single family residential lots, (c) said plat of added real estate shall dedicate, or commit to dedicate, the Out Lots of said plat of real estate, and (d) upon addition of the real estate to the scheme of this Declaration, the owners of the property therein shall be and become subject to this Declaration, and shall have all privileges and obligations set forth in this Declaration, including assessment by the Association for their prorata share of Association expenses. The addition at any time or from time to time of all or any portion or portions of the real estate to the scheme of this Declaration shall be made and evidenced by filing in the Office of the Recorder of Lake County, Indiana, a supplementary Declaration with respect to that portion of real estate to be added. Developer reserves the right to so amend and supplement this Declaration without the consent or joinder of the Association or of any Owner and/or Mortgagee of land in the Subdivision.

Section 4. Retractable Real Estate. At the sole election of the Developer, all of the real estate specifically described in Section 1 of this Article and subject to this Declaration may be withdrawn from submission hereunder at one time, or portions thereof at different times; provided, however that no real estate may be withdrawn which has been developed. All Owners, mortgagees and the Association are hereby deemed to consent to the vacation, and waive all right to remonstrate thereto, of

any portion of the plat of the Subdivision not developed in which the Developer has withdrawn from this Declaration.

Section 5. Easements. There are platted on the plat of the Subdivision certain easements which shall be and are hereby reserved for the installation, construction, maintenance, repair or replacement of any and all public utilities and drainage and their poles, ducts, wires, pipelines, lines, conduit, sewers, manholes or other related utility or drainage facility. No permanent structure shall be erected or allowed to be maintained on any easement. No Owner shall grant an easement, license or permit others to use any Lot, or portion thereof, in the Subdivision for access to any property or real estate not located within the Subdivision.

Article III

PROPERTY RIGHTS

Section 1. Title to Out Lots. Developer may retain the legal title to the Out Lots so long as it owns at least one Lot in the Subdivision. On or before conveyance by Developer of the last Lot which Developer owns in the Subdivision, Developer shall convey the Out Lots to the Association subject to taxes for the year of conveyance and to restrictions, conditions, limitations, reservations and easements of record; subject, however, to a reservation hereby perpetually reserved to the Developer, its successors and assigns, of the non-exclusive right to use and enjoy the common utility easements, easements of drainage, and ingress and egress easements for the benefit of real estate owned and to be owned by the Developer located on real estate which is contiguous to the Subdivision.

Section 2. Owners' Easements of Enjoyment. Every Owner of a Lot shall have a non-exclusive common right and easement of enjoyment and ingress and egress in and to the Out Lots including an approximately 10 foot to 20 foot Out Lot accessing the lake, if allowed, which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

- (a) The right of the Association to take such steps as reasonably necessary to protect the above-described properties against foreclosures;
- (b) All provisions of this Declaration, any plat of all or any part or parts of the property, and the Articles and By-Laws of the Association;
- (c) Rules and Regulations governing the use and enjoyment of the Out Lots adopted by the Association;
- (d) Restrictions contained on any and all plats of all or any part of the Out Lots or filed separately with respect to all or any part or parts of the property; and

(e) Easements for installation and maintenance of utilities and drainage facilities as shown on the recorded plat of the Subdivision. Within these easements, no structure, planting other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, impede, or change the direction of flow of drainage facilities in the easements. The easement areas shown on each Lot and all improvements thereon shall be continuously maintained by the Owner of such Lot, except for improvements for maintenance of which a public authority or utility company is responsible. No dwelling unit or other structure of any kind shall be built or erected or maintained on any such easement, reservation or right-of-way, and such easements, reservations and rights-of-way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to Developer, its successors and assigns of the right to use and enjoy the same non-exclusive easements, for the benefit of additional real estate owned or later acquired by Developer located or real estate contiguous to the Subdivision.

Section 3. Right of Entry. The Developer and the Association, through their duly authorized employees and contractors, shall have the right, after reasonable notice to the Owner thereof, to enter any Lot or tract of real estate at any reasonable hour on any day to perform such maintenance as may be authorized herein.

Section 4. Developer's Sales Activities. Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Developer to maintain and carry on upon any Lot owned by the Developer and any portions of the Out Lots such facilities and activities as, in the sole opinion of Developer, may be reasonably required, convenient, or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model units, and sales offices, and the Developer shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Developer and the Out Lots facilities, if any, which may be owned by the Association, as models and sales offices. This Section may not be amended without the express written consent of the Developer; provided, however, the rights contained in this Section 4 shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded or (b) upon the Developer's recording a written statement that all sales activity has ceased.

Section 5. No Partition. There shall be no judicial partition of the Out Lots, nor shall Developer, or any Owner or any other person acquiring any interest in the Subdivision, or any part thereof, seek judicial partition thereof of the Out Lots. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in co tenancy.

Article IV

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Purpose of the Association. The primary purpose of the Association shall be to insure high standards of maintenance and operation of all property and real estate in the Subdivision, including that property reserved by the Developer for the detention and management of storm water easements, to insure the provision of services and facilities of common benefit, and in general to maintain and promote the desired character of the Subdivision. In addition, the Association shall consider its primary purpose to manage and support financially all real estate owned by the Association, if any, as well as the storm drainage detention easements located within the Subdivision.

Section 2. Creation of the Association. As soon as is practicable following the recordation of this Declaration, Developer shall cause the Association to be incorporated as an Indiana For-Profit Corporation. Prior to the appointment of the Board of Directors by the Developer, responsibility for the control of the Association shall remain the exclusive responsibility and obligation of the Developer or its designated agents and employees.

Section 3. Membership. Every Owner, including the Developer, at all times so long as the Owner owns all or any part of the property 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.

Section 4. Classes and Voting. The Association shall have such classes of membership, which classes shall have such voting rights, as are set forth in the Articles of Incorporation.

Section 5. Board of Directors. The Association shall have a Board of three (3) Directors who shall constitute the Board of Directors.

(a) The Directors and Officers of the Association shall not be liable to any Owner for any mistake of judgment or any acts or omissions made in good faith by such Director or Officer. The Owners shall indemnify and hold harmless each of the Directors or Officers against all liability arising out of contracts made by such Directors or Officers on behalf of the Owners and Members of the Association, unless any such contracts shall have been made in bad faith or contrary to the provisions of this Declaration.

(b) The Board shall have the authority to and shall obtain comprehensive public liability insurance, as it shall deem desirable, and other liability insurance or insurances as it may deem appropriate in the circumstances. The premiums for such insurance shall be an expense to be paid by the Association.

Section 6. Powers and Duties of the Association. The Board of Directors of the Association shall have all of the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law in this Declaration:

(a) To own, maintain and otherwise manage the storm drainage detention basins located within the Subdivision and vacant and unimproved property, if any, and to do any and all other things necessary or desirable in the sole judgment of the Officers or Directors of the Association.

(b) To care for and maintain the landscaping, plantings and signs located within the Subdivision in a good and neat appearance.

(c) To make such improvements to the facilities under its control within the Subdivision, and to provide such other facilities and services as may be authorized from time to time by the affirmative vote of a simple majority of the Members of the Association acting in accordance with its constitution and Bylaws provided, however, that any such actions so authorized shall always be for the express purpose of keeping the Subdivision a highly desirable and exclusive residential community.

(d) Until such time as the Board of Directors is duly elected, all the powers and duties enumerated above shall be exercised exclusively by the Board of Directors, as appointed by the Developer. The Developer, at Developer's discretion may appoint Owners to serve on the Board of Directors at such time as it deems appropriate. The first elected Board shall be elected not later than one year after 100% of those Lots which have been subjected to this Declaration have been sold and title has been conveyed from the Developer to an Owner. All Owners of record who have been subjected to this Declaration shall be eligible to vote for said Board. All Directors of the first elected and all subsequent Boards of Directors of the Association, shall be nominated and elected pursuant to the Bylaws of the Association. The initial board of directors as appointed by the developer or elected by the homeowners shall consist of three (3) owners. and shall be elected for a term of three (3) years, except that for the initial election, one (1) director shall be elected for three (3) years, one (1) director shall be elected for two (2) years, and one (1) director shall be elected for one (1) year. Each year thereafter, the board member shall be elected for three (3) year terms to fill the anticipated vacancies. A chairperson of HARBOR CLUB PROPERTY OWNERS' ASSOCIATION shall be selected by the board members and shall preside at its meetings and shall be responsible for transmitting any and all communications to the association members. In the conduct of its' duties and responsibilities, the HARBOR CLUB PROPERTY OWNERS' ASSOCIATION shall abide by the notice and quorum requirements applicable to the association.

Article V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessment. The Developer, for each Lot owned by it within the Subdivision, hereby covenants and each Owner of any Lot (by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance) including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any annual assessments or charges, and any special assessments for capital improvements or major repair; such assessments to be fixed, established and collected from time to time as hereinafter provided. All such assessments, together with interest thereon from the due date at the rate of ten (10%) per cent per annum, and costs of collection thereof (including reasonable attorneys' fees), shall be a charge on the real estate and shall be a continuing lien upon the Lot or Lots against which each such assessment is made, and shall also be the personal obligation of the Owner. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Out Lots or by abandonment, or otherwise.

Section 2. Purpose of Assessment. The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Subdivision, including but not limited to the following:

- (a) Improvement, maintenance, repair, and if Board determines, watering of the Out Lots, entry-way landscaping identified by the developer, decorative signage and street lighting in the public rights-of-way;
- (b) Water, sewer, garbage, electrical lighting, telephone, gas and other necessary utility services for the Out Lots and street lighting;
- (c) Maintenance and repair of all storm drains, drainage easements, storm water detention or retention easements, sanitary sewers, parks, private roads, and easements shown on the plat or plats of the Subdivision recorded in the Office of the Recorder of Lake County, Indiana.
- (d) Protection, permitting and regulation of all preserved areas, nature areas, wetlands or recreational or park areas within the Subdivision.
- (e) Fire insurance covering the full insurable replacement value of all improvements located on the Out Lots with extended coverage;
- (f) Liability insurance insuring the Association and the Board, as well as each Director in their individual capacity, against any and all liability to the public, to any Owner, or to the licensees, invitees, or tenants of any Owner arising out of their

occupation and/or use of the Out Lots. The policy limits shall be set by the Association and shall be reviewed at least annually and increased or decreased in the discretion of the Association;

(g) Worker's compensation insurance to the extent necessary to comply with the Indiana law, and any other insurance deemed necessary by the Board;

(h) Acquisition of furnishings and equipment for the Out Lots as may be determined by the Association, including without limitation, all equipment, furnishings, and personnel necessary or proper for use of the Out Lots.

(i) Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration, or by law, or which shall be necessary or proper in the opinion of the Board for the operation of the Out Lots, for the benefit of the Owners, or for the enforcement of these restrictions.

(ii) Fees for professional services including administrative costs that the board believes necessary to fulfill the responsibilities of the Association.

Section 3. Annual Assessments. The Board shall fix the assessments, which shall be in amounts determined in accordance with the projected financial needs of the Association as to which the decision of the Board shall be dispositive. By the vote of two-thirds (2/3) of the members of the Board, the maximum amounts of the assessments may be increased or decreased from the amount hereinabove set forth.

Section 4. Uniform Rate of Assessment. All regular and special assessments shall be at a uniform rate for each Lot in the Subdivision without adjustment for size of Lots, number of residents or use or nonuse of the Out Lots.

Section 5. Special Assessments for Capital Improvements and Major Repairs. In addition to the annual assessment, 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, re-construction, unexpected repair or replacement of a capital improvement as approved by the Board, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-third (2/3) of the Members who are attending in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance, and shall set forth the purpose of the meeting.

Section 6. Date of Commencement of Annual Assessments: Due Date. The assessments for which provision is herein made shall commence on the first day of the month, or as fixed by the Board to be the date of commencement. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due date of any assessment shall be fixed in the resolution authorizing such assessment and any such assessment shall be payable annually, in advance, unless such other periods are determined by the Board. The board of directors of the association shall fix the amount of the annual charge by the first day of March of each year, and written notice of the charge so fixed shall be sent to each member.

Section 7. Duties of the Board of Directors. The Board shall fix the date of commencement, and the amount of the assessment against each Lot for each assessment, at least twenty-five (25) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owners. Written notice of the assessment shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement thereof. The Association shall, on demand, and for a reasonable charge, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of Assessment: The Lien, Personal Obligation, Remedies of Association. If any assessment is not paid on the date when due, such assessment shall then become delinquent and shall, together with interest thereon, and the cost of collection thereof, become a continuing lien on the Lot or Lots against which such assessment is made that shall bind such Lot in the hands of the Owner, and the Owner's heirs, devisees, personal representatives and assigns, and shall also be continuing personal obligation of the Owner against whom the assessment is levied.

If the assessment is not paid within thirty (30) days after the delinquency date the assessment shall bear a late payment fee of Twenty-Five Dollars (\$25.00) and incur interest from the date of delinquency at the rate of ten (10%) percent per annum, and the Association may, at any time thereafter, bring an action to foreclose the lien against the Lot or Lots in like manner as a foreclosure of a mortgage on real property and/or a suit on the personal obligation against the Owner, and there shall be added to the amount of such assessment the cost of any such action (including a reasonable attorneys' fee), and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the Court, together with the costs of the action.

Section 9. Subordination to Lien of Mortgages. The lien of the assessment for which provision is herein made shall be subordinate to the lien of any first mortgage to a bank, life insurance company, Federal or State savings and loan association, or real estate investment trust provided such mortgage is a purchase money mortgage. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such

Lot pursuant to a decree of foreclosure, and in any other proceeding in lieu of foreclosure of such mortgage. No such sale or transfer or proceeding in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessments thereafter becoming due, or from the lien of any subsequent assessment. The written opinion of either the Developer or the Association that the lien is subordinate to a mortgage shall be dispositive of any question of subordination.

Article VI

EXTERIOR MAINTENANCE ASSESSMENT

Section 1. Exterior Maintenance. The following maintenance standards shall be the minimum requirements for any home.

In addition to maintenance upon the Out Lots, the Association may provide upon any Lot requiring same, when necessary in the opinion of the Board to preserve the beauty, quality and value of the neighborhood, maintenance, including paint, repair, roof repair and replacement, gutters, down-spouts, exterior building surfaces, and yard clean-up and/or maintenance; provided, however, that ten (10) days written notice must first be given to the Owner of any such Lot or Lots of the need of such clean-up and/or maintenance.

The Association may enter into a master contract on behalf of the association members, to provide for services for snow removal, lawn care and such other services as determined by the board of directors. The cost of such maintenance shall be included as a common expense of the association to be paid by the owners as part of their normal assessments. These charges shall be assessed against the lot or lots upon which such maintenance is performed, or, in the opinion of the board, against the lot or lots benefiting from same.

Section 2. Assessment of Cost. The cost of any aforementioned master contract maintenance, if approved, shall be assessed against the Lot or Lots upon which such maintenance is performed, or, in the opinion of the Board, against the Lot or Lots benefiting from same. The assessment shall be apportioned among the Lots involved in the manner determined to be appropriate by the Board. If no allocation is made, the assessment shall be uniformly assessed against all of the Lots in the affected area. The exterior maintenance assessments shall not be considered a part of the annual or special assessments. Any exterior maintenance assessment shall be a lien on the Lot or Lots and the personal obligation of the Owner and shall become due and payable in all respects, together with interest, reasonable attorney's fees, and cost of collection, as provided for the other assessments of the Association and shall be subordinate to mortgage liens as provided for herein.

Section 3. Access at Reasonable Hours. For the purpose of performing the maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Lots or the exterior of any improvements thereon at reasonable hours any day except Sunday.

Article VII

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Power of Committee. There is hereby created an Architectural Control Committee for the purpose of architectural and engineering control to secure and maintain an attractive, harmonious residential community. The Developer shall represent the Architectural Control Committee as its sole member and grant all approvals and variances provided for herein until Developer conveys the last Lot which Developer owns in the Subdivision, except that Developer may elect to delegate and assign such duties and responsibilities to the Committee prior to that time. After delegation or assignment by the Developer, the Committee shall be composed of no less than three (3) individuals appointed by the Board to serve at the Board's pleasure. Two-thirds (2/3rds) of the Committee shall also be Members of the Association, with no greater than one (1) member of a household serving on the Committee. A majority of members of the Committee shall constitute the decision of the Committee.

(a) **In General.** No dwelling, house, building, structure or improvement of any type or kind shall be constructed or placed on any Lot in the Subdivision without the prior approval or permit from the City of Hobart, which shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. In addition, such plans and specifications shall show the proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1" - 10', or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or reports required elsewhere in these Restrictions.

Existing and finished grades shall be shown at the lot corners and at the corners of any proposed improvements, and shall show the relation of finished grades and elevations to neighboring lots or properties. Lot drainage provisions shall be indicated, as well as cut and fill details, if any substantial change in the lot contour is contemplated. The exterior elevations for any improvements must be built with finished floor elevations in conformity with the requirements of the county of Lake, Indiana and of the Developer.

(b) **Power of Disapproval.** The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

- (i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these restrictions;
- (ii) The design, color scheme or construction materials of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or
- (iii) The proposed improvement, or any part thereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of the other Owners.

(c) **Power to Grant Variances.** The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be documented in written form and granted in conformity with the general intent and purposes of these Restrictions, and no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Subdivision. In NO case shall a variance or adjustment by the Committee supersede variance requirements and review processes from City of Hobart Municipal Code or building/construction standards from appropriate city boards or commissions.

Section 2. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. Should the Committee fail to act within the specified time, the requirements of this Article shall have been automatically waived and the Owner's plans shall be deemed to have complied with all requirements hereof. One copy of all submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for the disapproval.

Section 3. Liability of Committee. Neither the Committee nor any agent thereof, nor the Developer, nor the Association, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

Section 4. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable municipal inspections and regulations.

Article VIII

USE RESTRICTIONS

Section 1. Residential Use. The real estate subject to these covenants and restrictions may be used for single family residential living units and for no other purpose. There shall be no more one (1) principal dwelling on any one (1) Lot. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof. No building or other improvements shall be erected upon any Lot without prior approval of the Committee as elsewhere herein provided. No accessory building shall be erected prior to erection of the principal dwelling or house.

(a) **Subdivision of a Lot.** No lot shall be divided, subdivided or reduced in size.

(b) **Consolidation of Two or More Lots.** Consolidation of two or more lots shall not be allowed.

(c) **Business Uses and Home Occupations.** Garage sales, moving sales, auctions, rummage sales, or similar activity is expressly prohibited. An Owner or occupant residing in a Lot may conduct other business activities within the Lot with the express written consent of the Board, so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (ii) the business activity conforms to all zoning ordinances; (iii) the business activity does not involve door-to-door or telephonic solicitation of residents of HARBOR CLUB; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in HARBOR CLUB which is noticeably greater than that which is typical of Lots in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of HARBOR CLUB and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of HARBOR CLUB, as may be determined in the Board's sole discretion. This subsection shall not apply to any activity conducted by Developer or a Builder approved by Developer with respect to its development and sale of HARBOR CLUB or any home or Lot or its use of any Lots which it owns within HARBOR CLUB.

Section 2. No Temporary Building. No tents, trailers, vans, shacks, tanks or temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot or in the Out Lots.

Section 3. Antennae and Solar Heat Panels. No exterior solar heat panels, windmills, aerial, antennae or satellite dish antennae in excess of 20 inches in diameter shall be placed or erected upon any Lot or the Out Lots or affixed in any manner to the exterior of any building in the Subdivision.

Section 4. Boats and Motor Vehicles. No boats, trailers, recreational vehicles, commercial vehicles exceeding $\frac{3}{4}$ ton, campers or other motor vehicles, except four-wheel personal private passenger automobiles, shall be placed, parked or stored upon any Lot or in the Out Lots, nor shall any maintenance or repair be performed upon any boat or motor vehicle upon any Lot, except within a fully enclosed building and totally isolated from public view. The list of prohibited vehicles shall include but is not limited to commercial trucks exceeding $\frac{3}{4}$ ton, over-the-road tracker trailer cabs and trailers, mobile home, trailers, camper trailer, snowmobiles, motorcycles, boats or other watercraft and their trailers. For purposes of this section, a commercial vehicle shall include, but is not limited to, any and all automobiles, station wagons and utility vehicles exceeding $\frac{3}{4}$ ton, which shall bear signs or have printed on the side of same a reference to any commercial undertaking or enterprise. For purposes of this Section, the aforementioned parking limitations do not apply to usual and customary private automobiles, station wagons, passenger mini-vans and similar vehicles all currently registered and licensed for daily use.

Section 5. Trees and Yard Grass. Each Lot must have installed by the Owner at least two (2) trees with a trunk diameter of at least two (2) inches, and five (5) bushes or shrubs growing upon it in the front yard, in compliance with Hobart Municipal Code 154.427, within ninety (90) days from the time that the dwelling structure is completed. No tree or shrub, the trunk of which exceeds four (4) inches in diameter shall be cut down or otherwise destroyed without the prior express written consent of the Committee. All front, side-yards, and rear of Lots must be sodded, seeded, or hydro-seeded by Owner within thirty (30) days from the time that the dwelling structure is completed.

Section 6. Artificial Vegetation. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Committee.

Section 7. Automobile Storage Areas. All homes erected upon a Lot shall have a garage attached to and architecturally consistent with the home. No automobile garage shall be permanently enclosed or converted to other use without the substitution of another enclosed automobile storage area upon the Lot. No carports shall be permitted unless approved by the Committee and all garages shall be at least adequate to house two (2) standard size American automobiles. All garages must have doors that are to be maintained in useable condition.

Section 8. Street Parking Prohibited. Except within the parking spaces in the Owner's garage (with the door closed) and for visitors and providers of services temporarily parking in a driveway or on the street. No unlicensed automobiles shall be parked longer than forty-eight (48) hours within any seven (7) day period on any street or Lot in the Development.

Section 9. Use of Yard. No clotheslines, yard ornaments, playground equipment, basketball goals or standards, fountains, flag poles, tennis courts, gazebos, or other similar uses of yards which may prove detrimental to the value of the adjoining Lots shall be

permitted, except as approved by the Committee. Storage sheds shall be allowed to be constructed on lots only upon written approval of the Committee. Storage sheds siding and trim shall be painted to match the home on the lot and shall be constructed in accordance with all City of Hobart building department requirements. Location of the shed shall be determined by the Committee. Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved, shall be made except in strict compliance with the provisions of this Declaration.

Section 10. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Development, except that no more than a total of three (3) animals (dogs, cats, or other larger household pets) may be kept in residences subject to rules and regulations adopted by the Association through its Board of Directors, provided that such pets are not kept, bred, or maintained for any commercial purpose. The Board shall have the absolute power to prohibit a pet from being kept on any Lot in the Subdivision, including inside residences constructed thereon. Pets should be confined to your yard or on a lead or leash. Excessive barking by Owners' dogs shall be considered a nuisance requiring abatement.

Section 11. Rubbish, Trash and Garbage. No rubbish, trash, garbage or other waste materials shall be kept or permitted on any Lot or on the Out Lots, except in sanitary containers located in appropriate areas concealed from public view.

Section 12. Fences, Hedges and Walls. Except for fences erected by the Developer and privacy fences erected by an Owner surrounding an in-ground pool; no fence, wall or other dividing instrumentality of any height shall be constructed or maintained on any Lot without a City of Hobart building permit in compliance with Municipal Code 154.006 (G) (5) (a) and as approved by the Developer or subsequently formed Committee. Fencing, if permitted, shall not exceed six (6) feet in height and must consist of black gloss finish, extruded aluminum material, with fence design approved by the developer or committee. All fences are permitted over drainage easements and must have a ground clearance of two (2) inches minimum to allow for the flow of water.

Section 13. Trash Receptacles. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street or Lot within the Subdivision at any time, except at the time when refuse collections are being made. The City of Hobart shall designate a trash collection day and a trash collection to be used as a public service. The Association may enter into a master contract for trash collection with a refuse disposal service with the costs thereof to be included as a Common Expense of the Association to be paid by Owners as part of their normal assessments. Additionally, should the Association enter into a separate master contract for trash collection, the Association may designate a standard trash container as acceptable by the any private disposal company, all at the expense of each Lot Owner, if applicable.

Section 14. Nuisances. Nothing shall be done or maintained on any Lot or on the Out Lots which may be or become a nuisance to the neighborhood as defined in Chapter 96 of the Hobart Municipal Code. No outside toilets shall be permitted on any Lot in the Development (except during a period of construction and then only with the consent of the Developer or Board), and no sanitary waste or other wastes shall be permitted to enter the storm drainage system.

Section 15. Signs. No sign of any kind shall be displayed to public view on any Lot or any Out Lots, except for the following:

- (a) In compliance with City of Hobart Municipal Code, SIGNS, beginning in Section 154.375.
- (b) Owners shall not install signs on public right of ways or obstruct the view of public right of ways.

The size, time, place, manner, and design of all signs shall be subject to approval by the Committee.

Section 16. Out Lots. Nothing shall be altered in, constructed on or removed from, any of the Out Lots except upon the written consent of the Association.

Each owner shall have the right to use the Out Lots in conjunction with all other owners, as may be required for the purpose of ingress and egress to, and use, occupancy and enjoyment of, the respective land owned by each owner. Such rights shall extend to the owners, tenants, guests, and other occupants and visitors.

Section 17. Miscellaneous. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot or any Out Lots, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that any Owner shall fail or refuse to keep Owner's Lot free of weeds, underbrush or refuse piles, or other unsightly growths or objects, then the Association may enter upon said Lot and remove the same at the expense of the Owner as provided for herein, and such entry shall not be deemed a trespass. No burning of garbage shall be allowed by any Owner.

Section 18. Size Requirements. The minimum square footage of living space dwellings constructed on Lots in the Subdivision, exclusive of walk-outs, basements, porches, terraces, garages, carports, accessory buildings, or portions thereof, or similar facilities not designed for regular and continuous habitation, shall be One Thousand Two Hundred Fifty (1,250) square feet of total finished living space. Basements shall be permitted to be built for a home within a lot.

Section 19. Residential Setback Requirements. No dwelling, house or other above-grade structure designed to be used in connection with such house shall be constructed or placed on any Lot in the Subdivision except as provided herein.

- (a) **Front, side and rear yard setbacks.** All dwellings or houses and above-grade structures designed to be used in connection therewith shall be constructed or placed on Lots in the Subdivision so as to comply with the front yard, side yard and rear yard setback lines as established in the plat or plats of the various portions of the Subdivision.
- (b) **Side Yards.** The side yard setback lines shall not be less than that as required by the City of Hobart.
- (c) **The Front and Rear Yards.** The front and rear yard setback lines shall not be less than that as required by the City of Hobart.

Section 20. Yard Lights. No exterior lighting fixtures shall be installed by an owner that may become an annoyance or a nuisance to Owners or occupants of adjacent properties.

Section 21. Standard Mail Box. The Developer shall adopt and designate a standard mailbox, newspaper receptacle, and post for all Lots in the Subdivision and may designate a standard location for such mailbox. Each Owner of a Lot in the Subdivision shall cause such standard mailbox and post to be installed and maintained, at such Owner's expense. No mailbox, other than those fixtures approved by the Developer or the Board in the Developer's absence, shall be installed on the exterior of any Lot. All repairs and replacements by Owner to such standard mailboxes and posts shall be consistent in color, quality and appearance with the original mailbox and post unless the advance written approval of the Board is obtained.

Section 22. Exterior Construction. All structures shall be specified on the design plans submitted to the architectural committee for approval and shall be required to meet the following minimum standards for exterior materials in the construction:

- (a) **Roofing materials shall be made of premium asphalt shingles, wood shakes, slate or simulated slate, standing seam metal, tile, or similar premium roofing material. The minimum roof pitch on each dwelling and garage shall be 4/12.**
- (b) **Siding materials shall be made of premium vinyl, or natural wood products such as cedar, redwood, cypress (or equivalent), natural stone, Hardiplank or other similar premium siding materials.**
- (c) **All exterior chimneys on the front elevation of the structure facing any street must be of brick, stone, or other similar type material; in no case shall small exterior chimneys be sided with metal or artificial stone.**

- (d) All driveways shall have a dust-free surface of Portland cement concrete, brick, cobblestone or other similar type material. No asphalt concrete driveways shall be permitted, unless approved by the Committee.
- (e) No structure shall have metal prefabricated flues or solar panels that extend above the highest roof line.
- (f) All lots within HARBOR CLUB shall have sidewalks installed by the builder within (30) days of occupancy, weather permitting. The owner shall thereafter be responsible for the maintenance of its sidewalk and driveway. All walks shall be concrete construction, adjacent to and parallel with the front lot line, and run from property line to property line. The sidewalks shall be five feet (5') wide and a minimum of four inches (4") with non-reinforced concrete. Asphalt driveways or sidewalks are not permitted. In all respects, the sidewalks shall meet the requirements of the developer.
- (g) There is a 25% masonry requirement for the front of each home. Paver bricks, stone, or other aesthetically pleasing uses of masonry may be permitted at the discretion of the developer.
- (h) Exterior construction material shall be approved by the Architectural Control Committee.

Section 23. Swimming Pools. Above ground swimming pools may be installed on any Lot as approved by the Committee. All in-ground pools shall be approved by the Committee. Any in-ground pools shall be continuously fenced, surrounding said pool with a non-climbable fence at least five feet (5) high or protected with a State of Indiana approved pool cover. Swimming pools should be designed with adequate buffers to minimize impact on adjacent Lots and must be located within setbacks as established by the Committee. When fencing around a swimming pool is required, the area fenced shall be no larger than necessary to adequately define the pool area.

Section 24. Certain Motorized Vehicles Prohibited. No go-carts, snowmobiles or similar motor-driven vehicles shall be operated within the Subdivision.

Section 25. Septic and Wells. No on-site wastewater treatment system (a "septic system") shall be constructed or utilized on any Lot. No well shall be drilled on any Lot without express written consent of the Board.

Section 26. Owner's Obligation to Maintain Lot. The Owner of a Lot in the Subdivision shall at all times maintain the Lot, real estate and improvements in such a manner as to prevent the Lot and improvements from becoming unsightly, and specifically such Lot Owner shall (a) mow and otherwise tend to the landscaping on the Lot as such times as may be

reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds; (b) cut down and remove dead trees; (c) remove all debris and rubbish and prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Lot or Subdivision; maintain the Owner's sidewalks and driveway, and (d) keep the exterior of the improvements in such a state of repair or maintenance as to avoid the improvements from becoming unsightly.

Section 27. Heating Plants. Every dwelling or house in the Subdivision must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation.

Section 28. Diligence in Construction. Every dwelling, house or other structure whose construction or placement on any Lot in the Subdivision is begun shall be completed within six (6) months after the beginning of such construction or placement. In addition, the front, side and rear lawn of each lot shall be seeded, sodded, or hydro seeded by Owner within ninety (90) days after completion of construction of a dwelling or house. No improvement which has partially or totally been destroyed by fire, windstorm or other casualty shall be allowed to remain in such state for more than three (3) months from time of such destruction or damage.

Section 29. Time in Which to Build Structures. An Owner of a Lot within the Subdivision must commence construction of the dwelling or house within the time period as determined by the developer. If construction does not begin or if a dwelling or house is not completed upon a Lot within the prescribed time, the Developer shall have the option to repurchase such Lot for a price, in cash, equal to the Owners' cost basis in the Lot, without paying the cost of improvements up to the time of repurchase. This option shall expire if Developer has not notified the Owner of Developer's intent to exercise the option prior to the time of commencement of the construction.

Section 30. Prohibition of Used Structures. All structures constructed or placed on any Lot in the Subdivision shall be constructed with substantially all new material, and no used structures shall be relocated or placed on any such Lot.

Section 31. Necessary Exceptions for Development. Developer, or the transferees of Developer, shall undertake the work of developing all Lots included within the Subdivision. The completion of that work and the sale, rent, or other disposition of the dwellings is essential to the establishment and welfare of the Subdivision as an on-going residential community. In order that such work may be completed and the Subdivision established as a fully-occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent the Developer, Developer's transferees, or the employees, contractors or sub-contractors of Developer, or of Developer's transferees, from doing whatever they may determine to be reasonably necessary or advisable for the completion of the work and the establishment of the Subdivision as a residential community, and the disposition of Lots by sale, lease or otherwise. Owner, upon commencement of construction of any residence,

dwelling unit or other structure, which is not prohibited by this Declaration shall pursue the performance of any construction diligently and continuously until completion of the structure involved. As used in this Section, the words, "its transferees" specifically exclude purchasers of an individual Lot or Lots improved with completed residences or intended for construction at a later date by someone other than the Developer.

Section 32. **Prohibition of use of Firearms.** The use of firearms within HARBOR CLUB, including the property and Out Lots is strictly prohibited per City of Hobart Municipal Code 130.06.

Article IX

TRANSFER OF UNIMPROVED LOTS

Section 1. **Developer's Right of First Refusal.** So long as Developer owns at least one (1) Lot in the Subdivision, no Lot and no interest therein, upon which a single family residence has not been constructed shall be sold or transferred unless and until the Owner of such Lot shall have first offered to sell such Lot or Lots to Developer and Developer has waived, in writing, the right to purchase said Lot.

Section 2. **Notice to a Developer.** Any Owner or Owners intending to make a bona fide sale of a Lot or any interest therein shall give to Developer notice of such intention, together with a fully executed copy of the proposed contract of sale (the "Proposed Contract"). Within thirty (30) days of receipt of such notice and information, Developer shall either exercise, or waive exercise of, the right of first refusal. If Developer elects to exercise the right of first refusal, Developer shall, within thirty (30) days after receipt of such notice and information, deliver to the Owner an agreement to purchase the Lot upon the following terms:

- (a) The price to be paid, and the terms of payment shall be that stated in the Proposed Contract or other terms agreed to by the Owner;
- (b) The sale shall be closed within thirty (30) days after the delivery or making of the Developer's agreement to purchase.

Section 3. **Certificate of Waiver.** If Developer shall elect to waive the right of first refusal, or shall fail to exercise said right within thirty (30) days of receipt of the Proposed Contract, Developer's waiver shall be evidenced by a certificate executed by Developer in recordable form which shall be delivered to the Owner or the Proposed Contract purchaser.

Section 4. Unauthorized Transactions. Any sale of a Lot, or any interest therein, upon which a single-family residence has not been constructed, without notice to Developer and waiver of Developer's right of first refusal as aforesaid, shall be void.

Section 5. Exceptions. This Article shall not apply to a transfer to or sale by any bank, life insurance company, Federal or State savings and loan association, or real estate investment trust which acquires its title as a result of owning a purchase money mortgage upon the Lot concerned, and this shall be so whether the title is acquired by deed from the mortgagor or its successors in title or through foreclosure proceedings; nor shall this Article apply to a sale by any such institution which so acquires title. Neither shall this Article require the waiver by Developer as to any transfer of title to a Lot at a duly advertised public sale with open bidding which is provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

Article X

GENERAL PROVISIONS

Section 1. Duration and Remedies for Violation. The covenants and restrictions of this Declaration shall run with and bind the real estate submitted pursuant to Article II hereof, and shall inure to the benefit of and be enforceable by the Developer, the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of fifteen (15) years TWENTY-FIVE (25) YEARS from the date this Declaration is recorded, after which time said covenants and restrictions shall automatically be extended for successive periods of ten (10) years unless amended as provided for elsewhere in this Declaration. Violation or breach of any condition, covenant or restriction herein contained shall give the Developer, Association, or Owner (or any two or more of them in concert or individually) in addition to all other remedies, the right to proceed at law or in equity to compel a compliance with the terms of said conditions, covenants or restrictions, and to prevent the violation or breach of any of them, and the expense of such litigation shall be borne by the then Owner or Owners of the subject property, provided such proceeding results in a finding that such Owner was in violation of said covenants or restrictions. Expenses of litigation shall include reasonable attorneys' fees incurred by Developer and/or the Association in seeking such enforcement but attorney fees specifically shall not be allowed to an Owner enforcing these restrictions, unless granted by a Court and based upon an independent finding of entitlement to such damages.

Section 2. Owner's Obligation to Maintain and Repair. Each Owner shall, at Owner's sole cost and expense, maintain and repair Owner's residence, keeping the same in a condition comparable to the condition of such residence at the time of its initial construction.

Section 3. Compliance with Soil Erosion Control Plan.

- (a) The Developer has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15 relating to Storm Water Run-off Associated with Construction Activity. Each Owner shall undertake all erosion control measures contained therein as the plan applies to "land disturbing activity" initiated by Owner or Owner's builders, contractors and their subcontractors and to comply with the Developer's general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control practices and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.
- (b) Owner shall indemnify and hold Developer harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or connected with, any work done by Owner, Owner's employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Developer.

Section 4. Notices. Any notices required to be sent to any Member or Owner under the provision of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 5. Severability. Invalidation of any one or more of these covenants and restrictions by judgment or Court Order shall in no way affect any other provisions which shall remain in full force and effect.

Section 6. Amendment. This Declaration may be amended, modified or terminated at any time by Developer with the execution and recordation of an instrument executed by Developer, so long as Developer is the Owner of any Lot or any property affected by this Declaration. Thereafter, Owners holding not less than two-thirds (2/3) of the voting interests of the membership may amend, modify or terminate this Declaration with approval from the City of Hobart Plan Commission, as presented under PC 19-11A.

Section 7. Usage. Whenever used the singular shall include the plural and singular, and the use of any gender shall include all genders.

Section 8. Effective Date. This Declaration shall become effective upon its recordation in the Office of the Recorder of Lake County, Indiana.

Section 9. Remedies for Breach of Covenants, Restrictions and Regulations.

- (a) **Abatement and Enjoinment:** The violation of any rule, restriction, condition or regulation adopted by the Board, or the breach or default of any covenant, bylaw or provision contained herein, shall give the Board the right:
- (i) To enter upon the property of a home (but not into any home located thereon) upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Declarant, or their successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; and,
 - (ii) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.
 - (iii) To pursue all rights and remedies as set forth in the Master Declaration.

The Board shall be entitled to recover from a defaulting Owner, other than the Declarant, reasonable attorney fees and costs incurred in pursuing any of the remedies set forth in this Section.

- (b) **Rights of Action:** The Board and/or any aggrieved Owner shall have the right to pursue an action against another Owner or Owners who fail to comply with the provisions of the Declaration and/or the rules and regulations adopted by the Board. In addition, Owners shall have a right of action against the Umbrella Association for the enforcement of the Declaration and/or rules or regulations adopted by the Board.

Section 10. Waiver of Damages: Neither the Declarant, nor their partners, representatives or designees, shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to this Declaration, or in the Declarant's (or their partners' or their respective representatives' or designees') capacity as developer, contractor, Owner, manager or seller of the Property, whether or not such claim (a) shall be asserted by any Owner, occupant or the Board or by any person or entity claiming through any of them; or (b) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (c) shall arise from contract or negligence. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Property, or any part thereof, being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any Owner, occupant, the Board, and their respective agents, employees, guests and invitees, or by reason of any neighboring

property or personal property located on or about the Property, or by reason of the failure to function, or disrepair of, any utility services (heat, air conditioning, electricity, gas water, sewage, and the like); provided, however, the terms of any written warranty of the Declarant (or their partners or their respective representatives or designees) given in connection with the sale by the Declarant of any land shall prevail over the terms and conditions of this paragraph.

Section 11. Tree and Landscaping Disclaimer: Nothing contained in this Declaration, the lot sale or transfer documents, the Declarations of Covenants, Easements and Restrictions for HARBOR CLUB, or any other document shall be construed as a guarantee of the survival of any landscape material and/or trees. The Developer shall not be obligated to remove and/or replace any destroyed landscape material or dead trees.

Section 12. Indemnity to Board and Committee Members: The members of the Board of Directors and HARBOR CLUB Committees, and the officers thereof, shall not be liable to the Owners for any mistake of judgement or any acts or omissions made in good faith as such members or officers. The Association shall indemnify and hold harmless each such member or officer against all contractual liability to others arising out of contracts made by such members or officers on behalf of the Association or Committees, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration, or in violation of any resolution adopted by the Owners or Board of Directors. Such members or officers shall have no personal liability with respect to any contract made by them on behalf of the Association or HARBOR CLUB PARTNERS', LLC. Each agreement made by such members or officers on behalf of the Association or Committees shall be executed by such members or officers on behalf of the Association or Committees, as agents.

ALL PERSONS INCLUDING ALL OWNERS, ARE HEREBY ADVISED THAT NO REPRESENTATIONS OR WARRANTIES, EITHER WRITTEN OR ORAL, HAVE BEEN OR ARE MADE BY THE DEVELOPER OR ANY OTHER PERSON WITH REGARD TO ANY WORK PERFORMED BY ANY PARTICIPATING BUILDER. NEITHER THE DEVELOPER NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS RESULTING FROM THE CONSTRUCTION, CONDUCT, OR ANY OTHER ACT OF A PARTICIPATING BUILDER.

IN WITNESS WHEREOF, the Developer has caused this Declaration of Covenants and Restrictions to be executed on the date first written above.

**HARBOR CLUB PARTNERS', LLC, an
Indiana limited liability company**

By: _____

Name:

Title:

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, the undersigned, a Notary Public for Lake County, State of Indiana, personally appeared _____, the _____ of HARBOR CLUB PARTNERS, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing instrument to be his free and voluntary act for and on behalf of said company. Signed and sealed this ___ day of _____, 2024.

My Commission Expires:

Notary Public
County of Residence:

The Document prepared by Thomas M. Krafft, as Member of HARBOR CLUB PARTNERS, LLC.

**CERTIFICATION AND REPORT TO
COMMON COUNCIL OF THE CITY OF HOBART ON
ZONE MAP CHANGE**

CERTIFICATION TO: Common Council of the City of Hobart

FROM: Steve McDermott, City Planner

RE: Change to be made on the zone map.

DATE: December 9, 2024

PETITIONER: Harbor Club Partner's LLC
214 Edgewood Drive
Valparaiso, IN 46385

REQUEST: Rezone existing PUD (Planned Unit Development District) to a new PUD (Planned Unit Development)

PROPOSED USE: For the proposed construction of single family homes

GENERAL LOCATION: Located 0.2 miles north from NE corner of Lake Park Ave. & Old Ridge Rd.

LEGAL DESCRIPTION: Harbor Club Subdivision, Lots 1 thru 17, 33 & 36

PLAN COMMISSION PETITION NO.: 24-31

DATE OF PLAN COMMISSION ACTION: December 5, 2024

DEADLINE FOR CITY COUNCIL ACTION: March 9, 2025

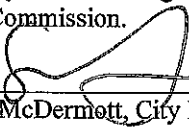
CERTIFICATION:

ACTION TAKEN BY PLAN COMMISSION:
Recommendation to the Common Council to Approve the change of zone requested
(Favorable recommendation)

CONDITIONS: None

VOTE: 8-0

I certify that the foregoing information accurately represents the action taken on this matter by the City of Hobart Plan Commission.



Steve McDermott, City Planner
City of Hobart

PUD Harbor Club

Findings of Fact

In the following space please provide the reason and concept of why you propose to amend the zoning map and provide justification. Consider the following in your response;

- (1) the comprehensive plan;
- (2) current conditions and the character of current structures and uses in each district;
- (3) the most desirable use for which the land in each district is adapted;
- (4) the conservation of property values throughout the jurisdiction; and
- (5) responsible development and growth.

mixed residential

Reinstate previous Approved PUD

- ① Subdivision has been developed since early 2000, all utilities are installed
- ② To bring 19 new homes to the city of Hobart
- ③ The values of homes surrounding will be up since were building new homes
- ④ We want to get this started so we can develop the 11 acres to south 7 more bigger homes on the 11 acres

The rezone should/should not be granted because; (Must meet all the following requirements.)

(a) the petition is not "spot zoning" which will confer a special benefit to the petitioner on a small tract of land with no commensurate benefit to the community.

(b) the comprehensive plan will not be disrupted or destroyed because:

we want to keep as many trees as we can

(c) the land involved is suitable for the proposed land change because:

its been sitting vacant since early 2000s so new homes would help it

(d) the topography is suitable for the proposed land use without adverse effect upon the surrounding land

because: we want to keep PUD AND UTILITIES, THE WAY IT WAS DEVELOPED

(e) the property value of adjacent property would not be decreased because:

neighboring property will increase in values

[Handwritten Signature]

10/29/24

Signature of Petitioner/Agent

Date

Decision:

After public hearing and review by the Hobart Advisory Plan Commission for the recommendation to rezone, the Plan Commission now finds that the Petition to Rezone Does ~~Does Not~~ comply with the standards in the zoning ordinance

All of which this 5th day of DECEMBER, 2024 by a majority vote of the Hobart Advisory

Plan Commission.

[Handwritten Signature]

Plan Commission President

Attest:

[Handwritten Signature]

Plan Commission Secretary/Zoning Official

e will meet
all of
HOBART
CITY CODES

MEMORANDUM

DATE: DECEMBER 9, 2024

TO: HOBART COMMON COUNCIL MEMBERS
MAYOR JOSH HUDDLESTUN
CITY ATTORNEY HEATHER McCARTHY

FROM: STEVE McDERMOTT, CITY PLANNER

RE: TO REZONE ESTABLISHED PUD TO A NEW PUD

Attached please find a Certification and Proposed Ordinance for your consideration regarding Plan Commission Petition 24-31, located 0.2 miles north from the NE corner of Lake Park Ave. & Old Ridge Rd., zoned PUD, 7 acres +/-

PUBLIC HEARING MINUTES OF THE PLAN COMMISSION MEETING OF DECEMBER 5, 2024: Present was Mike Macki, Cornerstone Partners stating they purchased the approved platted subdivision and that the PUD zoning has expired. He is proposing to rezone the expired established PUD to a newly proposed PUD complete with covenants. Ms. Galka opened the public hearing for Petition 24-31. *Randy Peters, 261 Lakewood Dr. questioned how this rezone and proposed single family development will affect their townhouse property values, questioned if the sanitary sewer system will be able to handle the development and whether street lights and sidewalks will be installed. Jarvette Davis-Joiner, 257 Lakewood Dr. stated they do not want to be included in the HOA asked if they will be forced to be in the HOA and also inquired as to the installation of the street lights.* Hearing no further public comments, Ms. Galka closed the public hearing. Mr. Metz felt the sewer capacity will be good. There was a program to clean all the sewer lines. There have been discussions with Mr. Macki through his portion of redevelopment, to increase the sewer line size to flow to the force main. Mr. Metz stated more research will need to be done since the original developer filed for bankruptcy years ago prior to completing all the infrastructure and that our ordinance requires street lights in subdivisions. Mr. Macki noted the existing townhouse property values will increase with the product he is proposing to build. The sidewalks will be installed only on the lots owned by Cornerstone Partners. The townhouse properties are responsible for installing their own sidewalks. Mr. Emig motioned for a Favorable Recommendation to the Common Council for Petition 24-31 including all discussion and Findings of Fact, seconded by Mr. Kara. All ayes, motion carried. (8-0)

Ms. Galka motioned Lots 34 & 35 represented in the former PUD under Petition 24-31 be recognized as zoned R-4 including all discussion, seconded by Mr. Kara. All ayes, motion carried. (8-0)

Regular meetings are held on the 1st and 3rd Wednesdays of each month in the Council Chambers, 2nd floor, Hobart City Hall

CITY OF HOBART
AGENDA ITEM REQUEST FORM

(PLEASE PRINT)

MEETING DATE: DECEMBER 18, 2024

BOARD OF PUBLIC WORKS (3:30 p.m.)

COMMON COUNCIL (6:00 p.m.)

ITEM TO BE ADDED TO AGENDA PC 24-31 HARBOR CLUB
AMEND ESTABLISHED PUD TO NEW PUD W/COVENANTS

SUPPORTING DOCUMENTATION ATTACHED MEMO/MINUTES, ORDINANCE,
COVENANTS, CERTIFICATION & REPORT & FINDINGS & FACT

REQUEST SUBMITTED BY JOY

ADDRESS (DEPARTMENT) PLANNING/ZONING

PHONE NUMBER (EXT) _____

DATE SUBMITTED DECEMBER 9, 2024