

74

Cross Reference Instrument
2000-0138478

MARTHA A. WOMACKS
MARION COUNTY AUDITOR
339280 SEP-18
DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
GREENTREE AT FT. BENJAMIN HARRISON HORIZONTAL PROPERTY REGIME

This Declaration (hereinafter referred to as "the Declaration") or "this Declaration"), made this 16th day of August, 2000, by GreenTree at Ft. Benjamin Harrison, LLC, an Indiana limited liability company (hereinafter referred to as "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of a certain parcel of land in Marion County, Indiana, more particularly described in "Exhibit A" attached hereto and by this reference, made a part hereof (hereinafter referred to as the "Real Estate"); and

WHEREAS, Declarant is also owner of certain parcels of land located adjacent to the Real Estate, more particularly described in "Exhibit B" attached hereto and made a part hereof (collectively the "Adjacent Real Estate"), all or a part of which Declarant anticipates may be added to the Real Estate by portions to be designated by Declarant from time to time (the Real Estate and the Adjacent Real Estate being hereafter collectively referred to as the "Project"); and

WHEREAS, Declarant desires and intends to develop a residential community designed to meet the specific life needs of seniors, to be known as GreenTree at Ft. Benjamin Harrison ("GreenTree"). GreenTree is not a nursing home, but a campus style environment for seniors in which various levels of service or assistance are provided to residents based upon each resident's needs and desires. GreenTree's resident profile is to include ambulatory individuals who are mentally alert but may benefit from or are comforted by the availability of services. The goal of GreenTree is to permit services to be "layered in" for residents as each resident's individual needs increase, allowing the residents of GreenTree to gracefully "age in place"; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common facilities therein contained, and, to this end, Declarant desires to subject the Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each owner of all or part thereof; and

Inst # 2000-0138479
MARION COUNTY RECORDER
JAN 15, 00 PAGE 17

DEPT. OF METROPOLITAN DEVELOPMENT
DATE 9-1-00
PER [Signature]
ADMINISTRATOR

FILED
SEP 01 2000
LAWRENCE TOWNSHIP
ASSESSOR

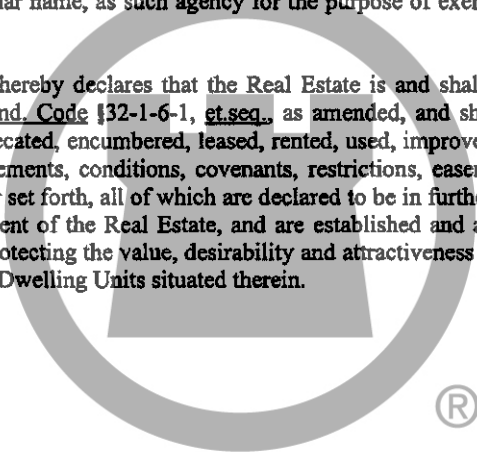
WHEREAS, Declarant intends to subject the Real Estate to the Indiana Horizontal Property Law and create a horizontal property regime (the "Regime") upon the Real Estate and therefore, as portions of the Adjacent Real Estate are developed from time to time, such portions will be added. All Owners of Dwelling Units as defined herein shall hold an undivided vested interest in the Common Properties and facilities on the Real Estate; and

WHEREAS, Declarant intends that, as portions of the Adjacent Real Estate are developed from time to time, they will be added to the Regime by an amendment to this Declaration, so that the Regime is to be expandable as defined in the Indiana Horizontal Property Law; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering any common facilities located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and distributing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the Owners of the Real Estate, and all parts thereof; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name of GreenTree at Ft. Benjamin Harrison Homeowners Association, Inc., or a similar name, as such agency for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that the Real Estate is and shall be a horizontal property regime pursuant to Ind. Code §32-1-6-1, et seq. as amended, and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Dwelling Units situated therein.



CHICAGO TITLE

ARTICLE I
Definitions

Section 1. The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

- a) "Act" shall mean and refer to the Indiana Not-For-Profit Corporation Act of 1971, as amended;
- b) "Additional Sections" shall mean portions of the Adjacent Real Estate that may from time to time be annexed to the Real Estate and included within the Regime as provided in Article VIII, Section 2;
- c) "Amendment" means any amendment to this Declaration by which all or any portion of the Adjacent Real Estate shall be included within the Regime;
- d) "Applicable Date" shall mean and refer to the date upon which a Percentage Vote applicable to the Dwelling Units shall remove the Initial Board of Directors.
- e) "Architectural Review Board" shall mean and refer to that committee or entity established pursuant to Article VIII, Section 1 of this Declaration for the purposes herein stated;
- f) "Articles" shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time;
- g) "Board" or "Board of Directors" shall mean and refer to the governing body of the Corporation elected, selected or appointed as provided for in the Articles, By-Laws and this Declaration;
- g) "Building" shall mean and refer to a structure having more than one

“Dwelling Unit”;

- h) **“By-Laws” shall mean and refer to the code of By-Laws of the Corporation, attached hereto, made a part hereof and marked “Exhibit C”, as the same may be amended from time to time;**
- i) **“Common Expenses” shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Properties, and all sums lawfully assessed against the Owners by the Corporation, and all sums, costs and expenses declared by this Declaration to be Common Expenses;**
- j) **“Common Properties” shall mean both General Common Properties and Limited Common Properties;**
- k) **“Corporation” shall mean and refer to GreenTree at Ft. Benjamin Harrison Homeowners Association, Inc., an Indiana not-for-profit corporation which Declarant has caused to be incorporated under said name or similar name, its successors and assigns;**
- l) **“Declarant” shall mean and refer to GreenTree at Ft. Benjamin Harrison, 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 the Declarant hereunder, and any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage exercised by Declarant;**
- m) **“Dwelling Unit” shall mean and refer to any individual residential unit in any building, structure or portion thereof situated on the Real Estate and within the Regime, designed and intended for use and occupancy as a residence by one (1) single family as designated by Declarant by its deed of same to another Person;**
- n) **“Formula” shall mean the method by which the Percentage Interest in Common Properties applicable to each Dwelling Unit as set forth in**

Article XVIII, Section 2(b);

- o) "General Common Properties" shall mean those Common Properties, the use and enjoyment of which are not limited to a particular Dwelling Unit or Units, as further defined and described in Article II, Section 4;
- p) "HPL" or "Horizontal Property Law" shall mean the provisions of the Indiana Horizontal Property Law as of the date of this Declaration, and as applicable as amended from time to time;
- q) "Limited Common Properties" shall mean those Common Properties, the use and enjoyment of which are limited to a particular Dwelling Unit or Units, as further described and defined in Article II, Section 5;
- r) "Mortgagee" shall mean and refer to the holder of a recorded first mortgage lien on a Dwelling Unit;
- s) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Dwelling Unit, but in any event shall not include or mean to refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Dwelling Unit, but upon so acquiring title to any Dwelling Unit a mortgagee or tenant shall be an Owner;
- t) "Percentage Vote" means that percentage of the total Vote accruing to all Dwelling Units which is applicable to each particular Dwelling Unit and exercisable by the Owner thereof as described in Article IV, Section 2, and in the By-Laws;
- u) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Properties appertaining to each Dwelling Unit, as determined in accordance with Article II, Section 6;
- v) "Person" shall mean and refer to an individual, firm, corporation, limited liability company, partnership, association, trust, or other legal entity, or

any combination thereof;

- w) "Plans" shall mean floor and building plans of the Buildings and the Dwelling Units, the site plan, the survey and elevation plans of the Real Estate and the Buildings, duly certified by a registered architect or license professional engineer, attached as exhibits to this Declaration of any Amendment, that pertain to any Real Estate made a part of the Regime;
- x) "Restrictions" shall mean and refer to the agreements, covenants, conditions, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time; and
- y) "Single family" shall include adults over the age of fifty-five (55) years, the caretakers of such adults and any disabled dependent of such adult.

ARTICLE II

Declaration: Description of Dwelling Units: Boundaries:

General and Limited Common Properties:

Easement to Corporation: Encroachment Easement

Section 1. Declaration. Declarant hereby expressly declares that the Real Estate shall be a horizontal property regime pursuant to Ind. Code §32-1-6-1 et.seq., as amended, shall be held, transferred, and occupied subject to the Restrictions. Subsequent owners of contract purchasers of any Dwelling Unit subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Dwelling Unit, or (ii) by the act of occupancy of any Dwelling Unit, shall accept such deed or execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner or contract purchaser acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owner of each of the Dwelling Units affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

Section 2. Description of Dwelling Units. The Real Estate contains eight (8) Dwelling Units, as shown on the Plans recorded at the time of recordation hereof. Such Dwelling Units are identified and referred to in the Plans and herein as Dwelling Units numbered 8122, 8124, 8126, 8128, 8133, 8135, 8137 and 8139. The Dwelling Units in the various portions of the Adjacent Real Estate, if annexed, shall be identified numerically, the exact numbers of the Dwelling Units to be identified and referred to in the Plans filed with each Amendment. The legal description of each Dwelling Unit shall consist of the numeric designation of such Dwelling Unit, and reference hereto and to any relevant Amendments then of record. Each Dwelling Unit shall consist of all space within the boundaries thereof (as hereinafter described), and all fixtures, facilities, utilities, equipment, appliances and structural components within such boundaries that are designed or intended solely and exclusively for enjoyment, use and benefit of such Dwelling Unit and the Owner thereof. Not included in any Dwelling Unit are those fixtures, facilities, utilities, equipment, appliances and structural components designed or intended for enjoyment, use, benefit, support or safety of more than one Dwelling Unit, or that may be necessary for the same, or that are specifically defined or described herein as Common Areas, or that are normally intended for common use; provided, however, that all fixtures, equipment and appliances designed or intended solely and exclusively for enjoyment, use and benefit of a Dwelling Unit shall constitute a part of such Dwelling Unit, even if the same are located wholly or partly outside the boundaries of such Dwelling Unit.

Section 3. Boundaries. The boundaries of each Dwelling Unit shall be as shown on the Plans. The vertical boundaries shall run from the interior, unfinished surfaces of the lowermost floors to the interior, unfinished surfaces of the uppermost ceilings, and the horizontal boundaries shall be the interior, unfinished drywall surfaces of the common walls and exterior walls, and the interior, unfinished surfaces of the doors and windows, except that all glass, screens and air conditioning units shall be deemed part of the Dwelling Unit. If any horizontal or vertical boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling of a Dwelling Unit because of inexactness of construction, settling after construction or any other reason, the boundary lines of such Dwelling Unit shall be deemed to be, and treated for purposes of occupancy, possession, maintenance, decoration, use and enjoyment, in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Dwelling Unit in and to such space lying outside the boundary lines of such Dwelling Unit as indicated on the Plans, but within the walls, floors and ceilings of such Dwelling Unit as the same may actually exist.

Section 4. General Common Properties. General Common Properties shall include the following, except to the extent otherwise specifically designated in Section 2, 3 or 5 of this Article II as being within a Dwelling Unit or as Limited Properties:

- a) yards, gardens, open spaces, fences and landscaping (except flowers or other plants not planted by Declarant as provided in Article VII, Section 2(b));
- b) sidewalks;
- c) exterior lighting fixtures, electrical and water service, except where separately metered to a particular Dwelling Unit;
- d) electrical, gas, water, sanitary sewer, telephone and cable television lines, mains, pipes, ducts, conduits, wiring and insulation;
- e) interiors of all structural walls and floors, including all exterior walls and attic space, walls between horizontally adjacent Dwelling Units and floors between vertically adjacent Dwelling Units;
- f) foundations, roofs and exterior wall surfaces of Buildings, and all other structural elements and components of Buildings; and
- g) all other structures, areas and facilities not expressly defined as Limited Properties in Article II, Section 5, or expressly included within Dwelling Units by Article II, Section 2 or 3.

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

- a) entranceways through which access to Dwelling Units is obtained are limited to use of the respective Dwelling Unit(s) served by such entranceways;
- b) patios, balconies, porches, courtyards, and decorative walls and fences, are limited to use of the respective Dwelling Unit(s) to which they are

appurtenant;

- c) driveways, walkways and similar areas used for access to particular individual Dwelling Units are limited to use of the Dwelling Units so served. Each Dwelling Unit shall have the exclusive right to use the parking area located in the driveway area immediately adjacent to such Dwelling Unit, as shown on the Plans.

Section 6. Ownership of Common Properties and Percentage Interest. In connection with and as an inseparable part of ownership of each Dwelling Unit, the Owner thereof shall have an undivided interest in the Common Properties as a tenant in common with all other Owners, such interest to be equal to the Percentage Interest applicable to such Dwelling Unit. The Percentage Interest in the Common Properties applicable to each Dwelling Unit shall be determined in accordance with the Formula. The Percentage Interests at the time of recordation hereof are equal to 12-1/2% for each Dwelling Unit. If any Additional Sections are annexed, as permitted and contemplated by Section VIII, then, upon execution and recordation of the applicable Amendment, the Percentage Interest of each Dwelling Unit that is part of the Regime prior to such annexation shall be recomputed in accordance with the Formula. Such recomputation will have the effect of reducing Percentage Interests in those Common Areas that are part of the Regime prior to such Amendment, so as to allocate Percentage Interests therein to the Dwelling Units added to the Regime by such Amendment. At the same time, such recomputation shall create Percentage Interests, in favor of all Dwelling Units in the Regime immediately following such annexation, in the Common Properties within such Additional Section being annexed. The overall resulting Percentage Interests shall be determined in accordance with the Formula and designated in the applicable Amendment. In any calculation or determination of a Percentage Interest, the figure obtained shall be rounded to the nearest one-thousandth of a percent and shall be so presented for all purposes of conveyance and hereof.

Section 7. Easement to Corporation. Declarant hereby grants a non-exclusive easement in favor of the Corporation for the maintenance of the General Common Properties. Said easement shall permit the Board or its agents to enter onto any Dwelling Unit or Limited Common Property to make emergency repairs or to do other work reasonably necessary for the proper maintenance or operation of the community and to enter onto any Dwelling Unit for the purpose of reconstruction and restoration in the event of casualty. Maintenance shall include but not be limited to maintenance of utilities which serve more than one Dwelling Unit and utilities

owned and utilized by the Corporation.

Section 8. Encroachment Easements. If any portion of the Common Properties encroaches on any Dwelling Unit or any Dwelling Unit encroaches upon the Common Properties or another Dwelling Unit as a result of construction, reconstruction, repairs, shifting, settlement or movement of any portion of the improvements, a valid easement shall be deemed to exist and run to the Corporation or to the Owner of the encroaching Dwelling Unit or improvement for the encroachment and for the maintenance thereof so long as said encroachment exists.

Section 9. Easements to and from Additional Sections. Declarant reserves unto itself, its successors and assigns, for use and benefit of that part of the Adjacent Real Estate not annexed, an easement for access to any and all necessary utility lines, mains and other utility services for any buildings or improvements upon the Adjacent Real Estate, whether or not such buildings or improvements are to be added to the Regime. Declarant, or its successors or assigns, shall be responsible for repairing any damage to any Property arising out of exercise of this easement. The easements reserved in this Section 9 shall be easements running with the land and accruing to the benefit of the Adjacent Real Estate.

ARTICLE III
Dedications

No street on the Real Estate shall be dedicated to Marion County or the City of Indianapolis for the use and benefit of the public, and all such streets shall remain private streets. The act of maintenance of such streets shall be a part of the assessments made pursuant to the terms herein.

ARTICLE IV
Corporation: Membership: Voting: Functions

Section 1. Membership in Corporation. Declarant and each Owner of a Dwelling Unit shall, automatically upon becoming an Owner, be and become a member of the Corporation and shall remain a member until such time as his ownership of a Dwelling Unit ceases, but membership shall terminate when such owner ceases to be an Owner, and will be transferred to the new Owner of his Dwelling Unit; provided, however, that any Person who holds the interest of an Owner in a Dwelling Unit merely as security for the performance of an obligation shall not

be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Corporation.

Section 2. Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:

- a) Class A. Class A members shall be all Owners except Class B members. Each Class A member shall be entitled to a Percentage Vote with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Dwelling Unit, all such Persons shall be members of the Corporation, but all of such persons shall have only the Percentage Vote for such Dwelling Unit, which vote shall be exercised as they among themselves determine, but in no event shall more than the Percentage Vote be cast with respect to any such Dwelling Unit.
- b) Class B. Class B members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Corporation. Class B members shall be entitled to the Percentage Vote applicable to any Dwelling Units made a part of the Regime by Amendment but not yet transferred to a Class A member.

Section 3. Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Properties, to pay taxes assessed against and payable with respect to the Common Properties, to pay any other necessary expenses and costs in connection with the Common Properties, and to perform such other functions as may be designated for it to perform under this Declaration.

ARTICLE V
Board of Directors

Section 1. Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an

Owner, including a person appointed by Declarant as provided in Section 2 of this Article V.

Section 2. Initial Board of Directors. The initial Board of Directors shall have three (3) members and such original directors shall be composed of the persons designated in the Articles, to-wit: R. Max Greenwalt, R. Lynn Greenwalt and Steve Smith (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act, (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reasons or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Person serving on the Initial Board, whether as an original member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Corporation nor an Owner of a Dwelling Unit for any other purpose (unless he is actually the Owner of a Dwelling Unit and thereby a member of the Corporation).

Section 3. Additional Qualifications. Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

Section 4. Term of Office and Vacancy. Subject to the provision of Section 2 of this Article V, one-third (1/3) of the Board of Directors shall be elected at such annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, one-third (1/3) of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one-third (1/3) of the Board of Directors shall be elected for a three (3) year term, one-third (1/3) for a two (2) year term, and one-third (1/3) for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject

to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by Percentage Vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

Section 5. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the Percentage Votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

Section 6. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Properties (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- a) maintenance, repair, replacement and upkeep of the Common Properties (or items deemed Common Properties for purposes of maintenance), not including, however, garage door openers;
- b) snow removal from streets, driveways and a sidewalk entry to each Dwelling Unit only when the snow reaches a depth of two inches (2") or more;
- c) assessment and collection from the Owners of the Owners' respective

share of the Common Expenses;

- d) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- e) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- f) keeping a current, accurate and detailed records of receipts and expenditures affecting the Common Properties and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
- g) procuring and maintaining for the benefit of the Owners, the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable; and
- h) paying taxes assessed against and payable with respect to the Common Properties and paying any other necessary expenses and costs in connection with the Common Properties; and
- i) making available to Owners and Mortgagees, and to holders, insurers or guarantors of any first mortgage, current copies of this Declaration, the By-Laws or other rules concerning the community and the books, records and financial statements of the Corporation. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances; and
- j) making available to any Mortgagee or any holder, insurer or guarantor of a first mortgage, upon request, a copy of the Corporation's audited financial

statement for the immediately preceding fiscal year free of charge to the party making such request.

Section 7. Powers of the Board of Directors. The powers of the Board of Directors set forth herein shall be retained by Declarant. Upon the Applicable Date, Declarant shall continue to retain the powers of the Board of Directors until and unless eighty percent (80%) of the total Percentage Vote shall vote to give the Board of Directors such powers. The powers of the Board of Directors whether retained by Declarant or otherwise, shall be such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- a) to employ a Managing Agent to assist the Board in performing its duties; provided that no employment agreement with the Declarant (or a corporation or other entity affiliated with the Declarant) as Managing Agent or for any other service shall be for more than three (3) years after the Applicable Date and after said date any such agreement shall be subject to termination by the Managing Agent without cause and by Declarant or by the Board as provided herein;
- b) to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
- d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Properties;
- e) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- f) to open and maintain a bank account or accounts in the name of the

Corporation;

- g) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Properties (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners.

Section 8. Limitations on Board Action.

1. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00) without obtaining the prior approval of a majority Percentage Vote of the Owners, except that in the following cases such approval shall not be necessary:

- a) contracts for replacing or restoring portions of the Common Properties damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
- b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
- c) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

2. The Board shall not, without the prior written approval of at least sixty-seven percent (67%) of the Percentage Vote or sixty-seven percent (67%) of the Mortgagees (whose mortgage interests have been made known to the Board of Directors) holding mortgages on Dwelling Units which have at least sixty-seven percent (67%) of the Percentage Vote which are subject to mortgagees:

CHICAGO TITLE

- a) by act or omission abandon, partition, subdivide, encumber, sell or transfer the Common Properties owned by the Corporation (provided, the granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this clause);
- b) by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Buildings or Dwelling Units, the exterior maintenance of Buildings or Dwelling Units, the maintenance of side walls in the Common Properties or common fences, or the upkeep of lawns on the Real Estate;
- c) fail to maintain fire and extended coverage on insurable Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and
- d) the hazard insurance proceeds for losses to any of the Common Properties for other than the repair, replacement or reconstruction of Common Properties.

Section 9. Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a common expense.

Section 10. Non-Liability of Directors. The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 11. Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 12. Bond. The Board of Directors shall provide surety bonds and shall require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and such bond shall specifically include protections for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense. The amount of the bonds shall be based upon the judgment of the Board of Directors and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Corporation or its management agent at any given time during the term of the bond. In no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all units plus reserve funds.

Section 13. Initial Management. The Initial Board has entered, or will hereafter enter,

into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Properties and, in general, perform all of the duties and obligations of the Corporation. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) at any time prior to the expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties, obligations and functions. Notwithstanding anything to the contrary contained in this Declaration, so long as such management agreement remains in effect, and unless at least eighty percent (80%) of the Percentage Vote. Declarant (or its affiliate, as appropriate) shall have, and Declarant hereby reserves to itself (or to its affiliate, as appropriate), the exclusive right to manage the Real Estate and Common Properties and to perform all the functions of the Corporation.

ARTICLE VI
Real Estate Taxes; Utilities

Section 1. Real Estate Taxes. Real estate taxes on each Dwelling Unit, and on any Dwelling Unit or other improvements on each Dwelling Unit, are to be separately assessed and taxed to each Dwelling Unit and shall be paid by the Owner of such Dwelling Unit. Any real estate taxes or other assessments against the Common Properties shall be paid by the Corporation and treated as a Common Expense.

Section 2. Utilities. Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Dwelling Unit. An outside water source will be metered separately for each Owner's private use. Utilities for lawn and shrubbery maintenance on Common Properties shall be separately metered and shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation. Utilities for street lights and the guard gate shall be separately metered and paid as part of the Common Expense, unless otherwise determined by the Corporation.

ARTICLE VII
Maintenance, Repairs and Replacements

Section 1. By Owners. Each Owner shall, at his own expense, be responsible for and shall promptly perform as the need arises, all interior maintenance, repairs, decoration and

replacement of his own Dwelling Unit. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, and conduits or systems enter the Dwelling Unit shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Dwelling Unit which, if neglected, might adversely affect any other Dwelling Unit or any part of the Common Properties. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit.

Section 2. By the Corporation. Maintenance, repairs, replacements and upkeep of the Common Properties shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

In addition to the maintenance of the Common Properties, the Corporation, as part of its duties, and as a part of the Common Expenses, shall provide:

- a) maintenance, repairs, replacement and upkeep of the exteriors of each Dwelling Unit. Such exteriors including, but not limited to, roofs, gutters, doors, windows (excluding glass which shall be considered a part of interior maintenance) and exterior walls shall be considered part of the Common Properties for maintenance only;
- b) for maintenance of the lawns and shrubbery, which shall be considered part of the Common Properties for purposes of maintenance only. Maintenance of lawns shall include but shall not be limited to fertilizing, mowing and replanting when necessary of the grass; and the care, fertilizing, trimming, removal and replacement of shrubbery and trees planted by the Declarant. It shall not include the care and maintenance of shrubs, trees, flowers or other plants which were not planted by Declarant, nor shall it include any area enclosed by a fence appurtenant to any Dwelling Unit.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Properties as it deems necessary.

Notwithstanding any obligation or duty of the Corporation to repair or maintain any of the Common Properties (or items deemed as such for purposes of maintenance), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver or subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Dwelling Unit is subject.

The authorized representative of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Dwelling Unit as may be required in connection with maintenance, repairs or replacements of or to the Common Properties for purposes of maintenance, including, but not limited to, access to any easements reserved by the Declarant on any portion of the Real Estate for such purposes.

ARTICLE VIII
Architectural Control

Section 1. The Architectural Review Board. As a standing committee of the Corporation, there shall be, and hereby is established an Architectural Review Board consisting of three (3) or more Persons as may, from time to time, be provided in the By-Laws. Until the Applicable Date, Declarant shall appoint the members of the Architectural Review Board. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors.

Section 2. Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Real Estate and of improvements thereon in such manner as to reserve and enhance values and to maintain the natural vegetation and topography.

Section 3. Conditions. No improvements, alterations, repairs, change of colors, excavations, changes in grade or their work which in any way alters the exterior of any Dwelling Unit or the improvements located thereon from its natural or improved state existing on the date such Dwelling Unit was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise

expressly provided in this Declaration. No building, fence, wall, Dwelling Unit or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Review Board; provided this restriction shall not be applicable to the original construction of a Dwelling Unit whether such construction occurs before or after the Applicable Date.

Section 4. Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.

ARTICLE IX Assessments

Section 1. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 2. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be subscribed to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority of the Percentage Vote; provided that any increase of more than ten percent (10%) must be approved by a vote of two-thirds (2/3)

of the Percentage Vote voting in person or by proxy; provided further, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the regular Assessments, and all other sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of replacement reserve funds as required by law for capital expenditures and replacement and repair of the Common Properties (or items deemed Common Properties for purposes of maintenance), which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Properties. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Properties (or items deemed Common Properties for maintenance) shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana, selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 3. Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Dwelling Unit, which shall be computed as follows: all Common Expenses except the cost of the master casualty insurance policy provided for in Article XII, Section 1 shall be divided by the number of Dwelling Units in the subdivision to determine the Regular Assessment for each Dwelling Unit. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Dwelling Unit (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Dwelling Unit based upon such annual budget as finally adopted by the Owners. The aggregate amount of the

Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Dwelling Unit shall be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the quarterly installments of the regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay quarterly assessments semi-annually or annually, in advance. At the election and option of the Board, the Regular Assessment may be required to be paid by the Owners in advance in equal monthly installments rather than quarterly installments. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

- a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether quarterly or monthly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
- b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether quarterly or monthly, until the entire amount of such excess has been so credited; provided, however, that if an Owner had paid his Regular Assessment either semi-annually or annually in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on

each separate Dwelling Unit as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by the Date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Dwelling Unit or any interest therein, shall not relieve or release such Owner or his successor as owner of such Dwelling Unit from payment of the Regular Assessment for such Dwelling Unit as finally determined, and such Owner and his successor as owner of such Dwelling Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 2 of Article X hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Quarterly or monthly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the corporation shall be responsible for providing any notice or statements to Owners for the same.

Each Owner shall prepay to the Corporation at the time his Dwelling Unit is conveyed to such Owner an amount equal to thirteen (13) monthly installments of the amount required to pay for the Dwelling Unit Owner's pro rata portion of the master casualty insurance policy based upon the budget for the current fiscal year and the Owner shall maintain such prepayment account at all times. The Corporation shall hold such pre-paid funds in a separate escrow account for the purchase of insurance.

Section 4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Dwelling Unit, prorated in equal shares (herein called "Special Assessment"); provided, that any such assessment shall have the assent of sixty-seven percent (67%) of the Percentage Vote voting in person or by proxy at a meeting duly called for this purpose. Without limiting the generality of the foregoing provisions, Special Assessments

may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

Section 5. Failure of Owner to Pay Assessments.

- a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Properties and items deemed Common Properties for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Properties or by abandonment of the Dwelling Unit belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments when due, the lien for such Assessment on the Owner's Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In

any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover from the Owner of the respective Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments were due, until paid, at a rate equal to the "prime interest rate" then being published by the Wall Street Journal.

- b) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage.

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

Section 6. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. Prior to the Applicable Date, the Initial Board shall have the power to vote on and approve the annual budget

and any Regular Assessment and Special Assessments.

Further, until the Applicable Date, the Regular Assessments are and shall be established as follows:

- a) From the date of the first conveyance of a Dwelling Unit by Declarant to any other Person until the Applicable Date or August 1, 2001:
 - i) the Regular Assessment shall be One Hundred Twenty-five Dollars (\$125.00) per month on each Dwelling Unit owned by someone other than Declarant, pro-rated on a daily basis for any period of time less than a month; and
 - ii) the Regular Assessment shall be twenty-five percent (25%) of the amount of the Regular Assessment set forth in Subparagraph (i) for each Dwelling Unit owned by Declarant until sixty (60) days after completion of such Dwelling Unit at which time the Regular Assessment for that Dwelling Unit shall be raised to the full amount set forth in Subparagraph (i).
- b) After August 1, 2001 (if the Applicable Date has not then occurred) and for each year thereafter until the Applicable Date, the Regular Assessment upon each Dwelling Unit may be increased by the Board by the actual costs incurred by the Corporation or the percentage increases, if any, in the Consumer Price Index between the Index figure for the month of June and the Index figure for the last month of the year preceding the year for which such increase is to be effective, whichever is less. Such increases may be made by the Board annually on, or effective on, January 1 of each year until the Applicable Date. As used herein, "Consumer Price Index" means the "Consumer Price Index for All Urban Consumers, U.S. City Average of all items (CPI-U, reference base of 1967=100.0)" published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the publication of the Consumer Price Index of the U.S. Bureau of Labor Statistics is either discontinued, or revised by changes in the weights

assigned by the 1972-73 Consumer Expenditure Survey to the expenditure groups, in the sample of items priced, in the sample of places where the pricing takes place or in the statistical methods employed in the calculation of the Consumer Price Index, then, and in any of such event, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical selected by the corporation shall be substituted for said Consumer Price Index and used for making such computations.

Notwithstanding the foregoing or anything else contained herein, until the Applicable Date (whether before or after August 1, 2001), the Regular Assessment to be paid by Declarant for each Dwelling Unit owned by Declarant shall be twenty-five percent (25%) of the Regular Assessment for owners other than Declarant until sixty (60) days after completion of a Dwelling Unit at which time the Regular Assessment for that Dwelling Unit shall be raised to one hundred percent (100%) of the Regular Assessment.

ARTICLE X Mortgages

Section 1. Notice to Corporation. Any Owner who places a first or successive mortgage lien upon his Dwelling Unit, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

Section 2. Notice of Certain Actions or Conditions. The Corporation shall, upon request of a Mortgagee (or insurer or guarantor) who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee (or insurer or guarantor) with written

notice of:

- a) any condemnation loss or any casualty loss which affects a material portion of the community or any Dwelling Unit on which there is a first mortgage;
- b) any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days;
- c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation; and
- d) any proposed action which would require the consent or approval of Mortgagees.

Section 3. Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Dwelling Unit, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessment or Special Assessments or other charges against the Dwelling Unit, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Dwelling Unit shall not be liable for nor shall the Dwelling Unit conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article IX hereof.

Section 4. Unpaid Taxes and Insurance. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which have or may become a lien against any Common Properties (excluding items deemed Common Properties for maintenance only) and may pay taxes and overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for any Common Properties (excluding items deemed Common Properties for maintenance only), and the Mortgagees asking such payments shall be owed immediate reimbursement therefor by the Corporation.

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ARTICLE XI
Insurance

Section 1. Casualty Insurance. The Corporation shall purchase a master casualty insurance policy with an "agreed amount and inflation guard endorsement" and a "blanket building endorsement" affording fire and extended coverage insurance insuring each Dwelling Unit in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the Dwelling Unit, excluding all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by an Owner and excluding any personal property owned by any Owner whether located on any Dwelling Unit or elsewhere. If the Board of Directors can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage. The Board of Directors 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 Mortgagee of each Owner.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Dwelling Unit resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than one hundred fifty percent (150%) of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or disbursed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such Master casualty insurance policy, and "all risk" coverage if obtained, shall (to the

extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its 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 Board of Directors 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, 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 Corporation does not elect to restore.

Section 2. Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time; provided, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agent or employees of any of the foregoing with respect to the Real Estate, all Owners of Dwelling Units and all other persons entitled to occupy any Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

Section 3. Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation 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 Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

Section 4. General Provisions. The premiums for all insurance herein described shall be paid by the Corporation as part of the Common Expenses. The Corporation shall select the provider of all insurance described herein. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, 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 Corporation who is required to send notices of meetings of the Corporation. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the mortgagee of each Dwelling Unit.

The Corporation shall determine the share of any premiums of insurance attributable to each Owner, and shall provide written notice with such portion of premium to each Owner. Each Owner shall be responsible for payment of such premiums on terms to be determined by the Board and such premiums shall be enforceable by the Corporation as set forth in Article X, Section 5 herein.

In no event shall any distribution of insurance proceeds for damage to Dwelling Unit or Common Properties be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy or the Board has notice of Mortgagee as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same restriction on distribution shall apply to the distribution of any condemnation awards in connection with any taking of any of the Common Properties. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds in excess of amounts needed to repair damage or pay off any first mortgage or condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses or operation.

Section 5. Insurance by Owners. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Dwelling Unit, the contents of his Dwelling

Unit, his personal property stored anywhere on the Real Estate, and for his 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 Corporation.

ARTICLE XII

Casualty and Restoration; Condemnation; Termination

Section 1. Casualty and Restoration. In the event of damage to or destruction of the structure or exterior of any Building or Dwelling Unit due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Corporation 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 no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Building or Dwelling Unit so damaged or destroyed for the costs thereof in excess of insurance proceeds received, if any shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Building so damaged or destroyed as to near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

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

Encroachments upon any Dwelling Unit which may be created as a result of such reconstruction or repair of any Building shall not constitute a claim or basis of a proceeding or

action for the Owner upon whose Dwelling Unit such encroachment exists, provided that such reconstruction was either substantially in accordance with the original plans and specifications or as the Building was originally constructed.

Section 2. Total or Partial Condemnation. In the event of the condemnation of all or any part of any Building or Dwelling Unit, the Board is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Properties, Buildings or Dwelling Units. For the purpose of such negotiation and/or of contest of such award to the Board as to Buildings and Dwelling Units, the Board is hereby declared to be the agent and attorney-in-fact of any Owner affected by the condemnation. This appointment of the Board shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any Owner from asserting any rights or claims to compensation which cannot be legally asserted by the Board.

Awards for the taking of all or part of a Building or Dwelling Unit shall be collected by the Board and distributed to the affected Owners. To the extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among Owners affected. In the event that an Owner does not agree with the distribution of an award, said Owner shall be entitled to have the dispute settled by arbitration. The protesting Owner shall appoint one (1) arbitrator, the Board acting as agent for all other affected Owners shall appoint one (1) arbitrator and the two (2) appointed arbitrators shall appoint a third arbitrator. A majority decision of the arbitrators shall be binding on all Owners and shall be enforceable.

Section 3. Termination. In the event of condemnation of two-thirds (2/3) or more of the Dwelling Units in the subdivision, the remaining Owners may, by a majority vote terminate this Declaration and dissolve the Corporation, provided, however, that the restrictions set forth in the subdivision Plat and in Article XIII shall remain in full force and effect in accordance with the terms of the Plat and Article XVII of this Declaration.

ARTICLE XIII ®
Restrictions, Covenants and Regulations

Section 1. Restrictions on Use. The following covenants and restrictions on the use and enjoyment of the Dwelling Units and Common Properties shall be in addition to any other covenants or restrictions contained herein and in any subdivision plat of any part of the real

Estate heretofore or hereafter recorded, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- a) All Dwelling Units shall be used exclusively for residential purposes as contemplated in the recitals of these Declarations and as "single family" "housing for older persons" intended for persons aged fifty-five (55) years and older as specified by federal and Indiana law.. The term "single family" shall include adults over the age of fifty-five (55) years, the caretakers of such adults and any disabled dependent of such adult. Owners may have other visitors on the Real Estate but the visits of such visitors shall be limited to two (2) weeks in duration.
- b) Nothing shall be done or kept in any Dwelling Unit, or on the Common Properties which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common Properties. No Owner shall permit anything to be done or kept in his Dwelling Unit or on any of the Common Properties which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Properties, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit.
- d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or place on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or things shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior

consent of the Architectural Review Board.

- e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or any of the Common Properties, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an owner shall be fully liable for any injury or damage to persons or property, including the Common Properties, caused by his pet. Further, the Owner of any pet shall be responsible for cleaning and removing any feces of such pet from any and all Dwelling Units, and Common Properties. The tethering of pets in any area outside an Owner's Dwelling Unit does not constitute "attended". Each pet shall be inoculated against rabies by a qualified and licensed veterinarian. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time including, but not limited to, a requirement that any Owner desiring to bring or maintain a pet on the Real Estate shall deposit with the Board a security deposit in an amount to be determined by the Board to cover any damage that may be caused by such pet to the Common Properties. Any such security deposit shall be returned to the Owner when the pet is permanently removed from the Real Estate, except to the extent said deposit has been used or is needed to repair damage caused by such pet. Any requirement for the depositing of such security deposit shall not be deemed to release or in any way limit an Owner's responsibility and liability for injury and damage caused by his pets. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Real Estate within ten (10) days after written notice from the Board to the respective Owner to do so.
- f) No Dwelling Unit shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the community developed or to be developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of

Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.

- g) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from any public street.
- h) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate. However, this provision shall not restrict the use of any Dwelling Unit for private religious and social activities.
- i) No "for sale", "for rent" or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Real Estate or any Dwelling Unit without the prior consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Real Estate in connection with any unsold or unoccupied Dwelling Units and nothing contained herein shall be construed or interpreted to affect or restrict the activities of Declarant in the marketing, advertising or sale of Dwelling Units as a part of the development of this community.
- j) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Properties or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Properties.
- k) No boats, campers, trailers of any kind, buses, mobile homes, trucks, motorcycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or

stored anywhere within the Real Estate; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage. No repair work shall be done on the Real Estate on any vehicles, including passenger vehicles.

- l) Each Owner shall keep his Dwelling Unit in good order, condition and repair and free of debris in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Dwelling Unit shall fail to so maintain his Dwelling Unit, the Corporation, after notice to the Owner and approval by two-thirds (2/3) vote of the Percentage Vote, shall have the right to enter upon said Dwelling Unit to correct, repair, maintain and restore the Dwelling Unit. All costs incurred by the Corporation related to such correction, repair, maintenance or restoration shall be and constitute a Special Assessment against such Dwelling Unit, payable by the Owner upon demand by the Corporation.
- m) All garbage, trash and refuse shall be stored in appropriate containers inside the Dwelling Units (including garages) and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collection as are designated by the Board.
- n) No swimming pools, in-ground or above-ground, nor outdoor hot tubs or jacuzzis shall be permitted on the Real Estate.
- o) Nothing shall be placed within any fenced area appurtenant to a Dwelling Unit which shall be taller than the height of said fence without approval from the Board.
- p) Common Properties shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

- q) No additional buildings or other improvements shall be erected other than the Buildings designated herein and shown on the Plans.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including but not limited to any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Applicable Date, the right to use and maintain the Common Properties and any Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction and sale of Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. Declarant shall further have all such rights during the construction of any Dwelling Unit, Building or appurtenance to any Dwelling Unit or Building, or any portion of the infrastructure and related development of the community. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Properties, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

Section 2. Transfer - Right of First Refusal. Notwithstanding anything to the contrary contained in any agreement to purchase or sell any Dwelling Unit, if an Owner of a Dwelling Unit shall desire to sell such Dwelling Unit or any part thereof or interest therein at any time or from time to time, Owner shall so notify Declarant, which shall constitute an offer on the part of the Owner to sell and convey the Dwelling Unit, or such part thereof or interest therein, to Declarant on the terms and conditions set forth below. Declarant then shall have a period of thirty (30) days after receipt of such notice in which to notify Owner of Declarant's election to purchase the Dwelling Unit, or such part thereof or interest therein, on the terms and conditions as are set forth below, if Declarant desires to do so.

- a) If Declarant elects to exercise this right of first refusal to purchase the Dwelling Unit, the terms and conditions of such purchase shall be as follows:
- i) The purchase price shall be the Purchase Price for Owner's original purchase of the Dwelling Unit until such time as all

of the residential units on the Real Estate as per the plan have been constructed, sold and closed (the "ROFR Price Date"). In the event that such Owner shall object to the amount of the purchase price, Declarant shall have the option to either:

- A) waive its election to purchase;
 - B) elect to fix the purchase price by the average of three (3) appraisers conducted by three (3) Indiana Certified General Appraisers. One appraiser shall be selected by Declarant, one appraiser shall be selected by Owner and the third appraiser shall be selected by the first two appraisers. The average of the appraisals shall be binding on all parties, with the parties sharing equally the costs of such appraisals; or
 - C) In the event Declarant shall waive its election to purchase, Declarant shall advise Owner in writing of such waiver of its right to purchase, and Owner shall have the right to sell the Dwelling Unit to a third party on any terms and conditions that do not conflict with this Declaration.
- ii) After the ROFR Price Date, the Owner shall present a written offer, including a purchase price, to Declarant. In the event said purchase price is unacceptable to Declarant and cannot be successfully negotiated between the parties, Declarant shall advise owner in writing of its intent not to exercise the right of first refusal, and Owner shall have the right to sell the Dwelling Unit to a third party on any terms and conditions that do not conflict with this Declaration of

Covenants, Conditions and Restrictions.

- iii) If Declarant exercises its right of first refusal under paragraph i) or ii) above, the closing shall take place within forty-five (45) days of the exercise.
- iv) Costs of the closing under ROFR shall be borne as follows:
 - A) Declarant shall pay the premium for a mortgagees policy of title insurance, Declarant's recording fees, one-half (1/2) of the closing fee, any inspection fee if an inspection is required by Declarant and the next installment of real estate taxes if such taxes are due and payable more than ninety (90) days after the closing.
 - B) Owner shall pay the premium for an Owner's policy of title insurance, deed preparation fee, Owner's document recording fees, one-half (1/2) of the closing fee, and the next installment of real estate taxes if such taxes are due and payable within ninety (90) days after closing.
- v) Owner's obligations, pursuant to this Section 2 of Article XIV, shall survive Owner's closing on the purchase of any Dwelling Unit. Further, any third party who purchases from Owner, shall be obligated to perform pursuant to this Declaration and to any provisions of the Contract that survives the closing on any Dwelling Unit. ®

CHICAGO TITLE

ARTICLE XIV
Amendment of Declaration

Section 1. Generally. 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 any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the Percentage Vote.
- c) **Meeting.** 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.** Except as otherwise provided herein, any proposed amendment to this Declaration must be approved during the first twenty (20) years by not less than ninety percent (90%) of the Percentage Vote and thereafter by seventy-five percent (75%) of the Percentage Vote. The instrument of amendment must be signed by such Owners and recorded. In the event any Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.
- e) **Amendments.** No amendment hereto shall be adopted that changes: ®
 - i) The Percentage Interest with respect to any Dwelling Unit or the share of an Owner's liability for Common Expenses, except as otherwise provided herein with regard to annexation;

- 1
- ii) The provisions of Article XII, Section 1 with respect to reconstruction or repair in the event of fire or casualty, without approval of a two-thirds (2/3) majority of the Percentage Vote and unanimous approval of all Mortgagees whose mortgage interests have been made known to the Board in accordance with the provisions of the By-Laws;
 - iii) The provisions of Article XVIII with regard to expansion, except by Declarant in the manner provided therein, so long as the Regime is still subject to expansion;
 - iv) The provisions of Article II, Article IX, Article XIII, Article XV, Article XVIII, and Article XIX without Declarant's consent so long as the Regime is still subject to expansion; or
 - v) Any provision hereof that would be deemed to be of a material nature by FNMA under any current or subsequent relevant guidelines that FNMA may issue, without approval of a two-thirds (2/3) majority of the Percentage Vote and approval of Mortgagees having mortgages on at least two-thirds (2/3) of the mortgaged Dwelling Units.

Any Mortgagee that duly has been notified of the nature of any proposed amendment shall be deemed to have approved the same if such Mortgagee or a representative thereof fails to appear at the meeting at such amendment is to be considered. If a proposed amendment is one permitted by this Section and is deemed by the Board to be one that is not of a material nature, the Board shall notify all Mortgagees whose interests have been made known to the Board of the nature of such proposed amendment, and such amendment conclusively shall be deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notice is mailed, and if such notice advises the Mortgagees of the time limitations contained in this sentence.

- f) Recordation. Each amendment hereto shall be executed only by Declarant in any case where Declarant has the right to amend this Declaration without any further consent or approval, and otherwise by the President or a Vice-President, and the Secretary or an Assistant Secretary, of the Association, provided that any amendment requiring Declarant's consent shall contain such consent. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded. Amendments dealing with Additional Sections and reassignment of Percentage Interests are not subject to the conditions of this Section and may be recorded by Declarant at any time without any other party's notice or consent.

Section 2. Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements, or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make or consent to any amendments described in this Section 2 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

CHICAGO TITLE

ARTICLE XV
Acceptance and Ratification

All present and future Owners, Mortgagees, tenants and occupants of the Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules and regulations as adopted by the Board of Directors, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XVI
Negligence

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Dwelling Unit of its appurtenances or of the Common Properties.

ARTICLE XVII
Benefit and Enforcement

This Declaration and the Restrictions shall run with and bind the Real Estate for a term commencing on the date this Declaration or any Amendment is recorded in the Office of the Recorder of Marion County, Indiana and expiring August 1, 2010, after which time they shall be automatically extended for successive periods of ten (10) years each unless by vote of a majority

of the then Percentage Vote it is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same.

In the event of a violation, or threatened violation, of any of the covenants, conditions or restrictions set forth in this Declaration, Declarant (so long as Declarant remains an owner of any part of the Real Estate), the Board, or any Owner shall have the right to enforce the covenants, conditions and restrictions contained herein and to pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof. The failure or delay at any time of Declarant, the Corporation, the Owners, or any other Person entitled to enforce any of the same shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

ARTICLE XVIII

Expansion

Section 1. Adjacent Real Estate. Adjacent Real Estate may be brought into the Regime by the Declarant and made subject to this Declaration of Covenants, Conditions and Restrictions pursuant to the terms of this Declaration at any time.

Section 2. Expansion. The provisions of this Article XVIII, Section 2 shall govern expansion of the Regime, and allocation and reallocation of Percentage Interests and Percentage Votes.

- a) Expansion by Sections. Declarant anticipates that it may from time to time construct additional Dwelling Units on various portions of the Adjacent Real Estate, for addition to the Regime in the manner hereinafter set forth. The general plan of development shall be consistent with the density and plan of development of the Dwelling Units to be constructed on the Real Estate. The maximum number of Dwelling Units to be contained in the Regime is twenty-three (23). Additional Sections shall not be added by Declarant at any time after the expiration of ten (10) years

1

from the date hereof, nor shall Declarant add any further Additional Sections if more than five (5) years have elapsed since the most recent prior Additional Section was added to the Regime. At any time, and from time to time, prior to expiration of such ten (10) year period, Declarant, at its option, may cause all or any part of the Adjacent Real Estate to be added and annexed to the Regime, subject to the following conditions:

- i) An Additional Section may not be annexed unless the Dwelling Units to be constructed in such Additional Section have been substantially completed, and unless the Plans therefor are completed, certified by a licensed professional engineer or registered architect as fully and accurately depicting the layout, location and dimensions of the Dwelling Units, and recorded along with an Amendment conforming to the requirements of paragraph (c) of this Article XVIII, Section 2; and
- ii) The Dwelling Units in any Additional Section shall be constructed with labor and material of comparable quality to the Dwelling Units previously constructed on the Real Estate, although not necessarily of similar design, either as to interior floor plan or exterior structural design. Declarant reserves the right to determine all development standards of each Additional Section other than those particularly set forth in this Article XVIII, Section 2.

Declarant expressly reserves the right not to annex any or all of the Adjacent Real Estate. Upon annexation of each Additional Section to the Regime, each Owner shall acquire a Percentage Interest, as recomputed in accordance with this Section, in the Common Properties in such Additional Section, and thenceforth shall incur and pay its Percentage Interest share of the Common Expenses attendant with such Additional Section, along with the Common Expenses attendant with the Real Estate and all Additional Sections previously added to the Regime.

- b) Percentage Interest. Each Owner shall have a Percentage Interest and Percentage Vote appurtenant to its Dwelling Unit that is equal to the Percentage Interest and Percentage Vote held by all other Owners, and there will be no differentiation based upon the size or value of the Dwelling Units. The Percentage Interest and Percentage Vote appurtenant to each Dwelling Unit at any time shall be 100% divided by the total number of Dwelling Units at that time (the "Formula"). The total shares shall at all times equal 100%, or as close to 100% as mathematically possible, having regard to the equality of shares allocable to each Dwelling Unit and the rounding thereof as required by Article II, Section 6.
- c) Procedures for Amendment. As each Additional Section is developed, Declarant may record an Amendment annexing and adding such Additional Section hereto and making it a part of the Regime. Declarant reserves the right to annex Additional Sections in any manner or order it may choose. Each Amendment shall contain the following:
- i) A description of the portion of the Adjacent Real Estate to be annexed;
 - ii) A description of the Dwelling Units constructed thereon in a manner consistent herewith and with the Act; and
 - iii) The Percentage Interest of each Dwelling Unit after such annexation, computed in accordance with the Formula.
- d) Rights of Owners Affected by Expansion. Each Owner, by acceptance of a deed to a Dwelling Unit, acknowledges, consents and agrees that the following rights and conditions shall be applicable upon recordation of each Amendment:
- i) The Additional Section described in such Amendment shall be governed in all applicable respects by the provisions hereof.

- ii) The Percentage Interest and Percentage Vote applicable to each Dwelling Unit automatically shall be reallocated in accordance with the figure set forth in such Amendment, which reallocation shall be in accordance with the Formula. On recordation of each Amendment, the amount by which the Percentage Interest of an Owner is reduced shall thereupon divest from such Owner and revert to Declarant, its successors and assigns.
- iii) Each deed, mortgage or other instrument affecting a Dwelling Unit shall be deemed to be subject to the limitation that the Percentage Interest appurtenant to such Dwelling Unit shall be, upon recordation of each Amendment, altered in accordance with such Amendment and the Formula.
- iv) The Percentage Interest in the Common Properties shall be deemed to include any additional Common Properties annexed hereto by such Amendment. Each Amendment shall grant and convey to the Owners the appropriate Percentage Interest in the Common Properties added by such Amendment, and each deed, mortgage or other instrument affecting a Dwelling Unit shall be deemed to include and attach to such additional Common Properties.
- v) Recordation of an Amendment shall not alter the amount of the lien for Common Expenses previously assessed to a Dwelling Unit that was part of the Regime prior to such recordation. The lien for the share of Common Expenses from and after such recordation shall be assessed and paid based upon the recomputed Percentage Interest.
- vi) Each Owner shall execute and deliver such documents as are necessary or desirable to accomplish annexation of Additional Sections in accordance with the provisions of

this Section.

- e) Election Not to Expand. If Declarant elects not to annex all or part of the Adjacent Real Estate, as permitted by this Section, Declarant shall file an Amendment which permanently shall remove that portion of the Adjacent Real Estate which Declarant elects not to annex, and such portion thereafter shall not be subject to any possibility of becoming part of the Regime. In addition, any portion of the Adjacent Real Estate for which an Amendment has not been filed within ten (10) years of the date hereof automatically shall be removed from the possibility of becoming part of the Regime. When, because of annexation of all of the Adjacent Real Estate, passage of time or filing of an Amendment under this paragraph (e), the Regime is no longer subject to expansion, the Percentage Interest then in effect shall not be altered unless 100% of the Percentage Vote approves such change and Mortgagees of at least two-thirds (2/3) of the mortgaged Dwelling Units consent to such change.

ARTICLE XIX
Miscellaneous

Section 1. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 2. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Properties or by abandonment of his Dwelling Unit.

Section 3. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the By-Laws and each shall be enforceable to the greatest extent permitted by law.

Section 4. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 5. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

Section 6. Notices. Any notice required or permitted to be sent hereunder or pursuant to the By-Laws shall be sufficient if sent by United States mail, certified or registered, postage prepaid, return receipt requested, to the address shown on the Association's records.

In Witness Whereof, GreenTree at Ft. Benjamin Harrison, LLC, Declarant, has executed this Declaration on the day and year first hereinabove set forth.

GREENTREE AT FT. BENJAMIN HARRISON, LLC

BY: GREENWALT DEVELOPMENT, INC.

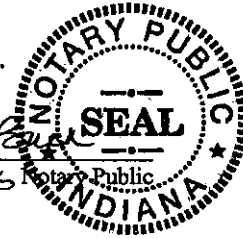
BY: R. Lynn Greenwalt
R. Lynn Greenwalt, President

STATE OF INDIANA)
) SS:
COUNTY OF HANCOCK)

Before me, a Notary Public, in and for said County and State, personally appeared R. Lynn Greenwalt, the President of Greenwalt Development, Inc., a Member of GreenTree at Ft. Benjamin Harrison, LLC, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 16th day of August, 2000.

Barbara L. Buck
Barbara L. Buck, Notary Public



My Commission Expires: 6/21/07
County of Residence: Warrick

greenwaldgreentree at ft. benjamin harrison.declaration of covenants.blb.081400



CHICAGO TITLE

*This instrument prepared by Maria L. Blum, Britzke & Davis
723 N. State Street
Greenfield, IN. 46040*

“EXHIBIT A”

Greentree at Fort Harrison-Phase I
Land Description
(A part of Instrument Number 98-0133191)

A part of the Northwest quarter of Section 7, Township 16 North, Range 5 East, in Marion County, Indiana, being described as follows:

Beginning at the Northeast corner of a tract of land described in Instrument Number 98-0133191 in the Office of the Recorder for Marion County, Indiana, said point also being the Northwest most corner of Drum Road as per the plat for Benjamin Square Section 1, as recorded in Instrument Number 990070075 in said Recorder's Office; thence South 06 degrees 03 minutes 44 seconds East along the Westerly right of way line of said Drum Road a distance of 202.52 feet; thence South 73 degrees 52 minutes 40 seconds West a distance of 123.28 feet; thence South 05 degrees 54 minutes 50 seconds East a distance of 145.75 feet to a point 43.00 feet distant from the Northwesternly line of said Benjamin Square Section 1; thence South 89 degrees 49 minutes 53 seconds West parallel with the Northwesternly line of said Benjamin Square Section 1 a distance of 139.98 feet; thence North 00 degrees 36 minutes 19 seconds West a distance of 196.90 feet; thence North 84 degrees 05 minutes 10 seconds East a distance of 53.06 feet; thence North 23 degrees 20 minutes 15 seconds East a distance of 77.61 feet; thence North 04 degrees 28 minutes 55 seconds West a distance of 95.45 feet to a point on the Southerly right of way line of East 66th Street as described in Instrument Number 96-0160709 in said Recorder's Office; thence North 85 degrees 31 minutes 05 seconds East along said southerly right of way line a distance of 69.39 feet; thence continuing along said right of way line North 85 degrees 03 minutes 33 seconds East a distance of 79.14 feet to the Point of Beginning. Containing 1.34 acres, more or less.



CHICAGO TITLE

“ EXHIBIT B ”

LAND DESCRIPTION
(Instrument # 1998-0133191)

Part of the Northwest Quarter of Section 7 Township 16 North, Range 5 East in Marion County, Indiana, of the Second Principal Meridian, being more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of Section 7, being in the center of Franklin Road; thence North 00 degrees 55 minutes 31 seconds West along the West line of said Section 7 a distance of 950.06 feet; thence North 89 degrees 35 minutes 12 seconds East (passing a Corps of Engineers monument at 75.00 feet, being on the east right-of-way line of Franklin Road as described in Instrument No. 74-77415, and also being the Northwest corner of land conveyed to the City of Lawrence by the United States as described in Instrument No. 74-84359, both recorded in the Office of the Recorder for Marion County) a distance of 82.63 feet to the new East right of way line of Franklin Road per Instrument No. 96-0160709 in the said Office of the Recorder; thence with the new East right-of-way line of Franklin Road as follows: North 00 degrees 39 minutes 35 seconds West a distance of 863.44 feet; thence North 00 degrees 44 minutes 37 seconds East a distance of 232.92 feet; thence North 03 degrees 56 minutes 21 seconds East a distance of 78.22 feet to the Point of Beginning; thence continuing North 03 degrees 56 minutes 21 seconds East 182.34 feet; thence North 08 degrees 28 minutes 22 seconds East 146.32 feet; thence North 12 degrees 30 minutes 55 seconds East 54.05 feet to a point on the new South right-of-way line of East 56th Street per said Instrument No. 96-0160709, thence leaving said new right-of-way line for Franklin Road and with said new South right-of-line of East 56th Street as follows; North 87 degrees 40 minutes 14 seconds East 402.82 feet; thence North 85 degrees 31 minutes 05 seconds East 296.83 feet; thence North 85 degrees 03 minutes 33 seconds East 79.14 feet; thence leaving said new right-of-way line for East 56th Street; thence South 06 degrees 03 minutes 44 seconds East a distance of 255.56 feet; thence South 16 degrees 12 minutes 03 seconds East a distance of 92.92 feet; thence South 00 degrees 10 minutes 07 seconds East a distance of 79.84 feet, thence South 89 degrees 49 minutes 53 seconds West a distance of 876.20 feet to the Point of Beginning. *Containing 7.6 acres more or less.*

CHICAGO TITLE

BY-LAWS
OF
GREENTREE AT FT. BENJAMIN HARRISON HOMEOWNERS ASSOCIATION, INC.

ARTICLE I
IDENTIFICATION AND APPLICABILITY

Section 1.01. Identification and Adoption. These By-Laws are adopted to govern the administration of the GreenTree at Ft. Benjamin Harrison Homeowners Association, Inc. ("Association") created to govern the use of common areas, and partly to govern the use of Dwelling Units, in a condominium community subject to the Indiana Horizontal Property Law, located in the City of Indianapolis, Marion County, Indiana, known as GreenTree at Ft. Benjamin Harrison. The Developer and owner of the subdivision is GreenTree at Ft. Benjamin Harrison, LLC ("Developer"), an Indiana limited liability company.

The Articles of Incorporation of the Association are incorporated herein by reference, and all of the covenants, rights, restrictions, and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. The provisions of these By-Laws shall apply to the administration and conduct of the affairs of the Association.

The Declaration of Covenants, Conditions and Restrictions of GreenTree at Ft. Benjamin Harrison Horizontal Property Regime recorded in the Office of the Recorder of Marion County on _____, 2000 as Instrument No. _____ (the "Declaration") are incorporated herein by reference, and all terms used herein are as defined in the Declaration unless otherwise specified herein.

Section 1.02. Individual Application. All of the Dwelling Unit Owners, future owners, mortgagees, tenants, future tenants, or their guests and invitees, and any other person who may use or occupy a Dwelling Unit or any Common Properties in the community, shall be subject to the terms and conditions of all documents affecting such Dwelling Unit and the Common Properties, as well as by the Articles of Incorporation of the Association, these By-Laws, and any Rules and Regulations adopted by the Association.

Section 1.03. Effect Of Becoming An Owner. The Owner of any Dwelling Unit in the Regime, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Dwelling Unit, shall accept such deed and execute such contract subject to the provisions contained in these By-Laws. By acceptance of such deed or execution of such contract the Owner acknowledges the rights and powers of Developer with respect to these By-Laws, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner covenants and agrees and consents to and with Developer and to and with the Owner and subsequent Owners of each of the Dwelling Units affected by these By-Laws to keep, observe, comply with the terms and conditions of these By-Laws.

ARTICLE II
MEETING OF ASSOCIATION

Section 2.01. Meetings. At least annually and at such other times as may be necessary, a meeting of the Dwelling Unit Owners shall be held for the purpose of electing the Board of Directors, approving the Annual Budget, and for such other purposes as may be appropriate or required.

Section 2.02. Annual Meetings. The Annual Meeting of the Dwelling Unit Owners shall be held on the first Monday on or after February 1st in each calendar year or as soon thereafter as is practicable. The Board of Directors may change the date for the Annual Meeting, but it shall give written notice to Owners of any change in the date of the Annual Meeting. At the Annual Meeting the Dwelling Unit Owners shall elect the Board of Directors of the Association in accordance with the provisions of these By-Laws, shall consider the Annual Budget, and shall transact such other business as may properly come before the meeting.

SECTION 2.03. Special Meetings. A Special Meeting of the Dwelling Unit Owners may be called by the President, by request of two (2) Directors, or upon a written request of not less than fifteen percent (15%) of the Dwelling Unit Owners. The request shall be presented to the President or Secretary of the Association and shall state the purposes for which the meeting is to be called and such purposes shall be stated in the notice thereof which is sent to the Dwelling Unit Owners. No business shall be transacted at a Special Meeting except as stated in the notice of the meeting, unless all the Dwelling Unit Owners are present.

Section 2.04. Notice and Place of Meetings. Any meetings of the Dwelling Unit Owners may be held at any suitable place, as may be designated by the Board of Directors. Written notice stating the date, time and place of any meeting, and in the case of a Special Meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each Owner. The notice shall be mailed or delivered to the Dwelling Unit Owners at their address as it appears upon the records of the Association and to any Mortgagee who requests the same in writing at its address as appears on the records of the Association. Attendance at any meeting by a Dwelling Unit Owner or their authorized representative, in person or by proxy, shall constitute waiver of notice of such meeting.

Section 2.05. Voting.

(a) Number of Votes. To facilitate the orderly conduct of the meeting, each Dwelling Unit Owner other than the Developer shall be a Class A member of the Association, and shall be entitled to cast the then current Percentage Vote as determined by the Formula on each matter coming before the meeting. The Developer shall be the sole Class B member and shall be entitled the Percentage Vote applicable to each Dwelling Unit in the Regime not yet transferred to a Dwelling Unit Owner.

(b) Multiple Owner. Where the Owner of a Dwelling Unit constitutes more than one (1) person, or is a partnership, there shall be only one (1) voting representative entitled to cast the

vote allocable to that Dwelling Unit.

(c) Voting by Corporation or Trust. Where a corporation or trust is a Dwelling Unit Owner or is otherwise entitled to vote, the trustee may cast the Percentage Vote on behalf of the trust and the agent or other representative of a corporation who is duly empowered to vote shall cast Percentage Votes to which the corporation is entitled.

(d) Proxy. A Dwelling Unit Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Dwelling Unit Owner shall duly designate his attorney-in-fact in writing, and such written designation shall be delivered to the Association prior to or at the commencement of the meeting.

(e) Quorum. Except where otherwise expressly provided in these By-Laws, the Dwelling Unit Owners representing one-third (1/3) of the total Percentage Interest in the Regime shall constitute a quorum at all meetings.

(f) Conduct of Annual Meeting. The President of the Association shall serve as Chairman of the Annual Meeting and in his absence the Vice President shall serve. The Chairman shall call the Annual Meeting to order at the duly designated time and business will be conducted normally in the following manner:

- i) Reading of the Minutes. The Secretary shall read the minutes of the last Annual Meeting and the minutes of any Special Meeting held subsequent thereto, but such reading may be waived upon motion.
- ii) Treasurer's Report. The Treasurer shall report to the Dwelling Unit Owners concerning the financial condition of the Association, and answer relevant questions of the Dwelling Unit Owners concerning the Common Expenses and financial report for the prior year and the proposed Annual Budget for the current year.
- iii) Budget. The proposed Annual Budget for the current fiscal year shall be presented to the Dwelling Unit Owners for approval or amendment. If the Dwelling Unit Owners do not approve the Annual Assessments for the current fiscal year at the time they approve the Annual Budget, then the Board of Directors shall set the Annual Assessments for the year at such amount as will raise the funds required to comply with the Annual Budget, including reserve requirements.
- iv) Election of Board of Directors. Nominations for the Board of Directors may be made by any Dwelling Unit Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Association at least three (3) days prior to the date of the Annual Meeting. Voting for the Board of Directors will be by paper ballot unless a majority of the Dwelling Unit Owners present waive voting by paper

ballot and approve another form of voting. The ballot shall contain the name of each person nominated to serve as a Board member. Each Dwelling Unit Owner may cast the applicable Percentage Vote for as many nominees as are to be elected. Those persons receiving the highest Percentage Vote shall be elected.

- v) Other Business. Other business may be brought before the meeting only if accepted and ruled in order by the Chairman of the Meeting, or which is pursuant to written request submitted to the Secretary of the Association at least three (3) days prior to the date of the meeting.
- vi) Adjournment.

ARTICLE III BOARD OF DIRECTORS

Section 3.01. Number and Duties. The affairs of the Association shall be governed and managed by the Board of Directors (herein collectively called the "Board" or "Directors" and individually called "Director"). The Board of Directors shall be composed of three (3) persons. No person shall be eligible to serve as a Director unless he is a Dwelling Unit Owner or unless he is appointed by the Developer. Also, any Dwelling Unit Owner who is thirty (30) days or more in arrears in his Annual or Special Assessments, will not be eligible to serve or to continue to serve as a Director.

Section 3.02. Initial Board of Directors. The initial Board of Directors shall be as provided in the Declaration, all of whom shall be appointed by Developer. Notwithstanding any other provisions in the By-Laws, the initial Board of Directors shall hold office until the first Annual Meeting of the Dwelling Unit Owners which shall be held on the first Monday on or after February 1st in each year.

Section 3.03. Additional Qualification. Where an Owner consists of more than one (1) person or is a partnership, corporation, trust or other legal entity, then one (1) of the persons constituting the multiple Dwelling Unit Owner, or an office or trustee, shall be eligible to serve on the Board of Directors. No Dwelling Unit Owner other than the Developer may be represented on the Board of Directors by more than one (1) person at a time.

Section 3.04. Term of Office and Vacancy. The Board of Directors shall be elected at each annual meeting of the Association. At the first annual meeting of the Board, one (1) Director shall be elected for one (1) year, one (1) Director for two (2) years and one (1) Director for three (3) years. At each subsequent annual meeting one (1) Director shall be elected for a term of three (3) years (since the term of one of the Directors will be expiring), and any other vacancies in the Board of Directors shall be filled by electing a Director to serve for the remainder of the term of the Director who did not serve for his whole term of office.

Any vacancy or vacancies occurring in the Board of Directors shall be filled until the

annual meeting of the members by a vote of a majority of the remaining Directors or by vote of the Dwelling Unit Owners if a Director is removed in accordance with Section 3.05 of this Article III.

Section 3.05. Removal of Director. A Director or Directors, except the initial Directors, may be removed with or without cause by majority vote of the Percentage Vote at a meeting duly called and constituted. In such case, a successor Director shall be elected at the same meeting from eligible Dwelling Unit Owners. A Director so elected shall serve until the next Annual Meeting of the Dwelling Unit Owners or until his successor is duly elected and qualified. An initial Director may be removed and replaced at the discretion of the Developer or by an eighty percent (80%) Percentage Vote of the Dwelling Unit Owners.

Section 3.06. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to, providing for the administration of the Association, the management, maintenance, repair, upkeep and replacement of the Common Properties (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Association, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- a) maintenance, repair, replacement and upkeep of the Common Properties (or items deemed Common Properties for purposes of maintenance), not including, however, garage door openers;
- b) snow removal from streets, driveways and a sidewalk entry to each Dwelling Unit only when the snow reaches a depth of two inches (2") or more;
- c) assessment and collection from the Owners of the Owners' respective share of the Common Expenses;
- d) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- e) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- f) keeping a current, accurate and detailed records of receipts and expenditures affecting the Common Properties and the business and

affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;

- g) procuring and maintaining for the benefit of the Owners, the Association and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable; and
- h) paying taxes assessed against and payable with respect to the Common Properties and paying any other necessary expenses and costs in connection with the Common Properties; and
- i) making available to Owners and Mortgagees, and to holders, insurers or guarantors of any first mortgage, current copies of this Declaration, the By-Laws or other rules concerning the community and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances; and
- j) making available to any Mortgagee or any holder, insurer or guarantor of a first mortgage, upon request, a copy of the Association's audited financial statement for the immediately preceding fiscal year free of charge to the party making such request.

Section 3.07. Powers of the Board of Directors. The powers of the Board of Directors shall initially be retained by the Developer. Developer shall continue to retain the powers of the Board of Directors until and unless eighty percent (80%) of the Percentage Vote of Dwelling Unit Owners shall vote to give the Board of Directors such powers. The powers of the Board of Directors whether retained by Declarant or otherwise, shall be such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- a) to employ a Managing Agent to assist the Board in performing its duties; provided that no employment agreement with the Developer (or a corporation or other entity affiliated with the Developer) as Managing Agent or for any other service shall be for more than three (3) years after the Applicable Date and after said date any such agreement shall be subject to termination by the Managing Agent without cause and by Developer or by the Board as provided herein;
- b) to purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

- c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Properties;
- e) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- f) to open and maintain a bank account or accounts in the name of the Association;
- g) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Properties (in addition to those set forth in the Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners.

Section 3.08. Limitations on Board Action.

1. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00) without obtaining the prior approval of a majority Percentage Vote of the Owners, except that in the following cases such approval shall not be necessary:

- a) contracts for replacing or restoring portions of the Common Properties damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
- b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
- c) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

2. The Board shall not, without the prior written approval of at least sixty-seven percent (67%) of the Percentage Vote:

- a) by act or omission abandon, partition, subdivide, encumber, sell or

transfer the Common Properties owned by the Association (provided, the granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this clause);

- b) by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Buildings or Dwelling Units, the exterior maintenance of Buildings or Dwelling Units, the maintenance of side walls in the Common Properties or common fences, or the upkeep of lawns on the Real Estate;
- c) fail to maintain fire and extended coverage on insurable Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and
- d) the hazard insurance proceeds for losses to any of the Common Properties for other than the repair, replacement or reconstruction of Common Properties.

Section 3.09. Compensation. No Director shall receive any compensation for his services unless a majority of the Dwelling Unit Owners shall approve paying such compensation. Each Director shall be reimbursed for his reasonable costs and expenses incurred for the benefit of the Association.

Section 3.10. Meetings. Regular meeting of the Board of Directors may be held at such time and place as shall be determined from time to time by the President. The Secretary shall give notice of the regular meetings of the Board to each Director personally or mailed by United States Mail at least three (3) days prior to the date of such meeting.

Special meetings of the Board of Directors may be called by the President or any two (2) members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called.

Section 3.11. Waiver of Notice. Any Director may, in writing, waive notice of a meeting and such waiver shall be deemed equivalent to the receipt of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place and purpose thereof. If all Directors are present at the meeting of the Board, or if those not present shall waive notice of the meeting or shall consent to the actions taken at the meeting, notice shall not be required and any business may be transacted at such meeting.

Section 3.12. Quorum. At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors

present at a meeting at which a quorum is present shall be the decision of the Board.

Section 3.13. Non-Liability of Directors. The Directors shall not be liable to the Dwelling Unit Owners or any other persons for any error or mistake in judgment exercised in carrying out their duties and responsibilities as Director, except for their own individual willful misconduct, bad faith or gross negligence. The Association may indemnify and hold harmless each of the Directors against any and all liabilities to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of law. The Association shall, if reasonably available, carry liability insurance for the Board of Directors. The cost of such insurance shall be included as part of the common expenses. It is intended that the Directors shall have no personal liability with respect to any contract made by them in good faith on behalf of the Association. The Dwelling Unit Owners shall be subject to special assessment for sums necessary for the Association to pay the aforesaid indemnity in favor of the Directors. Every contract made by the Board or the Managing Agent on behalf of the Association shall be in the name of the Association.

Section 3.14. Additional Indemnity of Directors and Officers. The Association may indemnify any person, his heirs, assigns and personal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director or an officer of the Association, against the reasonable expenses, including attorneys fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereon, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such person is liable for gross negligence or willful misconduct in the performance of his duties. The Association may also reimburse to any such Director or Officer of the Association the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority of the Dwelling Unit Owners that such Director or Officer was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit, or proceeding against a Director or an Officer, no Director or Officer shall be considered or deemed to be guilty of or liable for negligence or willful misconduct in the performance of his duties where, acting in good faith, such Director or Officer relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent or any Officer or employee thereof, or any Accountant, Attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof nor shall a Director or Officer be deemed guilty of or liable for negligence or willful misconduct solely by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 3.15. Books and Records. The Board of Directors shall itself, or through the Managing Agent, make available to Dwelling Unit Owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration of Covenants, Conditions and Restrictions as recorded pursuant to the Indiana Horizontal Property Law as may be amended from time to time, ("Declaration"), these By-Laws, any rules and regulations concerning GreenTree at Ft. Benjamin Harrison and the Association, and the books records and

financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

**ARTICLE IV
OFFICERS**

Section 4.01. Officers of the Association. The principal Officers of the Association shall be the President, Vice President, Secretary, and Treasurer, all of whom shall be elected by the Board. Any two (2) or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

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

Section 4.03. The President. The President shall be elected from among the Directors and shall be the Chief Executive Officer of the Association. He shall preside as Chairman at all meetings of the Association and of the Board, shall have and discharge all of the general powers and duties usually vested in the office of President or Chief Executive Officer of an Association or a Stock Corporation organized under the laws of Indiana, including, but not limited to the power to appoint committees from the Dwelling Unit Owners as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

Section 4.04. The Vice-President. A Vice-President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. In the absence of the President the Vice- President shall preside at all meetings of the Dwelling Unit Owners and of the Board of Directors. The Vice-President shall also perform such other duties as these By-Laws may prescribe or as shall from time to time be delegated to him by the Board or by the President.

Section 4.05. The Secretary. The Secretary need not be elected from among the Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meeting wherein resolutions shall be recorded, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association of the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 4.06. The Treasurer. The Board shall elect a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incident to the office of the Treasurer. He shall be the Legal Custodian of all monies, notes, securities and other valuables which may from time to time

come into the possession of the Association. He shall immediately deposit all funds of the Association coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name of the Association. The Treasurer need not be a Dwelling Unit Owner.

Section 4.07. Additional Officers. The Board of Directors may, from time to time, designate and elect additional Officers, including but not limited to Vice-Presidents and an Assistant Secretary and Assistant Treasurer who shall have such powers and duties as are set forth herein for such offices. The Assistant Secretary and Assistant Treasurer shall have such powers and duties as the Officer whom they are elected to assist shall delegate to them, and such other powers and duties as these By-Laws or the Board of Directors may prescribe.

Section 4.08. Delegation to Management Agent. The duties of the Secretary and/or Treasurer may be delegated to a Managing Agent if one is then serving.

ARTICLE V ACCOUNTING, BUDGETS, AND ASSESSMENTS

Section 5.01. Annual Accounting. Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 5.02. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be subscribed to the Owners at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided that any increase of more than ten percent (10%) must be approved by a vote of two-thirds (2/3) of the Percentage Vote voting in person or by proxy; provided further, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the regular Assessments, and all other sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of replacement reserve funds as required by law for capital expenditures and replacement and repair of the Common Properties (or items deemed Common Properties for purposes of maintenance), which replacement reserve fund shall be used for those purposes and not for

usual and ordinary repair expenses of the Common Properties. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Properties (or items deemed Common Properties for maintenance) shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana, selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as provided, whenever determined. Whenever, whether before or after the annual meeting of the Association, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 5.03. Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Dwelling Unit, which shall be computed as follows: all Common Expenses except the cost of the master casualty insurance policy provided for in Article XI, Section 1 of the Declaration shall be divided by the number of Dwelling Units in the subdivision to determine the Regular Assessment for each Dwelling Unit. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Dwelling Unit (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Dwelling Unit based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Dwelling Unit shall be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the quarterly installments of the regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay quarterly assessments semi-annually or annually, in advance. At the election and option of the Board, the Regular Assessment may be required to be paid by the Owners in advance in equal monthly installments rather than quarterly installments. In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget,

- a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during

such fiscal year, whether quarterly or monthly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

- b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether quarterly or monthly, until the entire amount of such excess has been so credited; provided, however, that if an Owner had paid his Regular Assessment either semi-annually or annually in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Dwelling Unit as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by the Date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Dwelling Unit or any interest therein, shall not relieve or release such Owner or his successor as owner of such Dwelling Unit from payment of the Regular Assessment for such Dwelling Unit as finally determined, and such Owner and his successor as owner of such Dwelling Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 3 of Article IX of the Declaration prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Quarterly or monthly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same.

Each Owner shall prepay to the Association at the time his Dwelling Unit is conveyed to such Owner an amount equal to thirteen (13) monthly installments of the amount required to pay for the Dwelling Unit Owner's pro rata portion of the master casualty insurance policy based upon the budget for the current fiscal year and the Owner shall maintain such prepayment account at all times. The Association shall hold such pre-paid funds in a separate escrow account for the purchase of insurance as provided in Article IX, Section 3 of the Declaration.

Section 5.04. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time unless otherwise provided in the Declaration, the Articles, these By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Dwelling Unit, prorated in equal shares (herein called "Special Assessment"); provided, that any such assessment shall have the assent of sixty-seven percent (67%) of the Percentage Vote voting in person or by proxy at a meeting duly called for this purpose. Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described herein and in the Declaration.

Section 5.05. Failure of Owner to Pay Assessments.

- a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Properties and items deemed Common Properties for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Properties or by abandonment of the Dwelling Unit belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments when due, the lien for such Assessment on the Owner's Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Dwelling Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment

or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments were due, until paid, at a rate equal to the "prime interest rate" then being published by the Wall Street Journal.

- b) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage.

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

Section 5.06. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the Declaration, in the Indiana Horizontal Property Law or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. Prior to the Applicable Date, the Initial Board shall have the power to vote on and approve the annual budget and any Regular Assessment and Special Assessments.

Further, until the Applicable Date, the Regular Assessments are and shall be established as follows:

- a) From the date of the first conveyance of a Dwelling Unit by Declarant to any other Person until the earlier of the Applicable Date or August 1, 2001:

- i) the Regular Assessment shall be One Hundred Twenty-five Dollars (\$125.00) per month on each Dwelling Unit owned by someone other than Declarant, pro-rated on a daily basis for any period of time less than a month; and
 - ii) the Regular Assessment shall be twenty-five percent (25%) of the amount of the Regular Assessment set forth in Subparagraph (i) for each Dwelling Unit owned by Declarant until sixty (60) days after completion of such Dwelling Unit at which time the Regular Assessment for that Dwelling Unit shall be raised to the full amount set forth in Subparagraph (i).
- b) After August 1, 2001 (if the Applicable Date has not then occurred) and for each year thereafter until the Applicable Date, the Regular Assessment upon each Dwelling Unit may be increased by the Board by the actual costs incurred by the Association or the percentage increases, if any, in the Consumer Price Index between the Index figure for the month of June and the Index figure for the last month of the year preceding the year for which such increase is to be effective, whichever is less. Such increases may be made by the Board annually on, or effective on, January 1 of each year until the Applicable Date. As used herein, "Consumer Price Index" means the "Consumer Price Index for All Urban Consumers, U.S. City Average of all items (CPI-U, reference base of 1967=100.0)" published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the publication of the Consumer Price Index of the U.S. Bureau of Labor Statistics is either discontinued, or revised by changes in the weights assigned by the 1972-73 Consumer Expenditure Survey to the expenditure groups, in the sample of items priced, in the sample of places where the pricing takes place or in the statistical methods employed in the calculation of the Consumer Price Index, then, and in any of such event, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical selected by the Association shall be substituted for said Consumer Price Index and used for making such computations. ®

Notwithstanding the foregoing or anything else contained herein, until the Applicable Date (whether before or after August 1, 2001), the Regular Assessment to be paid by Developer for each Dwelling Unit owned by Developer shall be twenty-five percent (25%) of the Regular Assessment for owners other than Developer until sixty (60) days after completion of a Dwelling Unit at which time the Regular Assessment for that Dwelling Unit shall be raised to one hundred percent (100%) of the Regular Assessment.

**ARTICLE VI
MANAGING AGENT**

The Initial Board has entered, or will hereafter enter, into a management agreement with the Developer (or a corporation or other entity affiliated with the Developer) under which the Developer (or such affiliate of the Developer, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Properties and, in general, perform all of the duties and obligations of the Association. Such management agreement is or will be subject to termination by the Developer (or its affiliate, as appropriate) at any time prior to the expiration of its term, in which event the Association shall thereupon and thereafter resume performance of all of its duties, obligations and functions. Notwithstanding anything to the contrary contained in this Declaration, so long as such management agreement remains in effect, and unless at least eighty percent (80%) of the Percentage Vote of the Dwelling Unit Owners as defined in Article I of the Declaration shall vote, as defined in Article V, Section 13 of the Declaration, the Developer (or its affiliate, as appropriate) shall have, and the Developer hereby reserves to itself (or to its affiliate, as appropriate), the exclusive right to manage the Real Estate and Common Properties and to perform all the functions of the Association.

**ARTICLE VII
AMENDMENT TO BY-LAWS**

These By-Laws may be amended by a vote of not less than eighty percent (80%) of the Dwelling Unit Owners voting in person or by proxy at a duly constituted meeting called for such purpose, or at an Annual Meeting, after the adoption of these By-Laws. However, any amendment made shall be in conformity with the then current Declaration.

**ARTICLE VIII
NOTICES**

Section 8.01. Notice to Mortgagees. Any Owner who places a first or successive mortgage lien upon his Dwelling Unit, or the Mortgagee, shall notify the Secretary of the Association thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, these By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

Section 8.02. Notice of Certain Actions or Conditions. The Association shall, upon request of a Mortgagee (or insurer or guarantor) who has furnished the Association with its

name and address as hereinabove provided, furnish such Mortgagee (or insurer or guarantor) with written notice of:

- a) any condemnation loss or any casualty loss which affects a material portion of the community or any Dwelling Unit on which there is a first mortgage;
- b) any default in the performance by its borrower of any obligations of such borrower under the Declaration or these By-Laws which is not cured within sixty (60) days;
- c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- d) any proposed action which would require the consent or approval of Mortgagees.

Section 8.03. Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Dwelling Unit, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessment or Special Assessments or other charges against the Dwelling Unit, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Dwelling Unit shall not be liable for nor shall the Dwelling Unit conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 2 of Article IX of the Declaration.

Section 8.04. Unpaid Taxes and Insurance. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which have or may become a lien against any Common Properties (excluding items deemed Common Properties for maintenance only) and may pay taxes and overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for any Common Properties (excluding items deemed Common Properties for maintenance only), and the Mortgagees asking such payments shall be owed immediate reimbursement therefor by the Association.

Section 8.05. Notice to Dwelling Unit Owners. Each Dwelling Unit Owner shall have the duty to notify the Association of his address for notice purposes and all notices duly mailed or delivered to that address shall be proper notice hereunder. The Association shall have no duty to send notice to any Dwelling Unit Owner, to any other address or to whom the Association has no address.

**ARTICLE IX
DEFINITIONS**

Section 9.01. All terms used herein shall have the same meaning as defined in the

Declaration of Covenants, Conditions and Restrictions of GreenTree at Ft. Benjamin Harrison Horizontal Property Regime recorded on September 1, 2000 as Instrument No. _____ in the office of the Recorder of Marion County, Indiana.

Dated this 16th day of August, 2000.

BOARD OF DIRECTORS:

R. Max Greenwalt
R. Max Greenwalt

R. Lynn Greenwalt
R. Lynn Greenwalt

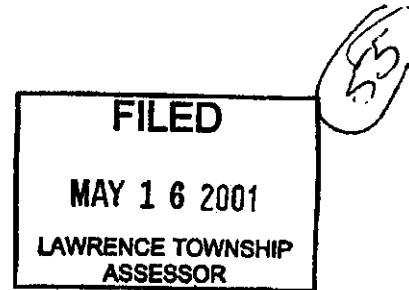
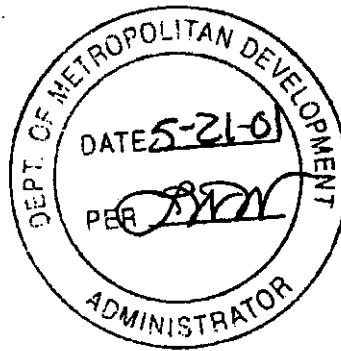
Steve Smith
Steve Smith

greenwaf@greentree at ft. benjamin Harrison home assn. bylaws. b1b.081400



CHICAGO TITLE

200 1-0083387



FIRST AMENDED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
GREENTREE AT FT. BENJAMIN HARRISON HORIZONTAL PROPERTY REGIME

This First Amended Declaration of Covenants, Conditions and Restrictions of GreenTree at Ft. Benjamin Harrison Horizontal Property Regime, made this 15th day of May, 2001, which amends the Declaration made the 16th day of August, 2000, (individually and collectively hereinafter referred to as "the Declaration" or "this Declaration") by GreenTree at Ft. Benjamin Harrison, LLC, an Indiana limited liability company (hereinafter referred to as "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of a certain parcel of land in Marion County, Indiana, more particularly described in "Exhibit A" attached hereto and by this reference, made a part hereof (hereinafter referred to as the "Real Estate" and the "Project"); and

WHEREAS, Declarant has previously declared a certain portion of the Real Estate to be subject to the Declaration as described on "Exhibit B", attached hereto and made a part hereof; and

WHEREAS, Declarant also desires to add an additional portion of the Real Estate, more particularly described in "Exhibit C" attached hereto and made a part hereof, to be subject to this Declaration (being hereafter referred to as the "Project"); and

WHEREAS, Declarant desires and intends to develop a residential community designed to meet the specific life needs of seniors, to be known as GreenTree at Ft. Benjamin Harrison ("GreenTree"). GreenTree is not a nursing home, but a campus style environment for seniors in which various levels of service or assistance are provided to residents based upon each resident's needs and desires. GreenTree's resident profile is to include ambulatory individuals who are mentally alert but may benefit from or are comforted by the availability of services. The goal of GreenTree is to permit services to be "layered in" for residents as each resident's individual needs increase, allowing the residents of GreenTree to gracefully "age in place"; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the

values and amenities in such community and the common facilities therein contained, and, to this end, Declarant desires to subject the Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each owner of all or part thereof; and

WHEREAS, Declarant intends to subject the Real Estate to the Indiana Horizontal Property Law and create a horizontal property regime (the "Regime") upon the Real Estate and therefore, as portions of the Real Estate are developed from time to time, such portions will be added. All Owners of Dwelling Units as defined herein shall hold an undivided vested interest in the Common Properties and facilities on the Real Estate; and

WHEREAS, Declarant intends that, as portions of the Real Estate are developed from time to time, they will be added to the Regime by an amendment to this Declaration, so that the Regime is to be expandable as defined in the Indiana Horizontal Property Law; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering any common facilities located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and distributing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the Owners of the Real Estate, and all parts thereof; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name of GreenTree at Ft. Benjamin Harrison Homeowners Association, Inc., or a similar name, as such agency for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that the Real Estate is and shall be a horizontal property regime pursuant to Ind. Code §32-1-6-1, et.seq., as amended, and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the

Real Estate as a whole and of each of the Dwelling Units situated therein.

ARTICLE I
Definitions

Section 1. The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

- a) “Act” shall mean and refer to the Indiana Not-For-Profit Corporation Act of 1971, as amended;
- b) “Additional Sections” shall mean portions of the Real Estate that may from time to time be annexed to the Real Estate subjected to the Indiana Horizontal Property Law and included within the Regime as provided in Article VIII, Section 2;
- c) “Amendment” means any amendment to this Declaration by which all or any portion of the Real Estate shall be included within the Regime;
- d) “Applicable Date” shall mean and refer to the date upon which a Percentage Vote applicable to the Dwelling Units shall remove the Initial Board of Directors.
- e) “Architectural Review Board” shall mean and refer to that committee or entity established pursuant to Article VIII, Section 1 of this Declaration for the purposes herein stated;
- f) “Articles” shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time;
- g) “Board” or “Board of Directors” shall mean and refer to the governing body of the Corporation elected, selected or appointed as provided for in the Articles, By-Laws and this Declaration;

- g) "Building" shall mean and refer to a structure having more than one "Dwelling Unit";
- h) "By-Laws" shall mean and refer to the code of By-Laws of the Corporation, attached hereto, made a part hereof and marked "Exhibit C", as the same may be amended from time to time;
- i) "Common Expenses" shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Properties, and all sums lawfully assessed against the Owners by the Corporation, and all sums, costs and expenses declared by this Declaration to be Common Expenses;
- j) "Common Properties" shall mean both General Common Properties and Limited Common Properties;
- k) "Corporation" shall mean and refer to GreenTree at Ft. Benjamin Harrison Homeowners Association, Inc., an Indiana not-for-profit corporation which Declarant has caused to be incorporated under said name or similar name, its successors and assigns;
- l) "Declarant" shall mean and refer to GreenTree at Ft. Benjamin Harrison, 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 the Declarant hereunder, and any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage exercised by Declarant;
- m) "Dwelling Unit" shall mean and refer to any individual residential unit in any building, structure or portion thereof situated on the Real Estate and within the Regime, designed and intended for use and occupancy as a residence by one (1) single family as designated by Declarant by its deed of same to another Person;
- n) "Formula" shall mean the method by which the Percentage Interest in

Common Properties applicable to each Dwelling Unit as set forth in Article XVIII, Section 2(b);

- o) "General Common Properties" shall mean those Common Properties, the use and enjoyment of which are not limited to a particular Dwelling Unit or Units, as further defined and described in Article II, Section 4;
- p) "HPL" or "Horizontal Property Law" shall mean the provisions of the Indiana Horizontal Property Law as of the date of this Declaration, and as applicable as amended from time to time;
- q) "Limited Common Properties" shall mean those Common Properties, the use and enjoyment of which are limited to a particular Dwelling Unit or Units, as further described and defined in Article II, Section 5;
- r) "Mortgagee" shall mean and refer to the holder of a recorded first mortgage lien on a Dwelling Unit;
- s) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Dwelling Unit, but in any event shall not include or mean to refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Dwelling Unit, but upon so acquiring title to any Dwelling Unit a mortgagee or tenant shall be an Owner;
- t) "Percentage Vote" means that percentage of the total Vote accruing to all Dwelling Units which is applicable to each particular Dwelling Unit and exercisable by the Owner thereof as described in Article IV, Section 2, and in the By-Laws;
- u) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Properties appertaining to each Dwelling Unit, as determined in accordance with Article II, Section 6;
- v) "Person" shall mean and refer to an individual, firm, corporation, limited

liability company, partnership, association, trust, or other legal entity, or any combination thereof;

- w) "Plans" shall mean floor and building plans of the Buildings and the Dwelling Units, the site plan, the survey and elevation plans of the Real Estate and the Buildings, duly certified by a registered architect or license professional engineer, attached as exhibits to this Declaration of any Amendment, that pertain to any Real Estate made a part of the Regime;
- x) "Restrictions" shall mean and refer to the agreements, covenants, conditions, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time; and
- y) "Single family" shall include adults over the age of fifty-five (55) years, the caretakers of such adults and any disabled dependent of such adult.

ARTICLE II

Declaration; Description of Dwelling Units; Boundaries; General and Limited Common Properties; Easement to Corporation; Encroachment Easement

Section 1. Declaration. Declarant hereby expressly declares that the Real Estate shall be a horizontal property regime pursuant to Ind. Code §32-1-6-1 et.seq., as amended, shall be held, transferred, and occupied subject to the Restrictions. Subsequent owners of contract purchasers of any Dwelling Unit subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Dwelling Unit, or (ii) by the act of occupancy of any Dwelling Unit, shall accept such deed or execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner or contract purchaser acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owner of each of the Dwelling Units affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

Section 2. Description of Dwelling Units. The Real Estate contains twelve (12) Dwelling Units, as shown on the Plans recorded at the time of recordation hereof. Such Dwelling Units are identified and referred to in the Plans and herein as Building No. 2, Units No. 1, 2, 3 and 4 (which such addresses are 8122, 8124,, 8126 and 8128 Hazen Way respectively); Building No. 4, Units No. 1, 2, 3 and 4 (which such addresses are 8042, 8044, 8046 and 8048 Hazen Way respectively); and Building No. 6, Units No. 1, 2, 3 and 4 (which such addresses are 8133, 8135, 8137 and 8139 Hazen Way respectively). The Dwelling Units in the various portions of the Adjacent Real Estate, if annexed, shall be identified numerically, the exact numbers of the Dwelling Units to be identified and referred to in the Plans filed with each Amendment. The legal description of each Dwelling Unit shall consist of the numeric designation of such Dwelling Unit, and reference hereto and to any relevant Amendments then of record. Each Dwelling Unit shall consist of all space within the boundaries thereof (as hereinafter described), and all fixtures, facilities, utilities, equipment, appliances and structural components within such boundaries that are designed or intended solely and exclusively for enjoyment, use and benefit of such Dwelling Unit and the Owner thereof. Not included in any Dwelling Unit are those fixtures, facilities, utilities, equipment, appliances and structural components designed or intended for enjoyment, use, benefit, support or safety of more than one Dwelling Unit, or that may be necessary for the same, or that are specifically defined or described herein as Common Areas, or that are normally intended for common use; provided, however, that all fixtures, equipment and appliances designed or intended solely and exclusively for enjoyment, use and benefit of a Dwelling Unit shall constitute a part of such Dwelling Unit, even if the same are located wholly or partly outside the boundaries of such Dwelling Unit.

Section 3. Boundaries. The boundaries of each Dwelling Unit shall be as shown on the Plans. The vertical boundaries shall run from the interior, unfinished surfaces of the lowermost floors to the interior, unfinished surfaces of the uppermost ceilings, and the horizontal boundaries shall be the interior, unfinished drywall surfaces of the common walls and exterior walls, and the interior, unfinished surfaces of the doors and windows, except that all glass, screens and air conditioning units shall be deemed part of the Dwelling Unit. If any horizontal or vertical boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling of a Dwelling Unit because of inexactness of construction, settling after construction or any other reason, the boundary lines of such Dwelling Unit shall be deemed to be, and treated for purposes of occupancy, possession, maintenance, decoration, use and enjoyment, in accordance with the actual existing construction. In such case, permanent

easements for exclusive use shall exist in favor of the Owner of each Dwelling Unit in and to such space lying outside the boundary lines of such Dwelling Unit as indicated on the Plans, but within the walls, floors and ceilings of such Dwelling Unit as the same may actually exist.

Section 4. General Common Properties. General Common Properties shall include the following, except to the extent otherwise specifically designated in Section 2, 3 or 5 of this Article II as being within a Dwelling Unit or as Limited Properties:

- a) yards, gardens, open spaces, fences and landscaping (except flowers or other plants not planted by Declarant as provided in Article VII, Section 2(b));
- b) sidewalks;
- c) exterior lighting fixtures, electrical and water service, except where separately metered to a particular Dwelling Unit;
- d) electrical, gas, water, sanitary sewer, telephone and cable television lines, mains, pipes, ducts, conduits, wiring and insulation;
- e) interiors of all structural walls and floors, including all exterior walls and attic space, walls between horizontally adjacent Dwelling Units and floors between vertically adjacent Dwelling Units;
- f) foundations, roofs and exterior wall surfaces of Buildings, and all other structural elements and components of Buildings; and
- g) all other structures, areas and facilities not expressly defined as Limited Properties in Article II, Section 5, or expressly included within Dwelling Units by Article II, Section 2 or 3.

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

- a) entranceways through which access to Dwelling Units is obtained are limited to use of the respective Dwelling Unit(s) served by such

entranceways;

- b) patios, balconies, porches, courtyards, and decorative walls and fences, are limited to use of the respective Dwelling Unit(s) to which they are appurtenant;
- c) driveways, walkways and similar areas used for access to particular individual Dwelling Units are limited to use of the Dwelling Units so served. Each Dwelling Unit shall have the exclusive right to use the parking area located in the driveway area immediately adjacent to such Dwelling Unit, as shown on the Plans.

Section 6. Ownership of Common Properties and Percentage Interest. In connection with and as an inseparable part of ownership of each Dwelling Unit, the Owner thereof shall have an undivided interest in the Common Properties as a tenant in common with all other Owners, such interest to be equal to the Percentage Interest applicable to such Dwelling Unit. The Percentage Interest in the Common Properties applicable to each Dwelling Unit shall be determined in accordance with the Formula. The Percentage Interests at the time of recordation hereof are equal to 8.33% for each Dwelling Unit. If any Additional Sections are annexed, as permitted and contemplated by Section VIII, then, upon execution and recordation of the applicable Amendment, the Percentage Interest of each Dwelling Unit that is part of the Regime prior to such annexation shall be recomputed in accordance with the Formula. Such recomputation will have the effect of reducing Percentage Interests in those Common Areas that are part of the Regime prior to such Amendment, so as to allocate Percentage Interests therein to the Dwelling Units added to the Regime by such Amendment. At the same time, such recomputation shall create Percentage Interests, in favor of all Dwelling Units in the Regime immediately following such annexation, in the Common Properties within such Additional Section being annexed. The overall resulting Percentage Interests shall be determined in accordance with the Formula and designated in the applicable Amendment. In any calculation or determination of a Percentage Interest, the figure obtained shall be rounded to the nearest one-thousandth of a percent and shall be so presented for all purposes of conveyance and hereof.

Section 7. Easement to Corporation. Declarant hereby grants a non-exclusive easement in favor of the Corporation for the maintenance of the General Common Properties. Said easement shall permit the Board or its agents to enter onto any Dwelling Unit or Limited

Common Property to make emergency repairs or to do other work reasonably necessary for the proper maintenance or operation of the community and to enter onto any Dwelling Unit for the purpose of reconstruction and restoration in the event of casualty. Maintenance shall include but not be limited to maintenance of utilities which serve more than one Dwelling Unit and utilities owned and utilized by the Corporation.

Section 8. Encroachment Easements. If any portion of the Common Properties encroaches on any Dwelling Unit or any Dwelling Unit encroaches upon the Common Properties or another Dwelling Unit as a result of construction, reconstruction, repairs, shifting, settlement or movement of any portion of the improvements, a valid easement shall be deemed to exist and run to the Corporation or to the Owner of the encroaching Dwelling Unit or improvement for the encroachment and for the maintenance thereof so long as said encroachment exists.

Section 9. Easements to and from Additional Sections. Declarant reserves unto itself, its successors and assigns, for use and benefit of that part of the Real Estate not annexed, an easement for access to any and all necessary utility lines, mains and other utility services for any buildings or improvements upon the Real Estate, whether or not such buildings or improvements are to be added to the Regime. Declarant, or its successors or assigns, shall be responsible for repairing any damage to any Property arising out of exercise of this easement. The easements reserved in this Section 9 shall be easements running with the land and accruing to the benefit of the Real Estate.

ARTICLE III
Dedications

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No street on the Real Estate shall be dedicated to Marion County or the City of Indianapolis for the use and benefit of the public, and all such streets shall remain private streets. The act of maintenance of such streets shall be a part of the assessments made pursuant to the terms herein.

ARTICLE IV
Corporation; Membership; Voting; Functions

Section 1. Membership in Corporation. Declarant and each Owner of a Dwelling Unit shall, automatically upon becoming an Owner, be and become a member of the Corporation and

shall remain a member until such time as his ownership of a Dwelling Unit ceases, but membership shall terminate when such owner ceases to be an Owner, and will be transferred to the new Owner of his Dwelling Unit; provided, however, that any Person who holds the interest of an Owner in a Dwelling Unit merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Corporation.

Section 2. Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:

- a) Class A. Class A members shall be all Owners except Class B members. Each Class A member shall be entitled to a Percentage Vote with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Dwelling Unit, all such Persons shall be members of the Corporation, but all of such persons shall have only the Percentage Vote for such Dwelling Unit, which vote shall be exercised as they among themselves determine, but in no event shall more than the Percentage Vote be cast with respect to any such Dwelling Unit.
- b) Class B. Class B members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Corporation. Class B members shall be entitled to the Percentage Vote applicable to any Dwelling Units made a part of the Regime by Amendment but not yet transferred to a Class A member.

Section 3. Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Properties, to pay taxes assessed against and payable with respect to the Common Properties, to pay any other necessary expenses and costs in connection with the Common Properties, and to perform such other functions as may be designated for it to perform under this Declaration.

ARTICLE V
Board of Directors

Section 1. Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 2 of this Article V.

Section 2. Initial Board of Directors. The initial Board of Directors shall have three (3) members and such original directors shall be composed of the persons designated in the Articles, to-wit: R. Max Greenwalt, R. Lynn Greenwalt and Steve Smith (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act, (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reasons or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Person serving on the Initial Board, whether as an original member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Corporation nor an Owner of a Dwelling Unit for any other purpose (unless he is actually the Owner of a Dwelling Unit and thereby a member of the Corporation).

Section 3. Additional Qualifications. Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

Section 4. Term of Office and Vacancy. Subject to the provision of Section 2 of this Article V, one-third (1/3) of the Board of Directors shall be elected at such annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, one-third (1/3) of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one-third (1/3) of the Board of Directors shall be elected for a three (3) year term, one-third (1/3) for a two (2) year term, and one-third

(1/3) for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by Percentage Vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

Section 5. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the Percentage Votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

Section 6. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Properties (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- a) maintenance, repair, replacement and upkeep of the Common Properties (or items deemed Common Properties for purposes of maintenance), not including, however, garage door openers;
- b) snow removal from streets, driveways and a sidewalk entry to each

- Dwelling Unit only when the snow reaches a depth of two inches (2") or more;
- c) assessment and collection from the Owners of the Owners' respective share of the Common Expenses;
 - d) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
 - e) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
 - f) keeping a current, accurate and detailed records of receipts and expenditures affecting the Common Properties and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
 - g) procuring and maintaining for the benefit of the Owners, the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable; and
 - h) paying taxes assessed against and payable with respect to the Common Properties and paying any other necessary expenses and costs in connection with the Common Properties; and
 - i) making available to Owners and Mortgagees, and to holders, insurers or guarantors of any first mortgage, current copies of this Declaration, the By-Laws or other rules concerning the community and the books, records and financial statements of the Corporation. "Available" means available for inspection, upon request, during normal business hours or under other

reasonable circumstances; and

- j) making available to any Mortgagee or any holder, insurer or guarantor of a first mortgage, upon request, a copy of the Corporation's audited financial statement for the immediately preceding fiscal year free of charge to the party making such request.

Section 7. Powers of the Board of Directors. The powers of the Board of Directors set forth herein shall be retained by Declarant. Upon the Applicable Date, Declarant shall continue to retain the powers of the Board of Directors until and unless eighty percent (80%) of the total Percentage Vote shall vote to give the Board of Directors such powers. The powers of the Board of Directors whether retained by Declarant or otherwise, shall be such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- a) to employ a Managing Agent to assist the Board in performing its duties; provided that no employment agreement with the Declarant (or a corporation or other entity affiliated with the Declarant) as Managing Agent or for any other service shall be for more than three (3) years after the Applicable Date and after said date any such agreement shall be subject to termination by the Managing Agent without cause and by Declarant or by the Board as provided herein; ®
- b) to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
- d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Properties;

- e) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- f) to open and maintain a bank account or accounts in the name of the Corporation;
- g) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Properties (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners.

Section 8. Limitations on Board Action.

1. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00) without obtaining the prior approval of a majority Percentage Vote of the Owners, except that in the following cases such approval shall not be necessary:

- a) contracts for replacing or restoring portions of the Common Properties damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
- b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
- c) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

2. The Board shall not, without the prior written approval of at least sixty-seven percent (67%) of the Percentage Vote or sixty-seven percent (67%) of the Mortgagees (whose mortgage

interests have been made known to the Board of Directors) holding mortgages on Dwelling Units which have at least sixty-seven percent (67%) of the Percentage Vote which are subject to mortgagees:

- a) by act or omission abandon, partition, subdivide, encumber, sell or transfer the Common Properties owned by the Corporation (provided, the granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this clause);
- b) by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Buildings or Dwelling Units, the exterior maintenance of Buildings or Dwelling Units, the maintenance of side walls in the Common Properties or common fences, or the upkeep of lawns on the Real Estate;
- c) fail to maintain fire and extended coverage on insurable Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and
- d) the hazard insurance proceeds for losses to any of the Common Properties for other than the repair, replacement or reconstruction of Common Properties.

Section 9. Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a common expense.

Section 10. Non-Liability of Directors. The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts

made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 11. Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 12. Bond. The Board of Directors shall provide surety bonds and shall require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and such bond shall specifically include protections for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense. The amount of the bonds shall be based upon the judgment of the Board of Directors and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Corporation or its management agent at any given time during the term of the

bond. In no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all units plus reserve funds.

Section 13. Initial Management. The Initial Board has entered, or will hereafter enter, into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Properties and, in general, perform all of the duties and obligations of the Corporation. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) at any time prior to the expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties, obligations and functions. Notwithstanding anything to the contrary contained in this Declaration, so long as such management agreement remains in effect, and unless at least eighty percent (80%) of the Percentage Vote. Declarant (or its affiliate, as appropriate) shall have, and Declarant hereby reserves to itself (or to its affiliate, as appropriate), the exclusive right to manage the Real Estate and Common Properties and to perform all the functions of the Corporation.

ARTICLE VI
Real Estate Taxes; Utilities

Section 1. Real Estate Taxes. Real estate taxes on each Dwelling Unit, and on any Dwelling Unit or other improvements on each Dwelling Unit, are to be separately assessed and taxed to each Dwelling Unit and shall be paid by the Owner of such Dwelling Unit. Any real estate taxes or other assessments against the Common Properties shall be paid by the Corporation and treated as a Common Expense.

Section 2. Utilities. Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Dwelling Unit. An outside water source will be metered separately for each Owner's private use. Utilities for lawn and shrubbery maintenance on Common Properties shall be separately metered and shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation. Utilities for street lights and the guard gate shall be separately metered and paid as part of the Common Expense, unless otherwise determined by the Corporation.

ARTICLE VII
Maintenance, Repairs and Replacements

Section 1. By Owners. Each Owner shall, at his own expense, be responsible for and shall promptly perform as the need arises, all interior maintenance, repairs, decoration and replacement of his own Dwelling Unit. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, and conduits or systems enter the Dwelling Unit shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Dwelling Unit which, if neglected, might adversely affect any other Dwelling Unit or any part of the Common Properties. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit.

Section 2. By the Corporation. Maintenance, repairs, replacements and upkeep of the Common Properties shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

In addition to the maintenance of the Common Properties, the Corporation, as part of its duties, and as a part of the Common Expenses, shall provide:

- a) maintenance, repairs, replacement and upkeep of the exteriors of each Dwelling Unit. Such exteriors including, but not limited to, roofs, gutters, doors, windows (excluding glass which shall be considered a part of interior maintenance) and exterior walls shall be considered part of the Common Properties for maintenance only;
- b) for maintenance of the lawns and shrubbery, which shall be considered part of the Common Properties for purposes of maintenance only. Maintenance of lawns shall include but shall not be limited to fertilizing, mowing and replanting when necessary of the grass; and the care, fertilizing, trimming, removal and replacement of shrubbery and trees planted by the Declarant. It shall not include the care and maintenance of shrubs, trees, flowers or other plants which were not planted by Declarant, nor shall it include any area enclosed by a fence appurtenant to any

Dwelling Unit.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Properties as it deems necessary.

Notwithstanding any obligation or duty of the Corporation to repair or maintain any of the Common Properties (or items deemed as such for purposes of maintenance), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver or subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Dwelling Unit is subject.

The authorized representative of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Dwelling Unit as may be required in connection with maintenance, repairs or replacements of or to the Common Properties for purposes of maintenance, including, but not limited to, access to any easements reserved by the Declarant on any portion of the Real Estate for such purposes.

ARTICLE VIII Architectural Control



Section 1. The Architectural Review Board. As a standing committee of the Corporation, there shall be, and hereby is established an Architectural Review Board consisting of three (3) or more Persons as may, from time to time, be provided in the By-Laws. Until the Applicable Date, Declarant shall appoint the members of the Architectural Review Board. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors.

Section 2. Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Real Estate and of improvements thereon in such manner as to reserve and enhance values and to maintain the natural vegetation and topography.

Section 3. Conditions. No improvements, alterations, repairs, change of colors, excavations, changes in grade or their work which in any way alters the exterior of any Dwelling Unit or the improvements located thereon from its natural or improved state existing on the date such Dwelling Unit was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Review Board; provided this restriction shall not be applicable to the original construction of a Dwelling Unit whether such construction occurs before or after the Applicable Date.

Section 4. Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.

ARTICLE IX
Assessments



Section 1. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 2. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual

budget shall be subscribed to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority of the Percentage Vote; provided that any increase of more than ten percent (10%) must be approved by a vote of two-thirds (2/3) of the Percentage Vote voting in person or by proxy; provided further, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the regular Assessments, and all other sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of replacement reserve funds as required by law for capital expenditures and replacement and repair of the Common Properties (or items deemed Common Properties for purposes of maintenance), which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Properties. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Properties (or items deemed Common Properties for maintenance) shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana, selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 3. Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Dwelling Unit, which shall be computed as follows: all Common Expenses except the cost of the master casualty insurance policy provided for in Article XII, Section 1 shall be divided by the number of Dwelling Units in the subdivision to determine the Regular Assessment for each Dwelling Unit. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such

assessment against his respective Dwelling Unit (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Dwelling Unit based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Dwelling Unit shall be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the quarterly installments of the regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay quarterly assessments semi-annually or annually, in advance. At the election and option of the Board, the Regular Assessment may be required to be paid by the Owners in advance in equal monthly installments rather than quarterly installments. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

- a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether quarterly or monthly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
- b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether quarterly or monthly, until the entire amount of such excess has been so credited; provided, however, that if an Owner had paid his Regular Assessment either semi-annually or annually in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to,

the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Dwelling Unit as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by the Date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Dwelling Unit or any interest therein, shall not relieve or release such Owner or his successor as owner of such Dwelling Unit from payment of the Regular Assessment for such Dwelling Unit as finally determined, and such Owner and his successor as owner of such Dwelling Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 2 of Article X hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Quarterly or monthly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the corporation shall be responsible for providing any notice or statements to Owners for the same.

Each Owner shall prepay to the Corporation at the time his Dwelling Unit is conveyed to such Owner an amount equal to thirteen (13) monthly installments of the amount required to pay for the Dwelling Unit Owner's pro rata portion of the master casualty insurance policy based upon the budget for the current fiscal year and the Owner shall maintain such prepayment account at all times. The Corporation shall hold such pre-paid funds in a separate escrow account for the purchase of insurance.

Section 4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall

have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Dwelling Unit, prorated in equal shares (herein called "Special Assessment"); provided, that any such assessment shall have the assent of sixty-seven percent (67%) of the Percentage Vote voting in person or by proxy at a meeting duly called for this purpose. Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

Section 5. Failure of Owner to Pay Assessments.

- a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Properties and items deemed Common Properties for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Properties or by abandonment of the Dwelling Unit belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments when due, the lien for such Assessment on the Owner's Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Dwelling

Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover from the Owner of the respective Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments were due, until paid, at a rate equal to the "prime interest rate" then being published by the Wall Street Journal.

- b) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage.

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

Section 6. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. Prior to the Applicable Date, the Initial Board shall have the power to vote on and approve the annual budget and any Regular Assessment and Special Assessments.

Further, until the Applicable Date, the Regular Assessments are and shall be established as follows:

- a) From the date of the first conveyance of a Dwelling Unit by Declarant to any other Person until the Applicable Date or August 1, 2001:
 - i) the Regular Assessment shall be One Hundred Twenty-five Dollars (\$125.00) per month on each Dwelling Unit owned by someone other than Declarant, pro-rated on a daily basis for any period of time less than a month; and
 - ii) the Regular Assessment shall be twenty-five percent (25%) of the amount of the Regular Assessment set forth in Subparagraph (i) for each Dwelling Unit owned by Declarant until sixty (60) days after completion of such Dwelling Unit at which time the Regular Assessment for that Dwelling Unit shall be raised to the full amount set forth in Subparagraph (i).
- b) After August 1, 2001 (if the Applicable Date has not then occurred) and for each year thereafter until the Applicable Date, the Regular Assessment upon each Dwelling Unit may be increased by the Board by the actual costs incurred by the Corporation or the percentage increases, if any, in the Consumer Price Index between the Index figure for the month of June and the Index figure for the last month of the year preceding the year for which such increase is to be effective, whichever is less. Such increases may be made by the Board annually on, or effective on, January 1 of each year until the Applicable Date. As used herein, "Consumer Price Index"

means the "Consumer Price Index for All Urban Consumers, U.S. City Average of all items (CPI-U, reference base of 1967=100.)" published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the publication of the Consumer Price Index of the U.S. Bureau of Labor Statistics is either discontinued, or revised by changes in the weights assigned by the 1972-73 Consumer Expenditure Survey to the expenditure groups, in the sample of items priced, in the sample of places where the pricing takes place or in the statistical methods employed in the calculation of the Consumer Price Index, then, and in any of such event, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical selected by the corporation shall be substituted for said Consumer Price Index and used for making such computations.

Notwithstanding the foregoing or anything else contained herein, until the Applicable Date (whether before or after August 1, 2001), the Regular Assessment to be paid by Declarant for each Dwelling Unit owned by Declarant shall be twenty-five percent (25%) of the Regular Assessment for owners other than Declarant until sixty (60) days after completion of a Dwelling Unit at which time the Regular Assessment for that Dwelling Unit shall be raised to one hundred percent (100%) of the Regular Assessment.

ARTICLE X
Mortgages



Section 1. Notice to Corporation. Any Owner who places a first or successive mortgage lien upon his Dwelling Unit, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with

the mortgage, or otherwise.

Section 2. Notice of Certain Actions or Conditions. The Corporation shall, upon request of a Mortgagee (or insurer or guarantor) who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee (or insurer or guarantor) with written notice of:

- a) any condemnation loss or any casualty loss which affects a material portion of the community or any Dwelling Unit on which there is a first mortgage;
- b) any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days;
- c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation; and
- d) any proposed action which would require the consent or approval of Mortgagees.

Section 3. Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Dwelling Unit, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessment or Special Assessments or other charges against the Dwelling Unit, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Dwelling Unit shall not be liable for nor shall the Dwelling Unit conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article IX hereof.

Section 4. Unpaid Taxes and Insurance. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which have or may become a lien against any Common Properties (excluding items deemed Common Properties for maintenance only) and may pay taxes and overdue premiums on hazard insurance policies, or secure new hazard insurance

coverage on the lapse of a policy, for any Common Properties (excluding items deemed Common Properties for maintenance only), and the Mortgagees asking such payments shall be owed immediate reimbursement therefor by the Corporation.

ARTICLE XI
Insurance

Section 1. Casualty Insurance. The Corporation shall purchase a master casualty insurance policy with an "agreed amount and inflation guard endorsement" and a "blanket building endorsement" affording fire and extended coverage insurance insuring each Dwelling Unit in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the Dwelling Unit, excluding all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by an Owner and excluding any personal property owned by any Owner whether located on any Dwelling Unit or elsewhere. If the Board of Directors can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage. The Board of Directors 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 Mortgagee of each Owner.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Dwelling Unit resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than one hundred fifty percent (150%) of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or disbursed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such Master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its 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 Board of Directors 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, 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 Corporation does not elect to restore.

Section 2. Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time; provided, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agent or employees of any of the foregoing with respect to the Real Estate, all Owners of Dwelling Units and all other persons entitled to occupy any Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

Section 3. Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation 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 Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right

to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

Section 4. General Provisions. The premiums for all insurance herein described shall be paid by the Corporation as part of the Common Expenses. The Corporation shall select the provider of all insurance described herein. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, 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 Corporation who is required to send notices of meetings of the Corporation. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the mortgagee of each Dwelling Unit.

The Corporation shall determine the share of any premiums of insurance attributable to each Owner, and shall provide written notice with such portion of premium to each Owner. Each Owner shall be responsible for payment of such premiums on terms to be determined by the Board and such premiums shall be enforceable by the Corporation as set forth in Article X, Section 5 herein.

In no event shall any distribution of insurance proceeds for damage to Dwelling Unit or Common Properties be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy or the Board has notice of Mortgagee as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same restriction on distribution shall apply to the distribution of any condemnation awards in connection with any taking of any of the Common Properties. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds in excess of amounts needed to repair damage or pay off any first mortgage or condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses or operation.

Section 5. Insurance by Owners. Each Owner shall be solely responsible for and may

obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his 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 Corporation.

ARTICLE XII

Casualty and Restoration; Condemnation; Termination

Section 1. Casualty and Restoration. In the event of damage to or destruction of the structure or exterior of any Building or Dwelling Unit due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Corporation 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 no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Building or Dwelling Unit so damaged or destroyed for the costs thereof in excess of insurance proceeds received, if any shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Building so damaged or destroyed as to near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

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

Encroachments upon any Dwelling Unit which may be created as a result of such reconstruction or repair of any Building shall not constitute a claim or basis of a proceeding or action for the Owner upon whose Dwelling Unit such encroachment exists, provided that such reconstruction was either substantially in accordance with the original plans and specifications or as the Building was originally constructed.

Section 2. Total or Partial Condemnation. In the event of the condemnation of all or any part of any Building or Dwelling Unit, the Board is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Properties, Buildings or Dwelling Units. For the purpose of such negotiation and/or of contest of such award to the Board as to Buildings and Dwelling Units, the Board is hereby declared to be the agent and attorney-in-fact of any Owner affected by the condemnation. This appointment of the Board shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any Owner from asserting any rights or claims to compensation which cannot be legally asserted by the Board.

Awards for the taking of all or part of a Building or Dwelling Unit shall be collected by the Board and distributed to the affected Owners. To the extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among Owners affected. In the event that an Owner does not agree with the distribution of an award, said Owner shall be entitled to have the dispute settled by arbitration. The protesting Owner shall appoint one (1) arbitrator, the Board acting as agent for all other affected Owners shall appoint one (1) arbitrator and the two (2) appointed arbitrators shall appoint a third arbitrator. A majority decision of the arbitrators shall be binding on all Owners and shall be enforceable.

Section 3. Termination. In the event of condemnation of two-thirds (2/3) or more of the Dwelling Units in the subdivision, the remaining Owners may, by a majority vote terminate this Declaration and dissolve the Corporation, provided, however, that the restrictions set forth in the subdivision Plat and in Article XIII shall remain in full force and effect in accordance with the terms of the Plat and Article XVII of this Declaration.

ARTICLE XIII Restrictions, Covenants and Regulations

Section 1. Restrictions on Use. The following covenants and restrictions on the use and

enjoyment of the Dwelling Units and Common Properties shall be in addition to any other covenants or restrictions contained herein and in any subdivision plat of any part of the real Estate heretofore or hereafter recorded, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- a) All Dwelling Units shall be used exclusively for residential purposes as contemplated in the recitals of these Declarations and as "single family" "housing for older persons" intended for persons aged fifty-five (55) years and older as specified by federal and Indiana law.. The term "single family" shall include adults over the age of fifty-five (55) years, the caretakers of such adults and any disabled dependent of such adult. Owners may have other visitors on the Real Estate but the visits of such visitors shall be limited to two (2) weeks in duration.
- b) Nothing shall be done or kept in any Dwelling Unit, or on the Common Properties which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common Properties. No Owner shall permit anything to be done or kept in his Dwelling Unit or on any of the Common Properties which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Properties, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit.
- d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or place on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television

antenna or other attachment or things shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Architectural Review Board.

- e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or any of the Common Properties, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an owner shall be fully liable for any injury or damage to persons or property, including the Common Properties, caused by his pet. Further, the Owner of any pet shall be responsible for cleaning and removing any feces of such pet from any and all Dwelling Units, and Common Properties. The tethering of pets in any area outside an Owner's Dwelling Unit does not constitute "attended". Each pet shall be inoculated against rabies by a qualified and licensed veterinarian. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time including, but not limited to, a requirement that any Owner desiring to bring or maintain a pet on the Real Estate shall deposit with the Board a security deposit in an amount to be determined by the Board to cover any damage that may be caused by such pet to the Common Properties. Any such security deposit shall be returned to the Owner when the pet is permanently removed from the Real Estate, except to the extent said deposit has been used or is needed to repair damage caused by such pet. Any requirement for the depositing of such security deposit shall not be deemed to release or in any way limit an Owner's responsibility and liability for injury and damage caused by his pets. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Real Estate within ten (10) days after written notice from the Board to the respective Owner to do so.
- f) No Dwelling Unit shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the community developed or

to be developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.

- g) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from any public street.
- h) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate. However, this provision shall not restrict the use of any Dwelling Unit for private religious and social activities.
- i) No "for sale", "for rent" or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Real Estate or any Dwelling Unit without the prior consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Real Estate in connection with any unsold or unoccupied Dwelling Units and nothing contained herein shall be construed or interpreted to affect or restrict the activities of Declarant in the marketing, advertising or sale of Dwelling Units as a part of the development of this community.
- j) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Properties or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Properties.
- k) No boats, campers, trailers of any kind, buses, mobile homes, trucks,

motorcycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the Real Estate; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage. No repair work shall be done on the Real Estate on any vehicles, including passenger vehicles.

- l) Each Owner shall keep his Dwelling Unit in good order, condition and repair and free of debris in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Dwelling Unit shall fail to so maintain his Dwelling Unit, the Corporation, after notice to the Owner and approval by two-thirds (2/3) vote of the Percentage Vote, shall have the right to enter upon said Dwelling Unit to correct, repair, maintain and restore the Dwelling Unit. All costs incurred by the Corporation related to such correction, repair, maintenance or restoration shall be and constitute a Special Assessment against such Dwelling Unit, payable by the Owner upon demand by the Corporation.
- m) All garbage, trash and refuse shall be stored in appropriate containers inside the Dwelling Units (including garages) and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collection as are designated by the Board.
- n) No swimming pools, in-ground or above-ground, nor outdoor hot tubs or jacuzzis shall be permitted on the Real Estate.
- o) Nothing shall be placed within any fenced area appurtenant to a Dwelling Unit which shall be taller than the height of said fence without approval from the Board.
- p) Common Properties shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the

rules and regulations from time to time adopted by the Board.

- q) No additional buildings or other improvements shall be erected other than the Buildings designated herein and shown on the Plans.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including but not limited to any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Applicable Date, the right to use and maintain the Common Properties and any Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction and sale of Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. Declarant shall further have all such rights during the construction of any Dwelling Unit, Building or appurtenance to any Dwelling Unit or Building, or any portion of the infrastructure and related development of the community. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Properties, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

Section 2. Transfer - Right of First Refusal. Notwithstanding anything to the contrary contained in any agreement to purchase or sell any Dwelling Unit, if an Owner of a Dwelling Unit shall desire to sell such Dwelling Unit or any part thereof or interest therein at any time or from time to time, Owner shall so notify Declarant, which shall constitute an offer on the part of the Owner to sell and convey the Dwelling Unit, or such part thereof or interest therein, to Declarant on the terms and conditions set forth below. Declarant then shall have a period of thirty (30) days after receipt of such notice in which to notify Owner of Declarant's election to purchase the Dwelling Unit, or such part thereof or interest therein, on the terms and conditions as are set forth below, if Declarant desires to do so.

- a) If Declarant elects to exercise this right of first refusal to purchase the Dwelling Unit, the terms and conditions of such purchase shall be as follows:

- i) The purchase price shall be the Purchase Price for Owner's original purchase of the Dwelling Unit until such time as all of the residential units on the Real Estate as per the plan have been constructed, sold and closed (the "ROFR Price Date"). In the event that such Owner shall object to the amount of the purchase price, Declarant shall have the option to either:
- A) waive its election to purchase;
 - B) elect to fix the purchase price by the average of three (3) appraisers conducted by three (3) Indiana Certified General Appraisers. One appraiser shall be selected by Declarant, one appraiser shall be selected by Owner and the third appraiser shall be selected by the first two appraisers. The average of the appraisals shall be binding on all parties, with the parties sharing equally the costs of such appraisals; or
 - C) In the event Declarant shall waive its election to purchase, Declarant shall advise Owner in writing of such waiver of its right to purchase, and Owner shall have the right to sell the Dwelling Unit to a third party on any terms and conditions that do not conflict with this Declaration.
- ii) After the ROFR Price Date, the Owner shall present a written offer, including a purchase price, to Declarant. In the event said purchase price is unacceptable to Declarant and cannot be successfully negotiated between the parties, Declarant shall advise owner in writing of its intent not to exercise the right of first refusal, and Owner shall have the

right to sell the Dwelling Unit to a third party on any terms and conditions that do not conflict with this Declaration of Covenants, Conditions and Restrictions.

- iii) If Declarant exercises its right of first refusal under paragraph i) or ii) above, the closing shall take place within forty-five (45) days of the exercise.
- iv) Costs of the closing under ROFR shall be borne as follows:
 - A) Declarant shall pay the premium for a mortgagees policy of title insurance, Declarant's recording fees, one-half (1/2) of the closing fee, any inspection fee if an inspection is required by Declarant and the next installment of real estate taxes if such taxes are due and payable more than ninety (90) days after the closing.
 - B) Owner shall pay the premium for an Owner's policy of title insurance, deed preparation fee, Owner's document recording fees, one-half (1/2) of the closing fee, and the next installment of real estate taxes if such taxes are due and payable within ninety (90) days after closing.
- v) Owner's obligations, pursuant to this Section 2 of Article XIV, shall survive Owner's closing on the purchase of any Dwelling Unit. Further, any third party who purchases from Owner, shall be obligated to perform pursuant to this Declaration and to any provisions of the Contract that survives the closing on any Dwelling Unit.

ARTICLE XIV
Amendment of Declaration

Section 1. Generally. 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 any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the Percentage Vote.
- c) **Meeting.** 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.** Except as otherwise provided herein, any proposed amendment to this Declaration must be approved during the first twenty (20) years by not less than ninety percent (90%) of the Percentage Vote and thereafter by seventy-five percent (75%) of the Percentage Vote. The instrument of amendment must be signed by such Owners and recorded. In the event any Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.
- e) **Amendments.** No amendment hereto shall be adopted that changes:
 - i) The Percentage Interest with respect to any Dwelling Unit or the share of an Owner's liability for Common Expenses, except as otherwise provided herein with regard to annexation;

- ii) The provisions of Article XII, Section 1 with respect to reconstruction or repair in the event of fire or casualty, without approval of a two-thirds (2/3) majority of the Percentage Vote and unanimous approval of all Mortgagees whose mortgage interests have been made known to the Board in accordance with the provisions of the By-Laws;
- iii) The provisions of Article XVIII with regard to expansion, except by Declarant in the manner provided therein, so long as the Regime is still subject to expansion;
- iv) The provisions of Article II, Article IX, Article XIII, Article XV, Article XVIII, and Article XIX without Declarant's consent so long as the Regime is still subject to expansion; or
- v) Any provision hereof that would be deemed to be of a material nature by FNMA under any current or subsequent relevant guidelines that FNMA may issue, without approval of a two-thirds (2/3) majority of the Percentage Vote and approval of Mortgagees having mortgages on at least two-thirds (2/3) of the mortgaged Dwelling Units.

Any Mortgagee that duly has been notified of the nature of any proposed amendment shall be deemed to have approved the same if such Mortgagee or a representative thereof fails to appear at the meeting at such amendment is to be considered. If a proposed amendment is one permitted by this Section and is deemed by the Board to be one that is not of a material nature, the Board shall notify all Mortgagees whose interests have been made known to the Board of the nature of such proposed amendment, and such amendment conclusively shall be deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notice is mailed, and if such notice advises the Mortgagees of the time limitations contained in this sentence.

- f) Recordation. Each amendment hereto shall be executed only by Declarant in any case where Declarant has the right to amend this Declaration without any further consent or approval, and otherwise by the President or a Vice-President, and the Secretary or an Assistant Secretary, of the Association, provided that any amendment requiring Declarant's consent shall contain such consent. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded. Amendments dealing with Additional Sections and reassignment of Percentage Interests are not subject to the conditions of this Section and may be recorded by Declarant at any time without any other party's notice or consent.

Section 2. Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements, or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make or consent to any amendments described in this Section 2 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

ARTICLE XV
Acceptance and Ratification

All present and future Owners, Mortgagees, tenants and occupants of the Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules and regulations as adopted by the Board of Directors, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XVI
Negligence

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Dwelling Unit of its appurtenances or of the Common Properties.

ARTICLE XVII
Benefit and Enforcement

This Declaration and the Restrictions shall run with and bind the Real Estate for a term commencing on the date this Declaration or any Amendment is recorded in the Office of the Recorder of Marion County, Indiana and expiring August 1, 2010, after which time they shall be automatically extended for successive periods of ten (10) years each unless by vote of a majority

of the then Percentage Vote it is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same.

In the event of a violation, or threatened violation, of any of the covenants, conditions or restrictions set forth in this Declaration, Declarant (so long as Declarant remains an owner of any part of the Real Estate), the Board, or any Owner shall have the right to enforce the covenants, conditions and restrictions contained herein and to pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof. The failure or delay at any time of Declarant, the Corporation, the Owners, or any other Person entitled to enforce any of the same shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

ARTICLE XVIII
Expansion

Section 1. Adjacent Real Estate. Portions of the Real Estate may be brought into the Regime by the Declarant and made subject to this Declaration of Covenants, Conditions and Restrictions pursuant to the terms of this Declaration at any time.®

Section 2. Expansion. The provisions of this Article XVIII, Section 2 shall govern expansion of the Regime, and allocation and reallocation of Percentage Interests and Percentage Votes.

- Expansion by Sections.** Declarant anticipates that it may from time to time construct additional Dwelling Units on various portions of the Real Estate, for addition to the Regime in the manner hereinafter set forth. The general plan of development shall be consistent with the density and plan of development of the Dwelling Units to be constructed on the Real Estate. The maximum number of Dwelling Units to be contained in the Regime is twenty-three (23). Additional Sections shall not be added by Declarant at any time after the expiration of ten (10) years from the date hereof, nor

shall Declarant add any further Additional Sections if more than five (5) years have elapsed since the most recent prior Additional Section was added to the Regime. At any time, and from time to time, prior to expiration of such ten (10) year period, Declarant, at its option, may cause all or any part of the Real Estate to be added and annexed to the Regime, subject to the following conditions:

- i) An Additional Section may not be annexed unless the Dwelling Units to be constructed in such Additional Section have been substantially completed, and unless the Plans therefor are completed, certified by a licensed professional engineer or registered architect as fully and accurately depicting the layout, location and dimensions of the Dwelling Units, and recorded along with an Amendment conforming to the requirements of paragraph (c) of this Article XVIII, Section 2; and
- ii) The Dwelling Units in any Additional Section shall be constructed with labor and material of comparable quality to the Dwelling Units previously constructed on the Real Estate, although not necessarily of similar design, either as to interior floor plan or exterior structural design. Declarant reserves the right to determine all development standards of each Additional Section other than those particularly set forth in this Article XVIII, Section 2.

Declarant expressly reserves the right not to annex any or all of the Real Estate. Upon annexation of each Additional Section to the Regime, each Owner shall acquire a Percentage Interest, as recomputed in accordance with this Section, in the Common Properties in such Additional Section, and thenceforth shall incur and pay its Percentage Interest share of the Common Expenses attendant with such Additional Section, along with the Common Expenses attendant with the Real Estate and all Additional Sections previously added to the Regime.

- b) Percentage Interest. Each Owner shall have a Percentage Interest and Percentage Vote appurtenant to its Dwelling Unit that is equal to the Percentage Interest and Percentage Vote held by all other Owners, and there will be no differentiation based upon the size or value of the Dwelling Units. The Percentage Interest and Percentage Vote appurtenant to each Dwelling Unit at any time shall be 100% divided by the total number of Dwelling Units at that time (the "Formula"). The total shares shall at all times equal 100%, or as close to 100% as mathematically possible, having regard to the equality of shares allocable to each Dwelling Unit and the rounding thereof as required by Article II, Section 6.
- c) Procedures for Amendment. As each Additional Section is developed, Declarant may record an Amendment annexing and adding such Additional Section hereto and making it a part of the Regime. Declarant reserves the right to annex Additional Sections in any manner or order it may choose. Each Amendment shall contain the following:
- i) A description of the portion of the Real Estate to be annexed;
 - ii) A description of the Dwelling Units constructed thereon in a manner consistent herewith and with the Act; and
 - iii) The Percentage Interest of each Dwelling Unit after such annexation, computed in accordance with the Formula.
- d) Rights of Owners Affected by Expansion. Each Owner, by acceptance of a deed to a Dwelling Unit, acknowledges, consents and agrees that the following rights and conditions shall be applicable upon recordation of each Amendment:
- i) The Additional Section described in such Amendment shall be governed in all applicable respects by the provisions hereof.

- ii) The Percentage Interest and Percentage Vote applicable to each Dwelling Unit automatically shall be reallocated in accordance with the figure set forth in such Amendment, which reallocation shall be in accordance with the Formula. On recordation of each Amendment, the amount by which the Percentage Interest of an Owner is reduced shall thereupon divest from such Owner and revert to Declarant, its successors and assigns.
- iii) Each deed, mortgage or other instrument affecting a Dwelling Unit shall be deemed to be subject to the limitation that the Percentage Interest appurtenant to such Dwelling Unit shall be, upon recordation of each Amendment, altered in accordance with such Amendment and the Formula.
- iv) The Percentage Interest in the Common Properties shall be deemed to include any additional Common Properties annexed hereto by such Amendment. Each Amendment shall grant and convey to the Owners the appropriate Percentage Interest in the Common Properties added by such Amendment, and each deed, mortgage or other instrument affecting a Dwelling Unit shall be deemed to include and attach to such additional Common Properties.
- v) Recordation of an Amendment shall not alter the amount of the lien for Common Expenses previously assessed to a Dwelling Unit that was part of the Regime prior to such recordation. The lien for the share of Common Expenses from and after such recordation shall be assessed and paid based upon the recomputed Percentage Interest.
- vi) Each Owner shall execute and deliver such documents as are necessary or desirable to accomplish annexation of Additional Sections in accordance with the provisions of

this Section.

- e) Election Not to Expand. If Declarant elects not to annex all or part of the Real Estate, as permitted by this Section, Declarant shall file an Amendment which permanently shall remove that portion of the Real Estate which Declarant elects not to annex, and such portion thereafter shall not be subject to any possibility of becoming part of the Regime. In addition, any portion of the Real Estate for which an Amendment has not been filed within ten (10) years of the date hereof automatically shall be removed from the possibility of becoming part of the Regime. When, because of annexation of all of the Real Estate, passage of time or filing of an Amendment under this paragraph (e), the Regime is no longer subject to expansion, the Percentage Interest then in effect shall not be altered unless 100% of the Percentage Vote approves such change and Mortgagees of at least two-thirds (2/3) of the mortgaged Dwelling Units consent to such change.

ARTICLE XIX
Miscellaneous

Section 1. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 2. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use of enjoyment of any of the Common Properties or by abandonment of his Dwelling Unit.

Section 3. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the By-Laws and each shall be enforceable to the greatest extent permitted by law.

Section 4. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 5. Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

Section 6. Notices. Any notice required or permitted to be sent hereunder or pursuant to the By-Laws shall be sufficient if sent by United States mail, certified or registered, postage prepaid, return receipt requested, to the address shown on the Association's records.

In Witness Whereof, GreenTree at Ft. Benjamin Harrison, LLC, Declarant, has executed this Declaration on the day and year first hereinabove set forth.

GREENTREE AT FT. BENJAMIN HARRISON, LLC

BY: GREENWALT DEVELOPMENT, INC.

BY: R. Lynn Grant

PRINTED: R. Lynn Grant

ITS: CEO

CHICAGO TITLE

STATE OF INDIANA)
) SS:
COUNTY OF HANCOCK)

Before me, a Notary Public, in and for said County and State, personally appeared

R. Lynn Greenwalt the CEO of Greenwalt Development, Inc., a Member of GreenTree at Ft. Benjamin Harrison, LLC, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 15th day of May, 2001.

Tina C. Baugh
Tina C. Baugh Notary Public

My Commission Expires: July 14, 2007
County of Residence: Hancock

This document was prepared by Karin L. Blue, Pritzke & Davis, 728 N. State St., Greenfield, Indiana, 46140.

greenwalgreentree at ft. benjamin harrison.declaration of covenants.blb.051101



CHICAGO TITLE

LAND DESCRIPTION
(Instrument # 1998-0133191)

Part of the Northwest Quarter of Section 7 Township 16 North, Range 5 East in Marion County, Indiana, of the Second Principal Meridian, being more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of Section 7, being in the center of Franklin Road; thence North 00 degrees 55 minutes 31 seconds West along the West line of said Section 7 a distance of 950.06 feet; thence North 89 degrees 35 minutes 12 seconds East (passing a Corps of Engineers monument at 75.00 feet, being on the east right-of-way line of Franklin Road as described in Instrument No. 74-77415, and also being the Northwest corner of land conveyed to the City of Lawrence by the United States as described in Instrument No. 74-64359, both recorded in the Office of the Recorder for Marion County) a distance of 82.63 feet to the new East right of way line of Franklin Road per Instrument No. 96-0160709 in the said Office of the Recorder; thence with the new East right-of-way line of Franklin Road as follows: North 00 degrees 39 minutes 35 seconds West a distance of 863.44 feet; thence North 00 degrees 44 minutes 37 seconds East a distance of 232.92 feet; thence North 03 degrees 56 minutes 21 seconds East a distance of 78.22 feet to the Point of Beginning; thence continuing North 03 degrees 56 minutes 21 seconds East 182.34 feet; thence North 08 degrees 28 minutes 22 seconds East 146.32 feet; thence North 12 degrees 30 minutes 55 seconds East 54.05 feet to a point on the new South right-of-way line of East 56th Street per said Instrument No. 96-0160709, thence leaving said new right-of-way line for Franklin Road and with said new South right-of-way line of East 56th Street as follows; North 87 degrees 40 minutes 14 seconds East 402.82 feet; thence North 85 degrees 31 minutes 05 seconds East 296.83 feet; thence North 85 degrees 03 minutes 33 seconds East 79.14 feet; thence leaving said new right-of-way line for East 56th Street; thence South 06 degrees 03 minutes 44 seconds East a distance of 255.56 feet; thence South 16 degrees 12 minutes 03 seconds East a distance of 92.92 feet; thence South 00 degrees 10 minutes 07 seconds East a distance of 79.84 feet, thence South 89 degrees 49 minutes 53 seconds West a distance of 876.20 feet to the Point of Beginning.

Greentree at Fort Harrison-Phase I
Land Description
(A part of Instrument Number 98-0133191)

A part of the Northwest quarter of Section 7, Township 16 North, Range 5 East, in Marion County, Indiana, being described as follows:

Beginning at the Northeast corner of a tract of land described in Instrument Number 98-0133191 in the Office of the Recorder for Marion County, Indiana, said point also being the Northwest most corner of Drum Road as per the plat for Benjamin Square Section 1, as recorded in Instrument Number 990070075 in said Recorder's Office; thence South 06 degrees 03 minutes 44 seconds East along the Westerly right of way line of said Drum Road a distance of 202.52 feet; thence South 73 degrees 52 minutes 40 seconds West a distance of 123.28 feet; thence South 05 degrees 54 minutes 50 seconds East a distance of 145.75 feet to a point 43.00 feet distant from the Northwesterly line of said Benjamin Square Section 1; thence South 89 degrees 49 minutes 53 seconds West parallel with the Northwesterly line of said Benjamin Square Section 1 a distance of 139.98 feet; thence North 00 degrees 36 minutes 19 seconds West a distance of 196.90 feet; thence North 84 degrees 05 minutes 10 seconds East a distance of 53.06 feet; thence North 23 degrees 20 minutes 15 seconds East a distance of 77.61 feet; thence North 04 degrees 28 minutes 55 seconds West a distance of 95.45 feet to a point on the Southerly right of way line of East 56th Street as described in Instrument Number 96-0160709 in said Recorder's Office; thence North 85 degrees 31 minutes 05 seconds East along said southerly right of way line a distance of 69.39 feet; thence continuing along said right of way line North 85 degrees 03 minutes 33 seconds East a distance of 79.14 feet to the Point of Beginning. Containing 1.34 acres, more or less.