



Pages: 41

Fee: \$135.50
By: DLW

**DECLARATION OF CONDOMINIUM OWNERSHIP
AND OF
EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS
FOR
CITY VIEW ON HERMAN CONDOMINIUMS**

44
DW

A201200056795

June 08, 2012 2:06 PM
Julie L. Voorhies,
Marion County Recorder

THIS DECLARATION, made and entered into by BY GRACE REAL ESTATE LLC, an Indiana limited liability company (hereinafter referred to as "Declarant"):

WITNESSETH THAT

WHEREAS, Declarant owns certain real estate located in Marion County, Indiana, more particularly described in Exhibit A attached hereto and by reference made a part hereof (hereinafter referred to as the "Property"); and

WHEREAS, it is the desire and intention of Declarant to enable the Property, together with all buildings, structures, improvements, fixtures and property of whatsoever kind thereon, and all easements, rights, appurtenances and privileges belonging or in anyway pertaining thereto, to be owned by Declarant and by each successor in interest of Declarant subject to, and to submit the Property, to the provisions of the Condominium Law of the State of Indiana; and

WHEREAS, Declarant has elected to establish, for the benefit of Declarant and for the mutual benefit of all future owners or occupants of the Property (as hereinafter defined), which shall be known as "City View On Herman Condominiums" (herein "City View"), or any part thereof, certain easements, privileges and rights in, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, Declarant has further elected to declare that the several owners, mortgagees, occupants, and other persons acquiring any interest in the Property shall at all times enjoy the benefits of, and shall at all times hold their interests subject to, the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of ownership of the Property and to facilitate the proper administration thereof and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property;

NOW, THEREFORE, Declarant, for the purposes set forth, DECLARES AS FOLLOWS:

ARTICLE I
DEFINITIONS

Section 1.1. For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

DUPLICATE FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

2012 JUN - 7 P 2:31

034575

JOSEPH P. O'CONNOR
MARION COUNTY ASSESSOR

(a) "Act" means the condominium laws of the State of Indiana, I.C. § 32-25-1-1, *et seq.* The Act is incorporated herein by reference.

(c) "Association" means City View On Herman Condominium Owners' Association, Inc., an Indiana nonprofit corporation, being the association of Co-owners of City View on Herman Condominiums.

(d) "Board" or "Board of Directors" means the governing body of the Association, being the initial Board of Directors referred to in the By-Laws or subsequent Board of Directors elected by the Co-owners in accordance with the By-Laws, and as further described in Article V.

(e) "Building" means the structure or structures in which the Condominium Units are located. The Building is more particularly described and identified in Exhibit B attached hereto and on the Plans and in Article II of this Declaration.

(f) "By-Laws" means the By-Laws of the Association providing for the administration and management of the Property as required by and in conformity with the provisions of the Act. A true and correct copy of the By-Laws is attached to this Declaration as Exhibit C and incorporated herein by reference.

(g) "Common Areas and Facilities" means all portions of the Property, except the Condominium Units, as described more particularly in Article III of this Declaration.

(h) "Common Expenses" means expenses of administration of the Association and expenses for the maintenance, repair, replacement, alteration, improvement, administration, management and operation of the Common Areas and Facilities and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the By-Laws.

(i) "Condominium Unit" means each one of the living units constituting a part of the Property, each individual living unit being more particularly described in the Plans and in Article II of this Declaration. Such term also includes the undivided percentage interest in the Common Areas and Facilities appertaining to each such living unit.

(j) "Co-owners" means the Owners of all the Condominium Units.

(k) "Declarant" means and refers to By Grace Real Estate LLC, an Indiana limited liability company, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to

any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(l) "Declaration" means this instrument, by which the Property is submitted to the provisions of the Act, and shall include such amendments, if any, to this instrument as from time to time may be adopted pursuant to the terms hereof.

(m) "Development Period" means the period of time commencing upon the date this Declaration is recorded in the Office of the Recorder of Marion County, Indiana and ending on the earlier of the date upon which Declarant conveys the last Condominium Unit to an Owner or three (3) years from the date of recordation of the Declaration.

(n) "Formula" means the method set forth in Article IV of this Declaration for computing the Percentage Interest appertaining to each Condominium Unit.

(o) "Limited Common Areas and Facilities" means a portion or portions of the Common Areas and Facilities which are designated by this Declaration as being Limited Common Areas and Facilities reserved for the use of a certain Condominium Unit or Condominium Units to the exclusion of the other Condominium Units as described more particularly in Article III of this Declaration.

(p) "Owner" means the record owner, whether one or more Persons, of a fee simple title to any Condominium Unit, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(q) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Facilities appertaining to each Condominium Unit as specifically expressed in Article IV of this Declaration.

(r) "Percentage Vote" means that percentage of the total vote accruing to all of the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof.

The Percentage Vote to which each Owner shall be entitled on any matter upon which the Co-owners are entitled to vote shall be the same percentage as the Percentage Interest appurtenant to such Owner's Condominium Unit.

(s) "Person" means a natural individual, corporation, partnership, association, trust or other legal entity or any combination thereof capable of holding title to real property.

(u) "Plans" means the site plan of the Property showing the location of the Buildings in relation to lot lines and the floor plans of the Building and the Condominium Units, filed of record as set forth in Section 9.10 below pursuant to the provisions of the Act, all of which are incorporated herein by reference.

(v) "Property" means the real estate submitted and subjected to the Act by this Declaration, all improvements and structures constructed or contained therein or thereon, including the Building, and all easements, rights and appurtenances belonging thereto, and all fixtures and property intended for the mutual use, benefit or enjoyment of the Owners, but not including the personal property of the Owners.

(x) "City View On Herman Condominiums" means the name by which the Property shall be known.

ARTICLE II CONDOMINIUM UNITS

Section 2.1. Description and Ownership. The legal description of each Condominium Unit shall consist of the identifying number for each Condominium Unit as shown on the Plans and on Exhibit B attached hereto. Every deed, lease, mortgage or other instrument shall describe a Condominium Unit by its identifying number as shown on the Plans, and every such description shall be deemed good and sufficient for all purposes. No Owner shall, by deed, plat or otherwise, subdivide or in any other manner cause a Condominium Unit to be separated into any tracts or parcels different from the whole Condominium Unit as shown on the Plans.

Section 2.2. Appurtenances. Each Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including but not limited to the garage, basement, if any, and storage areas and all fixtures, facilities, utilities, equipment, appliances and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Unit wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit or which may be necessary for the safety, support, maintenance, use and operations of the Building 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 Condominium Unit shall constitute a part of such Condominium Unit, whether or not the same are located within or partly within the boundaries of such Condominium Unit. Also, the interior sides and surfaces of all doors and windows in the perimeter walls of a Condominium Unit, whether or not located within or partly within the boundaries of a Condominium Unit, and all interior walls and all of floors, floor coverings and ceilings within the boundaries of a Condominium Unit, are considered part of the Condominium Unit.

Section 2.3. Boundaries. The boundaries of each Condominium Unit shall be shown on the Plans without regard to the existing construction measured between the interior unfinished

surface of the floors, roofs, ceilings and perimeter walls of each Condominium Unit. In the event any horizontal or vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or roof surface of the Condominium Unit because of inexactness of construction, settling after construction, or for any other reasons, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to such space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor or roof surfaces of the Condominium Unit.

Section 2.4. Certain Structures Not Constituting Part Of A Condominium Unit. No Owner shall own any pipes, wires, conduits, public utility lines or structural components running through a Condominium Unit and serving more than that Condominium Unit, whether or not such items shall be located in the floors, ceilings or perimeter or interior walls of the Condominium Unit, except as a tenant in common with all other Owners.

ARTICLE III

COMMON AREAS AND FACILITIES AND LIMITED COMMON AREAS AND FACILITIES

Section 3.1. Description of Common Areas and Facilities. Except as otherwise provided herein or on the Plans, Common Areas and Facilities shall consist of (1) the Property, excluding the Condominium Units, (2) the foundations, columns, girders, beams, supports and other structural portions of the Building, (3) the yards, landscaping, sidewalks, drives, perimeter fencing, entry gates and parking lots except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Common Areas and Facilities, (4) central electricity, gas, water, heating, air-conditioning and sanitary sewer service lines or laterals and lateral stubs serving the Building, if any, (5) exterior lighting fixtures and electrical service lighting the exterior of the Building unless separately metered to a particular Condominium Unit, (6) pipes, ducts, electrical wiring and conduits and public utilities lines which serve more than one Condominium Unit, (7) all streets and driveways that are not dedicated, (8) floors, roofs and exterior perimeter walls of the Building, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Common Areas, (9) all facilities and appurtenances located outside of the boundary lines of the Condominium Units, except those facilities and appurtenances (including but not limited to fixtures, equipment and appliances referenced in Section 2.2 above) expressly classified herein as part of the Condominium Unit or as Limited Common Areas, and (10) such other areas, if any, as are designated on the Plans.

Section 3.2. Description of Limited Common Areas and Facilities. Limited Common Areas and Facilities and those Condominium Units to which use thereof is limited are as follows:

(a) The entrances and exits of each Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they are attached or appertain.

(b) Patios and porches, the portion of the roof over a Unit, the portion of the driveways leading to the garage of a Condominium Unit and sidewalks serving a particular Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they are attached or appertain.

The Association shall have the right to permit each Owner of a Condominium Unit, subject to rules and regulations of the Association, to screen the porch appertaining to such Condominium Unit on the ground level thereof; provided, however, such screening must be installed and maintained in compliance with designs, color schemes, materials and other attributes approved in advance in writing by the Association.

(c) The exterior sides and surfaces of doors, windows and frames surrounding the same in the perimeter walls in each Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they appertain.

(d) Any other areas designated and shown on the Plans as Limited Common Areas and Facilities shall be limited to the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

Section 3.3. Ownership of Common Areas and Facilities and Percentage Interest.

Each Owner shall have an undivided interest in the Common Areas and Facilities as tenant in common with all other Owners equal to his or her Condominium Unit's Percentage Interest. Each Condominium Unit's Percentage Interest in the Common Areas and Facilities shall be determined in accordance with the Formula set forth in Section 4.2 of this Declaration and is set forth in the schedule attached hereto as Exhibit B, as amended from time to time by amendments to this Declaration as provided herein.

The Percentage Interest appertaining to each Condominium Unit as determined by Section 4.2 also shall be the Percentage Vote allocable to the Owner thereof in all matters with respect to City View On Herman and the Association upon which the Co-owners are entitled to vote, including but not limited to the election of the Board of Directors.

ARTICLE IV

GENERAL PROVISIONS AS TO
CONDOMINIUM UNITS AND COMMON AREAS AND FACILITIES

Section 4.1. Submission of Property to Act. The Property is hereby submitted to the provisions of the Act.

Section 4.2. Percentage Interest.

The Percentage Interest appurtenant to each Condominium Unit shall be computed as set forth in the following Formula:

The Percentage Interest appurtenant to each Condominium Unit will equal the result of one divided by the total number of Condominium Units times one hundred percent. The sum of the Percentage Interests of all Condominium Units will always equal 100.00%. Since there are five (5) Condominium Units the Percentage Interest appurtenant to each Unit shall be Twenty Percent (20%).

Section 4.3. No Severance Of Ownership. No owner shall execute any deed, mortgage, lease, or other instrument affecting title to a Condominium Unit without including therein both the Owner's interest in the Condominium Unit and the Condominium Unit's corresponding Percentage Interest of ownership in the Common Areas and Facilities, it being the intention hereof to prevent any severance of such combined ownership. 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 not expressly mentioned or described therein.

Section 4.4. Easements.

(a) Encroachments. In the event that, by reason of the construction, settlement or shifting of the Building, any part of the Common Areas and Facilities encroach or shall hereafter encroach upon any part of any Condominium Unit, or, if by reason of the design or construction of any Condominium Unit, it shall be necessary or advantageous to an Owner to use or occupy any portion of the Common Areas and Facilities for any reasonable use appurtenant to that Condominium Unit, which will not unreasonably interfere with the use or enjoyment of the Common Areas and Facilities by other Owners, or, if by reason of the design or construction of utility and ventilation systems, any main pipes, ducts or conduits serving more than one Condominium Unit encroach or shall hereafter encroach upon any part of any Condominium Unit, valid easements for the maintenance of such encroachment and for such use of the Common Areas and Facilities are hereby established and shall exist for the benefit of such Condominium Unit or the Common Areas and Facilities, as the case may be, so long as all or any part of the Building shall remain standing; provided, however, that in no event shall a valid easement for any encroachment or use of the Common Areas and Facilities be created in favor of any Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Property by the other Owners and if such encroachment or use occurred due to the willful conduct of any Owner.

(b) Utility Easements. All public utilities, including but not limited to cable television companies, serving the Property are hereby granted the right to install, lay, construct, renew, alter, remove, repair, replace, operate and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment into, over, under, along, on and through any portion of the Common Areas and Facilities for the purpose of providing utility services to the Property; provided, however, to the extent possible, all utility lines and facilities serving the Property and located therein shall be located underground. The Association may hereafter grant additional utility easements for the benefit of the Property over, under, along and on any portion of the Common Areas and Facilities, and each Owner hereby grants to the Association an irrevocable power of attorney coupled with an interest to execute, acknowledge, register or record for and in the name of all the Owners, such instrument or instruments as may be necessary to effectuate the foregoing.

(c) Public and Quasi-Public Vehicle Easement. All public and quasi-public vehicles, including without limitation, police, fire, ambulance and other emergency vehicles, trash and garbage collection, post office vehicles and carriers, and delivery vehicles, shall have the right to enter upon the Common Areas and Facilities in performance of their various duties.

(d) Easements To Run With The Land. All easements and rights described herein are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on Declarant, its successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance, or in any mortgage or other evidence of obligation, to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such Condominium Unit as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

Section 4.5. Use of the Common Areas and Facilities. Subject to the provisions of Section 4.4 of this Article, each Owner shall have the right to use the Common Areas and Facilities (except the Limited Common Areas and Facilities) in common with all other Owners, as may be required for the purpose of ingress and egress to, and use, occupancy and enjoyment of, the respective Condominium Unit owned by each Owner. Such rights shall extend to the Owner and the members of such Owner's immediate family and guests and other occupants and visitors. The use of the Common Areas and Facilities and the rights of the owners with respect thereto shall be subject to and governed by the provisions of the Act, this Declaration, the By-Laws and rules and regulations of the Association.

Section 4.6. Maintenance of Common Areas and Facilities: Common Expenses.

Except as otherwise provided herein, maintenance, repair, replacement, alteration, improvement, administration, management and operation of the Common Areas and Facilities shall be the responsibility of the Association. As of the first day of the first month following the conveyance of the first Condominium Unit, each Condominium Unit shall be subject to the Regular Assessments and Special Assessments (as determined by Declarant and/or the Board of Directors, as applicable), (collectively, the "Assessments") as provided in this Section and the Bylaws, and all such Assessments shall constitute liens upon each Condominium Unit and appurtenant Percentage Interest as provided and described in this Declaration and the Bylaws. The date(s) on which Assessments are due and payable shall be as specified in this Declaration or the Bylaws, or if not so specified, then as determined by the Board of Directors. 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 Condominium Unit. A conveyance by an Owner of his Condominium Unit shall not operate to release or limit the liability of an Owner for Assessment becoming due and payable which such Owner holds title to a Condominium Unit. The lien of any Assessment shall be subordinate to any first mortgage lien on any Condominium Unit which was recorded before the time when said Assessment first became delinquent, and any sale or transfer of a Condominium Unit pursuant to a foreclosure of a first mortgage lien shall extinguish such subordinate liens. Abandonment of a Condominium Unit or non-use of the Common Areas and Facilities by an Owner shall not relieve such Owner from his or her obligation to pay his or her proportionate share of Common Expenses.

Section 4.7. Separate Real Estate Taxes. It is intended and understood that real estate taxes are to be separately assessed and taxed to each Condominium Unit and that the Common Areas and Facilities are to be separately taxed to each Condominium Unit in accordance with the Condominium Unit's corresponding Percentage Interest in the Common Areas and Facilities. In the event that, for any year, such taxes are not separately taxed to each Owner, but are taxed on the Property as a whole, then each Owner shall pay his or her proportionate share thereof in accordance with his or her Condominium Unit's respective Percentage Interest in the Common Areas and Facilities.

Section 4.8. Utilities. Each Owner shall pay for his or her own telephone, electricity and other utilities which are separately metered or billed to his or her Condominium Unit by the respective utility company. Utilities which are not separately metered or billed shall be treated as part of the Common Expenses, unless otherwise determined by the Association.

Section 4.9. Maintenance, Repairs and Replacements of Condominium Units.

(a) By the Association. The Association, as a part of the Common Expenses, shall be responsible for the maintenance, repair and replacement of those portions of each Condominium Unit which contribute to the support of the Buildings, excluding, however, interior wall, ceiling and floor surfaces, but including outside walls. In addition, the Association shall maintain, repair and replace all exterior doors, garage doors, roof, conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which may be located within the

Condominium Unit boundaries exclusive of any portions of the foregoing which may be located at or beyond the wall, ceiling or floor outlets, or which may be the responsibility of an individual Owner under any other provision of this Declaration. The Board may replace and repair any window glass or window frames in the event any Owner fails to do so as provided in subparagraph (b) of this Section 4.9 of this Article, but the expense of same shall be paid by the defaulting Owner.

(b) By the Owner. Except as otherwise provided in subparagraph (a) above, each Owner shall furnish, at his or her own expense, and be responsible for the following:

(1) All of the maintenance, repairs and replacements within his or her own Condominium Unit and all of the window glass and window frames and all internal installations of such Condominium Unit such as televisions, refrigerators, ranges and other kitchen appliances, lighting fixtures and other electrical fixtures, appliances, and heating, plumbing and air-conditioning fixtures (including air-conditioning condenser units and heat pumps) or installations, and any portion of any other utility service facilities located within the Condominium Unit boundaries; provided however, such maintenance, repairs and replacements as may be required for the bringing of water or electricity to the Condominium Unit, shall be furnished by the Association as part of the Common Expenses.

(2) The Association may provide, by its rules and regulations, for ordinary maintenance and minor repair and replacements to be furnished to Condominium Units as a Common Expense.

(3) All of the decorating within his or her own Condominium Unit from time to time, including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. Each Owner shall be entitled to the exclusive use of such portions of the perimeter walls, floors, and ceilings as lie within the boundaries of his or her Condominium Unit as shown on the Plans, and such Owner shall maintain such portions in good condition and repair at his or her sole expense. All such maintenance and use shall be subject to the rules and regulations of the Association. The interior and exterior surfaces of window glass in all windows forming part of perimeter wall of a unit shall be cleaned or washed at the expense of each respective Owner. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades or other items visible on the exterior of

the Building, shall be subject to the rules and regulations of the Association and the Board. Decorating of the Common Areas and Facilities and any redecorating of Condominium Units to the extent made necessary by any damage to existing decorating of such Condominium Units caused by maintenance, repair or replacement work on the Common Areas and Facilities by the Association, shall be furnished by the Association as part of the Common Expenses. Nothing herein contained shall be construed to impose a contractual liability upon the Association for maintenance, repair and replacement, but the Association's liability shall be limited to damages resulting from negligence. The respective obligations of the Association, Board and Owners set forth in the Declaration shall not be limited, discharged or postponed by reason of the fact that any such maintenance, repair or replacement is required to cure a latent or patent defect in material or workmanship in the construction of the Property.

Section 4.10. Negligence of Owner. If, due to the negligent act or omission of an Owner, or of a member of his or her family or household pet, or of a guest or other authorized occupant or visitor of such Owner, damage shall be caused to the Common Areas and Facilities or to a Condominium Unit or Condominium Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Association, subject to the rules, regulations and By-Laws of the Association.

Section 4.11. Joint Facilities. To the extent that equipment, facilities and fixtures within any Condominium Unit shall be connected to similar equipment, facilities or fixtures affecting or serving other Condominium Units or the Common Areas and Facilities, then the use thereof by the individual Owners shall be subject to the rules and regulations of the Association. The authorized representatives of the Association, or of the manager or managing agent for the Building, shall be entitled to reasonable access to the individual Condominium Units as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and Facilities or any equipment, facilities or fixtures affecting or serving other Condominium Units or the Common Areas and Facilities, and the use thereof by the individual Owners shall be subject to the reasonable rules and regulations of the Association.

Section 4.12. Alterations, Additions and Improvements. No alterations of any Common Areas and Facilities or any additions or improvements thereto shall be made by any Owner without the prior written approval of the Association nor shall any Owner make any alteration in or to his or her respective Condominium Unit which would affect the safety or structural integrity of the Building. Declarant reserves the right to change the interior design and arrangement of all Condominium Units and alter the boundaries between Condominium Units so long as Declarant owns the Condominium Units so altered. No such change shall increase the number of Condominium Units nor change the Percentage Interest applicable to such Condominium Unit. If Declarant shall make any changes in the Condominium Units so authorized, such changes shall

be reflected by a recorded supplement to the Plans and related amendment to Section 9.10 of this Declaration, and such supplement to the Plans and amendment to this Declaration need not be approved by the Association or any other Owners.

Section 4.13. Replacement Reserve Fund. The Board shall establish a replacement reserve fund to be used for capital expenditures and replacement and repair of the Common Areas and Facilities as provided in Indiana Code 32-25-4-4. A portion of the Regular Assessments shall be deposited into the replacement reserve fund which shall be kept in an interest bearing account as provided in Indiana Code 32-25-4-4.

ARTICLE V INCORPORATION OF ASSOCIATION

Section 5.1. Association. Declarant shall cause to be incorporated a nonprofit corporation under the laws of the State of Indiana, to be called City View On Herman Condominium Owners' Association, Inc. which corporation shall be the governing body for all the Owners for the maintenance, repair, replacement, alteration, improvement, administration, management and operation of the Property. Upon the formation of the Association, the Declarant and every Owner shall be a member therein, which membership shall automatically terminate upon the sale, transfer or other disposition of such Owner's Condominium Unit, at which time the new Owner shall automatically become a member therein.

All members of the Association shall abide by the rules and regulations of the Association. The operation of the Association shall be more fully described in the By-Laws and its Articles of Incorporation. Upon such incorporation, the By-Laws shall become the By-Laws of the Association. Until such incorporation, there is hereby created an association of Owners to be known as the City View On Herman Condominium Owners' Association ("Unincorporated Association"). The Declarant and each Owner shall be a member of the Unincorporated Association and the Association, but membership shall terminate when such person ceases to be an Owner. The Association shall elect a Board of Directors in accordance with and as prescribed by the By-Laws.

Until the expiration of the Development Period, Declarant, or its nominee, shall exercise the power, rights, duties and functions of the Association and the Board; provided however, that Declarant may relinquish such powers, rights, duties and functions at any earlier time should Declarant deem such action to be reasonable or appropriate.

Section 5.2. Liability Of The Board And Officers. Neither the members of the Board nor the officers of the Association shall be liable to the Owners for any mistake of judgment or for any acts or omissions of any nature whatsoever of such Board members or officers, except for any acts or omissions found by a court to constitute willful misconduct in the performance of duty. The Owners (and, to the extent permitted by law, the Association) shall indemnify and hold harmless each of the members of the Board and each of the officers against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and

officers on behalf of the Owners or the Association, 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, attorneys' fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claims, action, suit or proceeding, whether civil, criminal, administrative or other in which any member of the Board or officers may be involved by virtue of such person being or having been such member or officer; provided, however, that such indemnity by the Association shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for willful misconduct in the performance of his or her duties as such member or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in any manner determined by the Board (who may be counsel regularly retained by the Association) there is no reasonable ground for such person or officer being adjudged liable for willful misconduct in the performance of his or her duties as such member. The Board shall have authority to purchase and maintain insurance on behalf of the officers and members of the Board against any liability or settlement based on asserted liability incurred by them by reason of being or having served in such capacity, whether or not the Association would have the power to indemnify them against such liability or settlement under the provisions of this Section 5.2 of this Article.

ARTICLE VI
COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The Condominium Units and Common Areas and Facilities shall be occupied and used as follows:

Section 6.1. Each Condominium Unit or any two or more adjoining Condominium Units used together shall be used for housing and related common purposes for which the Property was designed and for no other purpose. That part of the Common Areas and Facilities separating any two or more adjoining Condominium Units used together as aforesaid may be altered to afford ingress and egress to and from such adjoining Condominium Units in such manner and upon such reasonable conditions as shall be determined by the Association in writing.

Section 6.2. There shall be no obstruction of the Common Areas and Facilities, including but not limited to Limited Common Areas and Facilities serving more than one Condominium Unit, nor shall anything be stored on the Common Areas and Facilities, including but not limited to Limited Common Areas and Facilities serving more than one Condominium Unit (except in areas designed for such purpose), without the prior written consent of the Association except as hereinafter expressly provided. Owners shall be obligated to maintain and keep in good order and repair their respective Condominium Units.

Section 6.3. Nothing shall be done or kept in any Condominium Unit or in the Common Areas and Facilities which will increase the rate of insurance on the Property or

contents thereof, applicable for residential use, without the prior written consent of the Association. Owners shall not permit anything to be done or kept in their respective Condominium Units or in the Common Areas and Facilities which will result in the cancellation of insurance on the Property, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Areas and Facilities.

Section 6.4. Owners shall be individually responsible for insuring their personal property in their respective Condominium Units, their personal property stored elsewhere on the Property and their personal liability to the extent not covered by the liability insurance for all the Owners obtained by the Association as provided herein.

Section 6.5. Owners shall not cause or permit anything to be placed on the outside walls, doors and windows of the Buildings or in the Common Areas and Facilities, and no sign, awning, canopy, shutter, air-conditioning unit, radio or television antenna or satellite dish shall be affixed to or placed in, through or upon the exterior walls, doors, windows or roof or any part thereof, without the prior consent of the Association.

Section 6.6. No animals of any kind shall be raised, bred or kept in any Condominium Unit or in the Common Areas and Facilities, except that dogs, cats or other usual household pets may be kept in Condominium Units, subject to the limitations set forth in this Declaration and to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for any commercial purpose. Any such pet kept in violation of the limitations of this Declaration or in violation of rules and regulations adopted by the Association or causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon seven (7) days' written notice from the Association.

Section 6.7. No unlawful, noxious or offensive activity shall be carried on in any Condominium Unit or in the Common Areas and Facilities, nor shall anything be done therein or thereon, either willfully or negligently, which may be or become, in the reasonable judgment of the Association, a nuisance to the other Owners or occupants.

Section 6.8. Nothing shall be done in any Condominium Unit or in, on or to the Common Areas and Facilities which will impair the structural integrity of a Building or which would structurally change a Building except as is otherwise provided herein.

Section 6.9. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Areas and Facilities unless allowed by the Board. The Common Areas and Facilities shall be kept free and clear of rubbish, debris and other unsightly materials which are not in receptacles provided for such purpose.

Section 6.10. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted in any Condominium Unit which in the normal course of business would have members of the public or third parties visiting the Condominium Unit on a regular basis so as to disturb the residential quality of the Property, that

would cause noise or excessive lighting or would otherwise disturb the residential quality of the Property. Declarant recognizes that as of the date this Declaration was filed many home occupations can be carried on by the use of telephone, fax, email and internet without changing the residential character of the Property and those types of uses should not be prohibited. The Association shall have the right to adopt reasonable and non-discriminatory rules for the operation of any home business or home occupation to insure that other Condominium Unit owners are not disturbed by any business or home occupation that occurs and that the residential quality of the Property is preserved.

Section 6.11. No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Property except at such location and in such form as shall be determined by the Association.

Section 6.12. Nothing shall be altered or constructed in or removed from the Common Areas and Facilities, except upon the written consent of the Association.

Section 6.13. No campers, trailers of any kind, buses, mobile homes, trucks (other than pick-up trucks), mini bikes or any other vehicle other than normal passenger automobiles shall be permitted, parked or stored anywhere within the Property other than in a garage without the consent of the Board; provided, however, boats and related trailers shall be allowed within the Property in such areas as designated by the Board. Except as allowed by the Board, no repair work shall be done on the Property on any vehicles, including passenger automobiles unless performed within a garage. Any vehicle which is inoperative or is not being used for normal transportation shall not be permitted to remain on any of the Common Areas and Facilities and the Association, after written notice to any owner violating this provision, may cause any such vehicle to be removed at such Owner's expense.

Section 6.14. No additional building shall be erected or located within the Property other than the Building designated in the Declaration or an amendment to the Declaration, and shown on the Plans or plans filed with such an amendment to the Declaration, without the consent of the Association.

Section 6.15. Notwithstanding any provision hereof to the contrary, at all times and from time to time prior to the sale of the last Condominium Unit in the Property, Declarant, beneficiaries of Declarant, their agents, successors and assigns, hereby reserve the right: (a) to lease or sell any such Condominium Units; (b) to erect and maintain on the Property all advertising signs, banners, lighting and other sales devices for the purpose of aiding the sale or leasing of Condominium Units on the Property; (c) to maintain sales and management offices on the Property, including model Condominium Units for display, to facilitate the sale or leasing of Condominium Units thereon; and (d) to utilize the Common Areas and Facilities and, as appropriate, the Limited Common Areas and Facilities for ingress, egress and parking in connection with the sale and leasing of Condominium Units on the Property. The number, size, location and Declarant's relocation rights regarding such sales offices, management offices and model Condominium Units are set forth in Exhibit B.

Section 6.16. The Condominium Unit restrictions in this Article VI shall not, however, be construed in such a manner as to prohibit an Owner from: (a) maintaining a personal professional library therein; (b) keeping personal business or professional records or accounts therein; or (c) handling personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal use for housing and not in violation of this Article VI.

ARTICLE VII

INSURANCE, AND DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDINGS

Section 7.1. Insurance. The Co-owners, through the Association, shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Property in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the Common Areas and Facilities along with such other insurance deemed appropriate by the Board. If the Association can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the mortgagees of each Condominium Unit upon the following terms and conditions.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it, and it (or a corporate trustee as provided in the By-Laws) shall act as the insurance trustee and hold such proceeds for the benefit of the insured parties. In the event that the Association has not posted surety bonds for the faithful performance of its duties as such trustee or if such bonds do not exceed the funds which will come into its hands, and there is a damage to a part or all of the Property resulting in a loss, the Association shall obtain and post a bond for the faithful performance of its duties as insurance trustee in an amount to be determined by a majority vote of a meeting of the Co-owners but not to exceed 125% of the loss, before the Association shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the insurance trustee shall be to receive such proceeds as they are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Owners and the respective mortgagees. The proceeds shall be used or disbursed by the Association only in accordance with the provisions of this Declaration.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall contain provisions (to the extent the same are obtainable) that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board, its officers, agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Association is able to

obtain such insurance upon reasonable terms, (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted, and (ii) 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 Section 7.2 hereunder.

The Co-owners, through the Association, shall also purchase a master comprehensive public liability insurance policy in at least the amount of \$1,000,000 or such other amount or amounts as the Board shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its officers, the Board, any committee, executive organ or other organ of the Association or Board, any manager or managing agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to City View On Herman, all Owners of Condominium Units and all other persons entitled to occupy any Condominium Unit or other portions of City View On Herman.

The Association, shall also obtain any other insurance required by law to be maintained, including but not limited to workers' compensation insurance, and such other insurance as the Association shall from time to time deem necessary, advisable or appropriate, including but not limited to liability insurance on vehicles owned by the Association and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its officers, the Board, any committees, executive organ or other organ of the Association or Board and any manager or managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Association his or her right to adjust with the insurance companies all losses under policies purchased by the Association.

The premiums for all such insurance hereinabove described shall be paid by the Association as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

In no event shall any distribution of proceeds be made by the Association directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his or her mortgagee jointly.

Each Owner shall be solely responsible for and may obtain such additional insurance as he or she deems necessary or desirable at his or her own expense affording coverage upon his or her personal property, the contents of his or her Condominium Unit (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him or her) and his or her personal property stored elsewhere on the Property, and for his or her personal liability, but all such insurance shall contain the same provisions for waiver of

subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association. Each Owner may obtain casualty insurance at his or her own expense upon his or her Condominium Unit but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this section due to proration of insurance purchased by an Owner under this section, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

The Association shall not be responsible for obtaining insurance on any additions, alterations or improvements made by any Owner to his or her Condominium Unit unless and until such Owner shall request the Association in writing so to do, and shall make arrangements satisfactory to the Association to reimburse the Association for any additional premiums attributable thereto; and upon the failure of such Owner so to do, the Association shall not be obligated to apply any insurance proceeds to restore the affected Condominium Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements.

Each Owner hereby waives and releases any and all claims which he or she may have against any other Owner, the Association, its officers, members of the Board, the Declarant, the manager or managing agent of the Property, and their respective employees and agents, for damage to the Common Areas and Facilities, the Condominium Units, or to any personal property located in the Condominium Units or Common Areas and Facilities caused by fire or other casualty.

The Association shall also obtain insurance or a surety bond covering each member of the Board, the officers of the Association and such other persons as the Association shall determine to indemnify the Association against acts of fraud or dishonesty by such persons. Such insurance shall, if reasonably possible, contain coverage for any insurance proceeds received. The expenses of such insurance or surety bond shall be a Common Expense.

Section 7.2. Casualty and Restoration.

(a) Except as hereinafter provided, damage to or destruction of any Building or other improvements due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose; provided, however, that repair and reconstruction shall not be compulsory in the event of "complete destruction of all of the Buildings" (hereinafter defined) and shall only be done in accordance with the provisions hereinafter set forth. As used herein, the term "complete destruction of all of the Buildings" means, as set forth in the Act, a determination, made by a vote of two-thirds (2/3) of all Co-owners at a special meeting of the Association called for the purpose of making such determination, that total destruction of all of

the Buildings has occurred. A special meeting of the Association shall be called and held within sixty (60) days after any fire or any other casualty or disaster damaging or destroying a significant portion of the Building for the purpose of making the determination of whether or not there has been a complete destruction of all of the Buildings. If such a special meeting is not called and held within such sixty (60)-day period, or if the determination of whether or not there has been a complete destruction of all the Buildings has not been made within such sixty (60)-day period, then it shall be conclusively presumed that the Co-owners determined that there was not a complete destruction of all of the Buildings, and the Association shall proceed with repair and reconstruction as herein provided.

(b) If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are not insurance proceeds, and if the Property is not to be removed from the provisions of the Act, the cost for restoring the damage and repairing and reconstructing the Building and other improvements so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by all of the Co-owners of Condominium Units in percentages equal to the Percentage Interest of each Condominium Unit. Any such amounts payable by the Co-owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein and in the Act.

(c) For purposes of subparagraph (a) and (b) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Building, Condominium Units and other improvements to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

(d) If, under subparagraph (a) above, it is determined by the Co-owners at the special meeting of the Association referred to therein that there has been a complete destruction of all of the Buildings, the Co-owners shall, at said same special meeting, vote to determine whether or not such complete destruction of all of the Buildings shall be repaired and reconstructed. The Building and other improvements shall not be reconstructed or repaired unless by a vote of two-thirds (2/3) of all of the Co-owners a decision is made to rebuild, reconstruct and repair the Building. If two-thirds (2/3) or more of all of the Co-owners vote and decide that the Building is to be rebuilt, reconstructed and repaired, the insurance proceeds, if any, received by the Association shall be applied and any excess of construction costs over insurance proceeds, if any, received by the Association shall be contributed and paid as hereinabove provided in subparagraphs (a) and (b).

(e) If, in any case of the complete destruction of all of the Buildings, less than two-thirds (2/3) of all of the Co-owners vote in favor of the rebuilding, reconstruction and repair of the Building, the Building and other improvements

shall not be rebuilt, reconstructed or repaired and, in such event, the insurance proceeds net of any amounts paid to remove rubble and place the Property in a condition that complies with all applicable laws shall be divided among the Co-owners as set forth in this Declaration, the By-Laws and the Act and the Property shall be deemed and considered as to be removed from the provisions of the Act:

(i) the Property shall be deemed to be owned in common by the Owners;

(ii) the undivided interest in the Property owned in common which shall appertain to each Condominium Unit Owner shall be the Percentage Interest appurtenant to such Owner's Condominium Unit;

(iii) any liens affecting any of the Condominium Units shall be deemed to be transferred in accordance with the existing priorities to the Percentage Interest of Owner of the Condominium Unit in the Property; and

(iv) the Property shall be subject to an action for partition at the suit of any Owner of a Condominium Unit, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one (1) fund and shall be divided among all the Owners of the Condominium Units in a percentage equal to the percentage of undivided interest owned by each Owner in the Property, after first paying out of the respective shares of the Owners of Condominium Units, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each such Owner.

(f) Immediately after a fire or other casualty or disaster causing damage to any property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Association desires.

(g) The proceeds of insurance collected on account of any such casualty, and the sums received by the Association from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Building or other improvements are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

(i) If the amount of the estimated cost of reconstruction and repair is less than Thirty Thousand Dollars (\$30,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Association; provided, however, that upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the following paragraph (ii).

(ii) If the estimated cost of reconstruction and repair is more than Thirty Thousand Dollars (\$30,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect or engineer qualified to practice in Indiana and employed by the Association to supervise such work, payment to be made from time to time as the work progresses. The architect or engineer shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the architect or engineer for the services and materials described; and (3) that the costs as estimated by said architect or engineer for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(iii) Encroachments upon or in favor of Condominium Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Building stands.

(iv) In the event that there is any surplus of monies in the construction fund after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Common Areas and Facilities, or, in the discretion of the Association it may be divided among the Co-owners as set forth in the By-Laws. The action of the Association in

proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner or committing willful or malicious damage.

ARTICLE VIII

REMEDIES

Abatement and Enjoinment. The violation of any rule or regulation adopted by the Association, or the breach of any restriction, condition, covenant, By-Law or provision contained in this Declaration, the Articles of Incorporation of the Association or the deed to an Owner's Condominium Unit, shall give the Association the right:

(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 Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and Declarant, its beneficiaries, successors or assigns, the Association, its officers, the Board and their agents, shall not thereby be deemed guilty in any manner of trespass; and

(b) in an action maintained by the Board or the manager or managing agent on behalf of the Association 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 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 rate of twelve per cent (12%) per annum until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of such defaulting Owner's respective share of the Common Expenses, and the Association shall have a lien for all of the same upon the Condominium Unit of such defaulting Owner and upon all of the additions and improvements thereto. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1. Notices to Mortgagee. Upon written request to the Association, the holder of any duly recorded mortgage secured by any Condominium Unit shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Owner whose Condominium Unit is subject to such mortgage. Upon written request to the Association, the holder of a recorded first mortgage covering a Condominium Unit shall be given written notice of any default in the performance by the Owner of such Condominium Unit of any obligation

under this Declaration which is not cured within any applicable cure period, or, if there is no such cure period, within sixty (60) days after default.

Section 9.2. Claims of Owners. Each Owner hereby waives and releases any and all claims which such owner may have against any other Owner, occupant, the Association, its officers, members of the Board, the Declarant and its beneficiaries, the manager or managing agent, if any, and their respective employees and agents, for damage to the Common Areas and Facilities, the Condominium Units, or to any personal property located in the Condominium Units or Common Areas and Facilities, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance.

Section 9.3. Notices. Notices provided for in this Declaration and in the Act shall be in writing, and shall be addressed to the Board or Association at the address of the Association as provided in the By-Laws, or to any Owner the address of his or her Condominium Unit or at such other address as herein provided. The Association or Board may designate a different address for notices by giving written notice of such change of address to all Owners. Any Owner may also designate a different address for notices by giving written notice of such change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States first class mail, or when delivered in person with written acknowledgment of the receipt thereof, or, if addressed to an Owner, when deposited in the mailbox or at the door of the Owner's Condominium Unit.

Section 9.4. Notices to Estate. Notices required to be given any devisee, heir or personal representative of a deceased Owner may be delivered either personally or by mail to such party at the address appearing in the records of the Court wherein the estate of such deceased Owner is being administered.

Section 9.5. Acceptance of Declaration by Subsequent Grantees. Each grantee of the Declarant, and each subsequent grantee, by the acceptance of a deed of conveyance, each purchaser, and each tenant under a lease for a Condominium 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 person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance and lease.

Section 9.6. No Waiver. 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.

Section 9.7. Amendment of Declaration. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted 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 or by Owners having in the aggregate at least a majority of the Percentage Vote.

(c) Meetings. The resolution concerning a proposed amendment must be adopted by the designated 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 seventy-five per cent (75%) in the aggregate of the Percentage Vote. In the event any Condominium Unit is subject to a first mortgage, such mortgagees shall be notified of the meeting and the proposed amendment in the same manner as an Owner if such mortgagees have given prior notice of their mortgage interest to the Association in accordance with the provisions of the By-Laws. During the Development Period, no Amendment shall be effective without the written consent of Declarant.

(e) Special Amendments. Except as otherwise provided in this Declaration, no amendment to this Declaration shall be adopted which changes (1) the Percentage Interest with respect to any Condominium Unit or the applicable share of an Owner's liability for the Common Expenses, without the approval of one hundred per cent (100%) of the Co-owners, or (2) the provisions of Article VII of this Declaration with respect to reconstruction or repair in the event of fire or any other casualty or disaster, without the unanimous approval of all mortgagees whose mortgage interests have been made known to the Association in accordance with the provisions of the By-Laws.

(f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

(g) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have the right acting alone and without the consent or approval of the Co-owners, the Association, the Board, any mortgagees or any other person to amend or supplement this Declaration from time to time if (i) such amendment is made and recorded prior to the date on which

the Development Period ends (subject to Section 9.7 (e) above); (ii) such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time, (ii) such amendment is pursuant to Section 4.12 above or (iii) such amendment is (A) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rules or regulations, or judicial determination, or otherwise to comply with any other governmental order or request; (B) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (C) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or the Department of Housing and Urban Development, to enable such lender or purchaser to acquire or purchase mortgage loans on the Units; (D) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; or (E) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, any amendment permitted under subsections (A) through (E) of this Section 9.7(g) shall not adversely affect the title to any Unit, unless the Owner shall consent thereto in writing, nor affect the governing of City View On Herman. Each Owner, by acceptance of a deed to a Condominium Unit, shall thereby appoint Declarant or its nominee as such Owner's attorney-in-fact for the purpose of amending the Declaration pursuant to this Section 9.7(g), and to the extent required by law to carry out the intent of this Section 9.7(g), on behalf of such Owner to consent to or vote in favor of such an amendment. The appointment of Declarant or its nominee as such attorney-in-fact and the granting of such special power to Declarant or its nominee shall be deemed to be coupled with an interest, shall be irrevocable and binding upon the heirs, successors and assigns of such Owner, but shall expire at the end of the Development Period.

Section 9.8. No Impairment. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

Section 9.9. 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 condominium project.

Section 9.10. Plans. The Plans setting forth the layout, location, identification numbers and dimensions of the Condominium Units and the Property are incorporated into this Declaration by reference, and have been filed in the office of the Recorder of Marion County, as Instrument No. 2012-56762 on June 8, 2012.

IN WITNESS WHEREOF, the Declarant, By Grace Real Estate LLC, has caused this Declaration to be signed this 5th day of June, 2012.

By Grace Real Estate LLC

Ken Dilger
By: Ken Dilger

Its: Member

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Ken Dilger, the member of By Grace Real Estate LLC, who having been duly sworn, acknowledged the execution of the foregoing Declaration for and on behalf of said limited liability company.

GIVEN under my hand and Notarial Seal this 5 day of June, 2012.

Sara M. Webb

Sara M. Webb, Notary Public

My Commission Expires:

4-20-16

My County of Residence:

Hancock



This instrument was prepared by John W. Van Buskirk, Attorney.

I affirm under the penalties for perjury that I have taken reasonable care to redact each social security number in this document unless required by law. John W. Van Buskirk

T/06 By Grace-City View doc

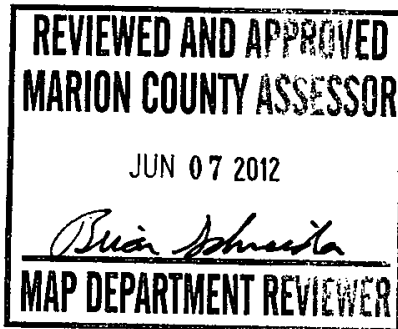


EXHIBIT A

LEGAL DESCRIPTION

CITY VIEW ON HERMAN CONDOMINIUM

LOTS 12, 13 AND 14 IN MARY E. AND WINSTON P. NOBLES SUBDIVISION OF A PART OF OUTLOT 61 IN THE CITY OF INDIANAPOLIS, MARION COUNTY, INDIANA.

EXCEPT 20 FEET BY PARALLEL LINES OFF THE ENTIRE WEST OF SAID LOT 14 WHICH WAS CONVEYED TO THE CITY OF INDIANAPOLIS FOR THE WIDENING OF HERMAN STREET, AS SHOWN IN TOWN LOT RECORD 185, PAGE 146, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA, BEING REFERRED TO IN A CERTAIN PLAT DATED AUGUST 19, 1953 AND RECORDED IN DEED RECORD 1502, PAGE 179, IN SAID OFFICE OF THE RECORDER.

Exhibit B
Schedule of Percentage Interest

<u>Condominium Unit Number</u>	<u>Percentage Interest</u>
1	20%
2	20%
3	20%
4	20%
5	20%

Condominium Units 1, 2, 3, 4 and 5 are located within one (1) Building, each of which is three (3) stories tall. None of the units have basements.

Declarant reserves the right to move any one or more of its sales office and model condominium units into one or more of the Condominium Units which are either owned by Declarant or leased by it for such purposes.

CODE OF BY-LAWS
OF
CITY VIEW ON HERMAN CONDOMINIUM OWNERS' ASSOCIATION, INC.

ARTICLE I

Identification

Section 1.1. Name. The name of the Association is the City View On Herman Condominium Owners' Association, Inc. (hereinafter referred to as the "Association").

Section 1.2. Registered Office and Registered Agent. The post-office address of the registered office of the Association is 5645 Castle Creek Parkway, Indianapolis, Indiana 46250; and the name and post-office address of its Registered Agent at such office is John W. Van Buskirk, 50 South Meridian Street, Suite 700, Indianapolis, Indiana 46204-3542.

Section 1.3. Fiscal Year. The fiscal year of the Association shall begin at the beginning of the first day of January in each year and end at the close of the last day of December next succeeding.

Section 1.4. Adoption and Declaration. These By-Laws are adopted simultaneously with the execution of a certain Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for City View On Herman Condominiums ("Declaration"), to which these By-Laws are attached and made a part thereof. The Declaration is incorporated herein by reference and all of the covenants, rights, restrictions and liabilities therein 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 made to Section 1.1 of the Declaration containing certain definitions.

ARTICLE II

Association Members

Section 2.1. Membership. Every Owner, including the Declarant while it is an Owner, is a member of the Association ("Member").

Section 2.2. Place of Meeting. All meetings of the Members of the Association shall be held on the Property, or at such other reasonable place as may be determined by the Board of Directors and specified in the notices or waivers of notice thereof or proxies to represent Members at such meetings.

Section 2.3. Annual Meetings. The initial annual meeting of the Members shall be held upon ten (10) days' written notice given by Declarant. The Declarant must give such written notice not later than thirty (30) days after 90% of the Condominium Units are occupied by Owners or thirty (30) days prior to the end of the Development Period, whichever first occurs. An annual meeting of the Members shall be held on the first Tuesday of October following such initial meeting, and on the first Tuesday of October of each succeeding year at 7:30 P.M., or at such other reasonable time or date (not more than thirty (30) days before or after such date) as may be designated by written notice of the Board delivered to the Members not less than ten (10) days prior to the date fixed for said meeting.

Section 2.4. Special Meetings. Special meetings of the Members may be called at any time for the purpose of considering matters that require the approval of all or some of the Members or for any other reasonable purpose. Any such Special Meeting shall be called by written notice, authorized by a majority of the Board, or by the Members having an aggregate Percentage Interest equal to or exceeding twenty-five percent (25%), and delivered not less than ten (10) days prior to the date fixed for such meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

Section 2.5. Emergency Matters. The Board may take action in good faith during an emergency without a meeting or notice to the Members.

Section 2.6. Notice of Meetings. Written or printed notice stating the place, day and hour of a meeting and, in case of a special meeting, the purpose or purposes for which such meeting is called shall be delivered or mailed by the Secretary of the Association to each Member of record of the Association entitled to vote at the meeting, at such address as appears on the records of the Association, at least ten (10) days before the date of the meeting. Notice of any meeting of the Members may be waived in writing by any Member if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place thereof. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 2.7. Voting at Meetings.

(a) Voting Rights. There shall be one person with respect to each Condominium Unit who shall be entitled to vote at any meeting of the Members. Such person shall be known as a "Voting Member." Such Voting Member may be (i) the Owner, (ii) one of the group composed of all the Owners of a Condominium Unit or (iii) if the Owner is a firm, corporation, partnership, association, trust, other legal entity or combination of the foregoing, an individual designated by such Owner in a notice given to the Association. Any or all of such Voting Members may be present at any meeting of the Voting Members and may vote or take any action as a Voting Member, either in person or by proxy. The total number of votes of all Voting Members shall be one hundred (100) and each Owner or group of Owners shall be entitled to the number of votes equal to the Percentage Interest applicable to his, her, its or their Condominium Unit as set forth in Exhibit B attached to the Declaration. Declarant (or its nominee) may exercise the voting

rights with respect to any Condominium Unit owned by it. If an Owner owns more than one Condominium Unit, such Owner may designate a different Voting Member for each Condominium Unit owned by such Owner.

(b) Proxies. A Voting Member is entitled to vote either in person or by proxy, executed in writing by such Voting Member or by his or her duly authorized attorney-in-fact and delivered to the secretary of the meeting. Proxies shall be valid only for the particular meeting designated thereon and must be filed with the Secretary before the scheduled time of the meeting. In any meeting of the Voting Members called for the purpose of electing members of the Board of Directors of the Association, each Voting Member shall be permitted to cast the number of votes to which he or she is entitled, as hereinabove set forth, for each Member of the Board of Directors of the Association to be elected at such meeting.

(c) Quorum and Adjournments. The presence in person or by proxy of the Voting Members having a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein or in the Declaration or the Act, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total votes present at such meetings. Any meeting of the Voting Members, including both annual and special meetings and any adjournments thereof, may be adjourned to a later date without notice other than announcement at the meeting, even though less than a quorum is present.

Section 2.8. List of Voting Members. At least five (5) days before each meeting of Members, the Secretary shall prepare or cause to be prepared a complete list of the Voting Members of the Association entitled to vote at such meeting arranged in alphabetical order with the address and the applicable Percentage Interest. Such list shall be on file in the principal office of the Association and shall be subject to inspection by any Member. The original or duplicate membership register shall be the only evidence as to the persons who are entitled as Members to examine such lists, or to vote at such meeting.

Section 2.9. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting, if prior to such action, a written consent thereto, setting forth the action so taken, is signed by all the Voting Members entitled to vote with respect to the subject matter thereof, and such written consent is filed with the minutes of the proceedings of the Members. Such consent shall have the same effect as a unanimous vote of the Voting Members.

ARTICLE III

Board of Directors

Section 3.1. Number, Term of Office and Qualifications. The Board of Directors shall consist of three (3) Voting Members. The terms of at least one-third (1/3) of the members of the

Board shall expire annually. Directors shall serve without compensation. The members of the first Board of Directors is set forth in the Articles of Incorporation of the Association. Members of the Board shall be elected by the Voting Members at their annual meeting and shall hold office until the expiration of the term for which they are elected or until their successors have been duly elected and qualified. If a member of the Board of Directors shall cease to meet any qualification herein required for a member of the Board, such member shall thereupon cease to be a member of the Board and his or her place on the Board shall be deemed vacant. The Voting Members may remove any member of the Board with or without cause, and elect a successor at a meeting of the Voting Members called expressly for such purpose.

Section 3.2. Vacancies. Vacancies occurring in the membership of the Board of Directors caused by disqualification, resignation, death or other incapacity, or increase in the number of members of the Board, shall be filled by a majority vote of the remaining members of the Board, and each member so elected shall serve until the next meeting of the Voting Members, or until his or her successor shall have been duly elected and qualified. Notice specifying any increase in the number of members of the Board and the name, address and principal occupation of and other pertinent information about any member elected to fill any vacancy shall be given in the next mailing sent to the Voting Members after such increase or election.

Section 3.3. Annual Meetings. The Board of Directors shall meet annually, without notice, immediately following and at the same place as, the annual meeting of the Voting Members.

Section 3.4. Regular Meetings. Regular meetings shall be held at such times and places, either within or without the State of Indiana, as may be determined by the President or Board of Directors.

Section 3.5. Special Meetings. Special meetings of the Board of Directors may be called by the President or by two (2) or more members of the Board, at any place within or without the State of Indiana, upon twenty-four (24) hours' notice specifying the time, place and general purposes of the meeting, given to each personally, by telephone or telegraph; or notice may be given by mail if mailed at least three (3) days before such meeting.

Section 3.6. Waiver of Notice. Any member of the Board of Directors may waive notice of any meeting in writing. Attendance by a member at any meeting shall constitute a waiver of notice of such meeting.

Section 3.7. Quorum. A majority of the entire Board of Directors then qualified and acting shall constitute a quorum and be sufficient for the transaction of any business, except for filling of vacancies in the Board of Directors which shall require action by a majority of the remaining members of the Board. Any act of the majority of the members of the Board present at a meeting at which a quorum shall be present shall be the act of the Board unless otherwise provided for by law or by these By-Laws. A majority of the members present may adjourn any meeting from time to time. Notice of an adjourned meeting need not be given other than by announcement at the time of adjournment.

Section 3.8. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting, if prior to such action, a written consent thereto is signed by all the members of the Board or of such committee, as the case may be, and such written consent is filed with the minutes of the proceedings of the Board.

ARTICLE IV

Officers

Section 4.1. Number of Officers. The officers of the Association shall consist of a President, a Secretary, a Treasurer and such officers or assistant officers as the Board shall from time to time create and so elect. Any two (2) or more offices may be held by the same person. The President shall be chosen from among the members of the Board. Officers shall serve without compensation unless such compensation is approved by the Voting Members holding a majority of the total votes.

Section 4.2. Election and Terms. Each officer shall be elected by the Board of Directors at the annual meeting thereof and shall hold office until the next annual meeting of the Board or until his or her successor shall have been elected and qualified or until his or her death, resignation or removal. Any officer may be removed at any time, with or without cause, by vote of a majority of the whole Board, but such removal shall be without prejudice to the contract rights, if any, of the person so removed; provided, however, that election of an officer shall not of itself create contract rights.

Section 4.3. Vacancies. Whenever any vacancy shall occur in any office by death, resignation, increase in the number of officers of the Association, or otherwise, the same shall be filled by the Board of Directors, and the officer so elected shall hold office until the next annual meeting of the Board or until his or her successor is duly elected or appointed.

Section 4.4. President. The President shall be the chief executive officer of the Association; shall preside at all meetings of the Voting Members and of the Board of Directors; shall have general and active supervision, control and management of the affairs and business of the Association, subject to the orders and resolutions of the Board; shall have general supervision and direction of all officers, agents and employees of the Association; shall see that all orders and resolutions of the Board are carried into effect; and in general shall exercise all powers and perform all duties incident to such office and such other powers and duties as may from time to time be assigned to him or her by the Board.

The President shall have full authority to execute proxies in behalf of the Association, to execute, with the Secretary, powers of attorney appointing other associations, corporations, companies, partnerships or individuals the agent of the Association, all subject to the provisions of the Act, the Declaration and this Code of By-Laws.

Section 4.5. Secretary. The Secretary shall attend all meetings of the Board and of the Voting Members and shall act as Secretary at such meetings; shall give or cause to be given all notices provided for in these By-Laws or required by law; shall record all votes and the minutes of all proceedings of the meetings of the Members and the Board in a book or books to be kept for that purpose and wherein resolutions shall be recorded; shall be custodian of the records of the Association; and, in general, shall exercise all powers and perform all duties as may be from time to time assigned to him or her by the Board or by the President.

Section 4.6. Treasurer. The Treasurer shall keep correct and complete financial records and books of account showing accurately at all times the financial condition of the Association; shall be the custodian of the Association Funds; shall immediately deposit in the name and to the credit of the Association all monies and other valuable effects of the Association in such depositories as may be designated by the Board of Directors; shall disburse the funds of the Association as may be ordered by the Board or by the President; and in general shall exercise all powers, perform all duties customarily incident to such office and such other powers and duties as may from time to time be assigned to him or her by the Board or by the President.

ARTICLE V

Books and Records

Section 5.1. Books and Records, in General. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Common Areas and Facilities, specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and other expenses incurred. Such records and the vouchers authorizing the payments shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Owner. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Owner shall be furnished a statement of such Owner's account, setting forth the amount of any unpaid assessments or other charges due and owing from such Owner, and such amount shall be binding upon the Board and the Association, and any mortgagee or grantee of such Owner furnished with such statement shall not be liable for, and the Condominium Unit of such Owner shall not be conveyed subject to a lien for, any unpaid assessment in excess of the amount set forth in such statement. Any mortgagee of any Condominium Unit who wishes to participate in any decision or consent in which it is entitled to participate by reason of the Declaration or these By-Laws shall provide the Secretary of the Board with its name and address and the Condominium Unit on which it holds a Mortgage so that it may be notified of any such pending decision or consent and participate therein. Failure to so notify the Board shall constitute waiver by any such mortgagee of the right to participate in such decision or consent.

ARTICLE VI

Administration

Section 6.1. Board of Directors; Association. The direction and administration of the Property shall be vested in the Association and Board of Directors. Notwithstanding any other provisions herein contained to the contrary, all duties, functions and obligations herein imposed upon the Board are so imposed with the express understanding that the Board is the governing body and agent of the Owners and the Association.

Section 6.2. Determination of Board to be Binding. Notwithstanding that the words "Board" and "Association" may in some instances be used interchangeably in various sections of these By-Laws or the Declaration, matters of dispute or agreement between Owners relating to the Property or with respect to interpretation or application of the provisions of the Declaration or these By-Laws, shall be determined by the Board, which determination shall be final and binding on the Association and on all Owners.

Section 6.3. General Powers of the Board. The Board shall have the following general powers and duties:

- (a) To elect the officers of the Association as hereinabove provided;
- (b) To administer the affairs of the Association and the Property;
- (c) To engage the services of a manager or managing agent who shall manage and operate the Property and the Common Areas and Facilities thereof for all of the Owners, upon such terms and for such compensation and with such authority as the Board may approve;
- (d) To formulate policies for the maintenance, repair, replacement, alteration, improvement, administration, management and operation of the Property and the Common Areas and Facilities thereof;
- (e) To adopt administrative rules and regulations governing the use, maintenance, repair, replacement, alteration, improvement, administration, management and operation of the Property and the Common Areas and Facilities and to amend such rules and regulations from time to time;
- (f) To provide for the maintenance, repair, replacement, alteration, improvement, administration, management and operation of the Common Areas and Facilities and payments therefor, and to approve payment vouchers or to delegate such approval to the officers of the manager or managing agent;
- (g) To provide for the designation, hiring and removal of employees and other personnel, including accountants, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, alteration,

improvement, administration, management and operation of the Property and the Common Areas and Facilities and to delegate any such powers to the manager or managing agent (and any such employees or other personnel who may be employees of the managing agent);

(h) To estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Owners their respective shares of such estimated expenses, as hereinafter provided;

(i) To comply with the instructions of a majority in interest of the Owners, as expressed in a resolution duly adopted at any Annual or Special Meeting of the Owners or by their unanimous written consent; and

(j) To exercise all other powers and duties of the Board as a group referred to in the Act, and all powers and duties of the Board referred to in the Declaration or these By-Laws.

Section 6.4. Specific Powers of the Board. The Board, for the benefit of the Board, the Association and all Owners, shall provide and shall pay for, as Common Expenses, the following:

(a) Utility Service for Common Areas and Facilities. Waste, water removal, electricity, and telephone, heat, power and other necessary utility services for the Common Areas and Facilities (and, if not separately metered or charged, for the Condominium Units);

(b) Insurance. Insurance in accordance with Article VII of the Declaration. Premiums for such insurance shall be Common Expenses. The Board may engage the services of any bank or trust company authorized to do trust business in Indiana to act as trustee, agent or depository on behalf of the Board for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, upon such terms as the Board shall determine consistent with the provisions of the Act and the Declaration. The fees of such corporate trustee shall be Common Expenses. In the event of any loss in excess of \$50,000.00 in the aggregate, the Board shall engage a corporate trustee as aforesaid upon the written demand of the mortgagee or Owner of any Condominium Unit so destroyed.

The proceeds of such insurance shall be applied by the Board or by the corporate trustee on behalf of the Board for the reconstruction of the Buildings, or shall be otherwise disposed of, in accordance with the provisions of the Declaration and the Act; and the rights of the mortgagee of any Condominium Unit under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions in the Act with respect to the application of insurance proceeds to reconstruction of Buildings. In the event of complete destruction of the Buildings, if the Buildings are not reconstructed, insurance proceeds, if any, shall be divided among the Co-

owners according to their Percentage Interests. Payment by an insurance company to the Board or to such corporate trustee of the proceeds of any policy, and the receipt of release from the Board of the Company's liability under such policy shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust under which such proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or to see to the application of any payments of the proceeds of any policy by the Board or the corporate trustee;

(c) Wages and Fees for Services. The services of any person or firm employed by the Board, including, without limitation the services of a person or firm to act as manager or as managing agent for the Property, the services of any person or persons required for maintenance or operation of the Property, and legal and/or accounting services necessary or proper in the operation of the Property or the enforcement of the Declaration and for the organization, operation and enforcement of the rights of the Association;

(d) Care of Common Areas and Facilities. Landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintenance, alteration, improvement, decorating, repair and replacement of the Common Areas and Facilities and such furnishings and equipment for the Common Areas and Facilities as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire or provide the same for the Common Areas and Facilities;

(e) Additional Expenses. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Board is required to secure or pay for pursuant to the terms of these restrictions or by law or which in its opinion shall be necessary or proper for the maintenance and operation of the Property as a first class condominium project or for the enforcement of the Declaration;

(f) Certain Maintenance of Condominium Units. Maintenance and repair of any Condominium Unit as provided in the Declaration, and maintenance and repair of any Condominium Unit if such maintenance or repair is necessary in the discretion of the Board to protect the Common Areas or any portion of a Building and the Owner or Owners of said Condominium Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair shall have been delivered by the Board to said Owner or Owners, provided that the Board shall levy a special assessment against such Owner for the cost of said maintenance or repair. The Board or its agents may enter any Condominium Unit when necessary in connection with any maintenance or construction for which the Board or Association is responsible; any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund. The Board reserves the right to

retain a pass key to each Condominium Unit, and no locks or other devices shall be placed on the doors to the Condominium Units to obstruct entry through the use of such pass key. In the event of any emergency originating in, or threatening, any Condominium Unit, or in the event of the Owner's absence from the Condominium Unit at a time when required alterations or repairs are scheduled, the management agent or its representative or any other person designated by the Board may enter the Condominium Unit immediately, whether the Owner is present or not;

(g) Capital Additions and Improvements. The Board's powers hereinabove enumerated shall be limited to the extent that the Board shall have no authority to acquire or provide or pay for any capital additions and improvements (other than for purposes of replacing or restoring portions of the Common Areas, subject to the provisions of the Declaration) having a total cost in excess of Seventy-Five Thousand Dollars (\$75,000.00), nor shall the Board authorize any structural alterations, capital additions to or capital improvements of the Common Areas requiring an expenditure in excess of Seventy-Five Thousand Dollars (\$75,000.00), without in each case the prior approval of the Voting Members holding a majority of the total votes;

(h) Certain Utility Services to Condominium Units. The Board may pay from the maintenance fund for water, taxes, waste removal and/or any utilities which are not separately metered or otherwise directly charged to individual Owners. However, the Board may discontinue such payments at any time, in which case each Owner shall be responsible for direct payment of such Owner's share of such expenses as determined by the Board. The Board reserves the right to levy additional assessments against any Owner, to reimburse it for excessive use by such Owner of any utility service, the expense of which is charged to the maintenance fund.

Section 6.5. Vouchers. All vouchers for payment of expenditures by the Board shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such vouchers shall be signed by the Treasurer and countersigned by the President of the Board.

ARTICLE VII

Assessments - Maintenance Fund

Section 7.1. Preparation of Estimated Budget. Each year on or before December 1, the Board shall estimate the total amount necessary to pay the cost of wages, payroll taxes, materials, insurance, services, management fees, supplies, maintenance, repairs, landscaping, fuel, power and other common utilities and Common Areas and Facilities, which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary for a replacement reserve fund, as set forth below, and

shall, on or before December 15, notify each Owner in writing as to the amount of such estimate, with reasonable itemization thereof. Said "estimated cash requirement" shall be established using generally accepted accounting principles and shall be assessed to the Owners according to each Owner's Percentage Interest as set forth in Exhibit B of the Declaration. On or before January 1 of the ensuing year and month thereafter, each Owner shall be obligated to pay to the Board, or as it may direct, one-twelfth(1/12) of the assessment made pursuant to this section; provided, however, the Board may allow quarterly payments. On or before the date of the Annual Meeting of each calendar year the Board shall supply to all Owners an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures, plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Owner's Percentage Interest to the installments due from Owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each Owner's Percentage Interest and shall be payable within ten (10) days of receipt of notice of such shortage.

Section 7.2. Replacements Reserve Fund and Additional Assessments. An adequate replacement reserve fund shall be established for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for such purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas 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, and selected from time to time by the Board. If said estimated cash requirement and replacement reserve fund proves inadequate for any reason, including nonpayment of any Owner's assessment, the Board may, at any time, levy a further assessment, which shall be assessed to the Owners according to each Owner's Percentage Interest. The Board shall serve notice of such further assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the quarterly maintenance payment which is due no more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted quarterly amount.

Section 7.3. Budget for First Year. When the first Board hereunder takes office, it shall determine the "estimated cash requirement", as hereinabove defined, for the period commencing thirty (30) days after it takes office and ending on December 31 of such calendar year. Assessments shall be levied against the Owners during said period as provided in Section 1 of this Article.

Section 7.4. Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and, in the absence of any annual estimate or adjusted estimate, the owner shall continue to pay the quarterly maintenance charge at the then existing rate established for the previous period until the quarterly

maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

Section 7.5. Status of Collected Funds. All funds collected hereunder shall be held and expended for the purposes designated herein and (except for such special assessments as may be levied hereunder against less than all the Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Owners in accordance with the Owner's Percentage Interest.

Section 7.6. Remedies for Failure to Pay Assessments. Each Owner shall be personally liable for all assessments made hereunder or pursuant to the Declaration and conveyance of the Condominium Unit by an Owner shall not extinguish the personal debt for all such assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall default in the payment of any charge or assessment imposed by the Association or Board as herein provided, the Board shall have the authority, for and on behalf of itself and the Association and as the representative of all Owners, to exercise and enforce any and all rights and remedies as may be provided in the Act, these By-Laws, the Declaration or otherwise available at law or in equity for the collection of all such unpaid charges or assessments. Upon the failure of any Owner to pay any delinquent assessment within fifteen (15) days after written notice, the Board shall have the right to accelerate the entire unpaid balance of all assessments for such Owner. In addition, if an Owner is in default in the monthly payments of the aforesaid charges or assessments after such notice, the Board may bring suit for and on behalf of itself and as representative of all Owners, to enforce collection thereof or to foreclose the lien therefor as hereinafter provided; and there shall be added to the amount due the costs of said suit, together with legal interest and reasonable attorneys' fees. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest costs and fees as above provided, shall be and become a lien or charge against the Condominium Unit of the Owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate as provided under the Act. In any such foreclosure, the Owner of the Condominium Unit involved shall pay a reasonable rental for the Condominium Unit. Unless otherwise provided in the Declaration, the members of the Board and its successors in office, acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Said lien shall take effect and be in force when and as provided in the Act; provided, however, notwithstanding any other provision of the Declaration or By-Laws, any first mortgage owned or held by or on behalf of any bank, insurance company, savings and loan association or other mortgagee shall be prior to any lien for Common Expenses, and where the mortgagee of a first mortgage of record or other purchaser of a Condominium Unit obtains title to the Condominium Unit as a result of foreclosure of the first mortgage, such acquirer of title, its successors and assigns shall not be liable for the shares of Common Expenses chargeable to such Condominium Unit which became due prior to the acquisition of title to such Condominium Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be Common Expenses collectible from all of the Co-owners including such acquirer, its successors and assigns.

ARTICLE VIII

Execution of Instruments

Section 8.1. Checks, Drafts, Etc. All checks, drafts, bills of exchange or other orders for the payment of money, obligations, notes or other evidences of indebtedness of the Association shall be signed or endorsed by such officer or officers, employee or employees of the Association as shall from time to time be designated by the Board.

Section 8.2. Contracts. All contracts, agreements, deeds, conveyances, mortgages and similar instruments authorized by the Board of Directors shall be signed, unless otherwise directed by the Board or required by law, by the President and attested by the Secretary.

ARTICLE IX

Amendments

Section 9.1. Amendments. Subject to any contrary, overriding or superseding provisions set forth herein or in the Declaration, these By-Laws may be amended in the same manner, and subject to the same limitations and requirements, as amendments to the Declaration, as set forth in Article IX of the Declaration, including the rights of Declarant to make amendments. Amendments to these By-Laws shall be considered as amendments of the Declaration and shall be recorded in the office of the Recorder of Marion County, Indiana, as required by the Declaration and the Act. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration or these By-Laws prior to the end of the Development Period without the consent and approval of Declarant.

ARTICLE X

The Act

The provisions of the Act, as amended, applicable to any of the matters not herein specifically covered by these By-Laws, are hereby incorporated by reference in and made a part of these By-Laws.