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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
ESTABLISHING BACKBAY CONDOMINIUM AND BY-LAWS FOR
BACKBAY HOMEOWNERS ASSOCIATION, INC..

THIS DECLARATION made this 12th day of October, 1982, by BACKBAY ASSOCIATES, LTD., an Indiana limited partnership (the "Declarant");

WITNESSETH:

WHEREAS, Declarant owns certain real estate which is located in Marion County, Indiana, and is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof; and

WHEREAS, Declarant has improved or desires to improve the real estate in the manner described in this Declaration; and

WHEREAS, Declarant desires to establish by this Declaration an expandable plan for the condominium ownership of the real estate and also certain adjacent real estate by submitting the real estate to the provisions of the Horizontal Property Law of the State of Indiana; (I.C. 1971, 32-1-6-1, et seq.) as amended from time to time (the "Act");

NOW, THEREFORE, Declarant declares that the real estate which is more particularly described in Exhibit "A" shall, and it hereby is, submitted to the provisions of the act and, together with all connected real estate, if any, annexed thereto as hereinafter provided, shall hereafter be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared to be in furtherance of a plan of expandable condominium ownership as described in the Act for the subdivision, improvement, protection, maintenance and sale of condominiums and all of which shall run with the land and shall be binding upon and shall inure to the benefit of all parties now or hereafter having or acquiring any right, title or interest therein, their respective successors and assigns. Declarant further declares that:

ARTICLE I

DEFINITIONS

As used herein:

1.1. The term "Articles" shall mean the Articles of Incorporation of BACKBAY HOMEOWNERS ASSOCIATION, INC., as amended from time to time.

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1.2. The term "Association" shall mean BACKBAY HOMEOWNERS ASSOCIATION, INC., an Indiana not-for-profit corporation, or any successor thereto.

1.3. The term "Board" shall mean the Board of Directors of BACKBAY HOMEOWNERS ASSOCIATION, INC., elected from time to time pursuant to the Declaration and By-Laws.

1.4. The term "Buildings" shall mean the structures located on the Real Estate, which form a part of the Property, and contain the Units as shown on the Plans.

1.5. The term "By-Laws" shall mean the by-laws of the Association, which are set forth in ARTICLES V, VI, and VII hereof, as amended from time to time.

1.6. The term "Common Areas" shall mean all portions of the Property other than the Units and shall include all Limited Common Areas.

1.7. The term "Common Expenses" shall mean the actual expenses (including reserves) lawfully incurred and assessed by the Board in connection with the Property, including without limitation, the expenses of maintenance, repair, insurance, administration and operation of the Common Areas.

1.8. The term "Declaration" shall mean this instrument, including any amendments hereto, and including specifically, without limitation, the By-laws which are incorporated herein as ARTICLES V, VI and VII.

1.9. The term "Limited Common Areas" shall mean those parts of the Common Areas serving exclusively a single Unit or several Units (but less than all of the Units) as an inseparable appurtenance thereto, including, without limitation, balconies, patios, stoops, storage areas, fenced yards, designated Parking Spaces, fireplaces, hot tubs, patios, decks, mailboxes, vestibules and any system or component part thereof which serves said Unit or Units exclusively, to the extent such system or component part is located outside the boundaries of a Unit.

1.10. The phrase "Majority of the Unit Owners" shall mean those Unit Owners, without regard to their number, who own more than fifty percent (50%) in the aggregate of the undivided ownership interest in the Common Areas; provided, however, that if a percentage greater than fifty percent (50%) is specified, then that greater percentage of the Majority of the Unit Owners shall mean those Unit Owners who in the aggregate own such specified percentage of the undivided ownership interest in the Common Areas.

1.11. The term "Occupant" shall mean any person or persons in possession of a Unit other than a Unit Owner.

1.12. The term "Parking Area" shall mean those parts of the Common Areas provided for parking automobiles.

1.13. The term "Parking Space" shall mean those parts of the Parking Area intended for the parking of a single motor vehicle.

1.14. The term "Plans" shall mean the architect's floor plans of the initial Buildings and Units prepared by ARCHONICS, as filed October 13, 1982, in the Office of the Recorder of Marion County, Indiana, in Horizontal Plan File _____, as Instrument No. 82-56705, together with all amendments, supplements and additions thereto which are duly prepared and filed with the Recorder of Marion County as provided in this Declaration and the Act, all of which Plans are hereby incorporated herein by reference.

1.15. The term "Property" shall mean the land, property and space comprising the Real Estate and all improvements, structures, fixtures, furnishings and equipment erected or located thereon and subjected to the Act for the use, benefit, and enjoyment of the Unit Owners.

1.16. The term "Real Estate" shall mean and include the real estate which is more particularly described in Exhibit "A" and such additions thereto, if any, as may hereafter be made subject to this Declaration as provided herein, including specifically without limitation, all easements and licenses appurtenant thereto.

1.17. The term "Regular Assessment" shall have the meaning as set forth in Section 6.3 of ARTICLE VI hereof.

1.18. The term "Special Assessment" shall have the meaning as set forth in Section 6.4 of ARTICLE VI hereof.

1.19. The term "Unit" shall mean a part of the Property within a Building designated and intended as a separate apartment or condominium.

1.20. The term "Unit Ownership" shall mean a part of the Property consisting of one Unit and the undivided interest in the Common Areas associated therewith.

1.21. The term "Unit Owner" shall mean each person or entity holding a record ownership interest in a Unit, including the Declarant, and any beneficiary of a trust, shareholder of a corporation or partner of a partnership holding a record ownership interest in any Unit, but excluding any person or entity who holds such an interest merely as security for the performance of an obligation or as a contract purchaser, unless such person or entity is in actual possession of such Unit.

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ARTICLE II

UNITS AND BUILDINGS

2.1. Description and Ownership:

(a) All Units are described in the Plans and are listed in Exhibit "B".

(b) Each Unit consists of the space enclosed and bounded by the horizontal and vertical planes set forth in the drawings thereof in the Plans as well as any pipes, ducts, flues, shafts, electrical wiring and conduits, and individual heating, cooling, and ventilation systems or equipment situated entirely within a Unit and serving only such Unit. The legal description of each Unit shall consist of the identifying number or symbol of such Unit as shown in the Plans and Exhibit "B". Every deed, lease, mortgage or other instrument may describe a Unit by its identifying number or symbol as shown in Exhibit "B", and every such description shall be deemed good and sufficient for all purposes.

(c) No Unit Owner shall, by deed, plat, court decree or otherwise, combine or subdivide or in any other manner cause his Unit to be separated from lawful access to a public way or into any tracts or parcels different from the whole Unit as shown in the Plans.

2.2. Certain Structures Not Constituting Part of a Unit.

Except as a tenant in common with all other Unit Owners, no Unit Owner shall own any structural components of the Buildings, including structural columns or pipes, wires, conduits, ducts, flues, shafts, or public utility lines running through his Unit and forming a part of any system serving more than his Unit, or any components of communication systems, if any, located in his Unit, whether or not any such items shall be located in the floors, ceilings or perimeter or interior walls of the Unit.

2.3. Real Estate Taxes. Real estate taxes shall be separately assessed against each Unit and its corresponding percentage of ownership in the Common Areas as provided in the Act; provided, however, that until such time as separate real estate tax bills are issued with respect to each Unit, the real estate taxes imposed on the Property shall be included in the Common Expenses assessed pursuant to this Declaration.

2.4. Description of Buildings. There is now one (1) Building on the Real Estate containing four (4) Units. The number of stories, basements, Common Areas, Limited Common Areas and other features are as shown in Exhibit "B" and the Plans.

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2.5. Annexation of Additional Land. So long as there are Class B members of the Association, additional land may be annexed to the Real Estate incorporating additional Units or expansion of Common Areas, or both, without the consent or vote of the Class A members of the Association; provided only, that any such land to be annexed shall be connected to the Real Estate and shall be a part of the land which is more particularly described in Exhibit "C", attached hereto and by this reference made a part hereof; and provided further, that the number of Units contained in the Real Estate shall not at any time exceed one hundred sixty-four (164). At such time as there are no Class B members of the Association, such additional property may be annexed only with the consent of a two-thirds (2/3) Majority of the Unit Owners. The scheme of the covenants, conditions and restrictions of this Declaration shall not be extended to include any such additional land unless and until the same is annexed to the Real Estate as hereinafter provided. Notwithstanding anything contained herein to the contrary, no further additional land shall be annexed to the Real Estate more than seven (7) years from the date of this Declaration, and no additional land at all shall be annexed to the Real Estate unless at least one additional phase is annexed and developed within five (5) years from the date of first recordation of this Declaration.

Any annexations made shall be made by recording a Supplementary Declaration of Covenants, Conditions and Restrictions among the land records for Marion County, Indiana, which Supplementary Declaration shall extend the scheme of these covenants, conditions and restrictions to such annexed property. Such Supplementary Declaration may contain such complementary additions and modifications to the covenants, conditions and restrictions set forth herein as may be necessary to reflect the different character or use, if any, of such annexed property.

Notwithstanding anything contained herein to the contrary, Declarant specifically reserves the option to not expand the condominium at all or to only expand it to any number of Units less than 164.

ARTICLE III

COMMON AREAS

3.1. Ownership of Common Areas. Each Unit Owner shall be entitled to the percentage of ownership in the Common Areas allocated to the respective Unit owned by such Unit Owner, as set forth in Exhibit "B" attached hereto, as it may from time to time be amended. The percentages of ownership interests set forth in Exhibit "B" have been computed and determined, and when and if additional land is annexed in the future shall be recomputed and redetermined in accordance with the formula set forth in Exhibit "B", and except for annexations of additional land as provided herein, shall thereafter remain constant and shall not be changed, except as

specifically permitted under the Act and the Declaration, without the unanimous written consent of all Unit Owners and all mortgagees having bona fide liens of record against any of the Unit Ownerships. Each Unit Owner, by acquiring an interest in a Unit subject to the covenants, conditions and restrictions of this Declaration, specifically consents to any such changes in the percentage of individual ownership of the Common Areas appertaining to his Unit. Said ownership interest in the Common Areas shall be an undivided interest, and the Common Areas shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership. The ownership of each Unit shall not be conveyed separately from the percentage of ownership in the Common Areas corresponding to said Unit. The undivided percentage of ownership in the Common Areas corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to that Unit.

3.2. Limited Common Areas. That portion of the Common Areas which are designated as Limited Common Areas shall serve exclusively the Unit or Units to which they are appurtenant or otherwise connected or designated. The Limited Common Areas, if any, and Units to which their use is reserved are described in Exhibit "B" and the Plans, as both amended from time to time.

3.3. Private Streets. The Common Areas include the private streets which provide ingress and egress to the Property from public thoroughfares. The costs of maintaining the private streets shall be Common Expenses. In the event of the dissolution of the Association or the abandonment, by act or omission, of the scheme of regulation, and financing thereof, for the maintenance of the Common Areas, without provision being made for a reasonable alternative, the Association shall, subject to the restrictions of ARTICLE X hereof, take all reasonable action to attempt to dedicate all private streets in the Property for the use and benefit of the public.

ARTICLE IV

PROVISIONS AS TO UNITS AND COMMON AREAS

4.1. No Severance of Ownership. No Unit Owner shall execute any deed, mortgage, lease or other instrument affecting title to his Unit Ownership without including therein both his interest in the Unit and his corresponding percentage of ownership in the Common Areas. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is disclaimed or not expressly mentioned or described therein.

4.2. Easement.

(a) Encroachments. In the event that (i) by reason of the construction, repair, reconstruction, settlement or shifting of the Buildings, any part of the Common Areas encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Areas, or any other Unit; or (ii) by reason of the design or construction of any Unit, it shall be necessary or advantageous to a Unit Owner to use or occupy any portion of the Common Areas for any reasonable use appurtenant to said Unit, which use or occupancy will not unreasonably interfere with the use or enjoyment of the Common Areas by other Unit Owners, or, if by reason of the design or construction of utility or ventilation systems, any pipes, ducts, flues, shafts or conduits serving more than one Unit encroach or shall hereafter encroach upon any part of any Unit; then in any such case valid easements for the maintenance of such encroachment and for such use of the Common Areas are hereby established and shall exist for the benefit of such Unit, or the Common Areas, as the case may be, so long as all or any part of the Buildings shall remain standing; provided, however, that in no event shall a valid easement for any encroachment or use of the Common Areas be created in favor of any Unit Owner if such encroachment or use is detrimental to, interferes with the reasonable use and enjoyment of the Property by the other Unit Owners or has been created by the Unit Owner or his agent through intentional, willful or negligent conduct.

(b) Easements for Utilities and Additional Purposes. All suppliers of utilities serving the Property are hereby granted the right to install, lay, construct, operate, maintain, renew, repair or replace, conduits, cables, pipes and wires and other equipment into, over, under, along and on any portion of the Common Areas for the purpose of providing the Property with utility services, together with the reasonable right of ingress from the Property for such purposes, and the Declarant hereby reserves and is also granted a transferable easement over and upon the Common Areas for the purpose of making improvements within the Property or additional land to be annexed to the Real Estate and for the purpose of doing all things reasonably necessary and proper in connection therewith; provided, however, that (i) the location of any such easements shall be subject to the approval of the Association and shall be documented as built at the expense of the grantee; and (ii) any such easement shall be used, maintained and repaired at the sole expense of the grantee. All guests and invitees of the Unit Owners and all public and quasi-public vehicles, including, but not limited to, police, fire and other emergency vehicles, trash and garbage collectors, post-office vehicles and privately owned delivery vehicles shall have the right to enter upon the Common Areas for purposes of ingress, egress and the performance of their duties. The Declarant or the Association may hereafter grant other or additional similar easements for utility purposes and

for other purposes, including, but not limited to, such easements as may be required to construct, keep and maintain improvements upon the Common Areas, for the benefit of the Property, over, under, along and on any portion of said Common Areas, and each Unit Owner hereby grants the Declarant and the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of such Unit Owner, such instruments as may be necessary to effectuate the foregoing. Easements are also hereby declared and granted to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, flues, shafts, conduits, public utility lines, components of the communications systems, if any, or structural components, which may run through the walls of a Unit, whether or not such walls lie in whole or in part within the Unit boundaries.

(c) Basements to Run with Land. All easements and rights described herein are easements appurtenant running with the land, and so long as the Property is subject to the provisions of this Declaration, shall remain in full force and effect, and shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Unit Owner, mortgagee and other person having an interest in the Property, or any part of portion thereof.

4.3. Storage and Parking Areas.

(a) Storage Areas. Each Unit Owner shall be responsible for all loss, costs or damages connected with his personal property located in any storage areas of the Common Areas.

(b) Parking Areas. The Parking Areas are a part of the Common Areas. All Parking Area entrances, exits, fixtures, equipment and associated facilities are part of the Common Areas. The Parking Area shall be allocated to the respective Unit Owners or as general unassigned parking in such manner and subject to such rules and regulations as the Association may prescribe.

(c) Boat Docks. In the event boat docks are installed or are appurtenant to the Property, such boat docks, and all rights relative to their installation and use, shall be deemed to be a part of the Common Area and shall be allocated to the respective Units or shall be held for general unassigned use in such manner, for such charge and subject to such rules and regulations as the Association may prescribe from time to time.

4.4. Use of Common Areas.

(a) General. Each Unit Owner shall have the right to use the Common Areas (except the Limited Common Areas) in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment

of the respective Unit owned by such Unit Owner. Such right to use the Common Areas shall extend to not only each Unit Owner, but also to his agents, servants, tenants, family members, invitees and licensees. However, each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Areas, if any, serving such Unit alone and the exclusive use together with the Unit Owners of other Units of the Limited Common Areas serving only those Units. Such rights to use the Common Areas and the Limited Common Areas, including the Parking Area, shall be subject to and governed by the provisions of the Act, Declaration, and rules and regulations of the Association. In addition, the Association shall have the authority to lease, grant concessions or grant easements with respect to parts of the Common Areas, subject to the provisions of the Declaration. All income derived by the Association from leases, concessions or other sources shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions or regulations as the Association may adopt or prescribe.

(b) Guest Privileges. The rights to use the Common Areas shall extend to the Unit Owner and the members of the immediate family and authorized guests and other authorized Occupants and visitors of the Unit Owner, subject to reasonable rules and regulations with respect thereto. The use of the Common Areas and the rights of the Unit Owners with respect thereto shall be subject to and governed by the provisions of the Act, this Declaration and the rules and regulations of the Association as may be imposed from time to time.

(c) Disclaimer of Bailee Liability. Notwithstanding anything to the contrary contained in this Declaration, none of the Board, the Association, any Unit Owner, or the Declarant shall be considered a bailee of any personal property stored in the Common Areas (including vehicles parked in the Parking Areas), whether or not exclusive possession of any particular areas shall be given to any Unit Owner for storage purposes, and none shall be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence.

4.5. Maintenance, Repairs and Replacements.

(a) By the Association. Except as specifically provided otherwise herein, the Association, at its expense, shall be responsible for the maintenance, repair and replacement of the exterior portion of all Units and also those portions, if any, of each Unit which contribute to the support of the Buildings excluding, however, interior wall, ceiling and floor surfaces. In addition, the Association shall maintain, repair and replace all pipes, wires, conduits, ducts, flues, shafts and other facilities for the furnishing of ventilating or utility services which may be located within the Unit boundaries and forming part of any system servicing more than one Unit, as specified in

Section 2.2 hereof, exclusive of any portions of the foregoing which may be located at or beyond the wall outlets, or which may be the responsibility of an individual Unit Owner under subparagraph (b) below, or any other provision of this Declaration. Maintenance, repairs and replacements of the Common Area and Limited Common Area (except as specifically provided otherwise herein) shall be furnished by the Association as part of the Common Expenses, subject to the By-Laws or rules and regulations of the Association.

(b) By the Unit Owner. Except as otherwise specifically provided in paragraph (a) above, each Unit Owner shall furnish and be responsible for, at his own expense:

(i) All of the cleaning, maintenance, repairs and replacements within his own Unit and of the inside and outside of all doors, windows, frames and screens appurtenant thereto, and all internal fixtures and equipment of such Unit such as refrigerators, ranges, and other kitchen appliances, lighting fixtures and other electrical fixtures, plumbing fixtures or installations, and any pipes, ducts, flues, shafts, electrical wiring and conduits, and the entire individual heating, cooling, and ventilating system or equipment servicing only such Unit (whether situated within or outside of said Unit); provided, however, that such maintenance, repairs and replacements as may be required for the bringing of water, gas and electricity to the Units, shall be furnished by the Association as part of the Common Expenses; and provided further, that the Association may provide, by its rules and regulations as may be imposed from time to time, for ordinary maintenance and minor repairs and replacements to be furnished to Units and appliances therein by building personnel as a Common Expense or as user charges pursuant to Section 6.11 hereof.

(ii) All the decorating within his own Unit as may be required from time to time, including, but not limited to, painting, wallpapering, washing, cleaning, paneling, floor-covering, draperies, window shades, curtains, and lighting. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceiling of his Unit, and each Unit Owner shall maintain such interior surfaces in good condition at his sole expense. Such maintenance and use shall be subject to the rules and regulations of the Association as may be imposed from time to time. Except with respect to improvements in place as of the date of the recording of this Declaration, each Unit Owner who shall elect to install in any portion of his Unit (other than in bath and powder rooms) hard surface floor covering (i.e., tile, slate, ceramic, parquet, etc.) shall be first required to install a sound absorbent undercushion of such kind and quality as

to prevent the transmission of noise to the Unit below, if any, and shall obtain approval of the Association prior to making such installation. If such prior approval is not so obtained, the Association may, in addition to exercising all the other remedies provided for in this Declaration for breach of any of the provisions hereof, require such Unit Owner to cover all non-conforming work with carpeting, or may require removal of such non-conforming work, at the expense of the offending Unit Owner. The interior and exterior surfaces of all windows forming part of a perimeter wall of a Unit shall be cleaned or washed at the expense of each respective Unit Owner. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades or other items visible on the exterior of the Building, shall be subject to the rules and regulations of the Association as may be imposed from time to time.

(iii) All of the maintenance, repair and replacements of the Limited Common Areas benefiting his Unit, in whole or in part, except to the extent otherwise directed by the Association or otherwise provided herein, shall be performed by the respective Unit Owner. At the discretion of the Association, the Association may perform, or cause to be performed, such maintenance, repairs and replacements of the Limited Common Areas and the cost thereof shall be assessed in whole or in part to Unit Owners benefited thereby, and further, at the discretion of the Association, the Association may direct such Unit Owners, in the name and for the account of such Unit Owners, to arrange for such maintenance, repairs and replacements, to pay the cost thereof with the funds of the Unit Owner, and to procure and deliver to the Association such lien waivers and contractor's or subcontractor's sworn statements as may be required to protect the Property from all mechanics or materialmen's lien claims that may arise therefrom.

(c) Nature of Obligations. Nothing herein contained shall be construed to impose a contractual liability upon the Association for maintenance, repair and replacement, and the Association's liability in this respect shall be limited to damages resulting from gross negligence or fraud. The respective obligations of the Association and Unit Owners set forth in this Declaration shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair or replacement is required to cure a latent or patent defect in material or workmanship in the construction of the Buildings, nor because they may or may not become entitled to proceeds under policies of insurance. In addition, and notwithstanding anything herein to the contrary, no Unit Owner shall have a claim against the Board, the Association or the Declarant for any work (such as exterior repair, or repair of the Common Areas), ordinarily the responsibility of someone other than the Unit Owner, but which

the Unit Owner himself has performed or paid for, unless the same shall have been agreed to in advance by the Association or Declarant.

4.6. Additions, Alterations or Improvements.

(a) The Association may authorize and charge as Common Expense (or in the case of Limited Common Areas may charge the Unit Owners benefited thereby) additions, alterations, or improvements to the Common Areas. The cost of any such work to the Common Areas may be paid by means of a special assessment.

(b) No additions, alterations or improvements shall be made by a Unit Owner to any part of the Common Areas without the prior written consent of the Association, except original construction of Buildings and Common Areas by Declarant. No additions, alterations or improvements shall be made by a Unit Owner to his Unit where such work affects the safety or structural integrity of the Buildings, alters the exterior appearance (including the color of any part thereof), reduces the value thereof or impairs any easement granted hereunder, without the prior written consent of the Association and of all Unit Owners; provided, however, that as to any such matters which do not affect the structural integrity or safety of the Project, the consent of only a three-quarters Majority of the Unit Owners shall be necessary. In the event any such consent is obtained, it may be conditioned upon the Unit Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration or improvements, subject to such standards as the Association may from time to time set, or (ii) to pay to the Association from time to time the additional cost of maintenance and/or insurance as a result of the addition, alteration or improvement. If an addition, alteration or improvement is made by a Unit Owner without the prior required written consent, then the Association may, in its discretion, take any of the following actions:

- (1) Require the Unit Owner to remove the addition, alteration or improvement and restore the Property to its original condition, all at the offending Unit Owner's expense; or
- (2) If the Unit Owner refuses or fails to properly perform the work required under subparagraph (1) above, the Association may cause such work to be done and may charge the Unit Owner for the cost thereof as determined by the Association; or
- (3) Upon receipt of the required approval, if any, necessary from the other Unit Owners, ratify the action taken by the Unit Owner, and the Association may (but shall not be required to) condition such ratification upon the same conditions which might have been imposed upon the giving of prior consent under this Section.

4.7. Negligence of Unit Owner. If, due to the act or omission of a Unit Owner, a member of his family or a household pet, guest or other Occupant or visitor of such Unit Owner, damage shall be caused to the Common Areas or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Association.

4.8. Joint Facilities. To the extent that equipment, facilities and fixtures within any Unit or Units shall be connected to similar equipment, facilities or fixtures affecting or serving other Units or the Common Areas, then the use thereof by the individual Unit Owners shall be subject to the rules and regulations of the Association as may be imposed from time to time. The authorized representatives of the Association shall be entitled to reasonable access to the individual Units as may be required in connection with inspection, maintenance, repairs or replacements of or to the Common Areas or any equipment, facilities or fixtures affecting or serving other Units or the Common Areas.

ARTICLE V

ADMINISTRATION

5.1. Administration of Property. The direction and administration of the Property shall be vested in the Association. The affairs and business of the Association shall be managed by the Board, which shall initially consist of three (3) persons. At such time as there shall be no Class B members, the Board shall be expanded to consist of five (5) persons. All directors shall be elected in the manner hereinafter set forth; provided, however, that, irrespective of any contrary provision of this Declaration, for a period commencing on the date this Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of voting members, the Declarant shall have the right to designate and select the three (3) persons who shall serve as members of the Board during such interim period and shall exercise the powers of the Board as provided in the Act. This initial Board shall consist of George R. Nichols, Garry B. Lindboe and Vincent W. Todd. Except for directors so designated by the Declarant, each member of the Board shall be elected from among the Unit Owners; provided, however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any one or more designated agents of such corporation, partnership, trust, or other legal entity shall be eligible to serve as a member of the Board; provided further, that with respect to any entity other than Declarant, any such agent must reside on the Property. If such a director fails to meet such qualifications during his term, he shall thereupon cease to be a director, and his place on the Board shall be deemed vacant.

5.2. Association. The Association has been formed, prior to the recording hereof, as a not-for-profit corporation under the Indiana General Not-for-Profit Corporation Act, having the name BACKBAY HOMEOWNERS ASSOCIATION, INC., and shall be the governing body for all of the Unit Owners for the maintenance, repair, replacement, administration and operation of the Property. 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 Unit Owners in accordance with the provisions contained herein. The Association shall have two (2) classes of members:

(a) Every Unit Owner shall be a Class A member of the Association. Class A members shall be entitled to one vote for each Unit in which they hold the interest required for membership. In the event that more than one person, group of persons or an entity is the record owner of a fee interest in any Unit, then the membership vote appurtenant to such Unit shall be exercised as they among themselves determine, but in no event shall more or less than one full vote be cast with respect to any Unit.

(b) There shall be 164 Class B memberships in the Association, all of which shall be issued to and held by the Declarant, its assignees or its nominee. The then holder of each Class B membership shall be entitled to one vote (164 total) for each Class B membership held by it. Each Class B membership shall lapse and become a nullity on the first to happen of the following events:

(i) thirty (30) days following the date upon which the total authorized number of votes for Class A memberships equal 132; or

(ii) January 1, 1992; or

(iii) upon surrender of said Class B memberships by the then holder thereof for cancellation on the books and records of the Association.

Each Unit Owner shall be a Class A member of the Association so long as he shall be a Unit Owner, and such membership shall automatically terminate when he ceases to be a Unit Owner and upon the transfer of his ownership interest the new Unit Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. The Association may issue non-transferable certificates evidencing membership therein and shall not have a seal. The fiscal year of the Association shall be the calendar year.

5.3. Voting Rights. There shall be one person with respect to each Class A or Class B membership who shall be entitled to vote at any meeting of the members of the Association. Such person shall be known and hereinafter referred to as a "voting member." With respect to all Class A memberships, such voting

member may be the Unit Owner or one of a group who compose the Unit Owner of a Unit Ownership or be some person designated by such Unit Owner to act as proxy on his or their behalf. The voting member must, in the case of a Class A member (but not in the case of a Class B member), be an Occupant. Such designation shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator or by written notice to the Board by the designator. Any or all Unit Owners may be present at any meeting of the voting members but only the voting member may vote or take any other action as a voting member either in person or by proxy. The person or persons designated by the Declarant shall be the voting member with respect to any Class A or Class B memberships held by the Declarant.

5.4. Meetings of the Voting Members of the Association:

(a) Quorum and Vote. Meetings of the voting 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 voting members having twenty-five percent (25%) of the total votes in both Class A and Class B memberships respectively shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting members at which a quorum is present at the commencement of the meeting upon the affirmative vote of the voting members having a majority of the total votes present at such meeting; provided, however, the following matters shall require the approval of voting members having not less than two-thirds (2/3) of the total votes of both Class A and Class B memberships respectively:

- (i) the merger or consolidation of the Association;
- (ii) the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the assets and property of the Association;
- (iii) the purchase, sale or lease of a Unit or other real estate by the Association; or
- (iv) a decision to rebuild in the event of complete destruction of all of the Buildings, as determined pursuant to Section 8.2 hereof.

(b) Annual Meeting. There shall be an annual meeting of the voting members on the second Monday of March of each year at 7:30 P.M., or at such other reasonable time or date as may be designated by written notice of the Board delivered to the voting members.

(c) Special Meetings. Special meetings of the voting members may be called at any time for the purpose of considering

matters which, by the terms of this Declaration, require the approval of all or some of the voting members, or for any other reasonable purpose. Special meetings may be called by written notice authorized by a majority of the Board, the President of the Association or by ten percent (10%) of the voting members and delivered no less than ten (10) days and no more than thirty (30) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

5.5. Notice of Meetings. Except as otherwise provided herein, notices of meetings of the voting members shall be either delivered personally or sent by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Unit of the Unit Owner with respect to which such voting right appertains if no address has been given to the Board; provided that any such notice shall be delivered no less than ten (10) days and no more than thirty (30) days prior to the date fixed for such meeting and shall state the date, time, place and purpose of such meeting. Notice of any meeting may be waived by any person entitled to notice thereof who files a written waiver of such notice with the Secretary of the Association prior to the commencement thereof. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

5.6. Board of Directors:

(a) The above-described interim Board shall serve without compensation. Such interim Board shall serve for a period commencing on the date this Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of voting members held as provided in Section 5.4(b) hereof. At the initial meeting of voting members held as provided in Section 5.4(b) hereof, the voting members shall elect the Board consisting of three (3) 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 and succeeding annual meetings shall serve until the following annual meeting. At the first annual meeting after there are no longer any Class B memberships outstanding, the number of directors shall be expanded to five (5) and five (5) Board members shall be elected. The three (3) persons receiving the highest number of votes at this annual meeting shall be elected to the Board for a term of two (2) years and the two (2) persons receiving the next highest number of votes shall be elected to the Board for a term of one (1) year. The election and term of office as between candidates receiving the same number of votes shall be determined by lot. Upon the expiration of the terms of office of the Board members so elected at this annual meeting

and thereafter, successors shall be elected for a term of two (2) years each. The voting members having at least two-thirds (2/3) of the total votes may from time to time thereafter 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 (i) such number shall not be less than three (3); (ii) the terms of at least one-third (1/3) of the persons on the Board shall expire annually; and (iii) no Board member shall be elected for a term of more than two (2) years but Board members may succeed themselves. Members of the Board shall receive no compensation for their services. Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by majority vote of the remaining Board members, except that a vacant position of the Board last filled by a person appointed by the Declarant shall be filled by a person appointed by the Declarant. Any director so elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the director he succeeds. Except as otherwise provided in this Declaration, the business of the Association shall be managed by the Board and the Board shall act by majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt. A majority of the total number of members of the Board shall constitute a quorum.

(b) The Board shall elect from among its members for the term of one (1) year (i) a President who shall preside over both its meetings and those of the voting members, and who shall be the chief executive officer of the Board and the Association and who shall be designated to mail and receive all notices and execute all amendments hereto as provided herein and in the Act; (ii) a Secretary who shall keep the minutes of all meetings of the Board and of the voting members and who shall, in general, perform all the duties incident to the office of the Secretary; (iii) a Treasurer to keep the financial records and books of account; and (iv) such additional officers as the Board shall see fit to elect. Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of the Board. Any director elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds. Any officer may be removed for cause at any time by a vote of not less than two-thirds (2/3) of the total membership of the Board at a special meeting thereof. The duties of the President and the Secretary shall not be performed by the same person.

(c) Except for directors designated by Declarant pursuant to Section 5.1 hereof, 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 5.6(a) hereof, by affirmative vote of all 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 who is removed may be elected by the voting members at the same meeting or any subsequent meeting called for that purpose.

(d) Written notice stating the place, date and hour of any meeting of the Board shall be delivered to each member of the Board not less than five (5) days prior to the date of such meeting. The purpose for which the meeting is called shall be stated in the notice.

(e) All meetings of the Board shall be open to attendance by any Unit Owner or Occupant.

(f) Any action required or permitted to be taken at any meeting of the Board 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.

5.7. General Powers and Duties of the Board. The Board shall exercise for and on behalf of the Association the following general powers and duties and shall be subject to the following limitations:

(a) The Board shall provide for the operation, maintenance, repair, replacement and improvement of the Common Areas, as provided for herein. The Board may elect to engage the services of an experienced professional manager to manage the portions of the Property for which the Board is responsible pursuant to this Declaration; provided, however, that any agreement for professional management shall provide for termination by either party without cause and without the payment of a termination fee upon thirty (30) days or less written notice, shall be for a term not to exceed one (1) year and shall be renewable by consent of the Association and the manager.

(b) The Board shall have the power and duty to provide for the designation, hiring and removal of employees and other personnel, including attorneys 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 the manager (and any such employees or other personnel as may be employees of the manager.)

(c) The Board, or its agents, upon reasonable notice, may enter any Unit when necessary in connection with any maintenance or construction for which the Association is responsible or to make emergency repairs as may be necessary to prevent damage to the Common Areas or to any other Unit or Units.

(d) The Board shall prepare, adopt and distribute to the Unit Owners the annual budget for the Association and provide the manner of assessing and collecting from the Unit Owners their respective shares of the Common Expenses.

(e) All checks, 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 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. A manager of the Property may be authorized to execute those documents required to enable it to perform its duties under its management agreement.

(f) The Board by vote of at least two-thirds (2/3) of its members, and without approval from any of the voting members of the Association except as hereinafter set forth, may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Unit Owners and occupants of the Property. Written notice of such rules and regulations, together with any amendments thereto, shall be given to all voting members.

(g) Prior to the election by voting members of the first Board, the Declarant shall, subject to the terms of this Declaration, have the authority to lease or to grant licenses, concessions and contracts with respect to any part of the Common Areas, including without limitation, leases or licenses relating to the Parking Area and any boat docks, all upon such terms as the Declarant deems appropriate. Upon election of the first Board, and thereafter, the Board by a vote of at least two-thirds (2/3) of the Board members shall have the same authority.

(h) Nothing herein contained shall be construed to give the Board authority to conduct an active business for profit on behalf of the Unit Owners or any of them.

(i) The Board shall have the power to bid for and purchase any Unit Ownership (or interest therein) at a sale pursuant to a mortgage foreclosure, or a foreclosure of the lien for Common Expenses under the Act, or at a sale pursuant to an order or direction of a court, or other involuntary sale, upon the consent or approval of two-thirds (2/3) Majority of the Unit Owners, which consent shall set forth a maximum price which the Association or its duly authorized representatives are authorized to bid and pay for said Unit Ownership or interest therein. The Board shall have the power to convey, encumber, lease or otherwise deal with Units so conveyed to or acquired by the Association.

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(j) The Board shall have the power to exercise all other powers and duties of the Board or Unit Owners as a group referred to in this Declaration, the Articles or the Act;

(k) Except as otherwise provided herein, the Association for the benefit of all the Unit Owners shall acquire and shall pay out of the maintenance fund hereinafter provided for, the following:

(i) Operating expenses of the Common Areas, including water, electricity, gas and telephone and other necessary utility service for the Common Areas and (if not separately metered or charged) for the Units;

(ii) Services of any person or firm to act on behalf of the Unit Owners in connection with real estate taxes and special assessments on the Unit Ownerships, and in connection with any other matter where the respective interests of the Unit Owners are deemed by the Board to be similar and nonadverse to each other. The cost of such services shall be Common Expenses;

(iii) Painting, cleaning, tuckpointing, maintenance, decorating, repair and replacement of the Common Areas (but not including the interior surfaces of the Units and of the perimeter doors appurtenant thereto, and repair of windows and frames and screens which the Unit Owners shall clean, maintain and repair) and such furnishings and equipment for the Common Areas as the Board shall determine are necessary and proper;

(iv) Any other materials, supplies, utilities, furniture, equipment, labor, services, maintenance, repairs or structural alterations which the Association is required to secure or pay for, pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the maintenance and operation of the Property as a first-class condominium development or for the enforcement of the restrictions contained herein;

(v) Any amounts necessary to discharge any mechanic's lien or other encumbrance levied against the entire Property or any part thereof which may in the opinion of the Board constitute a lien against the Property or against the Common Areas, rather than merely against the interests therein of particular Unit Owners. Where one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by reason of said lien or liens shall be specifically assessed to said Unit Owners;

(vi) Maintenance and repair of any Unit if such maintenance or repair is necessary, in the opinion of the Board, to protect the Common Areas or any other portion of the Buildings, and if a Unit Owner of any Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to said Unit Owner, provided that the Board shall levy a special assessment against such Unit for the cost of said maintenance or repair.

(vii) The Board's powers herein enumerated shall be limited to the extent that the Board shall have no authority to acquire and pay for out of the maintenance fund any structural alterations of, capital additions to, or capital improvements of the Common Areas (A) unless for purposes of replacing or restoring portions of the Common Areas in accordance with all of the provisions of this Declaration; (B) unless required for emergency repair, protection or operation of the Common Areas; (C) unless the total cost thereof is less than Ten Thousand Dollars (\$10,000.00); or (D) unless in the event an expenditure in excess of Ten Thousand Dollars (\$10,000.00) is required, the prior written approval of two-thirds (2/3) Majority of the Unit Owners shall be obtained.

(1) Neither the Declarant nor the Board shall have any authority to bind the Association either directly or indirectly to any management contract, employment contract, lease of Common Areas, Parking Areas, or recreational facilities or any contract or lease, including franchises and licenses, to which Declarant, or any affiliate of Declarant, is a party, unless the Association shall have a right of termination thereof which is exercisable without penalty at any time upon thirty (30) days written notice to the other party.

5.8. Insurance.

(a) The Association shall have the authority to and shall to the extent reasonably available obtain insurance for the Property as follows:

(i) Insurance on the Property, including the Units and the Common Areas, against loss or damage by fire and against loss or damage by risks now or hereafter embraced by standard extended coverage and vandalism and malicious mischief endorsements, an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and, if required by Federal National Mortgage Association ("FNMA"), Demolition and Contingent Liability from Operation of Building Laws Endorsements, an Increased Cost of Construction Endorsement, an Earthquake Damage Endorsement and other endorsements as necessary;

(ii) Insurance on the Property (exclusive of the land, excavations, foundations and footings) against all loss or damage from explosion of boilers, heating apparatus, pressure vessels and pipes in, on or along the Property, without coinsurance clauses if so available and in such amounts as the Board shall deem desirable;

(iii) Comprehensive public liability and property damage insurance against claims for personal injury, death or property damage suffered by the public or by any Unit Owner, occurring in, on or about the Property or upon, in or about the streets and passageways and other areas adjoining the Property, such public liability and property damage insurance to afford protection to such limits as the Board shall deem desirable (but in no event for less than One Million Dollars (\$1,000,000) with respect to liability for personal injury or property damage arising out of a single accident), including protection against water damage liability, liability for non-owned and hired automobiles and liability for property of others;

(iv) Such workmen's compensation insurance as may be necessary to comply with applicable laws;

(v) Employer's liability insurance in such amount as the Board shall deem desirable;

(vi) A fidelity bond indemnifying the Association, the Board and the Unit Owners for loss of funds resulting from fraudulent or dishonest acts of any employee or officer of the Association or of any other person handling the funds of the Association or the Unit Owners;

(vii) Such other insurance (including insurance with respect to officers' and directors' liability) in such reasonable amounts as the Board shall deem desirable.

The premiums for the above-described insurance, except as otherwise provided in this Section 5.8, shall be Common Expenses. Each Unit Owner shall be deemed to have delegated to the Association the exclusive right to adjust with the insurance companies all losses under the above-described insurance.

(b) All insurance provided for in this Section 5.8 shall be obtained under valid and enforceable policies issued by insurers of recognized responsibility who are authorized to do business in the State of Indiana.

(c) All policies of insurance of the character described in clause (i) of Paragraph (a) of this Section 5.8 (i) shall name as insured, the Declarant, so long as it has an insurable interest in the Property, and the members of the Board as trustees for the Unit Owners in the percentages established in

Exhibit "B" to this Declaration as the respective interests of all such insureds may appear; (ii) shall be without contribution as respects other such policies of insurance carried individually by the Unit Owners or their respective mortgagees whether such other insurance also covers their respective Units or the additions and improvements made by such Unit Owners to their respective Units; (iii) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement therefor, such option shall not be exercisable without the prior written approval of the Association or if it is in conflict with any requirement of law; (iv) shall provide that coverage may not be prejudiced by any act or omission of any Unit Owner when such act or omission is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control; and (v) shall contain an endorsement to the effect that such policy shall not be substantially modified or terminated without at least thirty (30) days prior written notice to all insureds, including the mortgagee of each Unit and all servicers for FNMA. Policies of insurance of the character described in clause (i) of paragraph (a) of this Section 5.8 may contain an endorsement extending coverage so as to include the payment of Common Expenses with respect to damaged Units during the period of reconstruction thereof.

(d) All policies of insurance of the character described in clauses (iii), (iv), (v) and (vii) of paragraph (a) of this Section 5.8 shall name as insureds the Unit Owners, their spouses, the Association, Board members, the managing agent (including the agents and employees of the Association and managing agent), and the Declarant in its capacity as a Unit Owner and Board member. In addition, all policies of insurance of the character described in clause (iii) of paragraph (a) of this Section 5.8 shall contain an endorsement whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Unit Owners and Occupants, and also waives any defenses based on co-insurance or on proration arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties. The Fidelity bond(s) described in clause (vi) of paragraph (a) of this Section 5.9 shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses for the Property, including reserves, unless a greater amount is required by FNMA, shall contain waivers of any defenses based upon the exclusion of persons who serve without compensation from any definition of "employee" and shall provide that they may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to all insureds, including the mortgagee of each Unit and the servicers for FNMA.

(e) The Association, for the benefit of the Unit Owners and the mortgagee of each Unit, shall pay the premiums on the policies of insurance described in paragraph (a) of this Section 5.8 at least thirty (30) days prior to the expiration date of the respective policies and shall notify the mortgagee of each Unit of such payment within ten (10) days after the date on which payment is made.

(f) The loss, if any, under any policies of insurance of the character described in clause (i) in paragraph (a) of this Section 5.8 shall be payable, and the insurance proceeds paid on account of any such loss shall be paid to the members of the Board, as trustees for each of the Unit Owners in their respective percentages of ownership in the Common Areas as established in this Declaration, which insurance proceeds, less the actual costs, fees and expenses, if any, incurred in connection with the adjustment of the loss, shall be applied to the payment of the cost of restoring the Property to substantially the same condition in which it existed immediately prior to such damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before, free from vendor's, mechanic's, materialman's and other similar liens. The Association shall notify the appropriate servicers for FNMA whenever damage to a Unit covered by a mortgage owned by FNMA exceeds One Thousand Dollars (\$1,000) or damage to the Common Areas exceeds Ten Thousand Dollars (\$10,000).

(g) Each Unit Owner shall be responsible for his own insurance on the contents of his own Unit, including the fixtures, floor, ceiling and wall coverings, furnishings and personal property therein, and his personal property stored elsewhere on the Property, and his personal liability to the extent not covered by the policies of liability insurance obtained by the Association for the benefit of all of the Unit Owners as above provided. All policies of casualty insurance carried by each Unit Owner shall be without contribution by the issuers of the policies of casualty insurance obtained by the Association for the benefit of all of the Unit Owners as above provided.

(h) Each Unit Owner shall be required to report all additions or alterations to his Unit promptly in writing to the Board, without prior request from the Board or the management agent, and to reimburse the Association for any additional insurance premiums attributable thereto, and he shall be responsible for any deficiency in any insurance loss recovery resulting from his failure to so notify the Board. The Association shall not be responsible for obtaining insurance on such additions, alterations or improvements unless and until such Unit Owner shall make such report and request the Association in writing to obtain such insurance, and shall make arrangements satisfactory to the Board for such additional premiums; and upon the failure of such Unit Owner so to do, the Association shall not be obligated to apply any insurance proceeds to restore the

affecteu Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. "Additions" or "alterations" shall mean property attached to the Unit and not readily removable without damage to the Unit, including, but not limited to, carpeting, special floor covering, special wall covering and paneling. The insurance coverage described in this paragraph (h) of Section 5.8 shall not be deemed to include personal property owned by the Unit Owner and not attached to the Unit.

(i) Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner, the Association, its officers, members of the Board, Declarant, the manager of the Property, if any, and their respective employees and agents, for any damage to the Common Areas, the Units, or to any personal property located in the Units or Common Areas caused by fire or other casualty to the extent that such damage is covered by fire or other form of casualty insurance.

5.9. Cancellation of Insurance. The Association shall be responsible, in the event any insurance required under Section 5.8(a)(i), (ii) or (iii) is cancelled, for serving notice of such cancellation upon any person insured thereunder.

5.10. Liability of the Association and its Board and Officers. Neither the Association, the members of the Board nor the Officers of the Association shall be liable to the Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Board members and officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Unit Owners shall indemnify and hold harmless each of the members of the Board and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Association, Board and officers of the Association on behalf of the Association or Unit Owners or arising out of their status as Board members or officers unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid or received in settlements) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any member of the Board or officer of the Association may be involved by virtue of such persons being or having been such member or officer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such member or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is no reasonable ground for such

persons being adjudged liable for gross negligence or fraud in the performance of his duties as such member or officer. It is also intended that the liability of any Unit Owner arising out of any contract made by or other acts of the Association, Board or officers of the Association, or out of the aforesaid indemnity in favor of the members of the Board and officers of the Association, shall be limited to such proportion of the total liability thereunder as his percentage interest in the Common Areas bears to the total percentage interest of all Unit Owners in the Common Areas. Every agreement made by the Association or by a manager on behalf of the Unit Owners shall provide that the Association or the manager, as the case may be, are acting only as agents for the Unit Owners, and none of the Board, officers of the Association or the manager shall have any personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Areas bears to the total percentage interest of all Unit Owners in the Common Areas.

ARTICLE VI

COMMON EXPENSES - MAINTENANCE FUND

6.1. Annual Accounting. Annually after the close of each calendar year of the Association and prior to the date of the annual meeting of the Association, the Association shall cause to be prepared and furnished each Owner a financial statement prepared by a certified public accounting firm then serving the Association, which statement shall include a balance sheet and shall show all receipts and expenses received, incurred or paid during the preceding calendar year.

6.2. Proposed Annual Budget. Annually before the date of the annual meeting of the Association, the Association shall cause to be prepared a proposed annual budget for that calendar year estimating the total amount of the Common Expenses for the year and shall cause a copy of such proposed budget to be mailed or delivered to each Unit at least two (2) weeks prior to the annual meeting. The annual budget shall be submitted to the members at the annual meeting of the Association for adoption, and if so adopted, and until superseded or amended, shall be the basis for the Regular Assessments for the ensuing or current fiscal years. At such annual meeting of the members, the budget shall be approved in whole or in part, or amended in whole or in part by a majority of the votes cast; provided, however, that in no event shall the annual meeting be adjourned without or until an annual budget is approved.

The annual budget, the Regular Assessment and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessment shall, in addition to establishing a maintenance fund for the usual and ordinary repair

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expenses of the Common Areas, also include the establishment of a replacement reserve fund for capital expenditures and replacement of the Common Area and of Units to the extent such capital expenditures and replacement are the obligation of the Association, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Area. Such replacement reserve fund for capital expenditures and replacement of the Common Area shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana, selected from time to time by the Board.

The failure or delay of the Association to prepare a proposed annual budget and to furnish a copy thereof to each Unit shall not constitute a waiver or release in any manner of the obligations of the Unit Owners to pay the Common Expenses as herein provided whenever determined.

6.3. Regular Assessments. The annual budget as adopted shall be based on the estimated cash requirement for the Common Expenses in the year as set forth in said budget and shall contain the proposed assessment against each Unit which shall be assessed to the Unit Owners according to each Unit's percentage ownership, from time to time, in the Common Areas. Immediately following the adoption of the annual budget, written notice of the amount of such assessment against each Unit (herein called the "Regular Assessment") shall be mailed or delivered to each Unit. The aggregate amount of the Regular Assessment shall be equal to the total amount of expenses provided and included in the final annual budget, including the reserve fund as hereinabove provided. The Regular Assessment against each Unit shall be paid in advance in equal monthly installments, commencing on the first day of January of such calendar year, and on the first day of each calendar month thereafter through and including the following December 1. Payment of the monthly installments of the Regular Assessment shall be made to the Association or as otherwise directed by the Board. The Regular Assessment for the year shall become a lien on each separate Unit as of January 1 of each calendar year. With respect to the annual budget and Regular Assessment with respect thereto, the Board may elect to use any reasonable fiscal year or longer period in lieu of a calendar year.

6.4. Special Assessments. From time to time, Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may be deemed necessary by the Association. In such event, the Board shall be authorized to adopt a resolution to make such expenditures and shall have the full right, power and authority to make a special assessment upon each Unit which shall be assessed to the Unit Owners according to each Unit's percentage ownership, from time to time, in the Common Areas, and which shall become a lien on such Unit upon approval of such resolution by two-thirds (2/3) of the voting members of the Association at a special meeting of Owners duly called in accordance with the By-laws for the purpose

of approving or rejecting such resolution (herein called "Special Assessment").

6.5. Regular Assessments Prior to Completion of Construction of all Units. During the period that Declarant is constructing Units within the Property, it is difficult to accurately allocate the Common Expenses to the individual Units. The purpose of this section is to provide the method for the payment of the Common Expenses during such period to enable the Association to perform its duties and function. Accordingly, and notwithstanding any other provision contained in this Declaration, the Articles, or otherwise, during the period that Declarant is constructing Units on the Real Estate, the annual budget and all Regular Assessments and Special Assessments shall be established by the Board without any meeting or concurrence of the members of the Association or the Unit Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Section 6.5. Further, during such period the Association will enter into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) (hereinafter referred to as "Management Agent" or "Managing Agent"). So long as such management agreement remains in effect, the Common Expenses or Regular Assessments shall be paid by the Unit Owners to the Management Agent. In return for such payments, the Management Agent shall guarantee that until the earlier of (1) the termination of said management agreement, or (2) December 31, 1982, the monthly Regular Assessment shall not exceed the amounts set forth in Exhibit B as initially filed with this Declaration (the "Guaranteed Charge"). After December 31, 1982 (assuming that said management agreement has not been terminated), and so long thereafter as said management agreement remains in effect, the Management Agent shall guarantee that the monthly Regular Assessment shall not exceed the amount of the Guaranteed Charge, plus an increase thereof not to exceed the increase in the Consumer Price Index (all items - all cities) published by the United States Government over such index as it existed in the month of December, 1982. The amount to be added to the Guaranteed Charge shall be an amount equal to the same percentage of the Guaranteed Charge as the percentage increase in said Consumer Price Index. Such adjustments to the Guaranteed Charge shall be made annually on January 1 of each year so long as said management agreement remains in effect and the Management Agent continues to perform such functions. Such monthly charge shall, during such period, be the Owner's sole obligation for his share of Common Expenses and shall be the Owner's entire Regular Assessment. The Management Agent shall be responsible for any deficit during such guaranteed period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations, which expenditures shall be covered through Special Assessments. It is understood that during this period not less than eight percent (8%) of the Regular Assessment shall be designated as a reserve fund for capital expenditures and replacement of Common Areas and of those portions of the Units which are the obligation of the Association to maintain, repair and

replace on a periodic basis. That portion of the Regular Assessment collected by the Management Agent during this period which is designated as a reserve fund shall be held by the Association and if required, may be applied to the replacement of Common Areas or those portions of Units obligated to be repaired and replaced by the Association. To the extent that such reserve fund is not so applied, the balance thereof shall be retained by the Association. Payment of the Regular Assessment to the Management Agent with respect to each Unit shall commence on the date of conveyance by Declarant to each new Unit Owner. The first payment shall be payable on the date of conveyance prorated to the first day of the calendar month next ensuing. Thereafter, payment of the Regular Assessment shall be paid the first day of each calendar month.

6.6. Uniform Rates of Assessment. Except as specifically provided otherwise herein, both Regular and Special Assessments shall be fixed for each Unit at amounts which are in the same ratios as each Unit's percentage ownership, from time to time, in the Common Areas.

6.7. Failure of Unit Owner to Pay Assessments. No Unit Owner may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expenses or toward any other expense lawfully determined by waiver of the use or enjoyment of the Common Area or by abandonment of the Unit belonging to him. Each Unit Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Unit Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Unit Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Unit may be filed and foreclosed by the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of the Unit Owner to make timely payments of any Regular Assessment or Special Assessment when due, the Association may, in its discretion, accelerate the entire balance of unpaid assessments with respect to such Unit for the current year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessments, the Unit Owner and any Occupant of the Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Unit and collecting the rentals and other profits therefrom for the benefit of the Association and to be applied against the unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Association shall be entitled to recover from the Unit Owner of the respective Unit all costs and expenses of such action incurred by the Association (including, but not limited to, reasonable attorneys' fees) and interest from the date such assessments were due until paid at the highest rate permitted by law. In the event

there exists more than one Unit Owner of any Lot, the liability of all Unit Owners under this Declaration shall be joint and several.

6.8. Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration or the Articles, any valid sale or transfer of a Unit to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a valid conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior Unit Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been extinguished as aforesaid shall be deemed to be a Common Expense collectible thereafter from all Unit Owners (including the party acquiring the subject Unit with respect to which it arose).

6.9. Notice of Unpaid Assessments. The Association shall, upon request of a mortgagee, a proposed mortgagee or purchaser who has a contractual right to purchase a Unit, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Regular or Special Assessments against the Unit, which statement shall be binding upon the Association and the Owner, and any mortgagee or grantee of the Unit shall not be liable for nor shall the Unit conveyed be subject to a lien for any unpaid assessments in excess of the amount set forth in such statement. Any prior mortgagee and its purchaser or assignee shall take free of assessments accruing before transfer to such purchaser or assignee.

6.10. Books and Records. The Association shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Common Areas, specifying and itemizing the maintenance and repair expenses of the Common Areas and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for inspection at the office of the Association by any Unit Owner or any holder of a first mortgage on a Unit Ownership at such reasonable time or times during normal business hours as may be requested by the Unit Owner. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

6.11. User Charges. The Board may establish, and each Unit Owner shall then pay, user charges to defray the expense of providing services, facilities or benefits which may not be used

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equally or proportionately by all of the Unit Owners or which, in the judgment of the Board, should not be charged to every Unit Owner. Such expenses may include, without limitation, charges for use of facilities located in the Common Areas; and fees for such other services and facilities provided to Unit Owners which reasonably should not be allocated among all of the Unit Owners in the same manner as the Common Expenses. Such user charges may be billed separately to each Unit Owner benefited thereby, or may be added to such Unit Owner's share of the Common Expenses, as otherwise determined, and collected as a part thereof. Nothing herein shall require the establishment of user charges pursuant to this Section 6.11 and the Board or Declarant may elect to treat all or any portion thereof as Common Expenses.

ARTICLE VII

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

7.1. Use and Occupancy. The Property shall be occupied and used as follows:

(a) Each Unit shall be used for housing and related common purposes for which the Property was designed and for no other purpose.

(b) There shall be no obstruction of the Common Areas nor shall anything be stored in the Common Areas (except in areas designed for such purpose) without the prior consent of the Association or except as hereinafter expressly provided. Each Unit Owner shall be obligated to maintain and keep in good order and repair his own Unit;

(c) Nothing shall be done or kept in any Unit or in the Common Areas serving the Units which will increase the rate of insurance on the Buildings or contents thereof without the prior written consent of the Association. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas which will result in the cancellation of insurance on the Buildings, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Areas.

(d) Without the prior consent of the Association, Unit Owners shall not cause or permit anything to be placed on the outside walls of the Buildings and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon any part of the exterior walls or roof thereof; and Unit Owners shall not cause or permit the enclosure (either partially or entirely) of any exterior portions of the Buildings.

(e) In order to enhance the sound characteristics of the Buildings, the floor covering for all occupied Units shall meet

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the minimum standard as may reasonably be specified by rules and regulations established by the Association.

(f) No animals of any kind shall be raised, bred, or kept in any Unit or in the Common Areas except that dogs and cats or other usual household pets may be kept in Units, subject to rules and regulations adopted by the Association; provided that they are not kept, bred or maintained for any commercial purpose; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days' written notice from the Association. The Association may restrict pets from access to any portions of the Common Areas, and may designate other portions of the Common Areas to accommodate the reasonable requirements of pets kept by Unit Owners.

(g) No noxious or offensive activity shall be carried on in any Unit or in the Common Areas, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants.

(h) Nothing shall be done in any Unit or in, on or to the Common Areas which will impair the structural integrity of the Buildings or which would structurally change the Buildings except as is otherwise provided herein. No Unit Owner shall overload the electric wiring in the Buildings, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Association, an unreasonable disturbance to others. No Unit Owner shall overload the floors of any Unit. The use of waterbeds, furnishings and equipment which may cause floor overloads or potential water damage to other Units shall be subject to reasonable Association approval.

(i) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials which are not in receptacles provided for such purpose.

(j) There shall be no playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Areas, except that subject to reasonable rules and regulations of the Association (i) baby carriages, bicycles and other personal property may be stored in common storage areas designated for that purpose and (ii) all amenity and service areas may be used for their intended purposes.

(k) No industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted in any Unit.

(l) No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Property, except one "For Sale" or "For Rent" sign of not more than five (5) square feet may be erected with respect to each Unit and the time or times during the week when said signs may be displayed may be reasonably controlled by the Association. Notwithstanding the foregoing, the right is reserved by the Declarant and its agents to place and maintain on the Property various model apartments, sales offices, management offices, advertising signs and lighting in connection therewith, at such locations and in such forms as shall be determined by the Declarant or its agents. The initial location of the model apartments and sales offices are designated in the initial Plans. The Declarant or its agents and prospective purchasers and lessees of any Unit from the Declarant are hereby granted the right of ingress, egress and transient parking in and through the Common Areas for such Unit sale or leasing purposes. The Declarant further reserves the right to use unsold Units and Common Areas for temporary storage, office, sales and related purposes. The foregoing rights of the Declarant shall terminate upon the closing of the sale of the last Unit.

(m) The Unit restrictions in paragraphs (a) and (k) of this Section 7.1 shall not, however, be construed in such a manner as to prohibit a Unit Owner from: (i) maintaining his personal professional library therein; (ii) keeping his personal business or professional records or accounts therein; or (iii) handling his personal, business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residence use and not in violation of paragraphs (a) and (k) of this Section 7.1.

(n) No Unit Owner shall be permitted to lease his Unit for transient or hotel purposes. Any lease of a Unit for less than one (1) month shall be deemed to be a lease for transient or hotel purposes. No Unit Owner may lease less than the entire Unit and all such leases shall be in writing. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and that any failure by the lessee to comply with the terms hereof shall be a default under the lease.

7.2. Amendment of By-Laws. The By-Laws of the Association may be amended pursuant to the provisions of Section 11.7 of this Declaration.

ARTICLE VIII

DAMAGE, DESTRUCTION, CONDEMNATION AND RESTORATION OF BUILDINGS

8.1. Partial Destruction. In the event of partial destruction from any cause of the improvements forming a part of the

Property, or any portions thereof, including any Units, then the Association shall cause the Property to be promptly repaired and restored and the proceeds of the insurance carried by the Association shall be applied to the cost of such restoration. If the insurance proceeds are not adequate to cover the cost of such reconstruction, then the costs of such reconstruction shall be borne by the Association and shall be assessed as a Common Expense.

8.2. **Complete Destruction.** In the event of a complete destruction of all of the Buildings, the Buildings shall not be reconstructed, but rather, the insurance proceeds, if any, shall be divided among the Unit Owners in the percentage by which each owns an undivided interest in the Common Areas and facilities, and otherwise as provided in Section 19(b) of the Act. The determination that there has occurred a complete destruction of the Buildings shall require the vote of two-thirds (2/3) of the voting members of the Association at a special meeting of the members called for said purpose within sixty (60) days after the date of any such destruction.

8.3. **Condemnation.** In the case of a taking or condemnation by competent authority of any part of the Property, the Association shall, if necessary, restore the improvements in the remaining portion of the Property to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking or condemnation. Any proceeds or awards made to the Association in connection with any such taking or condemnation shall be applied first to the cost of any restoration and any remaining portion of such proceeds or awards shall be, in the discretion of the Board, either (i) applied to pay the Common Expenses, or (ii) distributed to the remaining Unit Owners and their respective first mortgagees, as their interests may appear, based on their current percentage of interest in the Common Areas. In the event that part or all of one or more Units is taken or condemned, then the portions so taken or condemned shall be deemed to have been removed from the provisions of the Declaration and the Act and the court which has jurisdiction of the action shall adjust the percentage of interest in the Common Areas of the remaining Units in a just and equitable manner and as provided under the Act, and if the court fails to make such adjustment, such adjustment may be made by the Board. The President and Secretary of the Association shall execute and record an instrument on behalf of the Association as required by the Act which amends this Declaration, effective as of the effective date of the taking or condemnation, to reflect the removal of property and adjustments, if any, in the percentage of interest in the Common Areas as a result of an occurrence covered by this Section 8.3. From and after the effective date of the amendment referred to in the preceding sentence, the Unit Owner of a Unit which is removed in part or in whole from the provisions of this Declaration shall only be liable for the payment of assessments based on the percentage of interest in the Common Areas, if any, allocated to the Unit in the amendment.

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ARTICLE IX

REMEDIES

9.1. Abatement and Enjoinment. The violation of any restriction, condition or regulation adopted by the Association, or the breach of any covenant or provision herein contained, shall give the Declarant and the Association the right, upon not less than ten (10) days' notice, in addition to the rights set forth in the next succeeding section:

(a) to enter upon that part of the Property where such violation or breach exists and summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Declarant or its successors or assigns or the Board or its agents shall not thereby be deemed guilty in any manner of trespass; or

(b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

All expenses of the Association or Declarant in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest rate of interest permitted by law until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of his respective share of the Common Expenses, and the Association shall have a lien for all of the same upon the Unit Ownership of such defaulting Unit Owner and upon all of his additions and improvements thereto and upon all of his personal property in his Unit or located elsewhere on the Property. Any and all such rights and remedies may be exercised at any time and from time to time cumulatively, or otherwise. In addition, any aggrieved Unit Owner shall have the same rights and remedies as the Association under subparagraph (b) of this Section 9.1 in connection with any such violation.

9.2. Involuntary Sale. If any Unit Owner (either by his own conduct or that of any other Occupant of his Unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the regulations adopted by the Association, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall occur again after such notice, and subsequent curing thereof by the Unit Owner, then the Association shall have the power to issue to the defaulting Unit Owner a ten (10) day notice in writing terminating the right of said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use or control his Unit and thereupon an action in equity may be filed by the Association against the defaulting Unit Owner for a decree of mandatory injunction against the Unit Owner or Occupant

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or, in the alternative, a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by him on account of the breach of covenant and ordering that the right, title and interest of the Unit Owner in the Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Unit Owner from reacquiring his interest in the Property at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to the Unit Owner. Upon the confirmation of such sale, the purchaser thereof shall thereupon be entitled to a deed to the Unit Ownership and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide that the purchaser shall take the interest in the Unit Ownership subject to this Declaration.

9.3. Remedies for Failure to Pay Common Expenses. Each Unit Owner shall pay his proportionate share of the Common Expenses. A "late charge" in the amount of Thirty-Five Dollars (\$35.00) per month shall be charged to and assessed against each defaulting Unit Owner until paid. The amount and conditions for assessing of the late charge shall be subject to review by the Board from time to time. In addition to the foregoing, the Board (or the Declarant in the exercise of the powers, rights, duties and functions of the Board as provided in Section 11.1 hereof) or its agents shall have such other rights and remedies to enforce such collection as shall otherwise be provided herein or provided or permitted by law from time to time.

ARTICLE X

MISCELLANEOUS PROVISIONS CONCERNING MORTGAGES

The following provisions are intended for the benefit of each holder of a first mortgage upon a Unit, and to the extent, if at all, that any other provisions of this Declaration conflict with the following provisions, the following provisions shall control:

(a) The Association shall furnish each first mortgagee of a Unit a written notice of any default by the Unit Owner of such Unit in the performance of such Unit Owner's obligations under this Declaration which is not cured within thirty (30) days. Any first mortgagee of a Unit who comes into possession of the said Unit pursuant to the remedies provided in the mortgage, a foreclosure of the mortgage, or a deed (or assignment) in lieu

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of foreclosure, shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Unit which accrue prior to the time such holder comes into possession of the Unit.

(b) Upon request in writing, each first mortgagee of a Unit shall have the right:

(i) to examine the books and records of the Association during normal business hours;

(ii) to receive annual audited financial statements from the Association within ninety (90) days following the end of each of its respective fiscal years;

(iii) to receive notices of all meetings of the Association and to designate a representative to attend all such meetings;

(iv) to receive notice and to vote in lieu of the Unit Owner in respect of any proposal by the Unit Owners to make a material amendment to this Declaration, the By-Laws contained herein or the Articles of Incorporation of the Association;

(v) to receive notice of the pendency of any condemnation or eminent domain proceeding respecting the Property or any part thereof; and

(vi) to receive notice of any substantial damage or destruction of the Common Areas.

(c) No provision of this Declaration, the Articles, the By-laws, or any similar instrument pertaining to the Property or the Units therein shall be deemed to give a Unit Owner or any other party priority over any rights of the first mortgagees of Units pursuant to their mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units or the Common Area, or any portion thereof or interest therein. In such event, the holder of any first mortgage on a Unit shall be entitled to timely written notice of any such loss.

(d) There shall be included in each annual assessment levied by the Association (but not as a special assessment) an amount sufficient to establish an adequate reserve fund for the replacement of the Common Area facilities.

(e) Unless the first mortgagees of all of the individual Units which have become a part of the Property have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to:

(i) by act or omission change, waive, terminate or abandon the Condominium or any scheme of regulation, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Units, or the maintenance of Units or the Common Areas, except for abandonment provided by the Act in case of complete destruction to the Buildings;

(ii) change the pro rata interest or obligations of any Unit for the purpose of:

(A) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or

(B) determining the pro rata share of ownership of each Unit in the Common Areas, except as provided in Section 3.1 hereof upon annexation of additional land;

(iii) partition or subdivide any Unit;

(iv) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas by the condominium project shall not be deemed a transfer within the meaning of this clause);

(v) use hazard insurance proceeds for losses to any Property (whether to Units or to Common Areas) for other than the repair, replacement, or construction of such improvements, except as provided by statute in case of complete loss to the Units or the Common Areas of the Property;

(vi) fail to maintain fire and extended coverage insurance or insure Common Area improvements on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement costs);

(vii) materially amend the Declaration.

(f) Upon specific written request to the Association, each first mortgagee of a Unit shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Areas if such damage or destruction or taking exceeds Ten Thousand Dollars (\$10,000), or if damage in excess of One Thousand Dollars (\$1,000) shall occur to the Unit subject to such first mortgage, notice of such event shall also be given.

(g) Any first refusal provisions now or hereafter contained in this Declaration shall not impair the rights of any first mortgagee to:

- (i) foreclose or take title to a Unit Ownership pursuant to the remedies provided in the mortgage; or
- (ii) accept a deed (or assignment) in lieu of foreclosure in the event of default by the Unit Owner; or
- (iii) sell or lease a Unit Ownership acquired by such mortgagee.

ARTICLE XI

GENERAL PROVISIONS

11.1. Certain Rights of the Declarant. Until the time established by this Declaration for the election of the initial Board by the Unit Owners, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Association or Board in the Act and in this Declaration shall be held and performed by the Declarant. In exercising such rights, and the other rights reserved by the Declarant pursuant to this Declaration, the Declarant (or its designees on the Board) shall not be under any disability which would otherwise be imposed by law by reason of the Declarant's interest in the subject matter of any transaction; provided, however, that any such transaction shall have been entered into in good faith.

11.2. Notice to Mortgagees. Upon written request to the Board, the holder of any duly recorded mortgage against any Unit Ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Unit Owner whose Unit Ownership is subject to such mortgage.

11.3. Manner of Giving Notices. Notices provided for in this Declaration and in the Act shall be in writing and shall be addressed to the Association, any Unit Owner or Occupant, as the case may be, at the address of the Association or the respective Unit Owner or Occupant (indicating thereon the number of a respective Unit if addressed to a Unit Owner or Occupant), or at such other address as herein provided. Any Unit Owner may designate a different address or addresses for notices to him by giving notice of his change of address to the Association. Notices addressed as above shall be deemed delivered three (3) business days after being mailed by United States first class mail, postage prepaid, or when delivered in person with written acknowledgement of the receipt thereof, or if addressed to a Unit Owner or Occupant, when deposited in his mailbox in the Building or at the door of his Unit in the Building.

11.4. Notices to Estate or Representatives. Notices required to be given any devisee, heir or personal representative of a deceased Unit Owner may be delivered either personally or by mail to such party at his or its address appearing in the records of the court wherein the estate of such deceased Unit Owner is being administered.

11.5. Conveyance and Leases. Each grantee of the Declarant and each subsequent grantee by the acceptance of a deed of conveyance, and each purchaser under a purchase contract therefor, and each tenant under a lease for a Unit, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in the Property, and shall inure to the benefit of such Unit Owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

11.6. No Waivers. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

11.7. Amendment, Change, Modification or Rescission. No provision of this Declaration affecting the rights, privileges and duties of the Declarant may be modified without its prior written consent. The provisions of ARTICLES III and X and the following provisions of this Section 11.7 of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, duly executed on behalf of the Association, and by all of the Unit Owners and all first mortgagees having bona fide liens of record against any of the Unit Ownerships. Other provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, duly executed on behalf of the Association and approved by a seventy-five percent (75%) Majority of the Unit Owners at a meeting called for that purpose; provided, however, that any material amendment of this Declaration shall be subject to the provisions of subparagraph (e) (vii) of ARTICLE X hereof; and provided, further, that any proposed amendment of any provision of this Declaration specifically affecting rights or protection of the holders of first mortgages on the Unit Ownerships shall be deemed to be a material amendment. The change, modification or rescission shall be effective upon recordation of such instrument in the Office of the Recorder of Marion County, Indiana.

11.8. Partial Invalidity. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

11.9. Perpetuities and Other Invalidity. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the

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rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of Garry B. Lindboe, Vincent W. Todd and George R. Nichols.

11.10. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first-class residential condominium development.

11.11. Special Amendment. The Association and Declarant each reserves the right and power to execute and record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering Unit Ownerships, (iii) to bring this Declaration into compliance with the Act; or (iv) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant no longer holds or controls title to a Unit.

IN WITNESS WHEREOF, BACKBAY ASSOCIATES, LTD., an Indiana limited partnership, has caused this Declaration to be executed the day and year first above written.

BACKBAY ASSOCIATES, LTD.

By: Garry B. Lindboe
Garry B. Lindboe, General Partner

By: Vincent W. Todd
Vincent W. Todd, General Partner

By: George R. Nichols
George R. Nichols, General Partner

82 56706

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, a Notary Public in and for the County and State, personally appeared Garry B. Lindboe, Vincent W. Todd and George R. Nichols, the general partners of the foregoing BACKBAY ASSOCIATES, LTD., who, having been duly sworn, acknowledged that they signed and delivered the said instrument as their own free and voluntary act, for and on behalf of BACKBAY ASSOCIATES, LTD., for the uses and purposes therein set forth.

WITNESS under my hand and Notarial Seal this 12 day
of October, 1982.

My commission expires:

February 13, 1983

Marion R. Larsen
MARION R. LARSEN, Notary Public
Resident of Marion County

This instrument prepared by Stephen E. DeVoe, Attorney-at-law,
2450 One Indiana Square
Indianapolis, Indiana 46204

82 56706

Exhibit A

Land being a part of the North half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East in Marion County, Indiana, more particularly described as follows:

Beginning at a point on the South line of said North half of said Southwest-quarter-section, being North 89°26'23" East 1876.37 feet from the Southwest corner thereof; thence North 30°00'00" East 80.54 feet; thence North 73°54'06" West 72.13 feet; thence South 88°32'59" West 65.02 feet; thence North 00°00'00" East 111.65 feet; thence North 24°19'41" East 57.07 feet; thence North 90°00'00" East 163.34 feet; thence South 13°49'43" West 41.19 feet; thence South 10°40'11" East 70.21 feet; thence South 45°00'00" East 110.31 feet; thence South 00°00'00" East 74.24 feet to the aforesaid South line; thence South 89°26'23" West along said South line 133.71 feet to the point of beginning, containing 1.024 acres; subject to highways, rights-of-way and easements.

EXHIBIT B

1. Legal Description and Unit Number and Percentage Ownership of Common Areas:

<u>Building Number</u>	<u>Legal Description and Unit Number</u>	<u>Address</u>	<u>Adjusted Square Footage of Unit</u>	<u>Percentage Ownership of Common Areas</u>
1	1-1	8059 Lower Back Bay Lane	1990	25.0%
1	1-2	8061 Lower Back Bay Lane	2760	26.0%
1	1-3	8063 Lower Back Bay Lane	2330	25.0%
1	1-4	8065 Lower Back Bay Lane	1290	24.0%
				<u>100.0%</u>

2. Formula for Computing Percentage Ownership of Common Areas:

The percentage ownership of Common Areas by each Unit, to the nearest tenth of a percent, shall be computed by dividing the Unit Points for the Unit, as determined from the following table based on the adjusted square footage of the Unit, by the total Unit Points for all Units.

<u>Adjusted Square Footage of Unit</u>	<u>Unit Points</u>
0 to 1600 square feet	120
1601 to 2400 square feet	125
2401 to 3400 square feet	130
Over 3400 square feet	135

For purposes of this computation, the adjusted square footage for each Unit shall be the approximate interior square footage of the Unit (excluding garage, attic, unfinished basement and unenclosed space) as determined from the Plans by the Declarant's architect and shown in this Exhibit or in Supplementary Declarations.

3. Regular Monthly Assessments Prior to Completion of Construction of all Units (Guaranteed Charge):

<u>Adjusted Square Footage of Unit</u>	<u>Guaranteed Charge</u>
0 to 1600 square feet	\$120.00
1601 to 2400 square feet	\$125.00
2401 to 3400 square feet	\$130.00
Over 3400 square feet	\$135.00

Exhibit C

Part of
the North Half of the Southwest Quarter, and part of the North Half of the Southeast Quarter, both of Section 21, Township 17 North, Range 5 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Beginning at a point on the south line of said North Half of said Southwest Quarter, said point being North $89^{\circ}26'23''$ East along said south line 1216.37 feet from the Southwest Corner thereof; thence North $00^{\circ}33'37''$ West 200.00 feet; thence North $15^{\circ}07'33''$ West 136.70 feet; thence North $77^{\circ}51'46''$ East 27.00 feet; thence North $12^{\circ}08'14''$ West 189.00 feet; thence North $83^{\circ}51'46''$ East 103.00 feet; thence North $76^{\circ}08'37''$ East 192.00 feet; thence North $21^{\circ}13'37''$ East 288 feet, more or less, to a point on the Southwestern shore line of Geist Reservoir as established when said Reservoir is full (with the water level thereof being at an elevation of 785.00 feet above mean sea level); thence generally Easterly, Southeasterly and Southerly along said meandering shore line 3400 feet, more or less, to the south line of the North Half of said Southeast Quarter; thence South $89^{\circ}20'46''$ West along said south line 722 feet, more or less, to the Southeast Corner of said North Half of said Southwest Quarter; thence South $89^{\circ}26'23''$ West along the south line thereof 1449.88 feet to the point of beginning, containing 25.72 acres, more or less;

CROSS REFERENCE

83 35806

CROSS REFERENCE

CONSENT TO ASSIGNMENT OF LICENSE RIGHTS

THIS AGREEMENT, entered into this 11th day of MARCH, 1983, by and between Indianapolis Water Company ("IWC"), The Shorewood Corporation ("Shorewood") and The Creek Land Company, Inc. ("Creek"), all Indiana corporations, WITNESSES THAT:

WHEREAS, IWC owns Geist and Morse Reservoirs, located in Marion, Hamilton and Hancock Counties, Indiana ("Reservoirs"), and operates them for water supply purposes; and

WHEREAS, on October 19, 1970, IWC and Shorewood executed a License Agreement ("License Agreement"), recorded on October 22, 1970, as Instrument No. 70-46985 in the Office of the Recorder of Marion County, Indiana, as Instrument No. 70-2811 in the Office of the Recorder of Hancock County, Indiana, and recorded as Instrument No. 4863, in Book 121, in the Office of the Recorder of Hamilton County, Indiana ("License Agreement"), whereby IWC granted to Shorewood certain license rights to use the Reservoirs; and

RECEIVED FOR RECORD
BETH O'LAUGHLIN
REC'D. MARION CO.

MAY 27 22 AM '83

WHEREAS, pursuant to paragraph 2 of the License Agreement, Shorewood has the privilege of installing and constructing marinas, boat docks and beaches for commercial use adjacent to the shore line of the Reservoirs, and Shorewood desires to assign said rights to Creek, a wholly owned subsidiary of Shorewood to which Shorewood has conveyed substantial parts of its land holdings at the Reservoirs.

83 35806

NOW, THEREFORE, in consideration of the premises and mutual promises hereinafter set forth, the parties agree that:

1. IWC consents to the transfer from Shorewood to Creek of Shorewood's privilege, granted in paragraph 2 of the License Agreement, to install and construct marinas, boat docks and beaches for commercial use adjacent to the shore line of Geist or Morse Reservoir, subject to Creek's fulfillment of all obligations of such licensee under the License Agreement.

2. The specific license right permitted hereby to be assigned to Creek is personal to Creek. Creek may not assign said privilege or delegate any of its obligations under the License Agreement without first obtaining the written consent of IWC, and in the event of an approved delegation of its obligations, Creek shall remain entirely responsible for the fulfillment of all of the provisions of the License Agreement, unless a transfer of such responsibility is specifically provided for in the delegation documents and is approved by IWC in writing. 83 35806

3. Creek agrees that it shall be bound by all of the terms, conditions and provisions contained in the said License Agreement. Creek shall do all things required of it by the the terms of the License Agreement, including, but not limited to, holding IWC harmless in the event that IWC, by reason of its status as owner or operator of the Reservoirs, becomes involved, through or on account of the

terms of this License Agreement, or through or on account of the activities of Creek, its grantees, successors in interest, invitees or permittees, or any of them, in any claim or litigation or other controversy in connection with the Reservoirs.

IN WITNESS WHEREOF, IWC, Shorewood and Creek have executed this Consent.

INDIANAPOLIS WATER COMPANY

By Raymond L. Williams
Raymond L. Williams, President

THE SHOREWOOD CORPORATION

By Stanley E. Hunt
Stanley E. Hunt, President

THE CREEK LAND COMPANY, INC.

By Allen E. Rosenberg
Allen E. Rosenberg, President

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

83 35806

Before me, a Notary Public in and for said County and State, personally appeared Stanley E. Hunt the President of The Shorewood Corporation, who being duly sworn upon his oath, acknowledged the execution by him of the above and foregoing instrument to be the voluntary act and deed of The Shorewood Corporation.

Witness my hand and Notarial Seal this 30th day of June, 1983.

Nancy Martikke
Nancy Martikke, Notary Public

My Commission Expires Dec. 17, 1983
My County of Residence Hamilton

This instrument prepared by Fred. E. Schelegal, Attorney at Law.

830084454

630

ASSIGNMENT OF CONDOMINIUM DECLARATION
AND HOMEOWNERS ASSOCIATION MEMBERSHIPS

THIS ASSIGNMENT, executed this 15th day of November, 1983, by BACKBAY ASSOCIATES, LTD., an Indiana limited partnership ("Assignor") to GLM of Indiana, Ltd., an Indiana limited partnership ("GLM").

Recitals

A. Assignor executed a Declaration of Covenants, Conditions, and Restrictions Establishing BackBay Condominium and By-Laws for BackBay Homeowners Association, Inc., dated October 12, 1982, and recorded as Instrument No. 82-56706 with the Marion County Recorder (the "Condominium Declaration"), which document is hereby incorporated herein by reference.

B. Assignor is the holder of 164 Class B Memberships (the "Memberships") in BackBay Homeowners Association, Inc., an Indiana corporation.

C. Assignor desires to convey and assign to GLM all right, title, and interest of Assignor in and to the Condominium Declaration and the Memberships.

D. GLM has agreed to accept this assignment and to perform all liabilities and obligations associated with the Condominium Declaration and the Memberships.

Assignment

In consideration of the foregoing recitals and other good and valuable consideration, Assignor hereby assigns and conveys to GLM all right, title, and interest of Assignor in and to the Condominium Declaration and the Memberships, and all liabilities and obligations imposed upon Assignor by said Condominium Declaration and Memberships; and GLM hereby accepts this Assignment and agrees to be bound by the terms and conditions contained within the Condominium Declaration or imposed by the Memberships, and further agrees to indemnify Assignor against any liabilities and obligations resulting from this Assignment, the Condominium Declaration, or the Memberships.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed as of the day and year first above written.

BACKBAY ASSOCIATES, LTD.

By: [Signature]
Garby B. Lindhoe, General Partner

By: [Signature]
Vincent W. Todd, General Partner

Acceptance of Assignment

Accepted and agreed to this 15 day of NOV, 1983.

GLM OF INDIANA, LTD.

By GLM of Indiana, Inc., General Partner

By: _____, President

By: [Signature], Secretary

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STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Garry B. Lindboe and Vincent W. Todd, the General Partners of BackBay Associates, Ltd., who acknowledged the execution of the foregoing Assignment for and on behalf of BackBay Associates, Ltd., and who, having been duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this 15th day of November, 1983. B. Keith Shake, Notary Public
My Commission Expires Jan. 23, 1987
County of Residence: Marion

My Commission Expires: B. Keith Shake
Notary Public
Resident of _____ County

STATE OF New York INDIANA)
) SS:
COUNTY OF Eric MARION)

Before me, a Notary Public in and for said County and State, personally appeared Herbert M. Fubich and _____, the President and Secretary, respectively, of GLM of Indiana, Inc., which is the sole general partner of GLM of Indiana, Ltd., an Indiana limited partnership, who acknowledged the execution of the foregoing Assignment, for and on behalf of GLM of Indiana, Ltd., and who, having been duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this 15th day of November, 1983.

My Commission Expires: Waldron S. Hayes, Jr.
Notary Public
Resident of Eric County
March 30, 1985

WALDRON S. HAYES, JR.
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1985

This instrument was prepared by Stephen E. DeVoe, Attorney-at-Law.

830084454

830084454

630

ASSIGNMENT OF CONDOMINIUM DECLARATION
AND HOMEOWNERS ASSOCIATION MEMBERSHIPS

THIS ASSIGNMENT, executed this 15th day of November, 1983, by BACKBAY ASSOCIATES, LTD., an Indiana limited partnership ("Assignor") to GLM of Indiana, Ltd., an Indiana limited partnership ("GLM").

Recitals

A. Assignor executed a Declaration of Covenants, Conditions, and Restrictions Establishing BackBay Condominium and By-Laws for BackBay Homeowners Association, Inc., dated October 12, 1982, and recorded as Instrument No. 82-56706 with the Marion County Recorder (the "Condominium Declaration"), which document is hereby incorporated herein by reference.

B. Assignor is the holder of 164 Class B Memberships (the "Memberships") in BackBay Homeowners Association, Inc., an Indiana corporation.

C. Assignor desires to convey and assign to GLM all right, title, and interest of Assignor in and to the Condominium Declaration and the Memberships.

D. GLM has agreed to accept this assignment and to perform all liabilities and obligations associated with the Condominium Declaration and the Memberships.

Assignment

In consideration of the foregoing recitals and other good and valuable consideration, Assignor hereby assigns and conveys to GLM all right, title, and interest of Assignor in and to the Condominium Declaration and the Memberships, and all liabilities and obligations imposed upon Assignor by said Condominium Declaration and Memberships; and GLM hereby accepts this Assignment and agrees to be bound by the terms and conditions contained within the Condominium Declaration or imposed by the Memberships, and further agrees to indemnify Assignor against any liabilities and obligations resulting from this Assignment, the Condominium Declaration, or the Memberships.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed as of the day and year first above written.

BACKBAY ASSOCIATES, LTD.

By: [Signature]
Garby B. Lindhoe, General Partner

By: [Signature]
Vincent W. Todd, General Partner

Acceptance of Assignment

Accepted and agreed to this 15 day of NOV, 1983.

GLM OF INDIANA, LTD.

By GLM of Indiana, Inc., General Partner

By: _____ President

By: [Signature], Secretary

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Nov 17 9 07 AM '83

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Garry B. Lindboe and Vincent W. Todd, the General Partners of BackBay Associates, Ltd., who acknowledged the execution of the foregoing Assignment for and on behalf of BackBay Associates, Ltd., and who, having been duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this 15th day of November, 1983. *B. Keith Shake*
B. KEITH SHAKE, Notary Public
My Commission Expires Jan. 23, 1987
County of Residence: Marion

My Commission Expires: _____
Notary Public
Resident of _____ County

STATE OF ^{New York} INDIANA)
) SS:
COUNTY OF ^{Eric} MARION)

Before me, a Notary Public in and for said County and State, personally appeared Herbert M. Rubach and _____, the President and Secretary, respectively, of GLM of Indiana, Inc., which is the sole general partner of GLM of Indiana, Ltd., an Indiana limited partnership, who acknowledged the execution of the foregoing Assignment, for and on behalf of GLM of Indiana, Ltd., and who, having been duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this 15th day of November, 1983.
My Commission Expires: March 30, 1985
Waldron S. Hayes, Jr.
Notary Public
Resident of Eric County

WALDRON S. HAYES, JR.
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1985

This instrument was prepared by Stephen E. DeVoe, Attorney-at-Law.

830084454

AMENDED
DECLARATION

840046168

OF

BACKBAY

HORIZONTAL PROPERTY REGIME

CROSS REFERENCE

CROSS REFERENCE

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FOR: GLM of Indiana, Ltd.
An Indiana limited partnership

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AMENDED DECLARATION OF BACKBAY
HORIZONTAL PROPERTY REGIME

THIS AMENDED DECLARATION OF BACKBAY HORIZONTAL PROPERTY REGIME ("Declaration"), made this 1st day of June, 1984, by GLM of Indiana, Ltd., an Indiana limited partnership, ("Declarant"),

WITNESSETH:

WHEREAS, there exists a certain horizontal property regime commonly known as Backbay Condominiums, consisting of certain real estate described in Exhibit A attached hereto and made a part hereof (hereinafter called the "Real Estate") and all improvements located thereon (hereinafter collectively called the "Regime"), established by and subject to a certain Declaration of Covenants, Conditions and Restrictions Establishing Backbay Condominium and By-Laws For Backbay Homeowners Association, Inc., dated October 12, 1982 and recorded October 13, 1982 as Instrument No. 82-56706 in the office of the Recorder of Marion County, Indiana (hereinafter called the "Prior Declaration"); and,

WHEREAS, under the terms of the Prior Declaration, the horizontal property regime thereby established was to be "expandable" as provided for in the Horizontal Property Act of the State of Indiana ("Act"), and is subject to expansion so as to include all or any part of certain other real estate adjacent to the Real Estate, which is more particularly described in Exhibit B attached hereto and made a part hereof (hereinafter called the "Adjacent Real Estate"); and,

WHEREAS, said Prior Declaration was made by Backbay Associates, Ltd., an Indiana limited partnership, (hereinafter called the "Prior Declarant"), and the Dwelling Units and Percentage Interest within the Regime have been conveyed by the Prior Declarant to Epic Associates 82-XXIII, a limited partnership; and,

WHEREAS, Declarant has succeeded to all the rights, title, and interest of the Prior Declarant in and to the Real Estate and Adjacent Real Estate and under the Prior Declaration, by virtue of a certain Warranty Deed recorded as Instrument No. 83-84451, a certain Addendum to Shorewood Corporation Land Contract recorded as Instrument No. 83-84453, and a certain Assignment of Condominium Declaration and Homeowner's Association Memberships recorded as Instrument No. 83-84454, all in the office of the Recorder of Marion County, Indiana, so that Declarant is now the "Declarant" of Backbay Condominium, as the term "Declarant" is used in the Prior Declaration and in the Act; and,

WHEREAS, Declarant desires to amend the Prior Declaration, as allowed by paragraph 11.7 thereof, by recordation of this Declaration, which is intended to replace and supercede the Prior Declaration in all respects; and,

WHEREAS, there exist certain mortgages of interests in the Regime and of the Adjacent Real Estate, and the only Owner within the Regime is Epic Associates 82-XXIII, and said Owner and the mortgagees have agreed to give their consent and approval to the amendments of the Prior Declaration to be effected by the recordation of this Declaration;

NOW, THEREFORE, the Declarant hereby amends the Prior Declaration and subjects the Regime to the terms, covenants, conditions, and restrictions set forth in this Declaration, which shall substitute for and supercede the Prior Declaration in all respects, as follows:

Section 1. Definitions. The following terms whenever used in this Declaration shall have the following assigned meanings:

- (a) "Act" means the Horizontal Property Act of the State of Indiana, Acts 1963, Chapter 349, Sections 1 through 31, as amended.
- (b) "Additional Sections" means the portions of the Adjacent Real Estate which may from time to time be annexed to and included within "the Regime" as provided in Section 15.
- (c) "Amendment" means any amendment to this Declaration by which all or any portion of the Adjacent Real Estate is added to the Regime.
- (d) "Association" means the incorporated association of Co-Owners of the Regime, more particularly described in Section 8.
- (e) "Board of Directors" means the governing body of the Association elected by the Co-Owners in accordance with the By-Laws, and shall be synonymous with the term "Board of Directors" as used in the Act.
- (f) "Building" shall mean a single structure which contains more than one Dwelling Unit.
- (g) "By-Laws" means the Code of By-Laws of Backbay Co-Owners Association, Inc., an Indiana not-for-profit corporation, providing for the administration and management of the Property, a true copy of which is attached to this Declaration and incorporated herein by reference.
- (h) "Common Areas" means the common areas and facilities located or to be located on the Real Estate as defined in Section 4 of this Declaration.
- (i) "Common Expenses" means expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Areas, and all other costs and expenses incurred by the Association for the benefit of the Common Areas and/or Limited Areas or for the common benefit of all Owners; provided, however, that Common Expenses shall not include any costs of initial construction of any Building or other Property or improvements on any portion of the Tract, nor any costs or repairs covered by any warranty of Declarant as builder of the Buildings and other Property within the Regime, nor to any costs or repairs arising out of construction or other activities on any portion of the Adjacent Real Estate prior to its addition to the Regime, including but not limited to road damage and debris caused by construction traffic, linkage to any utility lines or mains within the Regime, and damage to or deterioration of grass, trees, fences, or other Property due to construction or the state of areas under development.
- (j) "Co-Owners" means all of the Owners of all the Dwelling Units in the Regime.

84 45168

- (k) "Declarant" means GLM of Indians, Inc., and any successor or assignee of its interest in all or any part of the Tract or in this Declaration; provided, however, that "Declarant" shall not be construed to include those persons who purchase individual Dwelling Units by deed from the Declarant, unless the conveyance expressly states that grantee shall become the Declarant for purposes of this Declaration.
- (l) "Dwelling Unit" means any of the individual units within the Regime which is to be transferred to an Owner for exclusive occupancy by said Owner or its successors or assigns, each individual unit being more particularly described and identified on the Plans and in Sections 2 and 3 of this Declaration.
- (m) "Formula" means the method set forth in paragraph 15.B. of this Declaration for computing the Percentage Interest applicable to each Dwelling Unit, including the Percentage Interest after any Additional Section is added by Amendment to this Declaration.
- (n) "Limited Areas" means the limited common areas and facilities as defined in Section 5 of this Declaration.
- (o) "Managing Agent" means any person or entity to which the management responsibilities of the Association are delegated under Section 13 of this Declaration.
- (p) "Mortgagee" means the holder, insurer, or guarantor of any mortgage on any Dwelling Unit.
- (q) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Dwelling Unit as a successor in title to Declarant or to the Prior Declarant. Persons or entities owning a single Dwelling Unit as tenants in common, joint tenants, tenants by the entireties, or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration.
- (r) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Dwelling Unit, as determined in accordance with Sections 6 and 15 of this Declaration.
- (s) "Percentage Vote" means that percentage of the total vote accruing to all of the Dwelling Units which is applicable to each particular Dwelling Unit and exercisable by the Owner thereof, as described in Sections 7 and 15 of this Declaration and in the By-Laws.
- (t) "Plans" means the floor and building plans of the Buildings and Dwelling Units on the Real Estate and the site plan, survey and elevation plan of the Real Estate and Buildings, duly certified by a registered architect or licensed professional engineer, and any such floor and building plans, site plans, surveys, and elevation plans which shall be prepared, verified and filed with any

Amendments and which pertain to portions of the Adjacent Real Estate annexed to and made a part of "the Regime" by such amendments.

- (u) "Property" means the Real Estate and appurtenant easements, the Dwelling Units, the Buildings, and all other improvements of every kind and nature whatsoever, now or hereafter located upon the Real Estate or upon any Additional Sections after annexation to the Regime, and used in connection with the operation, use and enjoyment of the Regime.
- (v) "Regime" means the Horizontal Property Regime created by this Declaration, including any subsequent Amendments thereto.
- (w) "Reserved Areas" shall mean any boat docks and related boating and/or water recreation facilities along the shoreline of Geist Reservoir which are added to the Regime and designated by Declarant as Limited Areas, pursuant to Sections 5 and 23 of this Declaration.
- (x) "Storage Areas" shall mean any areas intended and designed by Declarant to serve and be used exclusively by the Owner of a particular Dwelling Unit, as shown and designated on the Plans, for storage of property of such Owner.
- (y) "Tract" shall mean the Real Estate and Adjacent Real Estate.

Section 2. Description of Dwelling Units. The Real Estate contains four (4) Dwelling Units, as shown on the Plans recorded prior to the recording of this Declaration, as further described in Section 33, hereof. Said Dwelling Units are identified and referred to in the Plans and in this Declaration as Dwelling Units numbered 1-1, 1-2, 1-3, and 1-4. The Dwelling Units in the various portions of the Adjacent Real Estate, if annexed, shall be identified numerically, the exact numbers of the Dwelling Units to be identified and referred to in the Plans filed with each Amendment. The legal description for each Dwelling Unit shall consist of the numeric designation of the particular Dwelling Unit and reference to this Declaration and any relevant Amendments then of record. Each Dwelling Unit shall consist of all space within the boundaries thereof (as hereinafter described) and all fixtures, facilities, utilities, equipment, appliances, and structural components within said boundaries which are designed or intended to be solely and exclusively for the enjoyment, use and benefit of the Dwelling Unit. Not included in any Dwelling Unit are those fixtures, facilities, utilities, equipment, appliances, and structural components designed or intended for the use, benefit, support, safety or enjoyment of more than one Dwelling Unit, or which may be necessary for the same, or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Dwelling Unit shall constitute a part of such Dwelling Unit, even if the same are located partly outside the boundaries of such Dwelling Unit.

Section 3. Boundaries. The boundaries of each Dwelling Unit shall be as shown on the Plans. The vertical boundaries shall run from the upper surface of the interior, unfinished surfaces of the lower most floors to the interior, unfinished surfaces of the uppermost ceilings, and the horizontal boundaries shall be the interior, unfinished drywall surfaces of the

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common walls and exterior walls and the unfinished interior surfaces of the doors and windows of each Dwelling Unit, except that all glass shall be deemed a part of the Dwelling Unit. In the event that any horizontal or vertical boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or roof of the Dwelling Unit because of inexactness of construction, settling after construction, or for any other reasons, the boundary lines of each Dwelling Unit shall be deemed to be and treated for purposes of occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Dwelling Unit in and to such space lying outside of the boundary lines of the Dwelling Unit as indicated on the Plans, but within the walls, floors, and ceiling of the Dwelling Unit as the same may actually exist.

Section 4. Common Area and Facilities. Common areas shall be the following: (1) the yards, gardens, open spaces, landscaping, parks, woodland areas, recreation areas, sidewalks and driveways, except for any driveways designed to serve particular individual Dwelling Units; (2) central electricity, gas, water, cable television, and sanitary sewer lines and/or mains serving the Dwelling Units; (3) exterior lighting fixtures and electrical service, except where separately metered to a particular Dwelling Unit; (4) pipes, ducts, insulation, electrical wiring and conduits, public utility lines and central television antenna wiring; (5) interiors of all structural walls, including all exterior walls, walls between attached Dwelling Units, and walls between the garage and the remainder of each Dwelling Unit, and (6) the foundations, roofs, and exterior wall surfaces of all Buildings; (7) all structures, structural components, facilities and appurtenances located outside of the boundary lines of the Dwelling Units as described in Section 3 hereinabove. Common Areas shall not include those areas and facilities expressly defined as Limited Areas or included within the Dwelling Unit by Sections 2 or 3 hereinabove.

Section 5. Limited Areas. Limited Areas shall consist of the following:

- (a) Storage Areas. Storage Areas, if any, shall be limited to the exclusive use of a particular Dwelling Unit as designated on the Plans. The exclusive use of such Storage Areas shall pass with title to the Dwelling Unit for which such Area is designated, even though not expressly mentioned in the document passing title. The Storage Areas and use thereof shall be subject to such rules and regulations as may be deemed appropriate and be adopted by the Board of Directors. An Owner may grant a license to any other Owner to use all or part of his Storage Area, provided such license shall expire when the Owner granting the license ceases to be an Owner of the Dwelling Unit for which the Storage Area is designated. Any such license agreement shall be in writing and an executed copy thereof shall be furnished to the Board of Directors. The licensee shall be bound by and subject to all the obligations of the Owner with respect to such Storage Area, but the Owner granting such license shall not be relieved thereby from any of his obligations regarding such Storage Area.
- (b) Entranceways. The entranceways through which access to a Dwelling Unit is obtained are limited to the use of the Dwelling Unit or Dwelling Units served by such entranceway.

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- (c) Patios and Balconies. The patios, balconies, porches, courtyards and decorative walls and fences are limited to the use of the Dwelling Unit or Dwelling Units to which they are appurtenant.
- (d) Driveways and Parking Areas. The driveways, walkways, and similar areas used for access to particular individual Dwelling Units are limited to the use of the Dwelling Units so served. Each Dwelling Unit shall have the exclusive right to use the parking areas designated for its use on the Plans.

Section 6. Ownership of Common Area and Percentage Interest. In connection with and as an inseparable part of the ownership of each Dwelling Unit, each Owner thereof shall have an undivided interest in the Common Areas and Limited Areas as tenant in common with all other Owners, such interest to be equal to the Percentage Interest applicable to the Dwelling Unit. The Percentage Interest in the Common Areas and Limited Areas applicable to each Dwelling Unit shall be determined in accordance with the Formula set forth in Section 15 of this Declaration. The Percentage Interests at the time of recording of this Declaration are set forth on Exhibit C attached hereto. If any Additional Sections are annexed, as permitted and contemplated by paragraph 15 of this Declaration, then upon execution and recordation of the applicable Amendment, the Percentage Interest of each Dwelling Unit which is a part of the Regime prior to such annexation shall be recomputed in accordance with the Formula. Such recomputation will have the effect of reducing the Percentage Interests in those Common Areas and Limited Areas which are a part of the Regime prior to such Amendment, so as to allocate Percentage Interests therein to the Dwelling Units added to the Regime by the Amendment. At the same time, such recomputation shall create Percentage Interests, in favor of all Dwelling Units in the Regime immediately following such annexation, in the Common Areas and Limited Areas within such Additional Section being annexed. The overall resulting Percentage Interests shall be determined according to the Formula and designated in the applicable Amendment. In any calculation or determination of the Percentage Interest, the figure obtained shall be rounded to the nearest one-thousandth of a percent and shall be so presented for all purposes of conveyance and for all purposes of this Declaration.

Section 7. Membership in Association and Percentage Vote. In connection with and as an inseparable part of the ownership of each Dwelling Unit, each Owner shall be a member of the Association and shall have a Percentage Vote, which he shall be entitled to cast at each meeting of the Association on each matter on which the Co-owners may vote under the terms of this Declaration, the Articles of Incorporation of the Association, or the By-Laws. The Percentage Vote allocable to each Dwelling Unit for all matters upon which the Co-Owners are entitled to vote shall be equal to the Percentage Interest appertaining to each Dwelling Unit as determined by Sections 6 and 15, taking into account any adjustments as a result of any Amendments. To determine whether a majority or any specific percentage of the vote required by this Declaration has voted for or against any matter, the Percentage Votes of the Owners voting for such matter shall be added together and the Percentage Votes of the Owners voting against such matter shall be added together. A majority shall not exist for purposes of this Declaration unless such sum equals or exceeds fifty-one percent (51%) and a two-thirds (2/3) majority shall not exist unless such sum exceeds the decimal equivalent of two-thirds (2/3).

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Section 8. Association of Owners. In order to provide for the maintenance, repair, replacement, administration and operation of the Property and in compliance with the provisions of the Act, an association of the Co-Owners of the Dwelling Units in the Regime has been or shall be created by Declarant, to be known as the Backbay Co-Owners Association, Inc. (herein referred to as the "Association"). Each Owner shall be a member of the Association, but membership shall terminate when such person ceases to be an Owner, and such membership will be transferred to the new Owner along with the transfer of the Dwelling Unit. Declarant shall appoint the members of the initial Board of Directors of the Association, which shall control during such period all matters which would be within the authority of either the Association or the Board of Directors under this Declaration, the By-Laws, or the Act, except that certain powers including the power of assessment shall be limited as provided in the By-Laws. Each Owner is deemed to have conferred upon Declarant an irrevocable proxy to vote in such Owner's name, place, and stead on any and all matters on which the Co-Owners or any of them are entitled to vote under this Declaration, the By-Laws, or the Articles of Incorporation of the Association. Said initial Board of Directors shall serve until the time when Declarant turns over control of the Regime to the Co-owners, which shall take place no later than the earliest to occur of the following events:

- (a) One hundred twenty (120) days after a total of one hundred twenty-three (123) Dwelling Units in the Regime have been sold by Declarant;
- (b) One hundred twenty (120) days after substantial completion of all Dwelling Units and other Property which Declarant may elect to build on the Tract; or
- (c) The fifth anniversary of the date of this Declaration.

The irrevocable proxy conferred upon Declarant shall terminate as of the date of such transfer. Upon such transfer of control, Declarant shall make available to the Association all books, records, plans, and other information in its possession regarding the activities of said initial Board of Directors and the operation of the Regime prior to such turnover. Thereafter, the Association shall elect a Board of Directors annually in accordance with and as prescribed by the By-Laws, and may take any other actions with respect to control of the Regime provided for by this Declaration, the By-Laws, or the Act. The Board of Directors shall be the governing body of the Association, representing all of the Co-Owners in providing for the management, maintenance, repair, replacement and upkeep of the Property.

Section 9. Encroachments and Easements for Common Areas. If, by reason of the location, construction, settling, or shifting of a Dwelling Unit, a Common Area or Limited Area now encroaches or shall hereafter encroach upon any Dwelling Unit, then in such event an easement shall be deemed to exist and run to the Co-Owners and the Association for the maintenance, use and enjoyment of such Common Area or Limited Area. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines, and other common facilities, wherever located.

Section 10. Easement for Utilities and Public and Quasi-Public Vehicles. All public and quasi-public vehicles, including, but not limited to, police, fire, ambulance, and other

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emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, shall have the right to enter upon the streets, Common Areas and Limited Areas of the Regime in the performance of their duties. A transferable easement is also reserved by Declarant, to be granted to the appropriate utilities and their agents, for ingress, egress, installation, replacement, repairing, and maintaining of utilities lines, mains, and other necessary facilities and equipment within the Regime, including, but not limited to, water, sewers, gas, telephones, and electricity; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines, or other utilities, except as initially designed and approved by Declarant or as thereafter may be approved by the Board of Directors, nor permit substantial impairment of any Owner's use and enjoyment of his Dwelling Unit, and the grantee by any such easement rights shall be responsible for repair or restoration of damage to any Property caused by its activity pursuant to such easement rights. Declarant and the Association shall have the right to grant such other easements, licenses, and rights-of-way as may be necessary for the proper operation and maintenance of the Regime.

Section 11. Easements to and from Additional Sections. So long as all or any part of the Adjacent Real Estate is not annexed, Declarant reserves unto himself, his successors and assigns, for the use and benefit of that part of the Adjacent Real Estate not annexed, an easement to enter upon the streets and Common Areas to provide ingress and egress to the Adjacent Real Estate not annexed and to permit construction of buildings and other improvements upon such Adjacent Real Estate, and an easement for access to any and all necessary utility lines, mains, and other utility services for any buildings or improvements upon such Adjacent Real Estate, whether or not such buildings or improvements are to be added to the Regime. Declarant, or his successors or assigns, shall be responsible for repairing any damage to any Property arising out of the exercise of this easement. The easements herein reserved shall permit free and unrestricted use and access to the roadways and sidewalks by Declarant and any other owners or residents of the Adjacent Real Estate not annexed, their guests, invitees, and all public and quasi-public vehicles. The easements granted and reserved in this paragraph 18 shall be easements and covenants running with the land and accruing to the benefit of the Adjacent Real Estate.

Section 12. Restrictions on Use. The following restrictions apply to the use and enjoyment of the Dwelling Units, Common Areas, Limited Areas, and other Property:

- (a) All Dwelling Units shall be used exclusively for residential purposes and occupancy for a single-family. No lease shall demise any Dwelling Unit for a term of less than six months. Nothing herein contained shall restrict the use of Property by Declarant during construction and sale periods for unit "Models", sales offices, the location of construction trailers and equipment, and for storage of equipment, materials and supplies.
- (b) No additional buildings shall be erected other than the Buildings designated in the Declaration and shown on the Plans.
- (c) Nothing shall be done or kept in any Dwelling Unit or in the Common Areas or Limited Areas which will cause an increase in the rate of insurance on any Building or the contents thereof. No Owner shall

permit anything to be done or kept in his Dwelling Unit or in the Common Areas or Limited Areas which will result in a cancellation of insurance on any Building or contents thereof, or which would be in violation of any law or ordinance.

- (d) No waste shall be committed in the Dwelling Units, Common Areas or Limited Areas.
- (e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of a Building, or on or upon any balcony or patio, and no sign, awning, canopy, shutter, radio or television antenna, or other attachment shall be affixed to or placed upon the exterior walls or roof or any other part of the Building, without the prior written consent of the Board of Directors.
- (f) No animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Dwelling Unit or in the Common Areas or Limited Areas, except that small pet dogs, cats, or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred, or maintained for any commercial purpose, and does not create a nuisance. Pets shall be permitted outdoors only under leash and accompanied by an Owner or other person, and an Owner shall be fully liable for any injury or damage to any person or to the Common Areas or Limited Areas caused by his pet, and shall be responsible for removing from such areas his pet's waste materials. The Board of Directors may adopt such other rules and regulations regarding pets as it may deem appropriate, and in the event that in the judgment of the Board of Directors, any pet is causing or creating a nuisance or unreasonable disturbance or noise, such pet shall be permanently removed from the Property upon written notice of such determination by the Board of Directors.
- (g) Nothing shall be done or permitted in any Dwelling Unit which will impair the structural integrity of any Building or which would structurally change any Building, except as otherwise provided in the Declaration or these By-Laws; nor shall any Dwelling Unit be used in any unlawful manner or in any manner to cause injury to the reputation of the Regime or to be a nuisance, annoyance, inconvenience, or damage to other Owners or tenants of the Building or neighboring Buildings, including, without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, T-V, loud speakers, electrical equipment, amplifiers, or other equipment or machines.
- (h) No clothes, sheets, blankets, rugs, laundry, or other similar objects or materials shall be hung out or exposed on any part of the Common Areas. The Common Areas and Limited Areas shall be kept free and clear of rubbish, debris, and other unsightly material by the Owners, except as to specific areas designed for temporary storage thereof.
- (i) No industry, trade, or other commercial or religious activity, educational or otherwise,

whether designed for profit, altruism or otherwise, shall be conducted, practiced, or permitted on the Property.

- (j) No "For Sale", "For Rent" or "For Lease" signs, nor any window advertising display of any kind shall be maintained or permitted on any part of the Property, without the prior consent of the Board of Directors; provided, however, that the right is reserved by the Declarant and the Board of Directors to place or allow to be placed "For Sale" or "For Lease" signs on any unsold or unoccupied Dwelling Units.
- (k) All Owners and members of their families, their guests, or invitees, all lawful occupants of any Dwelling Unit and all other persons entitled to use the same and to use and enjoy the Common Areas and Limited Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be issued in writing by the Board of Directors governing the operation, use, and enjoyment of the Common Areas and Limited Areas.
- (l) No boats, campers, trailers of any kind, buses, mobile homes, trucks, motorcycles, mini-bikes, or any other unconventional vehicles of any description, shall be permitted, parked, or stored anywhere within the Property, except that any such vehicles may be parked or stored completely enclosed within a garage and boats may be kept at boat dock facilities in the event the same shall be added to the Regime. The parking of any type or kind of vehicle upon the streets, other than temporary parking by guests and invitees of any Owner, is prohibited. Appurtenant to each Dwelling Unit is the right to use a certain designated parking area located in the driveway area adjacent to that Dwelling Unit and more particularly indicated on the Plans. The number of vehicles which may be parked in such area by any Owner shall not exceed the number of automobiles for which such Owner's garage space is designated. No Owner shall park any vehicle on a recurrent or permanent basis in any location other than in his garage or his designated parking area.
- (m) No Owner shall be allowed to plant trees, landscape, or to do any gardening in any of the Common Areas or Limited Areas, except with the written consent of the Board of Directors.
- (n) All trash or refuse shall be stored in appropriate containers inside the Dwelling Unit (including garage) or designated trash areas and shall be made accessible for the regular trash collection system established by the Board of Directors.
- (o) No Owner shall install or maintain any interior or exterior window decor visible from outside the Dwelling Unit, other than interior draperies having a white or pastel back lining.

Section 13. Maintenance, Decoration, Repairs and Replacements. The Association will be responsible for the maintenance, repair, decoration, restoration, and replacement of the Common Areas and Limited Areas. Maintenance, repairs, replacements and upkeep of the Common Areas and Limited Areas shall be furnished

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by the Association and the cost thereof shall be part of the Common Expenses. The Association may elect to delegate such duties to a professional managing agent and may enter into a management contract for such purpose, provided that such agent and the terms of such contract are approved by a majority of the Percentage Vote. Declarant or an entity affiliated with Declarant shall serve as the Managing Agent for the Regime so long as Declarant retains control of the Association, and shall perform all property management functions on behalf of the Association. Any management contract made or which is deemed to arise between the Association and Declarant (or any affiliate) shall be terminable by the Association without cause and without penalty upon thirty (30) days' written notice at any time after Declarant relinquishes control of the Association. The Board of Directors has the right to adopt such rules and regulations concerning the maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas as it deems appropriate, including the appointment of committees to oversee the same. The Board of Directors shall have the exclusive right to determine the outside decor of each Dwelling Unit, including without limitation the color and type of paint and all decor appurtenant to the exterior of each individual Dwelling Unit. Each Owner shall control and have the right to determine the interior decor of his Dwelling Unit, but this shall not include the right to make structural changes to the Dwelling Unit, nor the right to use interior decor which adversely affects the external appearance of the Dwelling Unit, as more particularly set forth in Section 12 of this Declaration. No act or omission which constitutes waste shall be committed or suffered in or upon any Dwelling Unit, the Common Areas, or Limited Areas. Each Owner shall maintain and repair at his sole cost and expense all fixtures, appliances, equipment, and other improvements constituting a part of his Dwelling Unit under Sections 2 and 3 hereinabove, and each Owner shall promptly repair any condition or defect existing or occurring in his Dwelling Unit which, if not repaired, might adversely affect any Dwelling Unit, Common Area or Limited Area. The Board of Directors or their designated agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required) to enter into the Dwelling Units and the Common Areas and Limited Areas appurtenant to each Dwelling Unit to replace, repair, and maintain the Common Areas and Limited Areas. In the event that any Owner fails or is unable to maintain or repair any condition or defect for which he is responsible and such condition or defect causes or threatens to cause immediate and substantial harm to any person or to any property outside his Dwelling Unit, the Board of Directors or its designated agent shall have the right to enter such Owner's Dwelling Unit to remedy or repair such condition or defect, and any costs or expenses incurred in connection therewith shall be payable by such Owner upon demand by the Board of Mangers or its designated agent. Nothing herein contained shall be construed to represent a contractual liability to the Owners on the part of the Declarant, the Association, or the Board of Directors for maintenance, repair, or replacement of any Common Areas or Limited Areas, and the liability of the Association and the Board of Directors in this regard shall be limited to damages resulting from gross negligence, recklessness, or intentional misconduct.

Section 14. Alterations, Additions, and Improvements. No Owner shall make any alterations or additions to the Common Areas or Limited Areas without the prior written approval of the Board of Directors, nor shall any Owner make any alterations to his respective Dwelling Unit which would impair the safety thereof, or which would substantially alter or adversely affect any structural portion of any Dwelling Unit or impair any easement or hereditament, without the unanimous consent of the Co-owners. Any alterations, additions, or improvements made by any Owner wholly or in part outside his respective Dwelling

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Unit with the consent of the Board of Directors shall remain the property of that Owner and shall be owned, maintained, and insured by that Owner as part of his Dwelling Unit and deemed a part thereof for purposes of this Declaration. Upon the sale of his Dwelling Unit, such alterations, additions, or improvements shall be transferred along with such Dwelling Unit, and the purchaser shall be deemed to assume the prior Owner's maintenance and insurance obligations. If, in the reasonable discretion of the Board of Directors, such alteration, addition, or improvement is not being properly maintained, the Board of Directors may cause the same to be removed if such condition is not corrected by such Owner within ten (10) days after notice of such determination by the Board of Directors, and such Owner shall be liable for all costs incurred in connection with such removal.

Section 15. Expansion. The provisions of this paragraph shall govern the expansion of the Regime and the allocation and reallocation of Percentage Interests and Percentage Votes.

A. Expansion by Sections. Declarant anticipates that it may construct from time to time additional Dwelling Units on various portions of the Adjacent Real Estate, for addition to the Regime in the manner hereinafter set forth. The general plan of development shall be consistent with the density and plan of development of the Dwelling Units to be contained upon the Real Estate. The maximum number of Dwelling Units to be contained in the Tract is one hundred sixty-four (164). Additional Sections shall not be added by Declarant at any time after the expiration of seven (7) years from the date of this Declaration, nor shall Declarant add any further sections if more than five (5) years have elapsed since the most recent prior section was added to the Regime. At any time, and from time to time, prior to the expiration of said seven-year period, Declarant, at its option, may cause all or any part of the Adjacent Real Estate to be added to the Regime, subject to the following conditions:

- (a) An Additional Section may not be annexed unless the Dwelling Units to be constructed in such Additional Section have been substantially completed, and unless the Plans therefor are completed and certified by a licensed professional engineer or registered architect as fully and accurately depicting the layout, location, and dimensions of the Dwelling Units and recorded along with an Amendment conforming to the requirements of subsection C of this Section 15; and
- (b) The Dwelling Units on any Additional Sections shall be constructed with labor and material of comparable quality to the Dwelling Units previously constructed, although not necessarily of similar design, either as to interior floor plan or exterior structural design. Declarant reserves the right to determine all developmental standards of each Additional Section other than those particularly set forth in this Section 15.

Declarant expressly reserves the right not to annex any or all of the Adjacent Real Estate. Upon annexation of each Additional Section to the Regime, each Owner shall acquire a Percentage Interest, as recomputed in accordance with this Section 15, in the Common Areas and Limited Areas in such Additional Section, at which time each Co-Owner thenceforth shall also incur and pay his Percentage Interest share of the Common Expenses attendant with such Additional Section, along with the Common

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Expenses attendant with the Real Estate and all Additional Sections previously added to the Regime.

B. Percentage Interest. The Owner of each Dwelling Unit shall have a Percentage Interest and Percentage Vote appurtenant to his Dwelling Unit which is based upon the size of his Dwelling Unit. On the plat and/or in the amendment by which each Dwelling Unit is made a part of the Regime, there shall be designated the approximate interior square footage of floor space of each such Dwelling Unit, excluding garage, attic, unfinished basement, and unenclosed floor space (said square footage hereinafter called the "Adjusted Square Footage"). The determination of the Adjusted Square Footage as it appears on said plat or in said amendment shall be conclusive upon the Owners of the corresponding Dwelling Units. "Unit Points" are hereby allocated in accordance with Adjusted Square Footage as follows:

<u>Adjusted Square Footage of Dwelling Unit</u>	<u>Unit Points</u>
less than 1700	23
1701 to 2200	24
2201 to 2700	25
2701 to 3200	26
over 3200	27

The Percentage Interest and Percentage Vote appertaining to each Dwelling Unit at any time shall be equal to the Unit Points allocated to such Dwelling Unit by the above schedule, divided by the sum of the Unit Points allocated to each and every Dwelling Unit in the Regime as of such time.

C. Procedures For Amendment. As each Additional Section is developed, Declarant may record an Amendment annexing and adding such Additional Section to this Declaration and making it a part of the Regime. Declarant reserves the right to annex Additional Sections thereof in any manner or order it may choose. Such Amendment shall contain the following:

- (a) A description of the portion of the Adjacent Real Estate to be annexed;
- (b) A description of the Dwelling Units described in a manner consistent with this Declaration and the Act;
- (c) The Adjusted Square Footage attributable to each Dwelling Unit added by such Amendments;
- (d) The Percentage Interest of each of the Dwelling Units in the Regime after such annexation, computed in accordance with the Formula.

D. Rights of Owners Affected By Expansion. Each Owner, by acceptance of a deed to a Dwelling Unit, acknowledges, consents, and agrees that the following rights and conditions shall be applicable upon the recording of each Amendment:

- (a) The Additional Section described in each Amendment shall be governed in all applicable respects by the provisions of this Declaration.

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- (b) The Percentage Interest and Percentage Vote applicable to each Dwelling Unit shall be automatically reallocated in accordance with the schedule set forth in such Amendment, which reallocation shall be in accordance with the Formula. On recording of each Amendment, the amount by which the Percentage Interest of a Dwelling Unit Owner is reduced shall thereupon divest from such Dwelling Unit Owner and revert to the Declarant, its successors and assigns.
- (c) Each deed, mortgage, or other instrument affecting a Dwelling Unit shall be deemed given subject to the limitation that the Percentage Interest appurtenant to each Dwelling Unit shall be, upon the recording of each Amendment, altered in accordance with the Amendment and the Formula.
- (d) The Percentage Interest in the Common Areas and Limited Areas appurtenant to each Dwelling Unit shall be deemed to include any additional Common Areas and Limited Areas annexed hereto by such Amendment. Each Amendment shall grant and convey to the Owners the appropriate Percentage Interest in the Common Areas and Limited Areas added by such Amendment, and each deed, mortgage, or other instrument affecting a Dwelling Unit shall be deemed to include and attach to such additional Common Areas and Limited Areas.
- (e) The recording of an Amendment shall not alter the amount of the lien for Common Expenses previously assessed to a Dwelling Unit which was already a part of the Regime prior to such recording. The lien for the share of Common Expenses from and after such recording shall be assessed and paid based upon the recomputed Percentage Interest.
- (f) Each Owner agrees to execute and deliver such documents as are necessary or desirable to accomplish the annexation of the Additional Sections in the Tract in accordance with the provisions of this Section 15.

E. Removal From Tract. In the event Declarant elects not to annex all or part of the Adjacent Real Estate, as permitted by this Section 15, Declarant shall file an Amendment which shall permanently remove that portion of the Adjacent Real Estate which Declarant elects not to annex, and said portion thereafter shall not be subject to any possibility of becoming a part of the Regime. In addition, any portion of the Adjacent Real Estate for which an Amendment has not been filed within seven (7) years of the date hereof shall automatically be removed from the possibility of becoming a part of the Regime. When, because of the annexation of all of the Adjacent Real Estate, the passage of time, or the filing of an amendment under this Subsection E, the Regime is no longer subject to expansion, the Percentage Interest then in effect shall not be altered unless at least two-thirds of the Percentage Vote approves such change, and unless Mortgagees Dwelling Units representing at least two-thirds of the Percentage Vote in the Regime consent to such change.

Section 16. Assessments.

A. Liability for Assessments. As of the first day of the first month following its addition to the Regime, each Dwelling Unit and the Percentage Interest appurtenant thereto shall be subject to the Regular Assessments and special Assessments for

Common Expenses as provided in this Section 16, and all such Assessments shall constitute liens upon each Dwelling Unit and appurtenant Percentage Interest from and after the date of levy of each such Assessment. In addition, each Owner shall be personally liable for the amounts of any and all Assessments which become due and payable during the period in which such Owner holds title to a Dwelling Unit. No Owner shall be personally liable for any Assessments which first became due and payable prior to the time such Owner took title to a Dwelling Unit unless he expressly assumes such liability. However, a conveyance by an Owner of his Dwelling Unit shall not operate to release or limit the liability of an Owner for Assessments becoming due and payable while such Owner holds title to a Dwelling Unit. The lien of any Assessment shall be subordinate to any first mortgage on any Dwelling Unit which was recorded before the time when said Assessment first became delinquent.

B. Collection of Assessments. The amount of the Regular Assessment or of any special Assessment provided for in this Declaration or in the By-Laws shall be assessed as a lien upon the Dwelling Unit and Percentage Interest of each Owner as of the time when such Regular Assessment or special Assessment, as the case may be, is determined or levied by vote of the Association. Each Assessment shall be due and payable within ten (10) days of the due date thereof as specified in this Declaration or by the Association in connection with its levy of such Assessment, or if not so specified, then within thirty (30) days of the date of levy of such Assessment, and the date marking the end of the applicable time period allowed herein for the payment of such Assessment is hereby termed the "Delinquency Date". Any Assessment which is not paid in full by the Delinquency Date shall bear interest on the unpaid balance thereof from the delinquency Date until fully paid, at a per annum rate of interest which is two times the rate in effect as of said Delinquency Date for 90-day U.S. Treasury Bills (provided that such rate shall not exceed any maximum rate of interest allowed by applicable law). In the event that any costs or expenses, including attorney's fees, are incurred by or on behalf of the Association with respect to the recovery or collection of any delinquent Assessment, all such costs and fees shall be due and payable immediately by such delinquent Owner and shall bear interest from the dates incurred until paid in full, at per annum rates of interest which are two times the respective rates in effect as of the dates on which such costs and fees are incurred (provided that no rate shall exceed any maximum rate of interest allowed by applicable law). All interest and all costs and expenses payable hereunder with respect to a delinquent Assessment shall be added to and deemed a part of such delinquent Assessment and shall constitute a lien on the delinquent Owner's Dwelling Unit and Percentage Interest as of the date on which such delinquent Assessment first became a lien. In the event that any Assessment is not fully paid on or before the Delinquency Date, the Association shall be entitled to enforce payment of the same by foreclosure of said lien and/or other appropriate legal proceedings in accordance with the laws of the State of Indiana. Any such lien against a Dwelling Unit and its Percentage Interest shall be subordinate to any first Mortgage covering such Dwelling Unit and its Percentage Interest if and to the extent such Mortgage was recorded prior to the due date of the delinquent Assessments.

Section 17. Insurance.

A. The Association shall obtain fire and extended coverage insurance insuring all Dwelling Units in the Regime including all fixtures, appliances, and other improvements installed and sold by Declarant as a part thereof, and all Common Areas and Limited Areas in the Regime, in an amount equal to the full replacement cost thereof from time to time,

as determined by a qualified appraiser. Such insurance shall be in the form of a master casualty policy for the entire Regime, shall contain a "Replacement Cost Endorsement," and shall provide that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to paragraph 20. Such insurance coverage shall be for the benefit of each Owner and the Association and, if applicable, each Owner's Mortgagee. The amount of coverage shall be increased from time to time to cover all additions to the Regime. The proceeds shall be payable to the Association, who shall hold such proceeds as trustee for the individual Owners and Mortgagees, as their respective interests shall appear. The proceeds shall be used or disbursed only in accordance with the provisions of this Section 17 and of Section 19 of this Declaration, as applicable, and any surety bond or bonds obtained by the Board of Directors covering the officers of the Regime as provided in subsection D of this Section shall specifically include protections for any insurance proceeds so received.

B. The Association also shall obtain comprehensive public liability insurance together with Workmen's Compensation Insurance, employers liability insurance, and such other liability insurance, with such coverages and limits, as the Board of Directors deems appropriate; provided, however, that public liability insurance shall have liability limits of not less than One Million Dollars (\$1,000,000.00) for personal injury and Five Hundred Thousand Dollars (\$500,000.00) for property damages; and provided further, that all such policies shall meet the requirements of Subsection E of this Section. Such insurance shall inure to the benefit of each individual Owner, the Association, the Board of Directors, and any managing agent or company acting on behalf of the Association. The individual Owners, as well as any lessees of any Owners, shall have the right to recover losses insured for their benefit.

C. Each Owner shall have the right to purchase any additional insurance as he may deem necessary, and each Owner shall be solely responsible for loss of or damage to the contents of his own Dwelling Unit, however caused, including all floor and wall coverings, appliances, fixtures, and betterments installed by the Owner, and for loss of or damage to any of his personal property, whether or not stored or kept in his own Dwelling Unit. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

D. The Association shall obtain a fidelity bond indemnifying the Association, the Board of Directors, and the Co-Owners for loss of funds resulting from fraudulent or dishonest acts of any employee or officer of the Association or of any other person handling the funds of the Association or the Co-Owners, which bond shall be written in an amount equal to at least One Hundred Fifty Percent (150%) of the estimated annual operating expenses for the Property.

E. All policies of insurance of the character described in subparagraphs A and B of this Section 17 shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, the Board of Directors, the Declarant, any property manager, their respective employees and agents, or the Owners, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties. All policies of insurance maintained by the Association pursuant to this Section 17 shall provide such coverages and be in such amounts as may be required from time to time by FNMA.

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Section 18. Condemnation. In the event that all or any part of the Regime shall be taken or condemned by any competent authority, or if any condemnation proceeding shall be instituted with respect to all or any part of the Regime, the Association shall have the right to appear and defend in such proceedings on behalf of the Owners affected thereby and to prosecute on behalf of any such Owners any action or proceeding, at law or in equity, as it may deem appropriate for the adequate protection and compensation of all Owners affected by any confiscatory act of any public body. The proceeds obtained by the Association as a result of any such action or proceeding shall be received by the Association and shall be applied by the Association as follows: (a) the portion of such award which is allocated by the court making such award, or if not so allocated, then as determined by a two-thirds (2/3) majority of the Percentage Vote at a special meeting called for the purpose of making such allocation, to the buildings or units taken (such portion hereinafter called the "Building Award"), shall be distributed among the Owners whose Dwelling Units were taken in proportion to the current fair market value of each such Dwelling Unit; (b) the balance of such award after payment of the Building Award shall be paid, first, to reimburse the Association for its costs and expenses in obtaining such award, and the balance, if any, shall be paid to each Co-Owner in the Regime in proportion to his Percentage Interest. No amounts or damages shall be paid by the Association to any Owner for any partial taking, partial loss of use, or impedance of access as to any Dwelling Unit, except to the extent that the amount of any such award is specifically determined by the court making such award. Nothing in this Section 18 shall be construed to prevent any Owner affected by any condemnation or confiscatory action of any public body from participating in any condemnation proceedings or from prosecuting any action for any recovery for any confiscation of his property, but such Owner shall not be entitled to distribution out of the proceeds received by the Association to the extent that such Owner recovers sums or compensation for the same or similar damages as are the basis of the award to the Association.

Section 19. Casualty and Restoration. In the event of any damage to or destruction of the Property by fire or other casualty, the following provisions shall be applicable:

- (a) Partial Destruction. In the event of less than complete destruction (as defined in subsection (b) hereinbelow) of the Dwelling Units in all Buildings, all Dwelling Units and other Property shall be promptly repaired and restored. The proceeds of the insurance shall be applied to the cost of such restoration. If the insurance proceeds are not adequate to cover the cost of reconstruction or in the event there are no proceeds, the amounts needed to complete the repair and restoration beyond available insurance proceeds shall be paid by all Co-owners as a Common Expense. The application and use of such proceeds shall be determined by the Board of Directors of the Association, and when so determined in good faith shall be binding upon all Owners and Mortgagees.
- (b) Restoration in the Event of Complete Destruction. In the event that two-thirds or more of the Dwelling Units in the Regime are damaged or destroyed by fire or other casualty, a special meeting of the Association shall be called. If, at that meeting, a determination is made, by vote of at least a two-thirds (2/3) majority of the Percentage Votes of all Owners in the Regime, that a complete destruction has occurred so that

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the Buildings and other Property in the Regime shall not be repaired or restored, then the proceeds of insurance and the Property in the Regime shall be dealt with and disposed of in accordance with Section 21 of the Act, as it may be amended from time to time, or in accordance with any substitute provisions governing such matters as may be enacted subsequent to the date of this Declaration.

- (c) Restoration, for purposes of subparagraphs (a) and (b) above, shall mean construction or rebuilding of the Dwelling Units and other Property to substantially the same condition as they existed immediately prior to the destruction and with a similar quality of materials and workmanship and similar type of design and architecture, but excluding all improvements and property added to or kept in or about such Dwelling Units by any Owner.
- (d) In the event restoration of Dwelling Units is necessary, the insurance funds for such restoration shall be disbursed by any Mortgagee (if it elects to do so) which holds mortgages on 51% or more of the number of Dwelling Units that need to be restored; otherwise, the insurance funds shall be disbursed by the Association. Such distribution and payment of funds shall be in the manner and in accordance with the procedure normally used when disbursing funds for initial construction. Each insurer shall be notified of this provision by the Owners and each policy of insurance shall comply herewith.

Section 20. Negligence. Each Owner shall be liable for the expense of any maintenance, repair, or replacement of any of the Property which becomes necessary by reason of his negligence or that of any member of his family or his or their guests, employees, agents, or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy, or abandonment of his Dwelling Unit or its appurtenances or of the Common Areas or Limited Areas.

Section 21. Real Estate Taxes. Real estate taxes are to be separately taxed to each Dwelling Unit and the Percentage Interest connected therewith, as provided in the Act. In the event that for any year real estate taxes are not separately assessed and taxed to each Dwelling Unit, but are assessed and taxed on the Real Estate as a whole, then each Owner shall pay his proportionate share of the real estate taxes. Each Owner's proportionate share will be determined as follows:

- (a) With respect to the real estate taxes assessed against the land and all improvements constituting or being a part of the Common Areas, the proportionate share of such taxes shall be equal to the Percentage Interest then appurtenant to the Owner's Dwelling Unit. Declarant will pay for the taxes on the Adjacent Real Estate until annexed, at which time the Owners will pay all of same according to their respective Percentage Interests.
- (b) With respect to the real estate taxes assessed against the Buildings and Limited Areas, the respective Owners will be obligated to pay the

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amounts assessed against same to the extent of their respective interests therein (as determined by the relative fair market values of the Dwelling Units and appurtenant Limited Areas in each Building).

- (c) All other taxes assessed against the real estate or improvements shall be calculated by the Formula and paid for according to the Percentage Interest.

The worksheets of the Lawrence Township Assessor shall be used to determine assessment valuation for purposes of this Section 21.

Section 22. Utilities. Each Owner shall pay for those utilities provided to his Dwelling Unit which are separately billed or metered for his Dwelling Unit. Utilities which are not separately billed or metered shall be treated and paid as part of the Common Expenses.

Section 23. Use and Sale of Dwelling Units. For the purpose of maintaining the residential character of the Regime, and for the protection of the Co-Owners, Declarant specifically reserves the mode and method of the original sale of each Dwelling Unit until the last Dwelling Unit in the Regime is sold. As Declarant adds Additional Sections, Declarant may designate any Dwelling Unit therein for location of a sales and management office, but no more than one Dwelling Unit within the Regime shall be reserved for such purpose at any one time. The Dwelling Unit so designated may also be used, at the option of Declarant, as a furnished or unfurnished model, and Declarant may further designate from time to time, at its option, any other Dwelling Units in the Regime still held by Declarant, for use as furnished or unfurnished models. Any Dwelling Unit designated by Declarant for use as a model and/or as a sales and management office may, at Declarant's option, either be owned by Declarant or sold and leased back by Declarant for such purpose. The right of Declarant to so designate and use such Dwelling Units shall continue so long as Declarant owns or may construct any Dwelling Units within the Tract, and no action of the Association or any Owner shall impair such right. Upon discontinuation of such use by Declarant, each such Dwelling Unit shall not become Common Area or Limited Area, but shall be treated as a Dwelling Unit for all purposes of this Declaration; provided, however, that Declarant shall be entitled to designate one Dwelling Unit for use solely as a sales and management office, and such unit shall become a part of the Common Areas at the time Declarant ceases to use the same for such purpose. The designations of any Dwelling Units as permitted by this Section 23 shall be done by recorded instrument referencing this Declaration and this Section 23. Other than as provided in this Section 23, all Dwelling Units in the Regime shall be used for single-family residential purposes only, and no lease (other than a leaseback by Declarant) shall demise any Dwelling Unit for a term of less than six months.

Section 24. Boat Docks and Facilities. Declarant reserves the right to construct boat docks and related boating and/or water recreation facilities along the shoreline of Geist Reservoir, and further reserves the right to determine whether and to what extent such docks and facilities shall be available for use and access by Owners. In no event shall any such facilities be added to the Regime. The land up to the shoreline of Geist Reservoir shall be added to the Regime, or easements from the Regime to such docks and facilities shall be granted by Declarant to the Owners holding such license rights for access thereto. Title to Geist Reservoir is held by the Indianapolis Water Company, and Declarant can grant to Owners only such license rights as it obtains from said company and the use thereof shall be limited to Owners who have purchased from

Declarant a license to use the same. An easement over the Common Areas is hereby reserved and granted in favor of such Owners who hold such license rights for purposes of access to such docks and facilities.

Section 25. Amendment of Declaration. Except as otherwise provided in this Declaration, this Declaration may be amended in the following manner:

- (a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.
- (b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by the Owners of at least a majority of the Percentage Vote.
- (c) Meeting. The resolution concerning a proposed amendment must be adopted by the appropriate majority vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
- (d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than a majority of the Percentage Vote. In the event any Dwelling Unit is subject to a mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws.
- (e) Amendments. No amendment to this Declaration shall be adopted which changes:
 - (1) The Percentage Interest with respect to any Dwelling Unit or the share of an Owner's liability for Common Expenses, without the approval of sixty-seven percent (67%) of the Percentage Vote and the approval vote of the Mortgagees having mortgages on at least sixty-seven percent (67%) of the Dwelling Units in the Regime, except as otherwise provided in regard to annexation;
 - (2) The provisions of Section 25 of this Declaration with respect to reconstruction or repair in the event of fire or casualty, without the approval of sixty-seven percent (67%) of the Percentage Vote and the unanimous approval of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the By-Laws;
 - (3) The provisions of Section 15 of this Declaration, except by Declarant in the manner provided therein, so long as the Regime is still subject to expansion; or
 - (4) The provisions of Section 16 of this Declaration without the consent of the Declarant so long as the Regime is still subject to expansion; or

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- (5) Any provision of the Declaration or By-Laws which would be deemed to be of a material nature by the Federal National Mortgage Association ("FNMA") under Section 402.02 of Chapter 3 of FNMA's current Lending Guide or any subsequent relevant guidelines which FNMA may issue, without the approval of at least two-thirds of the Percentage Vote and the approval of Mortgagees having mortgages on at least sixty-seven percent (67%) of the Dwelling Units in the Regime.

In the event that a proposed amendment is one permitted by this Section and is deemed by the Board of Directors to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed.

- (f) Recording. Each amendment to the Declaration shall be executed by Declarant only in any case where Declarant has the right to amend this Declaration without any further consent or approval, and otherwise by the President and Secretary of the Association, provided that any amendment requiring the consent of Declarant shall contain Declarant's signed consent. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, no amendment shall become effective until so recorded.

The Amendments dealing with the Additional Sections and reassignment of Percentage Interests, however, are not subject to the conditions of this Section 25 and may be filed or adopted by the Declarant at any time without any notice or consent of any other party. In addition, the provisions of this Section 25 are subject to the rights given to the Declarant by virtue of the irrevocable proxies held by Declarant on behalf of the respective Owners, as provided in Section 8 hereinabove.

Section 26. Amendments for Mortgage Purchaser. In the event that FNMA or the Federal Home Loan Mortgage Corp. or other purchaser of a mortgage of any property in this Regime should impose any requirements pertaining to the attributes of the Regime or the provisions of this Declaration or the By-Laws, for purposes of qualifying for or agreeing to the purchase of any such mortgage, the Declarant or Board of Directors may fully satisfy such requirements, and shall have the right to amend this Declaration in accordance therewith, without the approval or consent of any Owner or Mortgagee.

Section 27. Reservation of Rights. Declarant reserves the right to amend this Declaration without consent of the respective Owners or the Association until all Dwelling Units which may be constructed on the Tract are sold by Declarant, the control of the Regime is turned over to the Association, or the tenth anniversary of the date hereof, whichever first occurs, provided that no such amendment shall materially impair the rights of any Mortgagee, nor substantially deprive the Co-owners, or any of them, of the rights intended to be conferred upon them by this Declaration or the By-Laws.

Section 28. Enforcement of Covenants and Restrictions. The various covenants and restrictions applicable to the use

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and enjoyment of the Dwelling Units, as set forth in this Declaration, are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, the Co-Owners, or the Association. Available relief in any action brought to enforce this Declaration shall include damages and injunctive relief against any violation or attempted violation of these provisions, and the recovery of any damages, costs, and attorneys' fees incurred by any party successfully enforcing this Declaration against any other party, but there shall be no right of reversion or forfeiture of title resulting from any violation.

Section 29. Costs and Attorneys' Fees. In a proceeding arising because of an alleged failure of an Owner to make any required payments or to comply with any provision of the Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the party initiating such proceeding shall be entitled to recover its reasonable attorneys' fees incurred in connection with such proceeding, if it is found or agreed in such proceeding that a violation of this Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, did occur.

Section 30. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants, and occupants of the Dwelling Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws, and the rules and regulations as adopted by the Board of Directors, as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Amendments, the Act, the By-Laws, and any rules and regulations adopted pursuant thereto, as each may be amended from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Dwelling Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. Each Owner agrees to execute and deliver such other documents, if any, as may be necessary or desirable to comply with the Act as it may be amended from time to time. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Dwelling Unit or Dwelling Units or any part of the Property in any manner shall be subject to the Declaration, the Act, the By-Laws, and the Rules and regulations applicable thereto, as each may be amended from time to time.

Section 31. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or by abandonment of his Dwelling Unit. The Association does not waive the right to place a lien on the Dwelling Unit and foreclose same by any failure to take action when any payment of any Assessment is not timely made when due by any Owner.

Section 32. Construction and Severability. This Declaration and the By-Laws are intended to comply with the provisions of the Act, and shall be construed whenever possible to be consistent therewith. The invalidity of any covenant, restriction, condition, limitation, or other provision of this Declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration or the attached By-Laws. If any of the options, privileges, covenants, rights, or interests created by this Declaration would otherwise be unlawful or void for viola-

tion of (a) the rule against perpetuities or any analogous statutory provisions, (b) the rule restricting restraints or alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the persons who are attorneys practicing with the firm Ice, Miller, Donadio & Ryan in Indianapolis, Indiana and their lawful descendants living as of the date of the Prior Declaration.

Section 33. Floor Plans. The Plans pertaining to the Real Estate, as described in Section 1(t) of this Declaration, are incorporated into this Declaration by reference, and have been recorded in the Office of the Recorder of Marion County, Indiana, under Instrument No. 82-56705, as of October 13, 1982.

Section 34. Notices. Any notice required or permitted to be sent under this Declaration or the By-Laws shall be sufficient if delivered personally or sent by first-class U. S. Mail, postage prepaid, to the address shown on the records of the Association; provided, however, that notices to Mortgagees of any matters other than annual meetings shall be sent by U. S. Certified Mail, Return Receipt Requested, or by U. S. Registered Mail.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day, month and year first above written.

GLM OF INDIANA, LTD.
By GLM of Indiana, Inc.,
General Partner

By: Herbert M. Luksch
Herbert M. Luksch, Vice
President

DISTRICT OF)
) SS:
COLUMBIA)

Before me, a Notary Public in and for the District of Columbia, personally appeared Herbert M. Luksch, as Vice President of GLM of Indiana, Inc., an Indiana corporation, as General Partner of GLM of Indiana, Ltd., an Indiana limited partnership, who acknowledged the execution of the above and foregoing Declaration of Backbay Horizontal Property Regime for and on behalf of said Corporation as General Partner of said partnership.

Witness my hand and Notarial Seal this 11th day of June, 1984.

Signature Donna Westlund

Printed DONNA WESTLUND
Notary Public

Resident of City of Alexandria County

My Commission Expires:

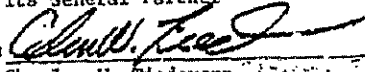
August 14, 1987

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APPROVAL OF AMENDED DECLARATION


Epic Associates 82-XXIII, a limited partnership, hereby approves and consents to the execution and recordation of the foregoing Declaration as an amendment to the Prior Declaration pursuant to paragraph 11.7 thereof, and acknowledges and agrees that the terms, covenants, conditions and restrictions contained in said Declaration replace and supersede the Prior Declaration in all respects and that said Declaration is binding upon it and upon its Dwelling Units and Percentage Interest.

EPIC ASSOCIATES 82-XXIII,
a limited partnership, by
EQUITY PROGRAMS INVESTMENT CORPORATION
its General Partner


By: 
Charles W. Tiedemann
Assistant Vice-President

City Federal Savings and Loan Association, as mortgagee of the interests of Epic Associates 82-XXIII in the Dwelling Units and appurtenant Percentage Interests held by Epic Associates 82XXIII, under mortgages recorded November 19, 1982 as Instrument Numbers 82-65333, 82-65334, 82-65335, and 82-65336 in the Office of the Recorder of Marion County, Indiana, and subsequently assigned to City Federal Savings and Loan Association, hereby consents to the execution and recordation of the foregoing Declaration as an amendment to the Prior Declaration, pursuant to paragraph 11.7 thereof, and acknowledges and agrees that the terms, covenants, conditions, and restrictions contained in said Declaration replace and supersede the Prior Declaration in all respects and that its interest under said mortgages is subject to said Declaration.

CITY FEDERAL SAVINGS AND LOAN
ASSOCIATION

By: 
(Signature)
James P. McTernan
Senior Vice President
(Printed Name and Title)

ATTEST:


(Signature)
William F. Gallagan, III
Assistant Secretary
(Printed Name and Title)

Marine Midland Realty Credit Corporation as mortgagee of the interests of Declarant in the Real Estate and Adjacent Real Estate, under a certain Mortgage recorded as Instrument No. 83-84455 and a certain Assignment recorded as Instrument No. 83-84456, both in the Office of the Recorder of Marion County, Indiana, hereby consents to the execution and recordation of the foregoing Declaration as an amendment to the Prior Declaration, pursuant to paragraph 11.7 thereof, and acknowledges and agrees that the terms, covenants, conditions, and restrictions contained in said Declaration replace and

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supersede the Prior Declaration in all respects and that its interests under said Mortgage and Assignment shall be subject to said Declaration.

MARINE MIDLAND REALTY CREDIT CORPORATION

By: [Signature] (Signature)

Robert J. Winter, Assistant Vice-President
(Printed Name and Title)

ATTEST:
[Signature]
(Signature)

Richard G. Birmingham - Assistant Secretary
(Printed Name and Title)

STATE OF VIRGINIA)
COUNTY OF FAIRFAX) SS:

Before me, a Notary Public in and for said County and State, personally appeared Charles W. Tiedemann, Asst. Vice-Pres. of EPIC, the General Partner of Epic Associates 82-XXIII, who acknowledged the execution of the foregoing Approval of Amended Declaration on behalf of said limited partnership.

Witness my hand and Notarial Seal this 6th day of February, 1984.

Signature [Signature]
Printed Margaret A. Albertson
Notary Public

My Commission Expires: 8/31/84

Resident of City of Alexandria County

STATE OF New Jersey)
COUNTY OF Somerset) SS:

Before me, a Notary Public in and for said County and State, personally appeared James P. McJannet and William F. Callaghan, III, the Senior Vice President and Assistant Secretary, respectively, of City Federal Savings and Loan Association, who acknowledged the execution of the foregoing Approval of Amended Declaration on behalf of said savings and loan association.

Signature [Signature]
KAREN M. TOLISCHUS
Notary Public of New Jersey
Printed My Commission Expires March 28, 1988
Notary Public

My Commission Expires: _____

Resident of _____ County

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STATE OF ~~NEW YORK~~ Delaware)
COUNTY OF ~~ESSEX~~ New Castle) SS:

Before me, a Notary Public in and for said County and State,
personally appeared Robert J. Winter and
Richard G. Bevington, the H.V.P. and
Asst. Sec. respectively, of Marine Midland Realty
Credit Corporation, who acknowledged the execution of the
foregoing Approval of Amended Declaration on behalf of said
corporation.

Witness my hand and Notarial Seal this 30 day
of April, 1984.

Signature Charlotte R. Vegso
Printed Charlotte R. Vegso
Notary Public
Resident of New Castle County

My Commission Expires:
4/27/85

This instrument was prepared by Scott A. Lindquist, ICE MILLER
DONADIO & RYAN, One American Square, Box 82001, Indianapolis,
Indiana 46282; telephone: (317) 236-2100.

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Exhibit A

Land being a part of the North half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East in Marion County, Indiana, more particularly described as follows:

Beginning at a point on the South line of said North half of said Southwest-quarter-section, being North $89^{\circ}26'23''$ East 1876.37 feet from the South-west corner thereof; thence North $00^{\circ}00'00''$ East 80.54 feet; thence North $73^{\circ}54'06''$ West 72.13 feet; thence South $88^{\circ}32'59''$ West 65.02 feet; thence North $00^{\circ}00'00''$ East 111.65 feet; thence North $24^{\circ}19'41''$ East 57.07 feet; thence North $90^{\circ}00'00''$ East 163.34 feet; thence South $13^{\circ}49'43''$ West 41.19 feet; thence South $10^{\circ}40'11''$ East 70.21 feet; thence South $45^{\circ}00'00''$ East 110.31 feet; thence South $00^{\circ}00'00''$ East 74.24 feet to the aforesaid South line; thence South $89^{\circ}26'23''$ West along said South line 133.71 feet to the point of beginning, containing 1.024 acres; subject to highways, rights-of-way and easements.

EXHIBIT B

CERTIFICATE OF SURVEY

A part of the North Half of the Southwest Quarter, and part of the North Half of the Southeast Quarter, both of Section 21, Township 17 North, Range 5 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Beginning at a point on the south line of said North Half of said Southwest Quarter, said point being North 89°26'23" East along said south line 1216.37 feet from the Southwest Corner thereof; thence North 00°33'37" West 200.00 feet; thence North 15°07'33" West 136.10 feet; thence North 77°51'46" East 27.00 feet; thence North 12°08'14" West 189.00 feet; thence North 83°51'46" East 103.00 feet; thence North 76°08'37" East 192.00 feet; thence North 21°13'37" East 288 feet, more or less, to a point on the Southwestern shore line of Geist Reservoir as established when said Reservoir is full (with the water level thereof being at an elevation of 785.00 feet above mean sea level); thence generally Easterly, Southeasterly and Southerly along said meandering shore line 3400 feet, more or less, to the south line of the North Half of said Southeast Quarter; thence South 89°20'46" West along said south line 722 feet, more or less, to the Southeast Corner of said North Half of said Southwest Quarter; thence South 89°26'23" West along the south line thereof 1449.88 feet to the point of beginning, containing 25.72 acres, more or less; subject to highways, rights-of-way and easements.

Excepting therefrom the real estate described in the foregoing Exhibit A.

AMENDED CODE OF BY-LAWS OF
BACKBAY CO-OWNERS ASSOCIATION, INC.
A NOT-FOR-PROFIT INDIANA CORPORATION

ARTICLE I

Identification and Applicability

Section 1.01. Identification and Adoption. These By-Laws are adopted simultaneously with the execution of a certain Declaration amending the Prior Declaration applicable to the Backbay Horizontal Property Regime, to which these By-Laws are attached and of which they are made a part. The Declaration is incorporated herein by reference and all of the covenants, conditions rights, restrictions, and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these By-Laws, and reference is hereby made to the definitions in Section 1 of the Declaration. These By-Laws amend the by-law provisions contained in the Prior Declaration, and shall replace and supersede all such provisions. The provisions of these By-Laws shall apply to the Property and to the administration and conduct of the affairs of the Association.

Section 1.02. Individual Application. All of the Owners, Co-owners, tenants, or their guests and invitees, or any other person that might now or hereafter use or occupy a Dwelling Unit or any part of the Property, shall be subject to the rules, restrictions, terms and conditions set forth in the Declaration, these By-Laws, and the Act, as the same may be amended from time to time.

ARTICLE II

Meetings of Association

Section 2.01. Purpose of Meetings. At least annually and at such other times as may be necessary or appropriate, a meeting of the Co-owners shall be held for the purpose of electing the Board of Directors, approving the annual budget, providing for the collection of Common Expenses, and for such other purposes as may be required by the Declaration, these By-Laws, or the Act.

Section 2.02. Annual Meetings. The first annual meeting shall not be held until the time of turnover of control of the Regime by Declarant or at such earlier time or times as may be determined by the Declarant. All subsequent annual meetings shall be held on any date selected by the Board of Directors which is within five (5) days of the anniversary of the first annual meeting. At each annual meeting, the Co-owners shall elect the Board of Directors of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 2.03. Special Meetings. A special meeting of the members of the Association may be called by resolution of the Board of Directors or upon a written petition of the Co-owners who have not less than ten percent (10%) of the Percentage Vote. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.04. Notice and Place of Meetings. All meetings of the members of the Association shall be held at such location within Marion County, Indiana as may be designated by the Board of Directors. Written notice stating the date, time, place of any meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each Co-owner and, if applicable, to any Mortgagee not less than fourteen (14) days prior to the date of such meeting. The notice shall be mailed by first-class U. S. Mail, postage prepaid, or delivered to the Co-owners at their respective addresses as the same shall appear upon the records of the Association, and to the Mortgagees at their respective addresses as they shall appear on the records of the Association, by such means as provided in Section 34 of the Declaration. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 2.05. Voting.

(a) Number of Votes. On each matter on which the Owners or any of them are entitled to vote at any meeting of the Association, each Owner present (in person or by proxy) shall be entitled to cast a fractional vote equal to his Percentage Vote. All votes shall be cast on paper ballots indicating the name of the Owner, his Dwelling Unit Number, and his Percentage Vote. The Secretary shall add the fractional votes cast for and against each matter, which sums shall be subject to verification by the President or Vice-President, and after such verification shall be deemed conclusively determined for purposes of ascertaining whether the necessary percent of the vote has been obtained for or against such matter. The ballots and any other records of how each Owner has voted on any particular issue shall be confidential and shall be available only to officers and Directors of the Association.

(b) Multiple Owners. When the Owner of a Dwelling Unit constitutes more than one person or entity, or is a partnership, there shall be only one voting representative entitled to cast the Percentage Vote allocable to that Dwelling Unit. At the time of acquisition of title to a Dwelling Unit by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Association an irrevocable proxy appointing one of such persons or partners as the voting representatives for such Dwelling Unit, which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies, or such appointment is otherwise rescinded by order of a court of competent jurisdiction. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to paragraph (d) of this Section 2.05, which shall constitute relinquishment of his right to act as voting representative for the Dwelling Unit at such meeting or meetings.

(c) Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled.

(d) Proxy. An Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his attorney-in-fact in writing, delivered to an officer of the Association prior to the commencement of the meeting.

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(e) Quorum. Except where otherwise expressly provided in the Declaration, these By-Laws, or the Act, the presence of Owners or their duly authorized representatives holding a majority of the total Percentage Vote shall constitute a quorum at all meetings. The terms "majority of Owners" and "majority of the vote", as used in these By-Laws, shall mean, unless otherwise expressly indicated, not less than fifty-one percent (51%) of the total Percentage Vote as determined by the applicable provisions set forth in the Declaration, and shall not mean a majority of the persons or votes present or represented at such meeting.

(f) Conduct of Meeting. The Chairman of the meeting shall be the President of the Association. He shall call the meeting to order at the duly designated time, and business will be conducted in the following order:

- (1) Reading of Minutes. The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto.
- (2) Treasurer's Report. The Treasurer shall report to the Co-owners concerning the financial condition of the Association and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed budget for the current year.
- (3) Budget. The proposed budget for the current calendar year shall be presented to the Co-owners for approval or amendment.
- (4) Election of Board of Directors. Nominations for the Board of Directors may be made by an Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Association at least ten (10) days prior to the annual meeting. Voting for Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Owner may cast his Percentage Vote for each of as many nominees as are to be elected; however, he shall not be entitled to accumulate his votes. Those persons receiving the highest number of votes shall be elected.
- (5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Association at least ten (10) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of the vote.
- (6) Committee Reports. Reports of committees designated to supervise and advise on the respective segments of maintenance and operations assigned by the Board of Directors shall be presented.
- (7) Adjournment. Upon completion of all business before the Association, the President, upon the motion of any Owner, may adjourn the meeting; provided, however, that no annual

meeting shall be adjourned until a budget is approved by the Co-owners for the upcoming year.

Section 2.06. Control During Development. Notwithstanding any other provision of the Declaration, the Act, or these By-Laws, from and after the date of the Declaration until the date when Declarant turns over control of the Regime to the Co-owners, as determined by Declarant within the limitations set forth in Section 8 of the Declaration, the Regime shall be governed by the initial Board of Directors appointed by Declarant. Said initial Board of Directors shall exclusively hold all rights and powers which a Board of Directors or the Association would have under the Declaration, the Act, or these By-Laws, except as specifically limited in this Section 2.06. Said initial Board of Directors may appoint from time to time from among the Co-owners committees to advise and assist it in the performance of its functions. The rights and powers of said initial board of Directors shall be limited as follows:

- (a) The power of assessment shall be limited in that the total monthly assessments in any month against any Dwelling Unit during the first year after the date of the Declaration shall not exceed Five Dollars (\$5.00) times the Unit Points allocated to such Dwelling Unit, and said amount shall not be increased in any subsequent year prior to turnover by more than ten percent (10%) over the assessment in the preceding year.
- (b) Said initial Board shall have no power to reallocate Percentage Interests or Percentage Votes in a manner not consistent with the Formula.
- (c) Said initial Board, as such, shall have no power to determine on behalf of the Co-owners whether a complete destruction of the Buildings and other Property within the Regime has occurred, and the Co-owners shall be entitled to vote on such matter in accordance with Section 19 of the Declaration, provided, however, that this shall not prohibit Declarant from voting on such matter according to the Percentage Vote attaching to the Dwelling Units owned by Declarant.
- (d) Said initial Board of Directors shall not take any action requiring the vote or consent of any Mortgagee unless the vote or consent of such Mortgagee is obtained.

Declarant shall have the right to waive, on behalf of the Association, the annual meetings and annual accountings provided for in this Article II and in the Declaration, so long as Declarant retains control of the Association. At the time of turnover of control by Declarant, the first annual meeting of the Association will be called, at which time the rights and powers of the initial Board of Directors shall terminate and the Regime shall thereafter be governed in accordance with the provisions of the Declaration, the Act, and these By-Laws other than this Section 2.06.

ARTICLE III

Board of Directors

Section 3.01. The affairs of the Association shall be governed and managed by the Board of Directors (herein sometimes collectively called "Board" and individually called

"Directors"). The initial Board of Directors shall be composed of three (3) persons appointed by Declarant. After the expiration of the term of the initial Board of Directors as provided in Section 2.06 hereinabove, the constituency of such Board may be increased to, but shall not exceed, nine (9). The number of Directors shall be increased in accordance with this Section 3.01 only if the increase is properly brought before the Association at an annual meeting or special meeting called for such purpose and approved by a majority of the Percentage Vote. No person shall be eligible to serve as a Director unless he is an Owner or is an attorney, agent, or employee of Declarant.

Section 3.02. Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then the person entitled to cast the Percentage Vote on behalf of such multiple Owner shall be eligible to serve on the Board of Directors.

Section 3.03. Term of Office and Vacancy. The Board of Directors shall be elected at each annual meeting of the Association subject to the limitations set forth in Section 2.06 above. Any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Directors or by vote of the Co-owners if a Director is removed in accordance with Section 3.04 of this Article III.

Section 3.04. Removal of Directors. After the tenure of the initial Board of Directors has expired, a Director or Directors may be removed with or without cause by a majority of the vote at a special meeting of the Co-owners duly called and constituted. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director selected shall serve until the next annual meeting of the Co-owners or until his successor is duly elected and qualified.

Section 3.05. Duties of the Board of Directors. The Board of Directors shall provide for the administration of the Horizontal Property Regime, the maintenance, upkeep, and replacement of the Common Areas and Limited Areas, and the collection and disbursement of the Common Expenses. These duties include, but are not limited to:

- (a) Repair and replacement of the Common Areas and Limited Areas;
- (b) Procuring of utilities, removal of garbage and waste, and snow removal from the Common Areas;
- (c) Landscaping, painting, decorating, and furnishing of the Common Areas and Limited Areas, the exterior of the Buildings, garages and walls;
- (d) Surfacing, paving, and maintaining streets, parking areas, garages, and sidewalks, and the regulation of the use thereof;
- (e) Assessment and collection from the Owners of the Owner's pro-rata share of the Common Expenses.
- (f) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (g) Preparing and delivering annually to the Co-owners a full accounting of all receipts and expenses incurred during each year, which accounting shall be delivered to each Owner simultaneously with delivery of the annual budget;

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- (h) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours.
- (i) Procuring and maintaining in force all insurance coverage required by the Declaration to be maintained for the whole Regime as specified by Section 18 of the Declaration.

Section 3.06. - Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) To employ a managing agent or a real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties;
- (b) To purchase for the benefit of the Co-owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
- (c) To procure for the benefit of the Owners fire and extended coverage insurance covering the Buildings and the Property to the full insurable value thereof and to procure public liability and property damage insurance and Workmen's Compensation insurance, if necessary, for the benefit of the Owners and the Association;
- (d) To employ legal counsel, architects, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (e) To include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (f) To open and maintain a bank account or accounts in the name of the Association; and
- (g) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Property; provided that the Board shall give written notice to the Co-owners of such rules and any revision, amendment, or alteration thereof.

Section 3.08. Limitations on Board Action. After the tenure of the initial Board of Directors, the authority of the Board of Directors to enter into contract shall be limited to contracts involving a total expenditure of less than \$3,000.00, unless the prior approval of a majority of Owners is obtained, except in the following cases:

- (a) Supervision and management of the replacement or restoration of any portion of the Common Areas or Limited Areas damaged or destroyed by fire or other casualty, where the cost thereof is payable out of insurance proceeds actually received; and,

- (b) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Co-owners at the annual meeting

Section 3.08. Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority of the Owners.

Section 3.09. Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of Directors. The Secretary shall give notice of regular meetings of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meetings. At any time after the tenure of the initial Board of Directors has expired, a special meeting of the Board may be called by the President or any two members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary, who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place as shall be designated in the notice.

Section 3.10. Waiver of Notice. Before any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place, and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 3.11. Non-Liability of Directors. The Directors shall not be liable to the Co-Owners for any action or inaction in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct or bad faith. The Co-owners shall indemnify and hold harmless each of the Directors against any and all liability to any person, firm, or corporation arising out of contracts made by the Board on behalf of the Co-owners' Association, unless any such contract shall have been made in bad faith or contrary to these provisions of the Declaration or By-Laws. It is intended that the Directors shall have no personal liability with respect to the contracts made by them on behalf of the Association and that in all matters, the Board is acting for and on behalf of the Co-owners and as their agent. The liability of any Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Directors shall be limited to such percentage of the total liability or obligation thereunder as is equal to his Percentage Interest. Every contract made by the Board or the Managing Agent on behalf of the Association shall provide that the Board of Directors and the Managing Agent, as the case may be, is acting as agent for the Co-owners and shall have no personal liability thereunder, except in their capacity as Owners and then only to the extent of their Percentage Interest.

Section 3.12. Additional Indemnity of Directors. The Co-owners shall indemnify any person and such person's heirs, assigns, and legal representatives, who shall be made a party to any action, suit, or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorney's fees, actually and reasonably incurred by him in connection with the defense of such action, suit, or proceeding, or in connection with any appeal therein, and including the reasonable amount of any of settlement of, or judgment rendered in, any action, suit or proceeding, unless it

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shall be found by a two-thirds (2/3) majority of the Co-owners that such Director was guilty of misconduct, and unless it is expressly admitted or determined in any action, suit, or proceeding that said Director acted recklessly, maliciously or in bad faith. No Director shall be considered or deemed to be guilty of or liable for misconduct in the performance of his duties where such Director reasonably relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent of the Association or any officer or employee thereof, or any accountant, attorney or other person, firm, or corporation employed by the Association to render advice or service, unless such Director had actual knowledge of the falsity or incorrectness thereof. In no case shall a Director be deemed guilty of or liable for misconduct solely by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

ARTICLE IV

Officers

Section 4.01. Officers of the Association. The principal officers of the Association shall be the President, Vice-President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 4.02. Election of Officers. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each election thereof. Upon recommendation of a majority of all members of the Board and upon an affirmative vote of a majority of all Owners, any officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4.03. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. After the tenure of the initial Board of Directors, he shall preside at all meetings of the Association and of the Board, shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including, but not limited to, the power to appoint committees from among the Co-owners as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

Section 4.04. The Vice-President. The Vice-President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice-President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 4.05. The Secretary. The Secretary shall be elected from among the Owners or Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of proceedings of such meetings, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 4.06. The Treasurer. The Board shall elect from among the Owners or Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incident to the office of Treasurer. He shall be legal custodian of all monies, notes, securities, and other valuables which may from time to time come into possession of the Association. He shall immediately deposit all funds of the Association coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name and for the exclusive benefit of the Association.

Section 4.07. Assistant Officers. The Board of Directors may from time to time designate and elect from among the Co-owners an Assistant Secretary and Assistant Treasurer, who shall have such powers and duties as the Officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board of Directors may prescribe.

ARTICLE V

Additional Rights and Duties of Board

Section 5.01. Right of Entry. An Owner or occupant of a Dwelling Unit shall be deemed to have granted the right of entry to his Dwelling Unit to the Managing Agent or any person authorized by the Board in case of any emergency, in order to remedy any circumstance threatening his Dwelling Unit or the Building in which it is located, whether the Owner is present at the time or not. Any Owner shall permit persons authorized by the Board to perform any work, when required, to enter his Dwelling Unit for the purpose of performing installations, alterations, or repairs to the mechanical or electrical facilities or equipment, or to make structural repairs, provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of emergencies, such right or entry shall be immediate.

Section 5.02. Right of Board to Adopt Rules and Regulations. The Board may promulgate such additional rules and regulations regarding the operation of the Property, including but not limited to, the use of the Common Areas and Limited Areas, as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board, and the Board shall cause copies of such rules to be delivered or mailed promptly to all Owners. Any rule or regulation promulgated by the Board may be altered, amended, or repealed by a majority of the Board at any meeting thereof called for such purpose.

Section 5.03. Maintenance of Boat Docks and Related Facilities. In the event that Declarant constructs boat docks and related facilities along the shoreline of Geist Reservoir and any Owners purchase the right to use the same, the Association shall oversee the operation, use, maintenance, and repair of such docks and facilities. Declarant shall assign to the Association its right under the license agreements by which the rights to use such docks and facilities transferred to Owners. Such license agreements shall each provide for annual fees to be collected from such Owners to cover the costs of operation, maintenance, and repair of such docks and facilities, including any added insurance costs, adequate reserves for replacements, and reasonable allocations of administrative costs of the Association, and the Association shall collect such fees and apply them to the costs of such operation, maintenance, and repair. In no event shall any such fees be applied to the Common Expenses, nor shall any Assessments be applied to any costs of operation, maintenance, or repair attributable to such

docks and facilities. The Board of Directors shall have the right to establish reasonable rules and regulations governing the use and enjoyment of such docks and facilities by Owners having rights thereto, insofar as such use has or may have a materially adverse effect upon the Common Areas.

ARTICLE VI

Procedures for Assessments

Section 6.01. Annual Accounting. Annually, after the close of each calendar year and prior to the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnished to each Owner an audited financial statement by an independent Certified Public Accountant, which statement shall show all receipts and expenses received, incurred, and paid by the Association during the preceding calendar year.

Section 6.02. Proposed Annual Budget. Annually, on or before the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year, and furnish a copy of such proposed budget to each Owner prior to the annual meeting. The proposed annual budget shall be submitted to the Co-owners at the annual meeting of the Association for adoption, and if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the ensuing calendar year. At the annual meeting of the Co-owners, the proposed annual budget may be approved in whole or in part, or may be amended in whole or in part by a majority of the vote; provided, however, that in no event shall the annual meeting of the Co-owners be adjourned until an annual budget is approved at such meeting.

Section 6.03. Regular Assessments. The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Dwelling Unit based on the Percentage Interest of each Dwelling Unit times the total amount of said budget (herein called the "Regular Assessment"). The Regular Assessment against each Unit shall be paid in twelve (12) equal monthly installments, commencing on the first day of the month following adoption and continuing on the first day of each calendar month thereafter. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, any Owner may elect to pay monthly Assessments semi-annually in advance. The Regular Assessment for each year shall become a lien on each separate Dwelling Unit as of the first day of the month after adoption. Prior to Declarant's turning over of control of the Regime to the Co-owners, the Co-owners shall bear the Common Expenses of the Regime through payment of an initial Assessment fixed from time to time by the initial Board of Directors. During the first year following the date of the Declaration, the amount payable per month for the initial Assessment is fixed at Five Dollars (\$5.00) times the Unit Points allocated to each Dwelling Unit. Each year thereafter, such initial Assessment may not be increased more than ten percent (10%) during each succeeding year. The Declarant shall be responsible for any deficits during the period in which it controls the Association, and Declarant shall also establish and maintain during such period a reserve fund for replacement or major repair of Common Areas based upon its good faith estimates of replacement costs and useful life of such Common Areas. After the turning over of control of the Regime to the Co-owners, each Dwelling Unit Owner shall pay to the Association a Regular Assessment based on the Percentage Interest for each Dwelling Unit for payment

of the regular Common Expenses provided for in the annual budget, including expenses for maintenance and repair of the Common Areas and Limited Common Areas, necessary insurance costs, reserve funds for replacements and maintenance, costs of operation of the community activities and facilities of the Association, and for any other necessary or appropriate expenses for maintenance and operation of the Regime.

Section 6.04. Special Assessments. In addition to the Assessments authorized above, the Association may levy in any Assessment year such special Assessments as may be necessary for the purpose of defraying, in whole or in part: (1) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, and (2) the expense of any other contingencies; provided that no special Assessments shall be levied without the assent of a majority of the Percentage Vote at a meeting duly called for this purpose. Each Owner shall pay to the Association a special Assessment based on his Percentage Interest times total sum approved to meet the costs and expenses as heretofore provided. The Association may, in connection with the levy of any special Assessment, specify that the same shall be payable in installments and specify the due dates thereof.

Section 6.05. Adjustments. In the event that the approved budget and Regular Assessments prove insufficient to meet the Association's actual expenses in any year, such deficiencies may be corrected through one or more special Assessments. In the event the approved and Regular Assessments exceed actual expenses in any year, such surplus may be retained and used to offset expenses in the next year(s) or returned to the Co-owners in proportion to their Percentage Interests, as the Board of Directors shall elect.

Section 6.06. Temporary Budget and Assessments. If for any reason an annual budget and the annual Assessments for any year have not been determined as of the beginning of such year, the budget and Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and annual Assessments are determined in accordance with the Declaration and these By-Laws; provided, however, that said preceding budget and Assessments may be increased by up to fifteen percent (15%) as the Board of Directors may deem necessary in said temporary budget and Assessments.

ARTICLE VII

Amendment to By-Laws

These By-Laws may be amended by Declarant in the same manner and to the same extent as the Declaration; in addition, these By-Laws may be amended by a majority of the Percentage Vote of the Co-owners in a duly constituted meeting called for such purpose, except that the right of amendment is exclusively reserved to the initial Board of Directors during the period set out in Section 2.06 above, and except as prohibited by any provision of the Declaration, the Act, or these By-Laws, as the same may be amended from time to time.

ARTICLE VIII

Mortgages

Section 8.01. Notice to Association. Any Owner who places a first mortgage lien upon his Unit or the Mortgagee shall notify the Secretary of the Association and provide the name and address of the Mortgagee. A record of such Mortgagee and name required to be given to the Mortgagee pursuant to the terms of the Declaration or these By-Laws shall be deemed effectively

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given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgages and the name and address of Mortgagee are furnished to the Secretary, either by Owner or by the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Declaration or these By-Laws shall be required, and no Mortgagee shall be entitled to vote on any matter on which he otherwise may be entitled to vote by virtue of the Declaration or By-Laws or proxy granted to such Mortgagee in connection with the Mortgage.

Section 8.02. Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed mortgagee, or purchaser who has a contractual right to purchase a Dwelling Unit, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular or Special Assessments or any Reservation Assessments against the Dwelling Unit, which statement shall be binding upon the Association and the Co-owners, and any Mortgagee or grantee of the Dwelling Unit shall not be liable for, nor shall the Dwelling Unit conveyed be subject to a lien for, any unpaid assessments in excess of the amount set forth in such statements.

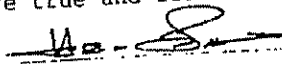
Section 8.03 Financial Statements. Upon the request of any holder, insurer, or guarantor of any first mortgage on any Dwelling Unit, the Association shall provide to said holder, insurer, or guarantor the most recent financial statement prepared on behalf of the Association pursuant to Section 5.02 of these By-Laws.

Section 8.04. Notices to Mortgagees. The Association shall promptly provide to any Mortgagee of whom the Association has been provided notice under Section 8.0 of these By-Laws of any of the following:

- (a) Any condemnation or casualty loss that affects either a material portion of the Regime or the Dwelling Unit securing its mortgage;
- (b) Any delinquency in the payment of Regular or Special Assessments owed by the Owner of any Dwelling Unit on which said holder, insurer, or guarantor holds a mortgage, if said delinquency continues for more than sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and,
- (d) Any proposed action that requires the consent of a specified percentage of Mortgagees.

CERTIFICATION

The undersigned, being first duly sworn, hereby certifies that the within and foregoing Code of By-Laws of Backbay Co-Owners Association, Inc. are true and correct.


Herbert M. Luksch, Secretary

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DISTRICT OF)
COLUMBIA) SS:

Subscribed and sworn to before me, a Notary Public, in and for said District of Columbia this 11th day of June, 1984.

Donna Westlund
Signature
Donna Westlund
Printed Notary Public

My Commission Expires:

August 14, 1987

My County of Residence:

City of Alexandria

APPROVAL OF BY-LAWS

Epic Associates 82-XXIII, a limited partnership, hereby approves and consents to the execution and recordation of the foregoing By-Laws as an amendment to the by-law provisions set forth in the Prior Declaration, and acknowledges and agrees that the foregoing By-Laws replace and supersede the by-law provisions of the Prior Declaration in all respects and that said By-Laws are binding upon it and upon its Dwelling Units and Percentage Interest.

EPIC ASSOCIATES 82-XXIII,
a limited partnership, by
EQUITY PROGRAMS INVESTMENT CORPORATION
its General Partner
By Charles W. Tiedemann
Assistant Vice-President

City Federal Savings and Loan Association, as mortgagee of the interests of Epic Associates 82-XXIII in the Dwelling Units and appurtenant Percentage Interests held by Epic Associates 82-XXIII, under mortgages recorded November 19, 1982 as Instrument Numbers 82-65333, 82-75334, 82-65335, and 82-65336 in the office of the Recorder of Marion County, Indiana, and subsequently assigned to City Federal Savings and Loan Association, hereby consents to the execution and recordation of the foregoing By-Laws as an amendment to the by-law provisions in the Prior Declaration, pursuant to paragraph 11.7 thereof, and acknowledges and agrees that the foregoing By-Laws replace and supersede the by-law provisions of the Prior Declaration in all respects and that its interest under said mortgages is subject to these By-Laws.

CITY FEDERAL SAVINGS AND LOAN
ASSOCIATION

By James P. McYternan
Signature
James P. McYternan
Senior Vice President
Printed Name and Title

Attest:

By William F. Callaghan, III
Signature

William F. Callaghan, III
Assistant Secretary
Printed Name and Title

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Marine Midland Realty Credit Corporation, as mortgagee of the interests of Declarant in the Real Estate and Adjacent Real Estate, under a certain mortgage recorded as Instrument No. 83-84455 and a certain Assignment recorded as Instrument No. 83-84456, both in the office of the Recorder of Marion County, Indiana, hereby consents to the execution and recordation of the foregoing By-Laws as an amendment to the by-law provisions in the Prior Declaration, pursuant to paragraph 11.7 thereof, and acknowledges and agrees that the foregoing By-Laws replace and supersede the by-law provisions of the Prior Declaration in all respects and that its interests under said Mortgage and Assignment shall be subject to these By-Laws.

MARINE MIDLAND REALTY CREDIT CORPORATION

By [Signature]
 Signature
Robert V. Winter, Assistant
 Printed Name and Title VICE-PRESIDENT

Attest:

By [Signature]
 Signature
Richard G. Birmingham - Assistant Secretary
 Printed Name and Title

STATE OF VIRGINIA)
) ss:
 COUNTY OF FAIRFAX)

Before me, a Notary Public in and for said County and State, personally appeared Charles W. Tiedemann, Asst. Vice-Pres. of EPIC, the General Partner of Epic Associates 82-XXIII, who acknowledged the execution of the foregoing Approval of By-Laws on behalf of said limited partnership.

Witness my hand and Notarial Seal this 16th day of February, 1984.

[Signature]
 Signature
Margaret A. Albertson
 Printed Notary Public

My Commission Expires:
8/27/84

My County of Residence:
City of Alexandria

84 461CS

STATE OF New Jersey)
) SS:
COUNTY OF Somerset)

Before me, a Notary Public in and for said County and State, personally appeared James P. McTernan and William F. Gallagan, III, the Senior Vice President and Assistant Secretary, respectively of City Federal Savings and Loan Association, who acknowledged the execution of the foregoing Approval of By-Laws on behalf of said savings and loan association.

Witness my hand and Notarial Seal this 4th day of April, 1983. 1984.

Karen M. Tolischus
Signature

KAREN M. TOLISCHUS
Notary Public of New Jersey
My Commission Expires March 28, 1988

Printed

Notary Public

My Commission Expires: _____

My County of Residence: _____

STATE OF Delaware)
) SS:
COUNTY OF ERIE New Castle)

Before me, a Notary Public in and for said County and State, personally appeared Robert J. Wilton and Richard G. Birmingham, the VP and Asst Secy, respectively of Marine Midland Realty Credit Corporation, who acknowledged the execution of the foregoing Approval of By-Laws on behalf of said corporation.

Witness my hand and Notarial Seal this 30 day of April, 1984.

Charlotte R. Vego
Signature

Charlotte R. Vego
Printed Notary Public

My Commission Expires: _____

My County of Residence: _____

11.27/85

New Castle

Prepared by Scott A. Lindquist, ICE MILLER DONADIO & RYAN, One American Square, Box 82001, Indianapolis, IN 46282.

84. 45163

SECOND AMENDMENT TO DECLARATION
OF BACKBAY HORIZONTAL PROPERTY REGIME

840073868

CROSS REFERENCE

CROSS REFERENCE

THIS SECOND AMENDMENT TO THE DECLARATION OF BACKBAY HORIZONTAL PROPERTY REGIME ("Second Amendment"), made this 17th day of September, 1984, by GLM OF INDIANA, LTD., an Indiana limited partnership (hereinafter referred to as "Declarant");

WITNESSES THAT:

WHEREAS, Declarant's predecessor in interest established the Backbay Horizontal Property Regime by a certain Declaration of Covenants, Conditions and Restrictions establishing Backbay Condominium and By-Laws for Backbay Homeowners Association, Inc., dated October 12, 1982, having recorded the same October 13, 1982 as Instrument Number 82-56706 in the office of the Recorder of Marion County, Indiana (hereinafter called the "Prior Declaration"); and,

WHEREAS, Declarant amended the entirety of the said Prior Declaration by a certain Amended Declaration of Backbay Horizontal Property Regime dated June 1, 1984 and recorded June 19, 1984 as Instrument Number 84-46168 in the office of the Recorder of Marion County, Indiana (hereinafter called the "Declaration"); and

WHEREAS, Declarant desires to add certain real estate and improvements and thereby expand the Backbay Horizontal Property Regime, as contemplated by the Prior Declaration and the Declaration;

NOW, THEREFORE:

Declarant hereby makes this Second Amendment to the Declaration, and the same is incorporated into the Declaration, as follows:

1. Declarant hereby adds to the Backbay Horizontal Property Regime the real estate described in Exhibit A attached hereto and made a part hereof ("Real Estate").

2. Declarant hereby adds to the Backbay Horizontal Property Regime Dwelling Units numbered 6-1, 6-2, 6-3, and 6-4, which are situated on said Real Estate and which are more particularly depicted and described on a certain plat entitled "Backbay Horizontal Property Regime-Phase II, dated September 10, 1984 and certified by Barry F. Smith, Registered Architect Number 2859.

3. Pursuant to the provisions of the Declaration, the Percentage Interests appertaining to each Dwelling Unit in Backbay Horizontal Property Regime are hereby adjusted and revised to equal the amounts set forth on Exhibit B attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the Declarant makes this Second Amendment to the Declaration of Backbay Horizontal Property Regime as of the date first above written.

GLM OF INDIANA, LTD.

By: GLM of Indiana, Inc.,
General Partner

By: Herbert M. Lukson
Herbert M. Lukson, Vice President

SEP 20 2 33 PM '84
RECEIVED FOR RECORD
- DEW CLARKE
RECORDER-HARRIS CO.
COUNTY AUDITOR
SEP 20 1984
DULY ENTERED
FOR TAXATION

926

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest Corner of said Half-Quarter Section; thence North 89°26'23" East along the South Line of said Half-Quarter Section a distance of 1876.37 feet to the Southwest Corner of Backbay, Phase I, as recorded in the Office of the Recorder of Marion County, Indiana, as Instrument No. 82-56705; thence running Northerly and Westerly along the West line of said Phase I with the following five courses, North 00°00'00" East a distance of 80.54 feet; thence North 73°54'06" West a distance of 72.13 feet; thence South 88°32'59" West a distance of 65.02 feet; thence North 00°00'00" East a distance of 111.65 feet; thence North 24°19'41" East a distance of 57.07 feet to the Northwest Corner of said Phase I; thence continuing North 24°19'41" East a distance of 229.37 feet; thence North 10°55'22" West a distance of 58.05 feet; thence North 45°27'57" West a distance of 119.86 feet to the POINT OF BEGINNING of the herein described tract; thence continuing North 45°27'57" West a distance of 54.09 feet; thence North 82°31'42" West a distance of 61.52 feet; thence North 27°10'52" East a distance of 35.00 feet; thence South 83°53'15" East a distance of 47.61 feet; thence North 11°38'25" East a distance of 163 feet, more or less, to a point on the Southwestern shoreline of Geist Reservoir as established October 10, 1983 (with the water level thereof being at an elevation of 785.0 feet above mean sea level) plus accretion and minus erosion; thence Southeasterly along the meanderings of said shoreline a distance of 190 feet, more or less, to a point; thence leave meanderings of said shoreline and run South 43°10'00" West a distance of 158 feet more or less, to the Point of beginning, containing .577 acres (24,144.34 square feet), more or less.

EXHIBIT A

84 73868

<u>Unit No.</u>	<u>Square Footage</u>	<u>Unit Points</u>	<u>Percentage Interest</u>
1-1	1990	24	12.0%
1-2	2760	26	13.0%
1-3	2330	25	12.5%
1-4	1290	23	11.5%
6-1	2635	25	12.5%
6-2	2725	26	13.0%
6-3	2215	25	12.5%
6-4	2750	<u>26</u>	<u>13.0%</u>
		200	100%

EXHIBIT B

84 73868

CROSS REFERENCE

840080439

CROSS REFERENCE 9.5

THIRD AMENDMENT TO DECLARATION OF BACKBAY HORIZONTAL PROPERTY REGIME

THIS THIRD AMENDMENT TO THE DECLARATION OF BACKBAY HORIZONTAL PROPERTY REGIME ("Third Amendment"), made this 11th day of ~~October~~, 1984, by GLM OF INDIANA, LTD., an Indiana limited partnership (hereinafter referred to as "Declarant");

WITNESSES THAT:

WHEREAS, Declarant's predecessor in interest established the Backbay Horizontal Property Regime by a certain Declaration of Covenants, Conditions and Restrictions establishing Backbay Condominium and By-Laws for Backbay Homeowners Association, Inc., dated October 12, 1982, having recorded the same October 13, 1982 as Instrument Number 82-56706 in the office of the Recorder of Marion County, Indiana (hereinafter called the "Prior Declaration"); and,

WHEREAS, Declarant amended the entirety of the said Prior Declaration by a certain Amended Declaration of Backbay Horizontal Property Regime dated June 1, 1984 and recorded June 19, 1984 as Instrument Number 84-46168 in the office of the Recorder of Marion County, Indiana (hereinafter called the "Declaration"); and

WHEREAS, Declarant amended the Declaration by a certain Second Amendment to Declaration dated September 17, 1984 and recorded September 20, 1984 as Instrument No. 84-73868 in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant desires to add certain real estate and improvements and thereby expand the Backbay Horizontal Property Regime, as contemplated by the Prior Declaration and the Declaration;

NOW, THEREFORE:

Declarant hereby makes this Third Amendment to the Declaration, and the same is incorporated into the Declaration, as follows:

1. Declarant hereby adds to the Backbay Horizontal Property Regime the real estate described in Exhibit A attached hereto and made a part hereof ("Real Estate").

2. Declarant hereby adds to the Backbay Horizontal Property Regime Dwelling Units numbered 7-1, 7-2, 7-3, and 7-4, which are situated on said Real Estate and which are more particularly depicted and described on a certain plat entitled "Backbay Horizontal Property Regime-Phase III" dated ~~October 9~~, 1984 and certified by Barry F. Smith, Registered Architect Number 2859, recorded as Instrument No. ~~84-80438~~ in the office of the Recorder of Marion County, Indiana.

3. Pursuant to the provisions of the Declaration, the Percentage Interests appertaining to each Dwelling Unit in Backbay Horizontal Property Regime are hereby adjusted and revised to equal the amounts set forth on Exhibit B attached hereto and incorporated herein by this reference.

Barry F. Smith
COURT ADDRESS
840080439
OCT 15 1984
MARION COUNTY RECORDS

RECEIVED FOR RECORD
8TH CLERK
RECORDS-MARION CO.
OCT 15 3 04 PM '84

Part of the North Half of the Southwest Quarter of Section 21,
Township 17 North, Range 5 East in Marion County, Indiana, more
particularly described as follows:

Commencing at the Southwest Corner of said Half-Quarter Section;
thence North 89°26'23" East along the South Line of said Half-
Quarter Section a distance of 1876.37 feet to the Southwest
Corner of Backbay, Phase I, as recorded in the Office of the
Recorder of Marion County, Indiana, as Instrument #82-56705;
thence running Northerly and Westerly along the West Line of
said Phase I with the following five courses, North 00°00'00"
East a distance of 80.54 feet; thence North 73°54'06" West a
distance of 72.13 feet; thence South 88°32'59" West a distance
of 65.02 feet; thence North 00°00'00" East a distance of 111.65
feet; thence North 24°19'41" East a distance of 57.07 feet, to
the Northwest Corner of Said Phase I; thence continuing North
24°19'41" East a distance of 229.37 feet; thence North 10°55'22"
West a distance of 58.05 feet; thence North 45°27'57" West a
distance of 119.86 feet to the Southeasterly Corner of Backbay,
Phase II as recorded by Instrument #84-73859 in the Office of
the Marion County Recorder; thence continuing North 45°27'57"
West on and along the Southerly Line of said Backbay, Phase II,
a distance of 54.09 feet; thence North 82°31'42" West on and
along the Southerly Line of said Backbay, Phase II, a distance
of 61.52 feet to the POINT OF BEGINNING, said point also being
the Southwest Corner of said Backbay, Phase II; thence South
73°28'07" West a distance of 44.03 feet; thence North 39°39'57"
West a distance of 90.00 feet; thence North 02°31'24" West a
distance of 126.21 feet more or less, to a point on the
Southwestern shoreline of Geist Reservoir as established
October 10, 1983 (with the water level thereof being at an
elevation of 785.0 feet above mean sea level) plus accretion and
minus erosion; thence Easterly on and along the meanderings
of said shoreline a distance of 208 feet plus or minus to a
point on said shoreline and to the Northwest Corner of said
Backbay, Phase II; said point being located by the following
six described courses which approximate the existing shoreline;
North 53°09'14" East a distance of 20.26 feet; thence North
42°40'27" East a distance of 61.00 feet; thence South 84°33'37"
East a distance of 10.00 feet; thence South 67°04'04" East a
distance of 28.00 feet; thence South 56°18'36" East a distance
of 61.00 feet; thence South 71°37'13" East a distance of 26.75
feet; thence leaving the meanderings of said shoreline, South
11°38'25" West on and along the West Line of said Backbay,
Phase II, a distance of 163.00 feet; thence North 83°53'15" West
on and along the Westerly Line of said Backbay, Phase II, a
distance of 47.61 feet; thence South 27°10'52" East on and along
the Westerly Line of said Backbay, Phase II, a distance of 35.00
feet to the point of beginning, containing 0.6825 Acres (29,731.18
square feet) more or less.

Subject to all Rights-of-Way and Easements of Record.

<u>Unit No.</u>	<u>Square Footage</u>	<u>Unit Points</u>	<u>Percentage Interest</u>
1-1	1990	24	7.947%
1-2	2760	26	8.609%
1-3	2330	25	8.278%
1-4	1290	23	7.616%
6-1	2635	25	8.278%
6-2	2725	26	8.609%
6-3	2215	25	8.278%
6-4	2750	26	8.609%
7-1	2635	25	8.278%
7-2	2725	26	8.609%
7-3	2215	25	8.278%
7-4	2750	26	8.609%

EXHIBIT B

84 80439

840684749
CROSS REFERENCE

9.50

RECORDED
DECLARATION
OCT 29 1984 026719
COUNTY AUDITOR

FOURTH AMENDMENT TO DECLARATION
BACKBAY HORIZONTAL PROPERTY REGIME

THIS FOURTH AMENDMENT TO THE DECLARATION OF BACKBAY HORIZONTAL PROPERTY REGIME ("Fourth Amendment"), made this 26 day of Oct, 1984, by GLM OF INDIANA, LTD., an Indiana limited partnership (hereinafter referred to as "Declarant");

WITNESSES THAT:

WHEREAS, Declarant's predecessor in interest established the Backbay Horizontal Property Regime by a certain Declaration of Covenants, Conditions and Restrictions establishing Backbay Condominium and By-Laws for Backbay Homeowners Association, Inc., dated October 12, 1982, having recorded the same October 13, 1982 as Instrument Number 82-56706 in the office of the Recorder of Marion County, Indiana (hereinafter called the "Prior Declaration"); and,

WHEREAS, Declarant amended the entirety of the said Prior Declaration by a certain Amended Declaration of Backbay Horizontal Property Regime dated June 1, 1984 and recorded June 19, 1984 as Instrument Number 84-46168 in the office of the Recorder of Marion County, Indiana (hereinafter called the "Declaration"); and

WHEREAS, Declarant amended the Declaration by a certain Second Amendment to Declaration dated September 17, 1984 and recorded September 20, 1984 as Instrument No. 84-73868 in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant amended the Declaration by a certain Third Amendment to Declaration dated October 11, 1984 and recorded October 15, 1984 as Instrument No. 84-80439 in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant desires to add certain real estate and improvements and thereby expand the Backbay Horizontal Property Regime, as contemplated by the Prior Declaration and the Declaration;

NOW, THEREFORE:

Declarant hereby makes this Fourth Amendment to the Declaration, and the same is incorporated into the Declaration, as follows:

1. Declarant hereby adds to the Backbay Horizontal Property Regime the real estate described in Exhibit A attached hereto and made a part hereof ("Real Estate").

2. Declarant hereby adds to the Backbay Horizontal Property Regime Dwelling Units numbered 5-1, 5-2, 5-3, and 5-4, which are situated on said Real Estate and which are more particularly depicted and described on a certain plat entitled "Backbay Horizontal Property Regime-Phase IV, dated October 22, 1984 and certified by Barry F. Smith, Registered Architect Number 2859, recorded as Instrument No. 84-84749 in the office of the Recorder of Marion County, Indiana.

RECEIVED FOR RECORDS
-ETHAN LAUGHLIN
RECORDER-MARION CO.
OCT 30 8 11 AM 1984

3. Pursuant to the provisions of the Declaration, the Percentage Interests appertaining to each Dwelling Unit in Backbay Horizontal Property Regime are hereby adjusted and revised to equal the amounts set forth on Exhibit B attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the Declarant makes this Fourth Amendment to the Declaration of Backbay Horizontal Property Regime as of the date first above written.

GLM OF INDIANA, LTD.

By: GLM of Indiana, Inc.,
General Partner

By: [Signature]
Herbert M. Luksch, Vice President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Herbert M. Luksch, the Vice President of GLM of Indiana, Inc., the General Partner of GLM of Indiana, Ltd., who acknowledged the execution of the foregoing instrument on behalf of said corporation acting as general partner of said partnership, and who, after being duly sworn, stated that he did so with proper authority from the Board of Directors of said corporation acting as General Partner of said limited partnership, and that all corporate and partnership actions necessary for the making of this instrument have been taken and done.

Witness my hand and Notarial Seal this 20th day of October, 1984.

Signature [Signature]

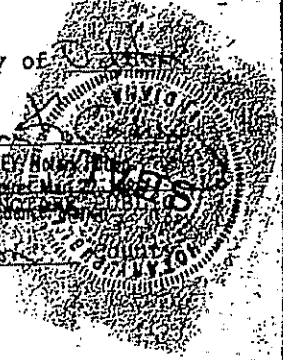
Printed

JANNA K. CASKEY
My Commission Expires March 27, 1985
County of Reynolds

My Commission Expires:

March 27, 1980

Resident of Marion



This instrument was prepared by Scott A. Lindquist, ICE MILLER DONADIO & RYAN, One American Square, Box 82001, Indianapolis, Indiana 46282.

84 84749

LEGAL DESCRIPTION

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest Corner of said Half-Quarter Section; thence North 89°26'23" East along the South line of said Half-Quarter Section a distance of 1876.37 feet to the Southwest Corner of Backbay, Phase I, as recorded in the Office of the Recorder of Marion County, Indiana, as Instrument No. 82-56705; thence running Northerly and Westerly along the West line of said Phase I with the following five courses, North 00°00'00" East a distance of 80.54 feet; thence North 73°54'06" West a distance of 72.13 feet; thence South 88°32'59" West a distance of 65.02 feet; thence North 00°00'00" East a distance of 111.65 feet; thence North 24°19'41" East a distance of 57.07 feet to the Northwest Corner of said Phase I; thence continuing North 24°19'41" East a distance of 229.37 feet; thence North 10°55'22" West a distance of 58.05 feet; thence North 45°27'57" West a distance of 119.86 feet to the POINT OF BEGINNING of the herein described tract, said point also being the Southeasterly Corner of Backbay, Phase II as recorded by Instrument No. 84-73869 in the Office of the Marion County Recorder; thence North 43°10'00" East on and along the Easterly line of said Backbay, Phase II a distance of 158.00 feet more or less, to a point on the Southwestern shoreline of Geist Reservoir as established October 10, 1983 (with the water level thereof being at an elevation of 785.0 feet above mean sea level) plus accretion and minus erosion, said point also being the Northeasterly Corner of said Backbay, Phase II; thence Southeasterly on and along the meanderings of said shoreline a distance of 102 feet plus or minus to a point on said shoreline, said point being located by the following five courses which approximate the existing shoreline; South 39°50'07" East a distance of 11.47 feet; thence South 26°04'31" East a distance of 26.16 feet; thence South 33°20'27" East a distance of 22.74 feet; thence South 47°48'56" East a distance of 21.59 feet; thence South 54°38'15" East a distance of 19.01 feet; thence leaving the meanderings of said shoreline, South 02°57'03" West a distance of 48.56 feet; thence South 45°50'48" West a distance of 71.78 feet; thence South 52°42'02" West a distance of 39.60 feet; thence North 45°27'57" West a distance of 119.86 feet to the point of beginning, containing 0.4194 acres (18,268.30 square feet) more or less.

Subject to all Rights-of-Way and Easements of record.

EXHIBIT A

84 84749

<u>Unit No.</u>	<u>Square Footage</u>	<u>Unit Points</u>	<u>Percentage Interest</u>
1-1	1990	24	5.941%
1-2	2760	26	6.436%
1-3	2330	25	6.188%
1-4	1290	23	5.693%
6-1	2635	25	6.188%
6-2	2725	26	6.436%
6-3	2215	25	6.188%
6-4	2750	26	6.436%
7-1	2635	25	6.188%
7-2	2725	26	6.436%
7-3	2215	25	6.188%
7-4	2750	26	6.436%
5-1	2635	25	6.188%
5-2	2725	26	6.436%
5-3	2215	25	6.188%
5-4	2750	<u>26</u>	<u>6.436%</u>
		404	100%

84 84749

EXHIBIT B

CROSS REFERENCE

850018672

RECORDED
DECLARATION

1285005657
COUNTY AUDITOR
Henry J. Suter

950
①

FIFTH AMENDMENT TO DECLARATION
OF BACKBAY HORIZONTAL PROPERTY REGIME

THIS FIFTH AMENDMENT TO THE DECLARATION OF BACKBAY HORIZONTAL PROPERTY REGIME ("Fifth Amendment"), made this 6th day of March, 1985, by GLM OF INDIANA, LTD., an Indiana limited partnership (hereinafter referred to as "Declarant");

WITNESSES THAT:

WHEREAS, Declarant's predecessor in interest established the Backbay Horizontal Property Regime by a certain Declaration of Covenants, Conditions and Restrictions establishing Backbay Condominium and By-Laws for Backbay Homeowners Association, Inc., dated October 12, 1982, having recorded the same October 13, 1982 as Instrument Number 82-56706 in the office of the Recorder of Marion County, Indiana (hereinafter called the "Prior Declaration"); and,

WHEREAS, Declarant amended the entirety of the said Prior Declaration by a certain Amended Declaration of Backbay Horizontal Property Regime dated June 1, 1984 and recorded June 19, 1984 as Instrument Number 84-46168 in the office of the Recorder of Marion County, Indiana (hereinafter called the "Declaration"); and

WHEREAS, Declarant amended the Declaration by a certain Second Amendment to Declaration dated September 17, 1984 and recorded September 20, 1984 as Instrument No. 84-73868 in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant amended the Declaration by a certain Third Amendment to Declaration dated October 11, 1984 and recorded October 15, 1984 as Instrument No. 84-80439 in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant amended the Declaration by a certain Fourth Amendment to Declaration dated October 26, 1984 and recorded October 29, 1984 as Instrument No. 84-84749 in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant desires to add certain real estate and improvements and thereby expand the Backbay Horizontal Property Regime, as contemplated by the Prior Declaration and the Declaration;

NOW, THEREFORE:

Declarant hereby makes this Fifth Amendment to the Declaration, and the same is incorporated into the Declaration as follows:

1. Declarant hereby adds to the Backbay Horizontal Property Regime the real estate described in Exhibit A attached hereto and made a part hereof ("Real Estate").
2. Declarant hereby adds to the Backbay Horizontal Property Regime Dwelling Units numbered 13-1, 13-2, 13-3, and 13-4, which are situated on said Real Estate and which are more particularly depicted and described on a certain plat entitled "Backbay Horizontal Property Regime-Phase V, dated February 28, 1985 and certified by Barry F. Smith, Registered Architect Number 2859, recorded as Instrument No. 85-18671 in the office of the Recorder of Marion County, Indiana.
3. Pursuant to the provisions of the Declaration, the Percentage Interests appertaining to each Dwelling Unit in

RECEIVED FOR RECORD
MAY 12 9 23 PM '85
REC'D BY ANGLIN
RECORDS-HERSON CO.

Backbay Horizontal Property Regime are hereby adjusted and revised to equal the amounts set forth on Exhibit B attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the Declarant makes this Fifth Amendment to the Declaration of Backbay Horizontal Property Regime as of the date first above written.

GLM OF INDIANA, LTD.

By: GLM of Indiana, Inc.,
General Partner

By: Herbert M. Luksch

Herbert M. Luksch,
Vice President

District of Columbia)
STATE OF INDIANA)
City of Washington) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Herbert M. Luksch, the Vice President of GLM of Indiana, Inc., the General Partner of GLM of Indiana, Ltd., who acknowledged the execution of the foregoing instrument on behalf of said corporation acting as general partner of said partnership, and who, after being duly sworn, stated that he did so with proper authority from the Board of Directors of said corporation acting as General Partner of said limited partnership, and that all corporate and partnership actions necessary for the making of this instrument have been taken and done.

Witness my hand and Notarial Seal this 10th day of March, 1984.

Signature Donna Westlund

Printed DONNA WESTLUND

My Commission Expires:

August 14, 1987

Resident of City of Marion County

850018673

This instrument was prepared by Scott A. Lindquist, ICE MILLER DONADIO & RYAN, One American Square, Box 82001, Indianapolis, Indiana 46282.

LEGAL DESCRIPTION

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest Corner of said Half-Quarter Section; thence North $89^{\circ}26'23''$ East along the South Line of said Half-Quarter Section a distance of 1,463.32 feet; thence North $79^{\circ}59'58''$ East a distance of 127.16 feet; thence North $20^{\circ}13'30''$ East a distance of 16.18 feet; thence North $30^{\circ}26'17''$ West a distance of 87.40 feet; thence North $14^{\circ}58'45''$ West a distance of 88.00 feet; thence North $03^{\circ}00'12''$ East a distance of 85.10 feet; thence North $17^{\circ}12'18''$ East a distance of 26.97 feet; thence North $34^{\circ}26'22''$ East a distance of 26.97 feet; thence North $43^{\circ}03'25''$ East a distance of 72.07 feet; thence South $83^{\circ}25'05''$ East a distance of 28.00 feet to the POINT OF BEGINNING of the herein described tract; thence North $07^{\circ}39'54''$ East a distance of 69.13 feet; thence North $09^{\circ}15'08''$ West a distance of 50.68 feet; thence North $72^{\circ}23'08''$ East a distance of 26.38 feet; thence South $83^{\circ}16'36''$ East a distance of 147.85 feet; thence South $12^{\circ}31'52''$ West a distance of 129.02 feet; thence North $83^{\circ}25'05''$ West a distance of 142.02 feet to the point of beginning, containing 0.4441 acres (19,345.91 square feet), more or less.

Subject to all Rights-of-Way and Easements of Record.

850018672

EXHIBIT A

<u>Unit No.</u>	<u>Square Footage</u>	<u>Unit Points</u>	<u>Percentage Interest</u>
1-1	1990	24	4.743%
1-2	2760	26	5.138%
1-3	2330	25	4.941%
1-4	1290	23	4.545%
6-1	2635	25	4.941%
6-2	2725	26	5.138%
6-3	2215	25	4.941%
6-4	2750	26	5.138%
7-1	2635	25	4.941%
7-2	2725	26	5.138%
7-3	2215	25	4.941%
7-4	2750	26	5.138%
5-1	2635	25	4.941%
5-2	2725	26	5.138%
5-3	2215	25	4.941%
5-4	2750	26	5.138%
13-1	2635	25	4.941%
13-2	2725	26	5.138%
13-3	2215	25	4.941%
13-4	2750	<u>26</u>	<u>5.138%</u>
		506	100%

850018672

EXHIBIT B

CROSS REFERENCE

850026596

SIXTH AMENDMENT TO DECLARATION
OF BACKBAY HORIZONTAL PROPERTY REGIME

DULY INDEXED
FOR TAXATION

APR 10 85 008348

Anita M. Williams

CROSS REFERENCE

THIS SIXTH AMENDMENT TO THE DECLARATION OF BACKBAY HORIZONTAL PROPERTY REGIME ("Sixth Amendment"), made this 26th day of March, 1985, by GLM OF INDIANA, LTD., an Indiana limited partnership (hereinafter referred to as "Declarant");

WITNESSES THAT:

WHEREAS, Declarant's predecessor in interest established the Backbay Horizontal Property Regime by a certain Declaration of Covenants, Conditions and Restrictions establishing Backbay Condominium and By-Laws for Backbay Homeowners Association, Inc., dated October 12, 1982, having recorded the same October 13, 1982 as Instrument Number 82-56706 in the office of the Recorder of Marion County, Indiana (hereinafter called the "Prior Declaration"); and,

WHEREAS, Declarant amended the entirety of the said Prior Declaration by a certain Amended Declaration of Backbay Horizontal Property Regime dated June 1, 1984 and recorded June 19, 1984 as Instrument Number 84-46168 in the office of the Recorder of Marion County, Indiana (hereinafter called the "Declaration"); and

WHEREAS, Declarant amended the Declaration by a certain Second Amendment to Declaration dated September 17, 1984 and recorded September 20, 1984 as Instrument No. 84-73868 in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant amended the Declaration by a certain Third Amendment to Declaration dated October 11, 1984 and recorded October 15, 1984 as Instrument No. 84-80439 in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant amended the Declaration by a certain Fourth Amendment to Declaration dated October 26, 1984 and recorded October 29, 1984 as Instrument No. 84-84749 in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant amended the Declaration by a certain Fifth Amendment to Declaration dated March 6, 1985 and recorded March 12, 1985 as Instrument No. 85-18672 in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant desires to add certain real estate and improvements and thereby expand the Backbay Horizontal Property Regime, as contemplated by the Prior Declaration and the Declaration;

NOW, THEREFORE:

Declarant hereby makes this Sixth Amendment to the Declaration, and the same is incorporated into the Declaration, as follows:

1. Declarant hereby adds to the Backbay Horizontal Property Regime the real estate described in Exhibit A attached hereto and made a part hereof ("Real Estate").
2. Declarant hereby adds to the Backbay Horizontal Property Regime Dwelling Units numbered 12-1, 12-2, 12-3, and 12-4, which are situated on said Real Estate and which are more particularly depicted and described on a certain plat entitled "Backbay Horizontal Property Regime-Phase VI, dated April 2, 1985 and certified by Barry F. Smith, Registered Architect

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MARION COUNTY, INDIANA
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LEGAL DESCRIPTION

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest Corner of said Half-Quarter Section; thence North 89° 26' 23" East along the South line of said Half-Quarter Section, a distance of 1,463.32 feet; thence North 79° 59' 58" East, a distance of 127.16 feet; thence North 20° 13' 30" East, a distance of 16.18 feet; thence North 30° 26' 17" West a distance of 87.40 feet; thence North 14° 58' 45" West, a distance of 88.00 feet; thence North 03° 00' 12" East, a distance of 70.38 feet; thence South 73° 29' 51" East, a distance of 11.73 feet to the POINT OF BEGINNING of the herein described tract; thence North 15° 47' 33" East, a distance of 51.44 feet; thence North 48° 57' 03" East, a distance of 100.48 feet to the Southwest corner of Backbay Phase V as recorded by Instrument No. 85-18671 in the office of the Marion County Recorder; thence South 83° 25' 05" East on and along the South line of said Phase V, a distance of 56.59 feet; thence South 42° 49' 31" East, a distance of 69.08 feet; thence South 36° 30' 53" West, a distance of 117.86 feet; thence North 73° 29' 51" West, a distance of 128.10 feet to the point of beginning; containing 0.4202 acres (18,302.32 square feet), more or less.

Subject to all Rights-of-way and Easements of Record.

850026596

EXHIBIT A

<u>Unit No.</u>	<u>Square Footage</u>	<u>Unit Points</u>	<u>Percentage Interest</u>
1-1	1990	24	3.947%
1-2	2760	26	4.276%
1-3	2330	25	4.112%
1-4	1290	23	3.783%
6-1	2635	25	4.112%
6-2	2725	26	4.276%
6-3	2215	25	4.112%
6-4	2750	26	4.276%
7-1	2635	25	4.112%
7-2	2725	26	4.276%
7-3	2215	25	4.112%
7-4	2750	26	4.276%
5-1	2635	25	4.112%
5-2	2725	26	4.276%
5-3	2215	25	4.112%
5-4	2750	26	4.276%
13-1	2635	25	4.112%
13-2	2725	26	4.276%
13-3	2215	25	4.112%
13-4	2750	26	4.276%
12-1	2635	25	4.112%
12-2	2728	26	4.276%
12-3	2215	25	4.112%
12-4	2750	26	4.276%
		608	100%

850026596

EXHIBIT B

SW
Address Only

880018553

FILE
MAR 02 1988
LAWRENCE TOWNSHIP
ASSESSOR

CROSS REFERENCE

SEVENTH AMENDMENT TO DECLARATION
OF BACKBAY HORIZONTAL PROPERTY REGIME

THIS SEVENTH AMENDMENT TO THE DECLARATION OF BACKBAY
HORIZONTAL PROPERTY REGIME ("Seventh Amendment") made this 25th
day of February 1988, by VANCORP, an Indiana
corporation (hereinafter referred to as "Declarant");

WITNESSES THAT:

WHEREAS, Declarant has succeeded to all the rights, title
and interest of its predecessor in interest by virtue of
certain Assignment of Declaration dated August 13, 1987
recorded August 26, 1987 as Instrument No. 87-98699 in the
office of the Recorder of Marion County, Indiana; and

WHEREAS, a predecessor in interest to Declarant established
the Backbay Horizontal Property Regime by a certain Declaration
of Covenants, Conditions and Restrictions establishing Backbay
Condominium and By-Laws for Backbay Homeowners Association,
Inc., dated October 12, 1982, having recorded the same October
13, 1982 as instrument Number 82-56706 in the office of the
Recorder of Marion County, Indiana (hereinafter called the
"Prior Declaration"); and,

WHEREAS, a predecessor in interest to Declarant amended the
entirety of the said Prior Declaration by a certain Amended
Declaration of Backbay Horizontal Property Regime dated June 1,
1984 and recorded June 19, 1984 as Instrument Number 84-46268 in
the office of the Recorder of Marion County, Indiana
(hereinafter called the "Declaration"); and,

WHEREAS, a predecessor in interest to Declarant amended the
Declaration by a certain Second Amendment to Declaration dated
September 17, 1984 and recorded September 20, 1984 as Instrument
No. 84-738868 in the office of the Recorder of Marion County,
Indiana; and,

WHEREAS, a predecessor in interest to Declarant amended the
Declaration by a certain Third Amendment to Declaration dated
October 11, 1984 and recorded October 15, 1984 as Instrument No.
84-80439 in the office of the Recorder of Marion County,
Indiana; and,

WHEREAS, a predecessor in interest to Declarant amended the
Declaration by a certain Fourth Amendment to Declaration dated
October 26, 1984 and recorded October 29, 1984 as Instrument No.
84-84749 in the office of the Recorder of Marion County,
Indiana; and,

WHEREAS, a predecessor in interest to Declarant amended the
Declaration by a certain Fifth Amendment to Declaration dated
March 6, 1985 and recorded March 12, 1985 as Instrument No.
85-18672 in the office of the Recorder of Marion County,
Indiana; and,

WHEREAS, a predecessor in interest to Declarant amended the
Declaration by a certain Sixth Amendment to Declaration dated
March 26, 1985 and recorded April 10, 1985 as Instrument No.
85-26596 in the office of the Recorder of Marion County,
Indiana; and,

WHEREAS, Declarant desires to include certain real estate and
improvements and thereby expand the Backbay Horizontal Property
Regime, as contemplated by the Prior Declaration and the
Declaration;

NOW THEREFORE:

Declarant hereby makes this Seventh Amendment to the
Declaration, and the same is incorporated into the Declaration,
as follows:

MARION COUNTY RECORDER
MAR 02 1988
BETH STANFORTH
MARION COUNTY RECORDER

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BETH STANFORTH
MARION COUNTY RECORDER

1. Declarant hereby adds to the Back Bay Horizontal Property Regime the real estate described in Exhibit "A" attached hereto and made a part hereof ("Real Estate").

2. Declarant hereby adds to the Backbay Horizontal Property Regime Dwelling Units numbered 4-1, 4-2, 4-3, and 4-4, which are situated on said Real Estate and which are more particularly depicted and described on a certain plat entitled "Backbay Horizontal Property Regime-Phase VII, dated January 29, 1988, and certified by Clifford Charles Lowe, Jr., Registered Architect Number 1452, recorded as Instrument No. 880018553 in the office of the Recorder of Marion County, Indiana.

3. Pursuant to the provisions of the Declaration, the Percentage interests appertaining to each Dwelling Unit in Backbay Horizontal Property Regime are hereby adjusted and revised to equal the amounts set forth on Exhibit "B" attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the Declarant makes this Seventh Amendment to the Declaration of Backbay Horizontal Property Regime as of the date first above written.

VANCORP, : Indiana corporation

By: Jerry W. Slusser
Jerry W. Slusser, President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Jerry W. Slusser, the President of VANCORP, who acknowledged the execution of the foregoing Instrument on behalf of said corporation acting as President and who, after being duly sworn, stated that he did so with proper authority from the Board of Directors of said corporation acting as President, and that all corporate actions necessary for the making of this instrument have been taken and done.

Witness my hand and Notarial Seal this 25th day of February, 1988.

Joyce M. Ford
Notary Public

Joyce M. Ford
Printed

My Commission Expires: 10-9-88

My County of Residence: Marion

Return to: Michael C. Peek
Of Counsel
CHRISTOPHER & TAYLOR
P.O. Box 2580
Indianapolis, Indiana 46206

This Instrument was prepared by Michael C. Peek, Attorney at Law, P.O. Box 2850, Indianapolis, Indiana 46206.

Part of the North Half of the Southwest Quarter of Section 21,
Township 17 North, Range 5 East in Marion County, Indiana, more
particularly described as follows:

Commencing at the Southwest Corner of said Half Quarter Section;
thence North 89 degrees 26 minutes 23 seconds East along the
South line of said Half Quarter section a distance of 1876.37
feet to the Southwest Corner of Backbay, Phase I, as recorded in
the Office of the Recorder of Marion County, Indiana as
Instrument 82-56705; thence running Northerly and westerly along
the west line of said Phase I with the following five courses,
North 00 degrees 00 minutes 00 seconds East a distance of 80.54
feet; thence North 73 degrees 54 minutes 06 seconds West a
distance of 72.13 feet; thence South 88 degrees 32 minutes 59
seconds West a distance of 65.02 feet; thence North 00 degrees
00 minutes 00 seconds East a distance of 111.65 feet; thence
North 24 degrees 19 minutes 41 seconds East a distance of 57.07
feet to the Northwest Corner of said Phase I; thence continuing
North 24 degrees 19 minutes 41 seconds East a distance of 229.37
feet; thence North 10 degrees 55 minutes 22 seconds West a
distance of 40.00 feet to the Beginning Point; thence continue
North 10 degrees 55 minutes 22 seconds West a distance of 18.05
feet to the Southeasterly Corner of Backbay Phase IV, as
recorded by Instrument No. 84-84748 in the Office of the
Recorder of Marion County, Indiana (the next three (3) described
courses being along the easterly line of said Backbay Phase IV);
thence North 52 degrees 42 minutes 02 seconds East a distance of
39.60 feet; thence North 45 degrees 50 minutes 40 seconds East a
distance of 71.78 feet; thence North 02 degrees 57 minutes 03
East a distance of 48.56 feet to the point on the Southwestern
Shoreline of Geist Reservoir as established October 10, 1983
(with the water level thereof being at an elevation of 785 feet
above mean sea level) plus accretion and minus erosion (the next
six (6) described courses being along the said shoreline);
thence South 80 degrees 19 minutes 00 seconds East a distance of
36.72 feet; thence North 73 degrees 30 minutes 36 seconds East a
distance of 85.74 feet; thence South 64 degrees 49 minutes 05
seconds East a distance of 45.39 feet; thence South 01 degrees
19 minutes 01 seconds West a distance of 34.38 feet; thence
South 14 degrees 27 minutes 39 seconds West a distance of 84.18
feet; thence South 27 degrees 44 minutes 09 seconds West a
distance of 69.11 feet; thence North 57 degrees 19 minutes 27
seconds West a distance of 78.53 feet; thence North 76 degrees
42 minutes 38 seconds West a distance of 60.68 feet; thence
South 73 degrees 37 minutes 05 seconds West a distance of 65.08
feet to the Beginning Point, containing 0.606 acres (26,387
square feet) more or less.

Subject to all Rights-of-Way and Easements of record.

EXHIBIT "A"

880018553

<u>Unit No.</u>	<u>Square Footage</u>	<u>Unit Points</u>	<u>Percentage Interest</u>
1-1	1990	24	3.409%
1-2	2760	26	3.693%
1-3	2330	25	3.551%
1-4	1290	23	3.267%
6-1	2635	25	3.551%
6-2	2725	26	3.693%
6-3	2215	25	3.551%
6-4	2750	26	3.693%
7-1	2635	25	3.551%
7-2	2725	26	3.693%
7-3	2215	25	3.551%
7-4	2750	26	3.693%
5-1	2635	25	3.551%
5-2	2725	26	3.693%
5-3	2215	25	3.551%
5-4	2750	26	3.693%
13-1	2635	25	3.551%
13-2	2725	26	3.693%
13-3	2215	25	3.551%
13-4	2750	26	3.693%
12-1	2635	25	3.551%
12-2	2728	26	3.693%
12-3	2215	25	3.551%
12-4	2750	26	3.693%
4-1	1988	24	3.409%
4-2	1731	24	3.409%
4-3	2121	24	3.409%
4-4	1932	<u>24</u>	<u>3.409%</u>

704

100%

EXHIBIT "B"

880018553

191678

890062462

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(34)

CROSS REFERENCE

CROSS REFERENCE

EIGHTH AMENDMENT TO DECLARATION OF BACKBAY
HORIZONTAL PROPERTY REGIME, AGREEMENT REGARDING
FUTURE DEVELOPMENT AND ASSIGNMENT

This Instrument made this 6th day of June, 1989 consisting of an Eighth Amendment to Declaration of Backbay Horizontal Property Regime by Vancorp, an Indiana Corporation (hereinafter "Vancorp"), an agreement between Vancorp, Marine Midland Realty Credit Corporation, a New York Corporation ("Marine"), Franklin Bank & Trust Co. ("Franklin"), Oaks Land Company, an Indiana Corporation and The Inland Group, Inc., an Indiana Corporation (hereinafter collectively "Feather Bay") and the Backbay Co-Owners Association, Inc., an Indiana Not For Profit Corporation ("Association"), and an Assignment from Vancorp to the Association;

WITNESSETH:

WHEREAS, Backbay Associates, Ltd., an Indiana Limited Partnership established the Backbay Horizontal Property Regime ("Regime") by a certain Declaration of Covenants, Conditions and Restrictions Establishing Backbay Condominium and By-Laws for Backbay Homeowners Association, Inc., dated October 12, 1982 and recorded on October 13, 1982 as Instrument No. 82-56706 in the Office of the Recorder of Marion County, Indiana (hereinafter called the "Prior Declaration"); and,

WHEREAS, by an Agreement dated November 15, 1983, Backbay Associates, Ltd. sold, conveyed and assigned all of its right, title and interest in and to the Prior Declaration, real estate, Adjacent Real Estate and improvements to GLM of Indiana, Ltd., an Indiana Limited Partnership ("GLM") which Agreement was recorded

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RECORDERS
MARION COUNTY RECORDS

DULY OFFERED FOR
RECORDATION
SUBJECT TO FINAL
APPROVAL FOR TRANSFER

JUN 29 1989 017854
CURTIS L. OSBORN
MARION COUNTY RECORDER

APPROVED
DMD-DDS BY *[Signature]*
JUN 29 89

FILED
JUN 20 1989
LAWRENCE TOWNSHIP
ASSESSOR

on November 17, 1983 in the Office of the Recorder, Marion County, Indiana as Instrument No. 83-84454; and

WHEREAS, GLM amended the entirety of the Prior Declaration by a certain Amended Declaration of Backbay Horizontal Property Regime dated June 1, 1984 and recorded June 19, 1984 as Instrument No. 84-46168 in the Office of the Recorder of Marion County, Indiana (hereinafter called the "Declaration") which Declaration replaced and superceded the Prior Declaration; and

WHEREAS, GLM amended the Declaration by documents dated: September 17, 1984 and recorded September 20, 1984 in the Office of the Recorder of Marion County, Indiana as Instrument No. 84-73868; October 11, 1984 and recorded October 15, 1984 in the Office of the Recorder of Marion County, Indiana as Instrument No. 84-80439; October 26, 1984 and recorded on October 29, 1984 in the Office of the Recorder of Marion County, Indiana as Instrument No. 84-84749; March 6, 1985 and recorded March 12, 1985 in the Office of the Recorder of Marion County, Indiana as Instrument No. 85-18672; and March 26, 1985 and recorded on April 10, 1985 in the Office of the Recorder of Marion County, Indiana as Instrument No. 85-26596 (collectively the "GLM Amendments"); and

WHEREAS, by Agreement dated September 30, 1986, GLM sold, conveyed and assigned all of its right, title and interest in and to the Declaration and the GLM Amendments to Marine which Agreement was recorded October 2, 1986 in the Office of the Recorder, Marion County, Indiana, as Instrument No. 86-99340; and

WHEREAS, by Assignment of Declaration dated August 13, 1987, Marine sold, conveyed and assigned all of its right, title and

interest in and to the Declaration and the GLM Amendments to Vancorp, which Assignment of Declaration was recorded August 26, 1987 in the Office of the Recorder, Marion County, Indiana, as Instrument No. 87-98699; and

WHEREAS, Vancorp amended the Declaration by a document dated February 25, 1988 and recorded March 2, 1988 in the Office of the Recorder of Marion County, Indiana as Instrument No. 88-10553 ("Vancorp Amendment"), and

WHEREAS, the Regime currently consists of the real estate as described in the Declaration, the GLM Amendments and the Vancorp Amendment and said Regime is subject to having added thereto certain Adjacent Real Estate (the "Adjacent Real Estate") to the extent the Declarant elects to add to the Regime in the manner set forth in the Declaration; and

WHEREAS, Vancorp pursuant to Section 15 of the Declaration has now elected to add to the Regime a certain portion of the Adjacent Real Estate; and

WHEREAS, Vancorp pursuant to Section 15E of the Declaration has now elected not to annex a part of the Adjacent Real Estate and to irrevocably, permanently and forever remove that portion of the Adjacent Real Estate from the possibility of becoming a part of the Regime; and

WHEREAS, Vancorp, Marine, Franklin, Feather Bay and the Association have reached an agreement for the future development of the Regime and Vancorp wishes to amend the Declaration setting forth the terms of said agreement, and

WHEREAS, Vancorp desires to amend the Declaration, the GLM Amendments and this Eighth Amendment by adding a new Section 35

thereto; and

WHEREAS, the Declaration calls for the creation of an association which association was not created and, in fact a different entity known as the Backbay Homeowners Association, Inc. has been maintained by various developers of the Regime; and

WHEREAS, the Homeowners have now created the Association as provided by the Declaration; and

WHEREAS, Vancorp desires to convey and assign to the Association all of Vancorp's right, title and interest in and to the Declaration, the GLM Amendments, the Vancorp Amendment, and this Eighth Amendment, the memberships, and the assets of the Backbay Homeowners Association, Inc.; and

WHEREAS, the Association has agreed to accept the assignment from Vancorp and to perform the future obligations associated with the Declaration, GLM Amendments, the Vancorp Amendment, and this Eighth Amendment and the membership;

NOW, THEREFORE:

Vancorp hereby makes this Eighth Amendment to the Declaration, and the same is incorporated into the Declaration as follows:

VANCORP'S ADDITION OF ADJACENT
REAL ESTATE TO THE REGIME

Vancorp hereby adds to the Regime the real estate described in Exhibit "A" attached hereto and made a part hereof.

VANCORP'S ELECTION NOT TO ANNEX
A PORTION OF ADJACENT REAL ESTATE

Vancorp hereby elects not to annex as part of the Regime and

hereby permanently and irrevocably removes from the Adjacent Real Estate, that real estate described in Exhibit "B" attached hereto and made a part hereof (the "Feather Bay Property"), which election removes the Feather Bay Property from any possibility of becoming a part of the Regime pursuant to Section 15E of the Declaration.

AGREEMENT BETWEEN VANCORP, MARINE, FRANKLIN, FEATHER BAY
AND THE ASSOCIATION FOR FUTURE DEVELOPMENT OF THE REGIME

1. Vancorp is the owner of adjacent real estate more particularly described on Exhibit "C" attached hereto and made a part hereof (hereinafter "Franklin Real Estate") which real estate is subject to the terms and conditions of the Declaration, GLM Amendments, Vancorp Amendment and this Eighth Amendment.
2. Pursuant to Section 15 of the Declaration, Vancorp has expressly reserved the right to add the Franklin Real Estate to the Regime, subject to the conditions set forth in the Declaration, GLM Amendments, Vancorp Amendment and this Eighth Amendment.
3. Vancorp has contemporaneously herewith executed a Corporate Warranty Deed deeding to Franklin the Franklin Real Estate subject to the terms and conditions of the Declaration, the GLM Amendments, the Vancorp Amendment, this Eighth Amendment and there is hereby reserved to each owner of a Dwelling Unit in the Regime an easement for the purposes of ingress and egress across the streets, roadways and Driveways to the extent any of the Franklin Real Estate contains any such streets, roadways or Driveways.
4. Franklin, for and on its own behalf, its successors,

assigns, and grantees from Franklin of any part or all of the Franklin Real Estate, agrees:

a. To develop the Franklin Real Estate in accordance with the conditions of the Declaration, GLM Amendments, Vancorp Amendment and this Eighth Amendment including but not limited to the requirements as to comparable quality, plans, and specifications of the units to be built on the Franklin Real Estate.

b. Prior to the addition to the Regime of any part of the Franklin Real Estate, said real estate will be maintained by Franklin, its successors, assigns, and/or grantees at their own cost and expense.

c. Franklin, its successors, assigns, and/or grantees agree and are mandated pursuant to the terms of this Agreement after completion of the Dwelling Units to add said Dwelling Units to the Regime.

d. After addition of the Dwelling Units to the Regime, Franklin, its successors, assigns, and/or grantees are responsible for the payment of any of the monthly maintenance assessments for any Dwelling Unit which Franklin, its successors, assigns, and/or grantee own in accordance with the terms and conditions of the Declaration, the GLM Amendments, Vancorp Amendment, and this Eighth Amendment and future amendments.

e. Franklin, its successors, assigns, and/or grantees agrees to comply with and are bound to comply with the terms and conditions of the Declaration and amendments thereto, which Declarations and amendments thereto are covenants running with

the land and shall inure to the benefit of Vancorp, its assignee, and the Association.

5. The Association agrees that in its capacity as Declarant, it will upon receipt of written notice from Franklin, its successors, assigns, and/or grantees certifying substantial completion of the Dwelling Units in accordance with the Declaration, the GLM Amendments, the Vancorp Amendment and this Eighth Amendment and requesting said Dwelling Units to be added to the Regime, the Association by proper amendment to the Declaration will add those Dwelling Units located on the Franklin Real Estate to the Regime.

6. Vancorp, contemporaneously herewith and pursuant to its election not to annex the Feather Bay Property to the Regime, has deeded said real estate to Feather Bay, subject to a permanent easement reserved by Vancorp, its successors, successors in interest and assigns for the benefit of the Regime as shown on Exhibit "D" attached hereto and made a part hereof (the "Easement Area") for the sole purpose of the maintaining by the Association of a stonewall and railroad tie wall as referenced in Exhibit "D" as well as shown on a certain survey dated March 16, 1989, made by Schneider Engineering Corporation, Indianapolis, Indiana. The Association shall have the right of ingress and egress over, upon and across the real estate adjacent to said Easement Area from the location identified on Exhibit "D" as "access area" and from no other location. The Association agrees that it shall maintain said stonewall and railroad tie wall in first class condition and shall keep the Easement Area clean and free of all debris.

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Vancorp and the Association hereby release any written license or easement or any other rights in the five feet (5') wide boardwalk shown as encroaching on the Feather Bay Property by a survey dated March 16, 1989, prepared by Schneider Engineering Corporation, and Feather Bay shall have the absolute and unrestricted right at its discretion to remove said boardwalk from the Feather Bay Property, which removal will be done in such a fashion to leave the boardwalk functional and in good condition on the property of the Regime.

The Association also hereby quitclaims and releases all of its right, title and interest in a certain easement recorded in the Office of the Recorder of Marion County as Instrument No. 83-83587, which easement was vacated by Vancorp in an instrument recorded in the Office of the Recorder of Marion County, Indiana as Instrument No. 88-17596.

7. Vancorp, as part of its agreement with Feather Bay and the Association, hereby agrees to amend the Declaration, the GLM Amendments, the Vancorp Amendment and this Amendment by adding thereto a new Section 35 as hereinafter set forth.

8. The parties to this Agreement recognize that in the past Vancorp has owned certain real estate which is or has become part of the Regime, the Adjacent Real Estate, and the Franklin Real Estate, and Vancorp has executed certain mortgages and security

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interests in fixtures in favor of Marine and Franklin. Vancorp and Franklin represent and warrant that the real estate previously added to the Regime and the real estate to be added to the Regime upon execution of this Eighth Amendment (consisting of the real estate described in Exhibit A) will be added thereto free and clear of the mortgage and fixture interests in favor of Marine and Franklin and upon the execution by Marine and Franklin of releases of their mortgage and fixture interest in said real estate, said real estate will become a part of the Regime free and clear of all liens and encumbrances.

9. The parties to this Agreement recognize the Association will incur various expenses for improvements of the common areas of the Regime which improvements have the potential effect of benefitting all parties to this Agreement, and in consideration thereof, Marine, Franklin, and Feather Bay each have paid the sum of Ten Thousand Dollars (\$10,000.00) to the Association contemporaneously herewith.

SECTION 35. RIGHTS OF NON-OWNERS

Vancorp hereby grants to the homeowners of residences or dwelling units located within the Feather Bay Property certain rights pursuant to and as specified in Section 35 which is hereby added to as an amendment to the Declaration, the GLM Amendments, the Vancorp Amendment and this Eighth Amendment, which Section 35 shall read as follows:

Section 35. Rights of Non-Owners. Commencing the 1st day of June, 1989, the owners of residences or dwelling units located within the Feather Bay Property, and their permitted

guests and invitees (individually referred to as a "Non-owner" and collectively referred to as "Non-owners") shall have the right, subject to the rules and regulations, and the payment of an annual fee (as hereinafter set forth) to use the pool and the tennis courts located within the Regime. Such rights shall include the use of the bathhouse area of the clubhouse which is adjacent to the pool, but no further rights to use any other areas of the clubhouse. The Association reserves the right as part of its exclusive right to adopt rules and regulations for the use of the pool and/or tennis courts by members of the Association and the Non-owners, provided such rules and regulations shall not discriminate between members of the Association and the Non-owners.

Each Non-owner who wishes to use the tennis courts and/or the pool shall have the right at any time to register for the use of the tennis courts and/or pool by giving written notice to the Association and by the payment of the annual fee as hereinafter set forth.

The annual fee for the calendar year 1989 for each Non-owner who wishes to use the tennis courts and/or pool shall be Two Hundred Fifty & 00/100 Dollars (\$250.00). The Association reserves the right to increase the annual fee for subsequent year which increases shall be determined by dividing the increase in the annual expenses budgeted by the Association (which budget shall include allocation for future capital improvements) for the pool and tennis courts by the total sum of the number of Dwelling Units paying regular assessments to the Association and the number of Non-owners who registered to use the pool and

tennis courts in the preceeding year.

Vancorp hereby grants to the Non-owners who have paid their annual fee the right and non-exclusive perpetual easement to enter upon the Common Areas necessary to provide ingress and egress to Non-owners for the use of the pool and/or tennis courts located within the Regime.

[End of Section 35 Amendment]

ASSIGNMENT OF CONDOMINIM DECLARATION, ASSETS
AND HOMEOWNERS ASSOCIATION MEMBERSHIPS

Vancorp hereby assigns and conveys to the Association all right, title, and interest of Vancorp in and to the Declaration, the GLM Amendments, the Vancorp Amendment and this Eighth Amendment, the Adjacent Real Estate, the Memberships, all assets of the Backbay Homeowners Association, Inc., and all future obligations imposed upon Vancorp by said Declaration, Amendments thereto and Memberships; and the Association hereby accepts this Assignment and agrees to be bound by the terms and conditions contained within the Declaration, the Amendments, or imposed by the Memberships and as a result of this Assignment, the Association is now the "Declarant" of the Backbay Condominium, as the term "Declarant" is used in the Prior Declaration, the Declaration, the Amendments and in the Horizontal Property Act of the State of Indiana.

GENERAL COVENANTS

1. This Eighth Amendment and the Agreement contained herein is binding on all of the parties hereto, their successors,

successors in interest, assigns, and/or grantees.

2. That the individual executing this document on behalf of their respective party herein states that said individual has the power and authority to execute this document and bind the respective party to the terms hereof.

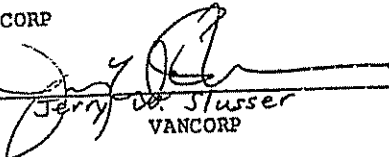
3. This document contains the entire understanding of the parties and can neither be modified or rescinded unless executed by all of the parties hereto.

4. The parties hereto agree they will execute and if necessary, record any and all further documents to consummate the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day hereinabove specified.

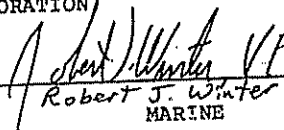
VANCORP

By


Jerry W. Stusser
VANCORP

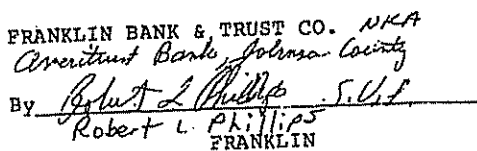
MARINE MIDLAND REALTY CREDIT CORPORATION

By


Robert J. Winter
MARINE

FRANKLIN BANK & TRUST CO. NKA
America's Bank of Johnson County

By


Robert L. Phillips
FRANKLIN

OAKS LAND COMPANY

By


Neil R. Strickland

-12-

890062462

THE INLAND GROUP, INC.

By Jay A. O'Brien, President.
Haver T. O'Brien
WEATHER BAY

BACKBAY CO-OWNERS ASSOCIATION, INC.

By Bruce B. Melchert, President
Bruce B. Melchert
ASSOCIATION

STATE OF INDIANA)
) SS
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State,
personally appeared Vancorp, by JERRY W. SLUSSER, its
PRESIDENT, who acknowledged the execution of the
foregoing, and who, having been duly sworn, stated that any
representations therein contained are true.

Witness my hand and notarial seal this 7th day of
June, 1989.

My Commission Expires:
12/4/92

Signature Robin L. Beck
Printed ROBIN L. BECK
Notary Public

County of Residence:
Hamilton

STATE OF INDIANA)
) SS
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Oaks Land Company by Neil R. Starkland, its PRESIDENT, who acknowledged the execution of the foregoing, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and notarial seal this 16th day of June, 1989.

My Commission Expires:
12/14/92

Signature Robert L. Beck
Printed ROBERT L. BECK
Notary Public

County of Residence:
Hamilton

STATE OF INDIANA)
) SS
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared The Inland Group, Inc. by James T. O'Brien, its PRESIDENT, who acknowledged the execution of the foregoing, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and notarial seal this 16th day of June, 1989.

My Commission Expires:
12/14/92

Signature Robert L. Beck
Printed ROBERT L. BECK
Notary Public

County of Residence:
Hamilton

STATE OF INDIANA)
) SS
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Backbay Co-Owners Association, Inc. by Bruce B. Melchert, its President, who acknowledged the execution of the foregoing, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and notarial seal this 6th day of June, 1989.

My Commission Expires:

August 23, 1992

Signature Benjamin A. Pecar

Printed Benjamin A. Pecar.
Notary Public

County of Residence:

Marion

This instrument prepared by J. Randall Aikman, Attorney-at-Law.

COPY

Part of the North Half of the Southwest Quarter, and part of the North Half of the Southeast Quarter, both of Section 21, Township 17 North, Range 5 East, of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Beginning at a point on the South line of said North Half of said Southwest Quarter, said point being North 89 degrees 26 minutes 23 seconds East along said South line 1216.37 feet from the Southwest corner thereof; thence North 00 degrees 33 minutes 37 seconds West 200.00 feet; thence North 15 degrees 07 minutes 33 seconds West 136.10 feet; thence North 77 degrees 51 minutes 46 seconds East 27.00 feet; thence North 12 degrees 08 minutes 14 seconds West 189.00 feet; thence North 83 degrees 51 minutes 46 seconds East 103.00 feet; thence North 76 degrees 08 minutes 37 seconds East 192.00 feet; thence North 21 degrees 13 minutes 37 seconds East 288 feet, more or less, to a point on the Southwestern shore line of Geist Reservoir as established when said Reservoir is full (with the water level thereof being at an elevation of 785.00 feet above mean sea level); thence generally Easterly, Southeasterly, and Southerly along said meandering shore line 300 feet, more or less, to the South line of the North Half of said Southeast Quarter; thence South 89 degrees 20 minutes 46 seconds West along said South line 722 feet, more or less, to the Southeast corner of said North Half of said Southwest Quarter; thence South 89 degrees 26 minutes 23 seconds West along the South line thereof 1449.88 feet to the Point of Beginning.

EXCEPTING therefrom, Backbay Horizontal Property Regime, Phase I, containing 1.024 acres, and recorded as Instrument #82-56705, at the Office of the Recorder of Marion County, Indiana;

ALSO EXCEPTING therefrom, Backbay Horizontal Property Regime, Phase II, containing 0.577 acres, and recorded as Instrument #84-73859, at the Office of the Recorder of Marion County, Indiana;

ALSO EXCEPTING therefrom, Backbay Horizontal Property Regime, Phase III, containing 0.683 acres, and recorded as Instrument #84-80438, at the Office of the Recorder of Marion County, Indiana;

ALSO EXCEPTING therefrom, Backbay Horizontal Property Regime, Phase IV, containing 0.419 acres, and recorded as Instrument #84-84748, at the Office of the Recorder of Marion County, Indiana;

ALSO EXCEPTING therefrom, Backbay Horizontal Property Regime, Phase V, containing 0.444 acres, and recorded as Instrument #85-18671, at the Office of the Recorder of Marion County, Indiana;

ALSO EXCEPTING therefrom, Backbay Horizontal Property Regime, Phase VI, containing 0.420 acres, and recorded as Instrument #85-26595, at the Office of the Recorder of Marion County, Indiana;

ALSO EXCEPTING therefrom, Backbay Horizontal Property Regime, Phase VII, containing 0.606 acres, and recorded as Instrument #88-18382, at the Office of the Recorder of Marion County, Indiana.

ALSO EXCEPTING therefrom:

Part of the North Half of the Southwest Quarter and part of the North Half of the Southeast Quarter, both of Section 21, Township 17 North, Range 5 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Beginning at the Southeast Corner of said North Half of said Southwest Quarter; thence South 89 degrees 26 minutes 23 seconds West along the south line thereof a distance of 466.17 feet; thence North 03 degrees 00 minutes 12 seconds West 182.41 feet to the Point of Curvature of a curve to the left; said curve having a radius of 40.00 feet and being subtended by a chord bearing North 33 degrees 07 minutes 36 seconds West and a length of 40.16 feet; thence in a northwesterly direction along said curve 42.07 feet to the Point of Tangency thereof; said point being the point of curvature of a curve to the right; said curve having a radius of 40.00 feet and being subtended by a chord bearing North 50 degrees 11 minutes 25 seconds West and a length of 18.09 feet; thence in a northwesterly direction along said curve 18.25 feet; thence South 52 degrees 52 minutes 49 seconds West 20.00 feet; thence North 90 degrees 00 minutes 00 seconds West 123.88 feet, more or less, to a point on the southwestern shore line of Geist Reservoir as established when said reservoir is full (with the water level thereof being at an elevation of 785.00 feet above mean sea level); thence generally easterly and southerly along said meandering shoreline 2,650 feet, more or less, to the south line of the North Half of said Southeast Quarter; thence South 89 degrees 20 minutes 46 seconds West 722.00 feet to the Point of Beginning and containing 10.50 acres, more or less.

ALSO EXCEPTING therefrom:

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Beginning at a point on the south line of said Half Quarter Section, said point being North 89 degrees 26 minutes 23 seconds East along said south line 1,216.37 feet from the Southwest corner thereof; said point being the Southeasterly corner of Feather Cove Section One, recorded as Instrument # 81-29286 in the Office of the Recorder of Marion County, Indiana; thence North 00 degrees 33 minutes 37 seconds West (this and the next five calls being along easterly and southerly boundaries of Feather Cove, Section One) 200.00 feet; thence North 15 degrees 07 minutes 33 seconds West 136.10 feet; thence North 77 degrees 51 minutes 46 seconds East 27.00 feet; thence North 12 degrees 08 minutes 14 seconds West 189.00 feet; thence North 83 degrees 51 minutes 46 seconds East 103.00 feet; thence North 76 degrees 08 minutes 37 seconds East 192.00 feet; thence South 80 degrees 11 minutes 07 seconds East 148.65 feet; thence South 16 degrees 19 minutes 28 seconds East 98.72 feet; thence South 01 degrees 28 minutes 45 seconds East 33.31 feet; thence South 28 degrees 12 minutes 42 seconds West 33.31 feet; thence South 43 degrees 03 minutes 25 seconds West 86.30 feet; thence South 34 degrees 26 minutes 22 seconds West 26.97 feet; thence South 17 degrees 12 minutes 18 seconds West 26.97 feet; thence South 03 degrees 00 minutes 12 seconds West 85.10 feet; thence South 14 degrees 58 minutes 45 seconds East 88.00 feet; thence South 30 degrees 26 minutes 17 seconds East 87.40 feet; thence South 20 degrees 13 minutes 30 seconds West 161.1 feet; thence South 79 degrees 59 minutes 58 seconds West 127.16 feet to the South line of the aforementioned Half Quarter Section; thence South 89 degrees 26 minutes 23 seconds West along said south line 246.95 feet to the Point of Beginning and containing 4.72 acres, more or less.

ALSO EXCEPTING therefrom:

COPY

PARCEL I:

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East, in Marion County, Indiana, more particularly described as follows:

Beginning at the Southwest corner of Backbay Horizontal Property Regime, Phase III, the plat of which is recorded as Instrument #84-80438, in the Office of the Recorder of Marion County, Indiana; thence South 20 degrees 36 minutes 50 seconds West a distance of 68.39 feet; thence South 05 degrees 36 minutes 52 seconds East a distance of 35.20 feet; thence North 80 degrees 11 minutes 07 seconds West a distance of 148.65 feet to the Southeast corner of Lot 8 in Feather Cove Section 1, a Subdivision in Marion County, Indiana, the plat of which is recorded as Instrument #81-29286, in the Office of the Recorder of Marion County, Indiana; thence North 21 degrees 13 minutes 37 seconds East along the Easterly line of said Feather Cove, Section 1, a distance of 288.50 feet to the Northwest Corner of said Backbay, Phase III (the next two (2) described courses being along the West line of said Backbay, Phase III); thence South 02 degrees 31 minutes 24 seconds East a distance of 126.21 feet; thence South 39 degrees 39 minutes 57 seconds East a distance of 90.00 feet to the Beginning Point.

ALSO EXCEPTING therefrom:

PARCEL II:

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East, in Marion County, Indiana, more particularly described as follows:

Beginning at the Northwest Corner of Backbay Horizontal Property Regime, Phase V, the plat of which is recorded as Instrument #85-18671, in the Office of the Recorder of Marion County, Indiana; thence North 31 degrees 24 minutes 24 seconds West a distance of 61.47 feet; thence North 05 degrees 38 minutes 32 seconds West a distance of 35.20 feet; thence North 20 degrees 56 minutes 50 seconds East a distance of 68.39 feet to the Southwest corner of Backbay Horizontal Property Regime, Phase III, the plat of which is recorded as Instrument #84-80438, in the Office of the Recorder of Marion County, Indiana; thence North 73 degrees 28 minutes 07 seconds East along the South line of said Backbay, Phase III a distance of 44.03 feet to the Southwest corner of Backbay Horizontal Property Regime, Phase II, the plat of which is recorded as Instrument #84-73869 in the Office of the Recorder of Marion County, Indiana; thence South 82 degrees 31 minutes 42 seconds East along the South line of said Backbay, Phase II, a distance of 61.52 feet; thence South 45 degrees 27 minutes 57 seconds East along the said South line and along the South line of Backbay Horizontal Property Regime, Phase IV, the plat of which is recorded as Instrument #84-84748, in the Office of the Recorder of Marion County, Indiana, a distance of 173.95 feet to the Southernmost corner of said Backbay, Phase IV; thence South 48 degrees 24 minutes 03 seconds West a distance of 64.39 feet to the Northeast corner of said Backbay, Phase V (the next two (2) described courses being along the North line of said Backbay, Phase V); thence North 83 degrees 16 minutes 36 seconds West a distance of 143.85 feet; thence South 72 degrees 23 minutes 36 seconds West a distance of 26.38 feet to the Beginning Point.

EXHIBIT "A" PAGE THREE

890062162

ALSO EXCEPTING therefrom:

PARCEL III:

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of Backbay Horizontal Property Regime, Phase I, the plat of which is recorded as Instrument #82-56705, in the Office of the Recorder of Marion County, Indiana; thence North 24 degrees 19 minutes 41 seconds East a distance of 229.37 feet; thence North 10 degrees 55 minutes 22 seconds West a distance of 40.00 feet to the Southwest corner of Backbay Horizontal Property Regime, Phase VII, the plat of which is recorded as Instrument #88-18382, in the Office of the Recorder of Marion County, Indiana; thence North 73 degrees 37 minutes 05 seconds East (this and the next two calls being along the Southern boundary of said Phase VII) a distance of 65.08 feet; thence South 76 degrees 42 minutes 38 seconds East a distance of 60.68 feet; thence South 57 degrees 19 minutes 27 seconds East a distance of 78.53 feet to a point on the Southwestern shoreline of Geist Reservoir as established October 10, 1983 (with the water level thereof being at an elevation of 785 feet above mean sea level) plus accretion and minus erosion; thence in a Southerly direction 250 feet (more or less) along said shoreline to the Northeast corner of the aforementioned Backbay Horizontal Property Regime, Phase I; thence South 90 degrees 00 minutes 00 seconds West along the North line of said Phase I a distance of 163.34 feet to the Point of Beginning.

ALSO EXCEPTING therefrom:

PARCEL IV:

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East, in Marion County, Indiana, more particularly described as follows:

Beginning at the Southernmost corner of Backbay Horizontal Property Regime Phase VI, the plat of which is recorded as Instrument #85-26595, in the Office of the Recorder of Marion County, Indiana; thence South 12 degrees 21 minutes 21 seconds East a distance of 117.21 feet; thence South 79 degrees 28 minutes 28 seconds West a distance of 120.76 feet; thence North 30 degrees 34 minutes 34 seconds West a distance of 26.84 feet; thence North 14 degrees 45 minutes 45 seconds West a distance of 88.00 feet; thence North 03 degrees 12 minutes 12 seconds East a distance of 70.38 feet to the South line of said Backbay Phase VI extended Westerly; thence South 73 degrees 29 minutes 51 seconds East along said South line a distance of 139.83 feet to the Point of Beginning.

EXHIBIT "A" PAGE FOUR

(End of Exhibit "A")

COPY

890062462

Part of the North Half of the Southwest Quarter and part of the North Half of the Southeast Quarter, both of Section 21, Township 17 North, Range 5 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Beginning at the Southeast Corner of said North Half of said Southwest Quarter; thence South 89 degrees 26 minutes 23 seconds West along the south line thereof a distance of 466.17 feet; thence North 03 degrees 00 minutes 12 seconds West 182.41 feet to the Point of Curvature of a curve to the left; said curve having a radius of 40.00 feet and being subtended by a chord bearing North 33 degrees 07 minutes 56 seconds West and a length of 40.16 feet; thence in a northwesterly direction along said curve 42.07 feet to the Point of Tangency thereof; said point being the point of curvature of a curve to the right; said curve having a radius of 40.00 feet and being subtended by a chord bearing North 50 degrees 11 minutes 25 seconds West and a length of 18.09 feet; thence in a northwesterly direction along said curve 18.25 feet; thence South 52 degrees 52 minutes 49 seconds West 20.00 feet; thence North 90 degrees 00 minutes 00 seconds West 123.88 feet, more or less, to a point on the southwestern shore line of Geist Reservoir as established when said reservoir is full (with the water level thereof being at an elevation of 785.00 feet above mean sea level); thence generally easterly and southerly along said meandering shoreline 2,650 feet, more or less, to the south line of the North Half of said Southeast Quarter; thence South 89 degrees 20 minutes 46 seconds West 722.00 feet to the Point of Beginning and containing 10.50 acres, more or less.

ALSO:

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Beginning at a point on the south line of said Half Quarter Section, said point being North 89 degrees 26 minutes 23 seconds East along said south line 1,216.37 feet from the Southwest corner thereof; said point being the Southeast corner of Feather Cove Section One, recorded as Instrument # 81-29286 in the Office of the Recorder of Marion County, Indiana; thence North 00 degrees 33 minutes 37 seconds West (this and the next five calls being along easterly and southerly boundaries of Feather Cove, Section One) 200.00 feet; thence North 15 degrees 07 minutes 33 seconds West 136.10 feet; thence North 77 degrees 51 minutes 46 seconds East 27.00 feet; thence North 12 degrees 08 minutes 14 seconds West 189.00 feet; thence North 83 degrees 51 minutes 46 seconds East 103.00 feet; thence North 76 degrees 08 minutes 37 seconds East 192.00 feet; thence South 80 degrees 11 minutes 07 seconds East 148.65 feet; thence South 16 degrees 19 minutes 28 seconds East 98.72 feet; thence South 01 degrees 28 minutes 45 seconds East 33.31 feet; thence South 28 degrees 12 minutes 42 seconds West 33.31 feet; thence South 43 degrees 03 minutes 25 seconds West 86.30 feet; thence South 34 degrees 26 minutes 22 seconds West 26.97 feet; thence South 17 degrees 12 minutes 18 seconds West 26.97 feet; thence South 03 degrees 00 minutes 12 seconds West 85.10 feet; thence South 14 degrees 58 minutes 45 seconds East 88.00 feet; thence South 30 degrees 26 minutes 17 seconds East 87.40 feet; thence South 20 degrees 13 minutes 30 seconds West 16.18 feet; thence South 79 degrees 59 minutes 58 seconds West 127.16 feet to the South line of the aforementioned Half Quarter Section; thence South 89 degrees 26 minutes 23 seconds West along said south line 246.95 feet to the Point of Beginning and containing 4.72 acres, more or less.

Subject to all legal rights-of-way and easements

COPY

EXHIBIT "B"

890062-162

COPY

PARCEL I:

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East, in Marion County, Indiana, more particularly described as follows:

Beginning at the Southwest corner of Backbay Horizontal Property Regime, Phase III, the plat of which is recorded as Instrument #84-80438, in the Office of the Recorder of Marion County, Indiana; thence South 20 degrees 51 minutes 50 seconds West a distance of 68.39 feet; thence South 05 degrees 31 minutes 52 seconds East a distance of 35.20 feet; thence North 80 degrees 11 minutes 07 seconds West a distance of 148.65 feet to the Southeast corner of Lot 8 in Feather Cove Section 1, a Subdivision in Marion County, Indiana, the plat of which is recorded as Instrument #81-29286, in the Office of the Recorder of Marion County, Indiana; thence North 21 degrees 13 minutes 37 seconds East along the Easterly line of said Feather Cove, Section 1, a distance of 288.90 feet to the Northwest Corner of said Backbay, Phase III (the next two (2) described courses being along the West line of said Backbay, Phase III); thence South 02 degrees 31 minutes 24 seconds East a distance of 126.21 feet; thence South 39 degrees 39 minutes 57 seconds East a distance of 90.00 feet to the Beginning Point.

ALSO:

PARCEL II:

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East, in Marion County, Indiana, more particularly described as follows:

Beginning at the Northwest Corner of Backbay Horizontal Property Regime, Phase V, the plat of which is recorded as Instrument #85-18671, in the Office of the Recorder of Marion County, Indiana; thence North 31 degrees 24 minutes 24 seconds West a distance of 61.47 feet; thence North 05 degrees 38 minutes 52 seconds West a distance of 35.20 feet; thence North 20 degrees 56 minutes 50 seconds East a distance of 68.39 feet to the Southwest corner of Backbay Horizontal Property Regime, Phase III, the plat of which is recorded as Instrument #84-80438, in the Office of the Recorder of Marion County, Indiana; thence North 73 degrees 28 minutes 07 seconds East along the South line of said Backbay, Phase III a distance of 44.03 feet to the Southwest corner of Backbay Horizontal Property Regime, Phase II, the plat of which is recorded as Instrument #84-73869 in the Office of the Recorder of Marion County, Indiana; thence South 82 degrees 31 minutes 42 seconds East along the South line of said Backbay, Phase II, a distance of 61.52 feet; thence South 45 degrees 27 minutes 57 seconds East along the said South line and along the South line of Backbay Horizontal Property Regime, Phase IV, the plat of which is recorded as Instrument #84-84748, in the Office of the Recorder of Marion County, Indiana, a distance of 173.95 feet to the Southernmost corner of said Backbay, Phase IV; thence South 49 degrees 24 minutes 03 seconds West a distance of 64.39 feet to the Northeast corner of said Backbay, Phase V (the next two (2) described courses being along the North line of said Backbay, Phase V); thence North 83 degrees 16 minutes 36 seconds West a distance of 143.85 feet; thence South 72 degrees 23 minutes 36 seconds West a distance of 26.38 feet to the Beginning Point.

EXHIBIT "C" PAGE ONE

890062462

ALSO:

PARCEL III:

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of Backbay Horizontal Property Regime, Phase I, the plat of which is recorded as Instrument #82-56705, in the Office of the Recorder of Marion County, Indiana; thence North 24 degrees 19 minutes 41 seconds East a distance of 229.37 feet; thence North 10 degrees 55 minutes 22 seconds West a distance of 40.00 feet to the Southwest corner of Backbay Horizontal Property Regime, Phase VII, the plat of which is recorded as Instrument #88-18382, in the Office of the Recorder of Marion County, Indiana; thence North 73 degrees 37 minutes 05 seconds East (this and the next two calls being along the Southern boundary of said Phase VII) a distance of 65.08 feet; thence South 75 degrees 42 minutes 38 seconds East a distance of 60.68 feet; thence South 57 degrees 19 minutes 27 seconds East a distance of 78.53 feet to a point on the Southwestern shoreline of Geist Reservoir as established October 10, 1983 (with the water level thereof being at an elevation of 785 feet above mean sea level) plus accretion and minus erosion; thence in a Southerly direction 250 feet (more or less) along said shoreline to the Northeast corner of the aforementioned Backbay Horizontal Property Regime, Phase I; thence South 90 degrees 00 minutes 00 seconds West along the North line of said Phase I a distance of 163.34 feet to the Point of Beginning.

ALSO:
PARCEL IV:

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East, in Marion County, Indiana, more particularly described as follows:

Beginning at the Southernmost corner of Backbay Horizontal Property Regime Phase VI, the plat of which is recorded as Instrument #85-26595, in the Office of the Recorder of Marion County, Indiana; thence South 12 degrees minutes 21 seconds East a distance of 117.21 feet; thence South 79 degrees minutes 28 seconds West a distance of 128.76 feet; thence North 30 degrees minutes 34 seconds West a distance of 26.84 feet; thence North 14 degrees minutes 45 seconds West a distance of 88.00 feet; thence North 03 degrees 12 minutes 12 seconds East a distance of 70.38 feet to the South line of said Backbay Phase VI extended Westerly; thence South 73 degrees 29 minutes 51 seconds East along said South line a distance of 139.83 feet to the Point of Beginning.

COPY

EXHIBIT "C" PAGE TWO

(End of Exhibit "C")

890062462

4.72 ACRES

(VA-10000)
NO. 100 81-0450

WOODS AREA

COPY

200.00'

S
8

CONC. TIE WALK

CONC. TIE PED

20' ELECTRIC LINE EASEMENT
(INSTRUMENT # 83-83769)

BURIED TELE LINE

STONE WALL

'BACKBAY' SIGN

ELECTRIC LINE ESMT.
(INSTR. # 83-83568)
(no utility shown)

R.R. TIE WALK

Access Area

S89°26'23"W

246.95'

S79°59'58"W
127.16'

FO

BEGINNING
POINT
(CONC. NAIL
SET)

OVERHEAD ELECTRIC LINE

PK NAIL FOUND

(FOX ROAD R/W PER DEED RECORD
AND PER INSTR. NO. 3015)

EXHIBIT "D"

890062162

③

**NINTH AMENDMENT TO
DECLARATION OF BACKBAY
HORIZONTAL PROPERTY REGIME**

THIS NINTH AMENDMENT TO the Declaration of Backbay Horizontal Property Regime (the "Ninth Amendment") is made this 4th day of March, 1993, by Backbay Co-Owners Association, Inc., an Indiana Not-For-Profit Corporation (the "Declarant").

WITNESSETH:

WHEREAS, Backbay Associates, Ltd., an Indiana limited partnership, established the Backbay Horizontal Property Regime (the "Regime") by a certain Declaration of Covenants, Conditions, and Restrictions Establishing Backbay Condominium and Bylaws for Backbay Homeowners Association, Inc. dated October 12, 1982, and recorded October 13, 1982, as Instrument No. 82-86706 in the Office of the Recorder of Marion County, Indiana (hereinafter called the "Prior Declaration"); and

WHEREAS, by an Agreement dated November 15, 1983, Backbay Associates, Ltd. sold, conveyed, and assigned all of its right, title, and interest in and to the Prior Declaration, real estate, Adjacent Real Estate, and improvements to GLM of Indiana, Ltd., an Indiana limited partnership ("GLM"), which Agreement was recorded on November 17, 1983, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 83-84454; and

WHEREAS, GLM amended the entirety of the Prior Declaration by a certain Amended Declaration of Backbay Horizontal Property

Regime dated June 1, 1984 and recorded June 19, 1984 as Instrument No. 84-46168 in the Office of the Recorder of Marion County, Indiana (hereinafter called the "Declaration"), which Declaration replaced and superseded the Prior Declaration; and

WHEREAS, GLM amended the Declaration by documents dated September 17, 1984 and recorded September 20, 1984 in the Office of the Recorder of Marion County, Indiana, as Instrument No. 84-73868; October 11, 1984 and recorded October 15, 1984 in the Office of the Recorder of Marion County, Indiana, as Instrument No. 84-80439; October 26, 1984 and recorded October 29, 1984 in the Office of the Recorder of Marion County, Indiana, as Instrument No. 84-84749; March 6, 1985 and recorded March 12, 1985 in the Office of the Recorder of Marion County, Indiana, as Instrument No. 85-18672; and March 26, 1985 and recorded on April 10, 1985 in the Office of the Recorder of Marion County, Indiana, as Instrument No. 85-26596 (collectively referred to as the "GLM Amendments"); and

WHEREAS, by Agreement dated September 30, 1986, GLM sold, conveyed, and assigned all of its right, title, and interest in and to the Declaration and the GLM Amendments to Marine, which Agreement was recorded October 2, 1986 in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-99340; and

WHEREAS, by Assignment of Declaration dated August 13, 1987, Marine sold, conveyed and assigned all of its right, title, and

interest in and to the Declaration and the GLM Amendments to Vancorp, which Assignment of Declaration was recorded August 26, 1987 in the Office of the Recorder of Marion County, Indiana, as Instrument No. 87-98699; and

WHEREAS, Vancorp amended the Declaration by a document dated February 25, 1988 and recorded March 2, 1988, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 88-10553 (the "Vancorp Amendment"); and

WHEREAS, Vancorp, Marine, Franklin Bank & Trust Co. ("Franklin"), Feather Bay, and Backbay Co-Owners Association amended the Declaration by a document dated June 5, 1989 and recorded June 29, 1989, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 89-0062462 (the "Eighth Amendment"), which Amendment provided for the future development of the Regime and by which Vancorp sold, conveyed and assigned all of its right, title, and interest in and to the Declaration, the GLM Amendments, the Vancorp Amendment, and the Eighth Amendment; and

WHEREAS, the Declarant desires to permit the construction on the Franklin Real Estate (more particularly described in the Eighth Amendment) by the successors to Franklin's interest in the Franklin Real Estate, of detached single-family dwelling units, and upon adding such dwelling units by subsequent amendment to the Declarations, to subject such dwelling units to the terms and conditions of the Declarations and all past and subsequent amendments; and

WHEREAS, this Ninth Amendment has been approved by the appropriate Percentage Vote of the co-owners of dwelling units in the Regime; and

WHEREAS, there exist certain mortgagees of interest of the real estate in the Regime and said mortgagees have consented to this Ninth Amendment in accordance with the Declaration.

NOW, THEREFORE, Declarant hereby makes this Ninth Amendment to the Declaration and the same is incorporated into the Declaration as follows:

1. Section 1(f) of the Declaration is hereby changed to read as follows:

"Building" shall mean a single structure which contains one (1) or more Dwelling Unit(s).

2. Paragraph A of Section 15 of the Declaration is hereby changed to read as follows:

A. Expansion by Sections. Declarant anticipates that it may construct from time to time additional Dwelling Units on various portions of the Adjacent Real Estate for addition to the Regime in the manner hereinafter set forth. The general plan of development shall be consistent with the density and plan of development of the Dwelling Units to be contained upon the Real Estate. The maximum number of Dwelling Units to be contained in the Tract is Thirty-Seven (37)*. Additional Sections shall not be added by Declarant at any time after the expiration of five (5) years from the date of this Ninth Amendment. At any time, and from time to time, prior to the expiration of said five-year period, Declarant, at its option, may cause all or any part of the Adjacent Real Estate to be added to the Regime, subject to the following conditions:

*37 is the current estimated number of units based on all amendments to the Regime.

TENTH AMENDMENT TO DECLARATION OF BACKBAY HORIZONTAL PROPERTY REGIME

THIS TENTH AMENDMENT TO the Declaration of Backbay Horizontal Property Regime (the "Tenth Amendment") is made this 15th day of November, 1994, by Backbay Co-Owners Association, Inc., an Indiana Not-For-Profit Corporation (the "Declarant").

WITNESSETH:

WHEREAS, the Declarant desires to have the authority to sell to the owners of the four (4) lots which comprise Bay Forest Estates which real estate is more particularly described in Exhibit "A" attached hereto and made a part hereof, license rights with respect to the boat docks and facilities located along the shoreline of Geist Reservoir; and

WHEREAS, this Tenth Amendment has been approved by the appropriate Percentage Vote of the co-owners of Dwelling Units in the Regime; and

WHEREAS, there exists no mortgagees of interest of the real estate in the Regime who have made their interests known to the Board of Directors of the Declarant and who have not consented to this Tenth Amendment in accordance with the Declaration.

NOW, THEREFORE, Declarant hereby makes this Tenth Amendment to the Declaration and the same is incorporated into the Declaration as follows:

1. Section 24 of the Declaration is hereby changed to add the following as an additional paragraph at the end of said section:

Additionally, the Declarant shall have the right to sell and convey rights to boat docks and facilities to the owners of the real estate located in Bay Forest Estates (Exhibit "A") and to prescribe rules and regulations associated with said boat docks and facilities, including an easement or license across the Common Areas of the Regime for purposes of access to such docks and facilities. The owners of Bay Forest lots who purchase boat dock rights shall not acquire any rights whatsoever in the Regime other than those rights expressly described herein.

2. All other terms and conditions of the Declaration, as amended, shall remain unchanged.

IN WITNESS WHEREOF, the Declarant has executed this Tenth Amendment to the Amended Declaration of Backbay Horizontal Property Regime on the 15th day of November, 1994.

BACKBAY CO-OWNERS ASSOCIATION, INC.

By 
Bruce B. Melchert, President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Bruce B. Melchert, the President of Backbay Co-Owners Association, Inc. and acknowledged the execution of the foregoing Tenth Amendment to Declaration of Backbay Horizontal Property Regime and stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 17th day of November, 1994.

My Commission Expires:

1-17-98

County of Residence:

Marion

Signature



Printed

JAYCE M. TAYLOR
NOTARY PUBLIC
STATE OF INDIANA
MARION COUNTY
COMMISSION EXPIRES JAN 17 1998

Lots 1 through 4 of Bay Forest Estates, a subdivision located in Marion County, Indiana, and adjacent to that real estate comprising the Backbay Horizontal Property Regime.

EXHIBIT 'A'

**ELEVENTH AMENDMENT TO DECLARATION OF BACKBAY
HORIZONTAL PROPERTY REGIME**

JOHN R. VON ARX
031502 FEB 27 1996
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

96-43718

THIS ELEVENTH AMENDMENT TO the Declaration of Backbay Horizontal Property Regime (the "Eleventh Amendment") is made this 9th day of February, 1996, by Backbay Co-Owners Association, Inc., an Indiana Not-For-Profit Corporation (the "Association").

WITNESSETH:

WHEREAS, located within and as part of the Backbay Horizontal Property Regime (the "Regime"), is certain real estate known as the Common Areas (hereinafter the "Common Areas"); and

WHEREAS, included within and as part of the Common Areas is certain real estate, the legal description of which is more particularly set forth and described on Exhibit "1" attached hereto and denominated as Parcel A (hereinafter "Parcel A"); and

82-56706

WHEREAS, K. Stephen Mohr and Sharin S. Martin (hereinafter collectively and severally "Mohr") are the owners of a certain parcel of real estate located in Marion County, State of Indiana, described as Lot 15, Feather Bay Section One (hereinafter the "Mohr Parcel"); and

WHEREAS, included within and as part of the Mohr Parcel is certain real estate which is more particularly set forth and described on Exhibit "1" attached hereto and denominated as Parcel B (hereinafter "Parcel B"); and

WHEREAS, the Association and Mohr have entered into an agreement for the exchange as between themselves of their respective ownership, right, title, and interest in and to Parcel B and Parcel A; and

WHEREAS, this Eleventh Amendment has been approved by the appropriate Percentage Vote of the co-owners of Dwelling Units in the Regime; and

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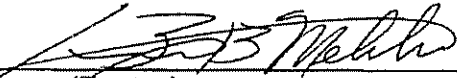
WHEREAS, there exists no mortgages of interest of the real estate in the Regime who have made their interest known to the Board of Directors of the Declarant and who have not consented to this Eleventh Amendment in accordance with the Declaration.

NOW, THEREFORE, the Association hereby makes this Eleventh Amendment to the Declaration and the same is incorporated into the Declaration as follows:

1. Parcel A is hereby permanently and irrevocably removed from the Regime.
2. The Association shall by warranty deed, transfer and convey all of its right, title, and interest in and to Parcel A to Mohr.
3. Parcel B is hereby added to and made a part of the Regime.
4. Mohr shall transfer and convey all of their right, title, and interest in and to Parcel B to the Association.
5. All other terms and conditions of the Declaration, as amended, shall remain unchanged.

IN WITNESS WHEREOF, the Association has executed this Eleventh Amendment to the Amended Declaration of Backbay Horizontal Property Regime on the 9th day of February, 1996.

BACKBAY CO-OWNERS ASSOCIATION, INC.

By: 
(Signature)

Bruce B. Melchert
(Printed)

President
(Title)

By: James E. McClusky
JAMES E. MCCLUSKY
(Printed)
Secretary
(Title)

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Bruce Melchert, the President and James E. McClusky, the Secretary of Backbay Co-Owners Association, Inc. and acknowledged the execution of the foregoing Eleventh Amendment to Declaration of Backbay Horizontal Property Regime and stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 9th day of February, 1996.

My Commission Expires: _____

Signature

Joyce M. Saylor

County of Residence: _____

Printed
JOYCE M SAYLOR
NOTARY PUBLIC STATE OF INDIANA
MARION COUNTY
MY COMMISSION EXP. JAN 17, 1998

This instrument was prepared by Peter A. Velde, Attorney At Law.

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**LAND DESCRIPTION
PARCEL A**

Part of the North Half of the Southwest Quarter of Section 21, Township 17 North, Range 5 East in Marion County, Indiana being a part of the tract of land described in a deed to Vancorp recorded in Instrument #87-0098897 in the Marion County Recorders Office, being described as follows:

Beginning at the east-most corner of lot 15 in Feather Bay, Section One as recorded in Instrument #88-0117718 in the Marion County Recorders Office, being a point on a curve having a radius of 40.00 feet, the radius point of which bears North 52 degrees 52 minutes 49 seconds East; thence southeasterly along said curve an arc distance of 18.25 feet to a point which bears South 28 degrees 44 minutes 21 seconds West from said radius point, being a point of a curvature of a reverse curve having a radius of 40.00 feet, the radius point of which bears South 26 degrees 44 minutes 21 seconds West; thence southeasterly along said curve an arc distance of 28.07 feet to a point which bears North 84 degrees 05 minutes 04 seconds East from said radius point; thence South 86 degrees 40 minutes 54 seconds West a distance of 80.00 feet; thence North 70 degrees 39 minutes 28 seconds West a distance of 87.58 feet to the south line of said lot 15; thence North 90 degrees 00 minutes 00 seconds East along said south line a distance of 95.80 feet; thence North 52 degrees 52 minutes 49 seconds East along said south line a distance of 20.00 feet to the **POINT OF BEGINNING**. Containing 2368 square feet, more or less.

**LAND DESCRIPTION
PARCEL B**

Part of lot 15 in Feather Bay, Section One, the plat of which is recorded in Instrument #89-0117718 in the Marion County Recorders Office, being described as follows:

Commencing at the east-most corner of said lot 15, being a point on a curve having a radius of 40.00 feet, the radius point of which bears North 52 degrees 52 minutes 49 seconds East; thence South 52 degrees 52 minutes 49 seconds West along the southeasterly line of said lot 15 a distance of 20.00 feet; thence North 90 degrees 00 minutes 00 seconds West along the south line of said lot 15 a distance of 95.80 feet to the **POINT OF BEGINNING**; thence continuing North 90 degrees 00 minutes 00 seconds West a distance of 28 feet, more or less to a point on the Southwestern shoreline of Geist Reservoir as established October 10, 1993 (with the water level thereof being at an elevation of 786.0 feet above mean sea level) plus accretion and minus erosion; thence northeasterly along the meandering of said shoreline a distance of 9 feet, more or less to a point bearing North 70 degrees 39 minutes 28 seconds West from the beginning point; thence South 70 degrees 39 minutes 28 seconds East a distance of 27 feet, more or less to the **POINT OF BEGINNING**. Containing 124 square feet, more or less.

EXHIBIT "1"

5

**THIRTEENTH AMENDMENT TO DECLARATION OF BACKBAY
HORIZONTAL PROPERTY REGIME**

THIS THIRTEENTH AMENDMENT TO the Declaration of Backbay Horizontal Property Regime (the "Thirteenth Amendment") is made this 3rd day of November, 1997, by Backbay Co-Owners Association, Inc., an Indiana Not-For-Profit Corporation (the "Association").

WITNESSETH:

WHEREAS, Backbay Associates, Ltd., an Indiana limited partnership, established the Backbay Horizontal Property Regime (the "Regime") by a certain Declaration of Covenants, Conditions, and Restrictions Establishing Backbay Condominium and Bylaws for Backbay Homeowners Association, Inc. dated October 12, 1982, and recorded October 13, 1982, as Instrument No. 82-56706 in the Office of the Recorder of Marion County, Indiana (the "Prior Declaration"); and

WHEREAS, the Prior Declaration was amended, and as amended, restated in its entirety by a certain Amended Declaration of Backbay Horizontal Property Regime, dated June 1, 1984, and recorded June 19, 1984, as Instrument No. 84-46168, in the office of the Recorder of Marion County, Indiana (the "Amended Declaration"); and

WHEREAS, the Amended Declaration has been amended from time to time by various amendments, all of which have been recorded with the Recorder of Marion County, Indiana, including amendments

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Inst # 1998-0010026

thereto made by and pursuant to the following instruments:

Second Amendment to Declaration of Backbay Horizontal Property Regime, dated September 17, 1984 and recorded September 20, 1984 as Instrument No. 84-73868 ("Second Amendment"); Third Amendment to Declaration of Backbay Horizontal Property Regime, dated October 11, 1984 and recorded October 15, 1984 as Instrument No. 84-80439 ("Third Amendment"); Fourth Amendment to Declaration of Backbay Horizontal Property Regime, dated October 26, 1984 and recorded on October 29, 1984 as Instrument No. 84-84749 ("Fourth Amendment"); Fifth Amendment to Declaration of Backbay Horizontal Property Regime, dated March 6, 1985 and recorded March 12, 1985 as Instrument No. 85-18672 ("Fifth Amendment"); Sixth Amendment to Declaration of Backbay Horizontal Property Regime, dated March 26, 1985 and recorded on April 10, 1985 as Instrument No. 85-26596 ("Sixth Amendment"); Seventh Amendment to Declaration of Backbay Horizontal Property Regime, dated February 25, 1988 and recorded March 2, 1988 as Instrument No. 88-18553 ("Seventh Amendment"); Eighth Amendment to Declaration of Backbay Horizontal Property Regime, Agreement Regarding Future Development and Assignment, dated June 6, 1989 and recorded June 29, 1989, as Instrument No. 89-0062462 (the "Eighth Amendment"); Ninth Amendment to Declaration of Backbay Horizontal Property Regime, dated March 4, 1993 and recorded May 3, 1993 as Instrument No. 1993-0050926 (the "Ninth Amendment"); Tenth Amendment to Declaration of Backbay Horizontal Property Regime, dated November 15, 1994 and recorded on December 29, 1994, as Instrument No. 1994-0188993 (the "Tenth Amendment"); Eleventh

Amendment to Declaration of Backbay Horizontal Property Regime, dated February 9, 1996 and recorded on February 27, 1996, as Instrument No. 96-25736 (the "Eleventh Amendment"); Twelfth Amendment to Declaration of Backbay Horizontal Property Regime and Declaration of Covenants, Restrictions and Agreements for Abutting Real Estate, dated July 2, 1996 and recorded on July 3, 1996 as Instrument No. 96-91143 (the "Twelfth Amendment") (the Amended Declaration, as amended by the Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, Seventh Amendment, Eighth Amendment, Ninth Amendment, Tenth Amendment, Eleventh Amendment, Twelfth Amendment and all other amendments referred to therein or which prior to the recording thereof were of record with the recorder of Marion County, Indiana, are hereinafter referred to as the "Declaration"); and

WHEREAS, the Regime consists of the real estate described in the Declaration; and

WHEREAS, the Association wishes to amend the Declaration by amending part of Section 2. and Section 5. to clarify certain ambiguities in each Section; and

WHEREAS, this Thirteenth Amendment has been approved by the appropriate Percentage Vote of the Co-Owners of Dwelling Units in the Regime; and

WHEREAS, there exists no mortgages of interest in the real estate in the Regime who have made their interest known to the Board of Directors of the Association and who have not consented to this Thirteenth Amendment or the Covenants, Restrictions and Agreements in accordance with the Declaration.

NOW, THEREFORE:

The Association hereby makes this Thirteenth Amendment to the Declaration, and the same is incorporated into the Declaration as follows:

1. Section 2. (Description of Dwelling Units) shall be and is amended to include as a part of each Dwelling Unit and each Dwelling Unit shall consist of: (i) all doors, including, but not limited to: all entry doors, all french, atrium, patio, deck, sliding or other doors, and garage doors, and all hardware of same, which are designed or intended to be solely and exclusively for the enjoyment, use and benefit of the Dwelling Unit; (ii) all skylights, whether glass, tempered glass, plexi-glass, double pane or plastic, which are designed or intended to be solely and exclusively for the enjoyment, use and benefit of the Dwelling Unit; and (iii) the maintenance of and the replacement of all doors and skylights as hereinabove described shall be for whatever reason, including but not limited to condensation of double panes or leaks, the responsibility of the Owner; provided however, when the entire Building in which the Dwelling Unit is located is scheduled to be painted, the Association would paint, stain or seal any exterior doors.

2. Section 5. (b) (Entranceways) shall be and is amended by limiting (re-defining) the definition of entranceways to only the opening (frames, trim, siding) through which access to a Dwelling Unit is obtained and/or the opening used by the Dwelling Unit or Dwelling Units served by such entranceway. Entranceway does not include the individual door or hardware components

through which access to a Dwelling Unit is obtained and/or the door used by the Dwelling Unit or Dwelling Units served by such entranceway.

3. All other terms and conditions of the Declaration, as amended, shall remain unchanged.

IN WITNESS WHEREOF, the Association has executed this Thirteenth Amendment to the Declaration on the 3rd day of November, 1997.

Backbay Co-Owners Association, Inc.

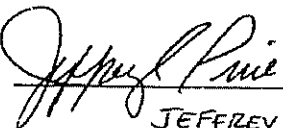
By: X 

Printed: Richard Horner

Title: President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me the undersigned, a Notary Public for Marion County, State of Indiana, personally appeared RICHARD HORNER the PRESIDENT of Backbay Co-Owners Association, Inc., who acknowledged the execution of this instrument this 3rd day of November, 1997.

Signature 

Printed JEFFREY L. PRICE

My Commission Expires: 9/20/00

My County of Residence: MARION

This instrument prepared by Peter A. Velde, Kightlinger & Gray, 151 N. Delaware Street, Suite 660, Indianapolis, Indiana 46204.

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