

DECLARATION  
AND  
BY-LAWS,

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ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP  
OF  
PREMISES AT  
INDIANAPOLIS, INDIANA  
PURSUANT TO THE HORIZONTAL PROPERTY LAW OF THE  
STATE OF INDIANA

NAME -- HERITAGE COMMONS HORIZONTAL PROPERTY REGIME

This instrument was prepared by  
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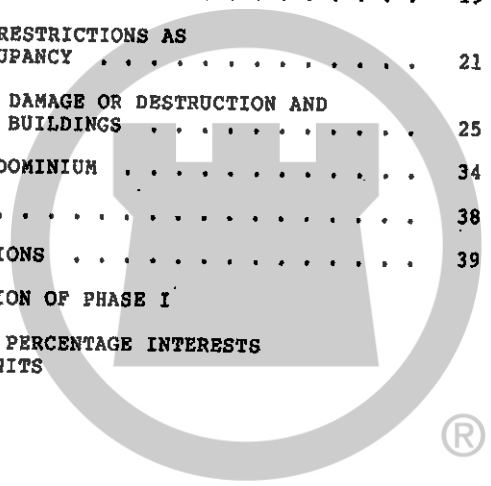
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CHICAGO TITLE

DECLARATION OF CONDOMINIUM OWNERSHIP  
 AND OF  
 EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS  
 FOR  
 HERITAGE COMMONS HORIZONTAL PROPERTY REGIME  
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CHICAGO TITLE

DECLARATION OF CONDOMINIUM OWNERSHIP  
AND OF  
EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS  
FOR  
HERITAGE COMMONS HORIZONTAL PROPERTY RECIME

THIS DECLARATION, made and entered into by E. F. REALTY  
CO., an Indiana partnership (hereinafter referred to as  
"Declarant"):

WITNESSETH THAT:

WHEREAS, Declarant owns certain real estate located in  
Marion County, Indiana, more particularly described as follows:

A part of the Fractional Northwest Quarter of  
Section 31, Township 16 North, Range 5 East in Marion  
County, Indiana, being more particularly described as  
follows, to-wit:

Commencing at the Northwest corner of said Northwest  
Quarter Section thence North 89 degrees 54 minutes  
37 seconds East upon and along the North line of said  
Quarter Section 330.00 feet; thence South 00 degrees  
00 minutes 15 seconds East and parallel with the West  
line of said Quarter Section 225.001 feet to the POINT  
OF BEGINNING OF THIS DESCRIPTION: thence South  
00 degrees 00 minutes 15 seconds East and parallel  
with said West line 224.999 feet to the Northwest  
corner of "Chatham Walk, Second Section", a  
subdivision in Marion County, Indiana, the plat of  
which is recorded as Instrument Number 71-2005 in the  
Office of the Recorder of Marion County, Indiana;  
thence, North 89 degrees 54 minutes 37 seconds East  
and parallel with the North line of said Quarter  
Section 269.34 feet to the Northeast corner of said  
"Chatham Walk, Second Section", said point also being  
the Northwest corner of "Chatham Walk, First Section",  
a subdivision in Marion County, Indiana, the plat of  
which is recorded as Instrument Number 71-40535 in the  
Office of the Recorder of Marion County, Indiana;  
thence North 89 degrees 54 minutes 37 seconds East and  
parallel with said North line 380.66 feet; thence  
North 00 degrees 00 minutes 15 seconds West and  
parallel with the West line of said Quarter Section  
260.00 feet; thence South 89 degrees 54 minutes  
37 seconds West parallel with said North line 122.90  
feet; thence South 50 degrees 2 minutes 56 seconds  
West 27.98 feet; thence North 74 degrees 3 19 minutes  
52 seconds West 66.04 feet; thence South 89 degrees  
54 minutes 37 seconds West 177.00 feet; thence South  
00 degrees 00 minutes 15 seconds East and parallel  
with said West line 35.001 feet; thence South  
89 degrees 54 minutes 37 seconds West and parallel  
with said North line 265.059 feet to the POINT OF  
BEGINNING.

(hereinafter referred to as the "Real Estate"); and

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WHEREAS, Declarant is the owner of a portion of the Real Estate more particularly described in Exhibit "A" attached hereto and by reference made a part hereof (hereinafter referred to as "Phase I"); and

WHEREAS, Declarant intends to improve the Real Estate with an expandable condominium project containing a maximum of twenty-nine (29) residential units to be known as Heritage Commons Horizontal Property Regime; and

WHEREAS, it is the desire and intention of Declarant to enable Phase I and such other portions of the Real Estate as Declarant may from time to time subject to this Declaration, together with all buildings, structures, improvements, fixtures and property of whatsoever kind thereon, and all easements, rights, appurtenances and privileges belonging or in anywise pertaining thereto (hereinafter referred to as the "Property"), to be owned by Declarant and by each successor in interest of Declarant under that certain type or method of ownership commonly known as an expandable condominium, and to submit the Property to the provisions of the Horizontal Property Law of the State of Indiana; and

WHEREAS, Declarant, acting under direction of the parties authorized to direct Declarant, has elected to establish, for the benefit of Declarant and for the mutual benefit of all future owners or occupants of the Property, or any part thereof, which shall be known as "Heritage Commons Horizontal Property Regime", certain easements, privileges and rights in, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

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

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Property and to facilitate the proper administration thereof and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property;

NOW, THEREFORE, Declarant, as the owner of Phase I and for the purposes set forth, DECLARES AS FOLLOWS:

ARTICLE I

DEFINITIONS

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

(a) "Act" means the Horizontal Property Law of the State of Indiana, I.C. 32-1-6-1, et seq. The Act is incorporated herein by reference.

(b) "Association" means Heritage Commons Co-Owners Association, Inc., an Indiana not-for-profit corporation, being the association of Co-owners of Heritage Commons, more particularly described in Article V hereof.

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

(d) "Building" or "Buildings" means the structure or structures on the Real Estate in which the Condominium Units are located. Each Building is more particularly described and identified on the Plans and in Article II of this Declaration. Such term also includes any additional structures containing one or more condominiums which may be submitted and subjected to the Act and this Declaration by supplemental declarations as herein provided, and will be identified in supplemental declarations or on plans that will be filed therewith.

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

(f) "Common Areas" means the Common Areas and Facilities and the Limited Common Areas and Facilities.

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

(h) "Common Expenses" means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Facilities and Limited Common Areas

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and Facilities (to the extent provided herein) and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the By-Laws.

(i) "Condominium Unit" means each one of the units constituting a part of the Property, each individual unit being more particularly described in the Plans and in Article II of this Declaration and each additional unit which may be submitted to the Act and this Declaration by supplemental declarations as herein provided. Such term also includes the undivided percentage interest in Common Areas and Facilities and Limited Common Areas and Facilities.

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

(k) "Declarant" means and refers to E & F Realty Company, an Indiana general partnership, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant. A mortgagee acquiring title by virtue of foreclosure against the Declarant or by acceptance of a deed in lieu of foreclosure does not assume the prior obligations or liabilities of the Declarant.

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

(m) "Heritage Commons" means the name by which the Property and the Horizontal Property Regime shall be known.

(n) "Limited Common Areas and Facilities" means a portion or portions of the Common Areas and Facilities which are designated by this Declaration, the Plans or action of the Board as being Limited Common Areas and Facilities reserved for the use of a certain Condominium Unit or Condominium Units to the exclusion of the other Condominium Units.

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

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

(q) "Percentage Vote" means that percentage of the total vote accruing to all of the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof. The Percentage Vote to which each owner shall be entitled on any matter upon which the Co-owners are

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entitled to vote shall be the same percentage as the Percentage Interest appurtenant to such Owner's Condominium Unit.

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

(s) "Phase I" means the real estate described on Exhibit "A" and such other portions of the Real Estate which, as of any given time, have been subjected to the Act and this Declaration either by this Declaration or a supplemental declaration as herein provided.

(t) "Plans" means the site plan of the Real Estate showing location of the Buildings in relation to "lot lines" and the floor plans of the Buildings and the Condominium Units, submitted pursuant to the provisions of the Act, all of which are incorporated herein by reference.

(u) "Property" means Phase I and such other portions of the Real Estate as may be submitted and subjected to the Act and this Declaration by supplemental declarations as herein provided, all improvements and structures constructed or contained therein or thereon, including the Buildings, and all easements, rights and appurtenances belonging thereto, and all fixtures and property intended for the mutual use, benefit or enjoyment of the Owners, but not including the personal property of the Owners.

## ARTICLE II

### CONDOMINIUM UNITS

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

2. Appurtenances. Each Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including but not limited to all fixtures,

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facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Unit wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit or which may be necessary for the safety, support, maintenance, use, and operations of the Building or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Condominium Unit shall constitute a part of such Condominium Unit, whether or not the same are located within or partly within the boundaries of such Condominium Unit. Also, the interior sides and surfaces of all doors and windows in the perimeter walls of a Condominium Unit, whether or not located within or partly within the boundaries of a Condominium Unit, and all interior walls and all of the floors and ceilings within the boundaries of a Condominium Unit, are considered part of the Condominium Unit.

3. Boundaries. The boundaries of each Condominium Unit shall be shown on the Plans without regard to the existing construction measured between the interior unfinished surface of the floors, ceilings and perimeter walls of each Condominium Unit. In the event any horizontal or vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Condominium Unit because of inexactness of construction, settling after construction, or for any other reasons, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to

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such space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor or ceiling surfaces of the Condominium Unit.

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

### ARTICLE III

#### COMMON AREAS AND FACILITIES AND LIMITED COMMON AREAS AND FACILITIES

1. Description of Common Areas and Facilities. Except as otherwise provided herein or on the Plans, Common Areas and Facilities shall consist of (1) the Property, excluding the Condominium Units, (2) the foundations, columns, girders, beams, supports, other structural portions of the Building and exterior surfaces of roofs of the Building, (3) the yards, gardens, sidewalks, drives and parking areas, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Common Areas and Facilities, (4) central electricity, gas, water and sanitary sewer mains serving the Buildings, if any, (5) exterior lighting fixtures and electrical service lighting the exterior of the Buildings unless separately metered to a particular Condominium Unit, (6) pipes, ducts, electrical wiring and conduits and public utilities lines which serve more than one Condominium Unit, (7) all streets that are not dedicated, (8) floors (but not floor coverings), roofs and exterior perimeter walls of the Buildings, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Common Areas and Facilities,

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(9) all facilities and appurtenances located outside of the boundary lines of the Condominium Units, except those areas and facilities expressly classified and defined herein as Limited Common Areas and Facilities or as part of the Condominium Unit, and (10) such other areas as are designated on the Plans.

2. Description of Limited Common Areas and Facilities.

Limited Common Areas and Facilities and those Condominium Units to which use thereof is limited are as follows:

(a) The halls, corridors, lobbies, stairs, stairways, attic space, entrances and exits of each Building, if any (except those located within the interior of Condominium Units) shall be limited to the use of the Condominium Units of such Building.

(b) Patios, porches or decks together with an area, if any, around such patio, porch or deck specifically shown and designated on the Plans and any fences and gates therein enclosing or surrounding the same, shall be limited to the exclusive areas of the Condominium Unit to which they are attached; provided, however, that any owner of a Condominium Unit desiring to fence in such area around his patio, porch or deck so designated on the plans shall first obtain the written approval as to the location, size, style, material, design, color and architecture of said <sup>®</sup> fence from the Board and provided further that the Owner to whose Condominium Unit said fence is or is to be attached shall construct and maintain the fence and any gates therein and maintain the area enclosed by the fence at his own expense.

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

(d) Any other areas designated and shown on the Plans as Limited Common Areas and Facilities shall be limited to

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the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

3. Ownership and Percentage Interest. Each Owner shall have an undivided interest in the Common Areas and Facilities and Limited Common Areas and Facilities, as tenants in common with all other Owners, equal to his Condominium Unit's Percentage Interest. The Percentage Interest in the Common Areas appertaining to each Condominium Unit is set forth in Exhibit "B" attached hereto. The Percentage Interest of each Condominium Unit shall be equal for all purposes and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units which, from time to time, have been submitted and subjected to the Act and this Declaration as herein provided and which constitute a part of Heritage Commons. Except as otherwise provided or permitted herein and except as further altered by the addition of additional Condominium Units through the inclusion of additional portions of the Real Estate, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas shall be of a permanent nature and shall not be altered without the unanimous consent of all the Owners and then only if in compliance with all requirements of the Act.

The Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to Heritage Commons and the Association upon which the Co-owners are entitled to vote.

#### ARTICLE IV

##### GENERAL PROVISIONS AS TO CONDOMINIUM UNITS AND COMMON AREAS

1. Submission of Property to Act. The Property is hereby submitted to the provisions of the Act.
2. No Severance Of Ownership. No Owner shall execute any deed, mortgage, lease, or other instrument affecting title to a Condominium Unit without including therein both the Owner's interest in the Condominium Unit and the Condominium Unit's corresponding percentage of ownership in the Common Areas, it

being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

3. Easements.

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

(b) Utility Easements and Declarant's Easements. All public utilities, including cable television companies,

serving the Property are hereby granted the right to install, lay, construct, renew, alter, remove, repair, replace, operate and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment into, over, under, along, on and through any portion of the Common Areas for the purpose of providing utility services to the Property. The Board may hereafter grant additional utility easements for the benefit of the Property over, under, along and on any portion of the Common Areas, and each Owner hereby grants to the Board an irrevocable power of attorney to execute, acknowledge, register or record for and in the name of all the Owners, such instrument or instruments as may be necessary to effectuate the foregoing. Declarant hereby receives an easement throughout the Real Estate to the extent reasonable or necessary to perform any maintenance, repairs or construction which Declarant is obligated or required to make.

(c) Easement for Emergency Purposes. An easement is hereby granted and dedicated for use in the case of emergency by emergency vehicles such as fire trucks, rescue units, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the Real Estate, including the Common Areas and all Condominium Units. ®

(d) Easements To Run With The Land. All easements and rights described herein are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on Declarant, its successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance, or in any mortgage or other evidence of obligation, to the easements

and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such Condominium Unit as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

4. Use of the Common Areas and Facilities. Subject to the provisions of Paragraph 3 of this Article, each Owner shall have the right to use the Common Areas and Facilities (except the Limited Common Areas and Facilities) in common with all other Owners, as may be required for the purpose of ingress and egress to, and use, occupancy and enjoyment of, the respective Condominium Unit owned by each Owner. Such rights shall extend to the Owner and the members of such Owner's immediate family, employees, invitees, lessees, visitors and guests. The use of the Common Areas and Facilities and the rights of the Owners with respect thereto shall be subject to and governed by the provisions of the Act, this Declaration, the By-Laws and rules and regulations of the Board.

5. Maintenance of Common Areas: Common Expenses. Except as otherwise provided herein, management, repair, alteration and improvement of the Common Areas shall be the responsibility of the Board. Each Owner (other than Declarant) shall pay his proportionate share of the expenses of maintenance, repair, replacement, administration and operation of the Common Areas and other Common Expenses. Such proportionate share shall be in the same ratio as the percentage of ownership in the Common Areas as set forth in Exhibit "B", as amended from time to time by supplemental declarations as herein provided. Payment thereof shall be in such amount and at such times as may be provided by the By-Laws or rules and regulations of the Board. In the event of the failure of an Owner to pay his proportionate share when due, the amount thereof shall

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constitute a lien on the interest of such Owner in the Property pursuant to the terms of the Act. Abandonment of a Condominium Unit or non-use of the Common Areas by an Owner shall not relieve such Owner from his obligation to pay his proportionate share of Common Expenses.

6. Parking Areas. Any portion of the Property allocated to parking purposes shall be part of the Common Areas and Facilities and shall be subject to the reasonable and non-discriminatory rules and regulations of the Board.

7. Maintenance of Streets, Parking Areas and Drainage Facilities. As part of its responsibility in maintaining the Common Areas, the Association shall be responsible for the repair and maintenance of streets within Heritage Commons, including the patching of cracks and holes and resurfacing. The Association shall further provide for snow removal from such streets and parking areas and, at the option of the Board or by vote of the Owners, may provide for snow removal from the walks servicing the individual Condominium Units. The Association shall further be responsible for the maintenance of the drainage facilities located upon the Real Estate and the Association shall cooperate with any abutting landowners in the maintenance of any common drainage facilities. The costs of the repairs and maintenance specified herein, including appropriate reserves as required under I.C. 32-1-6-22, as amended, shall be a part of the Common Expenses.

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

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with his respective percentage of ownership interest in the Common Areas.

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

10. Insurance. Each Owner shall be responsible for his own insurance on the contents of his own Condominium Unit, and for additions and improvements thereto and decorating and furnishings and personal property therein; and for personal property stored elsewhere on the Property; and his personal liability insurance, except as provided in the By-Laws.

The Board shall obtain fire and extended coverage insurance insuring the Property as set forth in Article VII hereof. The Board shall obtain comprehensive public liability insurance in such limits as the Board shall deem appropriate, together with workmen's compensation insurance and other liability insurance, if deemed necessary or appropriate by the Board. Such insurance shall inure to the benefit of each Owner, the Association, the Board, and any managing agent or company acting on behalf of the Association. Such insurance coverage shall also cover cross liability claims of one insured against the other. The premiums for all such insurance shall be paid by the Association as part of the Common Expenses.

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

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affected Condominium Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements.

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

11. Maintenance, Repairs and Replacements of Condominium Units.

(a) By the Association. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of those portions of each Condominium Unit which contribute to the support of the Buildings, excluding, however, interior wall, ceiling and floor surfaces, but including outside walls. In addition, the Association shall maintain, repair and replace all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to a Condominium Unit or which service more than one Condominium Unit exclusive of any portions of the foregoing which may be located at or beyond the wall, ceiling or floor outlets, or which may be the responsibility of an individual Owner under any other provision of this Declaration. The Board may replace and repair any window glass, window frames and doors, or any utility service which constitutes a safety hazard, in the event any Owner fails to do so as provided in subparagraph (b) of this Paragraph 11 of this Article, but the expense of same shall be paid by the defaulting Owner.

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

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(1) All of the maintenance, repairs and replacements within his own Condominium Unit and all of the window glass, window frames and doors appurtenant thereto, and all internal installations of such Condominium Unit such as televisions, refrigerators, ranges and other kitchen appliances, lighting fixtures and other electrical fixtures, appliances, and heating, plumbing and air-conditioning fixtures, (including air-conditioning condenser units and heat pumps and the like) whether or not located within such Owner's Unit, or other installations, and any portion of any other utility service facilities located within the Condominium Unit boundaries; provided however, such maintenance, repairs and replacements as may be required for the bringing of water or electricity to the Condominium Unit, shall be furnished by the Association as part of the Common Expenses. The Association may provide, by its rules and regulations, for ordinary maintenance and minor repair and replacements to be furnished to Condominium Units as a Common Expense. Except as otherwise provided by the Board, an Owner shall maintain any fenced area adjacent to this Condominium Unit, including any landscaping. No Owner shall make any alterations or additions to his Condominium Unit which affects the structural integrity of any other Condominium Unit or Building.

(2) All of the decorating within his own Condominium Unit from time to time, including painting, wall papering, washing, cleaning, paneling, partitioning, floor covering,

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draperies, window shades, curtains, lighting and other furnishings and interior decorating. Each Owner shall be entitled to the exclusive use of such portions of the perimeter walls, floors, and ceilings as lie within the boundaries of his Condominium Unit as shown on the Plans, and such Owner shall maintain such portions in good condition and repair at his sole expense. All such maintenance and use shall be subject to the rules and regulations of the Board. The interior and exterior surfaces of window glass in all windows forming part of perimeter wall of a unit shall be cleaned or washed at the expense of each respective Owner. Decorating of the Common Areas (other than interior surfaces within the Condominium Units as above provided), and any redecorating of Condominium Units to the extent made necessary by any damage to existing decorating of such Condominium Units caused by maintenance, repair or replacement work on the Common Areas by the Association, shall be furnished by the Association as part of the Common Expenses. Nothing herein contained shall be construed to impose a contractual liability upon the Association for maintenance, repair and replacement, but the Association's liability shall be limited to damages resulting from negligence. The respective obligations of the Association and Owners set forth in the Declaration shall not be limited, discharged or postponed by reason of the fact that any such maintenance, repair or replacement is required to cure a latent or patent defect in material or workmanship in the construction of the Property.

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12. Negligence of Owner. If, due to the negligent act or omission of an Owner, his officers, employees, contractors, invitees, guests or household pet or other authorized occupants or visitors of such Owner, damage shall be caused to the Common Areas or to a Condominium Unit or Condominium Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board, subject to the rules, regulations and By-Laws of the Association.

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

14. Alterations, Additions and Improvements. No alterations of any Common Areas or any additions or improvements thereto shall be made by any Owner without the prior written approval of the Board nor shall any Owner make any alteration in or to his respective Condominium Unit which would affect the safety or structural integrity of the Building in which the Condominium Unit is located. Declarant reserves the right to change the interior design and arrangement of all Condominium Units and alter the boundaries between Condominium Units so long as Declarant owns the Condominium Units so altered. If Declarant

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shall make any changes in the Condominium Units so authorized, such changes shall be reflected by a recorded supplement to the Plans and such supplement to the Plans need not be approved by the Association or any other Owners.

ARTICLE V

INCORPORATION OF ASSOCIATION

1. Association. Declarant, upon the sale of one (1) or more of the Condominium Units, shall cause to be incorporated a not-for-profit corporation under the laws of the State of Indiana, to be called Heritage Commons Co-Owners' Association, Inc. which corporation shall be the governing body for all the Owners for the maintenance, repair, replacement, administration and operation of the Property. Upon the formation of the Association, every Owner shall be a member therein, which membership shall automatically terminate upon the sale, transfer or other disposition of such Owner's Condominium Unit, at which time the new Owner shall automatically become a member therein. The Association shall have one class of member.

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

Until such time as the Board provided for in this Declaration is formed and until such time thereafter as Declarant shall have consummated the sale of twenty-three (23) Condominium Units, the

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

2. Liability Of The Board. Neither the members of the Board nor the officers thereof shall be liable to the Owners for any mistake of judgment or for any acts or omissions of any nature whatsoever as such Board members and officers, except for any acts or omissions found by a court to constitute willful misconduct in the performance of duty. The Owners (and, to the extent permitted by law, the Association) shall indemnify and hold harmless each of the members of the Board and each of the officers against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers on behalf of the Owners or the Association, or arising out of their status as Board members or officers, unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claims, action, suit or proceeding, whether civil, criminal, administrative or other in which any member of the Board or officers may be involved by virtue of such person being or having been such member or officer, provided, however, that such indemnity by the Association shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for willful misconduct in the performance of his duties as such member or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in any manner determined by the Board (who

may be counsel regularly retained by the Association) there is not reasonable ground for such person or officer being adjudged liable for willful misconduct in the performance of his duties as such member. The Board shall have authority to purchase and maintain insurance on behalf of the officers and members of the Board against any liability or settlement based on asserted liability incurred by them by reason of being or having served in such capacity, whether or not the Association would have the power to indemnify them against such liability or settlement under the provisions of this Paragraph 2 of this Article.

#### ARTICLE VI

##### COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

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

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

2. There shall be no obstruction of the Common Areas and Facilities, or Limited Common Areas and Facilities serving more than one (1) Condominium Unit, nor shall anything be stored in the Common Areas and Facilities, or Limited Common Areas and Facilities serving more than one (1) Condominium Unit (except in areas designed for such purpose), without the prior written consent of the Board except as hereinafter expressly provided. Owners shall be obligated to maintain and keep in good order and repair their respective Condominium Units.

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3. Nothing shall be done or kept in any Condominium Unit or in the Common Areas which will increase the rate of insurance on the Property or contents thereof, applicable for commercial or residential use, without the prior written consent of the Board. Owners shall not permit anything to be done or kept in their respective Condominium Units or in the Common Areas which will result in the cancellation of insurance on the Property, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Areas.

4. Owners shall be individually responsible for insuring their personal property in their respective Condominium Units, their personal property stored elsewhere on the Property (if applicable) and their personal liability to the extent not covered by the liability insurance for all the Owners obtained by the Board as provided herein.

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

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



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

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

9. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials which are not in receptacles provided for such purpose.

10. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted in any Condominium Unit.

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

12. Nothing shall be altered or constructed in or removed from the Common Areas, except upon the written consent of the Board.

13. No boats, campers, trailers of any kind, buses, mobile homes, trucks (other than pick-up trucks), mini bikes, or any other vehicle other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the Property, provided, however, that nothing herein shall prevent the parking or storage of such vehicles on a driveway leading to a unit's garage or completely enclosed within a garage. Any vehicle which is inoperative or is not being used for normal transportation shall not be permitted to remain on any of the Common Areas and the Board, after written notice to any Owner violating this provision, may cause any such vehicle to be removed at such Owner's expense.

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

15. Nothing shall be altered or constructed in or removed from the Common Areas, except upon the consent of the Board.

16. No additional building shall be erected or located within Heritage Commons other than the Building designated in the Declaration and shown on the Plans, without the consent of the Board. Declarant may, however, erect a directional and identification sign or signs on or near the perimeter of the Real Estate for the benefit of the Owners. Such sign or signs shall constitute a part of the Common Area and shall be for the benefit of all Owners, under the reasonable control of the Board.

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

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ARTICLE VII

INSURANCE, AND DAMAGE OR DESTRUCTION  
AND RESTORATION OF BUILDINGS

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

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board, who shall act as the insurance trustee and hold such proceeds for the benefit of the insured parties. In the event that the Board has not posted surety bonds or obtained fidelity insurance for the faithful performance of their duties as such managers or if such bonds or insurance coverage does not exceed the funds which will come into its hands, and there is a damage to a part or all of the Property resulting in a loss, the Board shall obtain and post a bond for the faithful performance of its duties as insurance trustee in an amount to be determined by a majority vote of a meeting of the Co-owners but not to exceed 125% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the insurance trustee shall be to

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receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Owners and the respective mortgagees. The proceeds shall be used or disbursed by the Association or Board, as appropriate, only in accordance with the provisions of this Declaration.

The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of each damaged Owner to the damages of all Owners directly damaged by any event insured under the said master casualty insurance policy.

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 Association, the Board, 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 is able to obtain such insurance upon reasonable terms, (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Paragraph 2 hereunder.

The Co-owners, through the Association, shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, the Board, any committee or organ of the Association or Board, any managing agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with

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respect to Heritage Commons, all Owners of Condominium Units and all other persons entitled to occupy any Condominium Unit or other portions of Heritage Commons.

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

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

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

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, the contents of his Condominium Unit (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him) and his personal property stored elsewhere on the Property (if allowed), 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 Association. Each Owner may obtain casualty insurance at his own expense upon his Condominium Unit but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association, to be distributed as herein provided.

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

2. Casualty and Restoration.

(a) Except as hereinafter provided, damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose;

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provided, however, that repair and reconstruction shall not be compulsory in the event of "complete destruction of all of the Buildings" (as hereinafter defined) and shall only be done in accordance with the provisions hereinafter set forth. As used herein, the term "complete destruction of all of the Buildings" means a determination, made by a vote of two-thirds (2/3) of all Co-owners at a special meeting of the Association called for the purpose of making such determination, that total destruction of all of the Buildings has occurred. A special meeting of the Association shall be called and held within ninety (90) days after any fire or any other casualty or disaster damaging or destroying any of the Buildings for the purpose of making the determination of whether or not there has been a complete destruction of all of the Buildings. If such a special meeting is not called and held within such ninety (90) day period, or if the determination of whether or not there has been a complete destruction of all of the Buildings has not been made within such ninety (90) day period, then it shall be conclusively presumed that the Co-owners determined that there was not a complete destruction of all of the Buildings, and the Association shall proceed with repair and reconstruction as herein provided.

(b) If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are not insurance proceeds, and if the Property is not to be removed from the horizontal property regime, the cost for restoring the damage and repairing and reconstructing the Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by all of the Owners of Condominium Units in

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proportion to the ratio that the Percentage Interest of each Condominium Unit bears to the total Percentage Interest of all Condominium Units. Any such amounts payable by the Co-owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein and in the Act.

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

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

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

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reconstruction and repair of the Buildings, the Buildings shall not be rebuilt, reconstructed or repaired and, in such event, the Property shall be deemed and considered as to be removed from the provisions of the Act:

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

(ii) the undivided interest in the Property owned in common which shall appertain to each Condominium Unit Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas;

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

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

(f) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board or Association has the responsibility of maintenance and repair, the Board shall obtain reliable and detailed

estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board desires.

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

(i) If the amount of the estimated cost of reconstruction and repair is less than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board; provided, however, that upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the following paragraph (ii).

(ii) If the estimated cost of reconstruction and repair of any Building or other improvement is more than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect or engineer qualified to practice in Indiana and employed by the Board to supervise such work, payment to be made from time to time as the work progresses. The architect or engineer shall be required to furnish a certificate giving a brief description of the services and materials furnished by various

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contractors, subcontractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the architect or engineer for the services and materials described; and (3) that the costs as estimated by said architect or engineer for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.

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

(iv) In the event that there is any surplus of monies in the construction fund after the reconstruction or repair of the damage has been fully completed and all costs paid such sums may be retained by the Board as a reserve or may be used in the maintenance and operation of the Common Areas, or, in the discretion of the Board of Managers it may be distributed to the

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Owners in the Buildings affected and their mortgagees who are the beneficial owners of the fund. The action of the Board in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

ARTICLE VIII

EXPANDABLE CONDOMINIUM

1. Expandable Condominium and Declarant's Reserved Rights.

Heritage Commons is and shall be an "expandable condominium", as defined in the Act, and Declarant expressly reserves the right and option to expand the Property and Heritage Commons in accordance with the provisions of the Act and the following provisions:

(a) The real estate described and defined herein as Phase I is the real estate being subject to the Heritage Commons Horizontal Property Regime by this Declaration and constitutes the first phase of the general plan of development of the Real Estate. The balance of the Real Estate is the area into which expansion of Heritage Commons may be made by Declarant. The maximum number of Condominium Units which may be developed on the Real Estate, including Condominium Units under Phase I as defined in this original Declaration, shall be twenty-nine (29). Subject to said limit as to the maximum number of Condominium Units to be developed on the Real Estate, Heritage Commons may be expanded by Declarant to include additional portions of the Real Estate in one (1) or more additional phases by the execution and recording of one (1) or more amendments or supplements to this Declaration; provided, however, that no single exercise of such right and option of expansion as to any part or parts of the Real Estate shall preclude Declarant from thereafter from time to time further expanding Heritage

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Commons to include other portions of the Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Real Estate so long as such expansion is done on or before December 31, 1995. Such expansion is entirely at the discretion of Declarant and nothing contained in this original Declaration or otherwise shall require Declarant to expand Heritage Commons beyond Phase I or any other portions of the Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration by amendments or supplements to this Declaration as provided above.

(b) The Percentage Interest which will appertain to each Condominium Unit in Heritage Commons as Heritage Commons may be expanded from time to time by Declarant in accordance with the terms hereof (including the Percentage Interest which appertains to each of the Condominium Units included in this original Declaration) shall be equal for all purposes and shall be a percentage equal to the number one (1) divided by the total number of condominium units which, from time to time, have been subjected and submitted to this Declaration and then constitute a part of Heritage Commons as provided in Article III hereof.

(c) Simultaneously with the recording of amendments or supplements to this Declaration expanding Heritage Commons, Declarant shall record new Plans as required by the Act. Such amendments or supplements to this Declaration shall also include provisions reallocating Percentage Interest so that the Condominium Units depicted on such new Plans shall be allocated Percentage Interests in the Common Areas on the same basis as the Condominium Units depicted in the prior Plans. Such reallocation of Percentage Interests shall vest when the amendment or supplement to the Declaration incorporating those changes has been recorded.

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(d) When the amendment or supplement to the Declaration incorporating the addition of Condominium Units or expansion of Common Areas, or both, is recorded, all liens including, but not limited to, mortgage liens shall be released as to the Percentage Interests in the Common Areas described in the Declaration and shall attach to the reallocated Percentage Interests in the Common Areas as though the liens had attached to those Percentage Interests on the date of the recordation of the mortgage or other lien. The Percentage Interest appertaining to additional Condominium Units being added by the amendment or supplement to the Declaration are subject to mortgage and liens upon the recordation of the amendment or supplement to the Declaration.

In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, as attorney-in-fact, to shift the Percentage Interest in the Common Areas appurtenant to each Condominium Unit to the percentages set forth in each such amendment or supplement to this Declaration recorded pursuant to this Article. Each deed, mortgage or other instrument with respect to a Condominium Unit and the acceptance thereof shall be deemed a grant and acknowledgment of and consent to such power to said attorney-in-fact and shall be deemed to reserve to said attorney-in-fact the power to shift and reallocate from time to time the percentages of ownership in the Common Areas appurtenant to each Condominium Unit to the percentages set forth in each such recorded amendment or supplement to this Declaration.

Each Owner of a Condominium Unit by acceptance of a deed thereto, further acknowledges, consents and agrees, as to each such amendment or supplement to this Declaration that is recorded, as follows:

(i) The portion of the Real Estate described in each such amendment or supplement to this Declaration shall be governed in all respects by the provisions of this Declaration.

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(ii) The Percentage Interest in the Common Areas appurtenant to each Condominium Unit shall automatically be shifted and reallocated to the extent set forth in each such recorded amendment or supplement to this Declaration and upon the recording of each such amendment or supplement to this Declaration, shall thereby be and be deemed to be released and divested from such Owner and reconveyed and reallocated among the other Owners as set forth in each such recorded amendment or supplement to this Declaration.

(iii) Each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed given subject to the conditional limitation that the Percentage Interest in the Common Areas appurtenant to each Condominium Unit shall, upon the recording of each amendment or supplement to this Declaration, be divested pro tanto to the reduced percentage set forth in such amendment or supplement to this Declaration and vested among the other Owners, mortgagees and others owning an interest in the other Condominium Units in accordance with the terms and percentages of each such recorded amendment or supplement to this Declaration.

(iv) A right of revocation is hereby reserved by the grantor in each such deed, mortgage or other instrument of a Condominium Unit to so amend and reallocate the Percentage Interest in the Common Areas appurtenant to each Condominium Unit.

(v) The Percentage Interest in the Common Areas appurtenant to each Condominium Unit shall include and be deemed to include any additional Common Areas included in land to which Heritage Commons is expanded by a recorded amendment or supplement to this Declaration and each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed to include such additional Common Areas and the ownership of any such Condominium Unit and lien of any such mortgage shall automatically include and attach to such

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additional Common Areas as such amendments or supplements to this Declaration are recorded.

(vi) Each Owner shall have a perpetual easement, appurtenant to his Condominium Unit for the use of any such additional Common Areas described in any recorded amendment or supplement to this Declaration, for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easements granted to the Owners (also known as Limited Common Areas and Facilities) of specific Condominium Units as may be provided in any such amendment or supplement to this Declaration.

(vii) The recording of any such amendment or supplement to this Declaration shall not alter the amount of the lien for expenses assessed to or against a Condominium Unit prior to such recording.

(viii) Each Owner, by acceptance of the deed conveying his Condominium Unit, agrees for himself and all those claiming under him, including mortgagees, that this Declaration and each amendment or supplement to this Declaration are and shall be deemed to be in accordance with the Act and for purposes of this Declaration and the Act, any changes in the respective Percentage Interest in the Common Areas as set forth in each such amendment or supplement to this Declaration shall be deemed to be made by agreement of all Owners.

(ix) Each Owner agrees to execute and deliver such documents necessary or desirable to cause the provisions of this Article to comply with the Act as it may be amended from time to time.

#### ARTICLE IX

#### REMEDIES

Abatement and Enjoyment. The violation of any rule or regulation adopted by the Board, or the breach of any

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restriction, covenant, By-Law or provision herein contained, shall give the Board the right: (a) to enter upon that part of the Property where such violation or breach exists and summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and Declarant, its beneficiaries, successors or assigns, the Board and its agents, shall not thereby be deemed guilty in any manner of trespass; and (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach. All expenses of the Board in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of twelve per cent (12%) per annum until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of such defaulting Owner's respective share of the Common Expenses, and the Board shall have a lien for all of the same upon the Condominium Unit of such defaulting Owner and upon all of the additions and improvements thereto. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

ARTICLE X

GENERAL PROVISIONS

1. Until such time as the Board provided for in this Declaration is formed Declarant, or its nominee, shall exercise and perform the powers, rights, duties and functions of the Board.
2. Upon written request to the Board, the holder of any duly recorded mortgage secured by any Condominium Unit shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Owner whose Condominium Unit is subject to such mortgage. Upon written request to the Board, the holder of a recorded first mortgage covering a Condominium Unit

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shall be given written notice of any default in the performance by the Owner of such Condominium Unit of any obligation under this Declaration which is not cured within any applicable cure period, or, if there is no such cure period, within sixty (60) days after default. Any vote required or allowed to be taken hereunder by the Owners of Condominium Units may be voted by such owner in person or by proxy timely delivered to the appropriate representative of the Board of Directors upon a proxy form approved by the Board or such representative. In the event such a proxy is tendered by a mortgagee holding a first mortgage lien upon a Unit in accordance with any terms and provisions of such mortgage which delegate proxy authority to such mortgagee, the Board of Directors may honor such proxy without further inquiry into the validity of such mortgage and the Board of Directors shall have no further liability to such Owner with respect thereto.

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

4. Notices provided for in this Declaration and in the Act shall be in writing, and shall be addressed to the Board or Association, or any Owner, as the case may be, at the address of the Association as provided in the By-Laws, or the address of the respective Condominium Unit, if addressed to an Owner, or at such other address as herein provided. The Association or Board may designate a different address for notices by giving written notice of such change of address to all Owners. Any Owner may

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also designate a different address for notices by giving written notice of such change of address to the Board or Association. Notices addressed as above shall be deemed delivered when mailed by United States first class mail, or when delivered in person with written acknowledgment of the receipt thereof, or, if addressed to an Owner, when deposited in the mailbox or at the door of the Owner's Condominium Unit.

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

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

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

8. Amendment of Declaration. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

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(a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or 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 (in person or by proxy) at a meeting duly called and held in accordance with the provisions of the By-Laws.

(d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five per cent (75%) in the aggregate of the Percentage Vote. In the event any Condominium Unit is subject to a first mortgage, such mortgagees shall be notified of the meeting and the proposed amendment in the same manner as an Owner if such mortgagees have given prior notice of its mortgage interest to the Board in accordance with the provisions of the By-Laws. During the two (2) year period commencing upon the date this Declaration is recorded no Amendment shall be effective without the written consent of Declarant unless Declarant shall have conveyed twenty-three (23) Condominium Units.

(e) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the Percentage Interest with respect to any Condominium Unit or the applicable share of an Owner's liability for the Common Expenses, without the approval of one hundred per cent (100%) of the Co-owners except for changes pursuant to Article VIII herein, or (2) the provisions of Article VII of this Declaration with respect to reconstruction or repair in the event of fire or any other casualty or disaster, without the unanimous approval of all mortgagees whose mortgage interests

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have been made known to the Board in accordance with the provisions of the By-Laws.

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

(g) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have the right acting alone and without the consent or approval of the Co-owners, the Association, the Board, any mortgagees or any other person to amend or supplement this Declaration from time to time if (i) such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time, (ii) such amendment or supplement is made to implement expansion of the property and Heritage Commons pursuant to Declarant's rights to so expand the same as set forth in Article VIII hereof; (iii) such amendment is recorded prior to the earlier of (1) the date on which Declarant has sold twenty-three (23) Condominium Units, or (2) January 1, 1988.

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

10. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a condominium project.

11. The Plans setting forth the layout, location, identification numbers and dimensions of the Condominium Units and the Property are incorporated into this Declaration by reference, and have been filed in the office of the Recorder of Marion County, Indiana, as Instrument No. \_\_\_\_\_. At the

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time of recordation of the Plans and this Declaration, all construction work on the Buildings may not have been completed. Declarant shall have the right, upon completion of construction, to file amended as-built floor plans for any Units not yet conveyed by Declarant.

12. Declarant may transfer its rights, duties and obligations hereunder to any other person or entity in conjunction with the transfer of its interest in the Real Estate by written instrument declaring such transfer recorded in the Office of the Recorder of Marion County, Indiana.

IN WITNESS WHEREOF, the Declarant, E & F Realty Company, has caused this Declaration to be signed by its duly authorized general partner this 26th day of March, 1986.

E & F REALTY COMPANY

BY:   
Franklin L. Jackson, General Partner

CHICAGO TITLE

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Franklin L. Jackson, general partner of E & F Realty Company, an Indiana general partnership, who, having been duly sworn, acknowledges the execution of the foregoing Declaration for and on behalf of said partnership.

GIVEN under my hand and Notarial Seal this 26th day of March, 1986.

  
(Marilyn J. Duran) Notary Public

My Commission Expires:

June 27, 1989

My County of Residence:

Marion



This instrument was prepared by Brian J. Tuohy, Attorney.

CHICAGO TITLE

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CONSENT OF MORTGAGEE

Merchants National Bank & Trust Company of Indianapolis,  
holder of a Mortgage on the Property dated \_\_\_\_\_, \_\_\_\_\_,  
and recorded as Instrument No. \_\_\_\_\_ hereby consents to the  
execution and recording of the within Declaration of  
Condominium Ownership and agrees that said Mortgage is subject  
thereto and to the provisions of the Horizontal Property Law of  
the State of Indiana.

IN WITNESS WHEREOF, the said Merchants National Bank &  
Trust Company of Indianapolis has caused with instrument to be  
signed by its duly authorized officers on its behalf; all done  
at Indianapolis, Indiana, on this \_\_\_\_ day of \_\_\_\_\_,  
19\_\_.

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

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

and \_\_\_\_\_, the \_\_\_\_\_

and \_\_\_\_\_, respectively, of \_\_\_\_\_

\_\_\_\_\_, each of whom, having been

duly sworn, acknowledged the execution of the foregoing

instrument for and on behalf of said bank and stated that the

representations contained therein are true.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_.

( \_\_\_\_\_ ) Notary Public

My Commission Expires:

My County of Residence is:

\_\_\_\_\_

\_\_\_\_\_

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LEGAL DESCRIPTION OF PHASE I

A strip of ground twenty-four (24) feet in width lying twelve (12) feet either side of the herein described centerline. The centerline of said access easement is located in the fractional Northwest quarter of Section 31, Township 16 North, Range 5 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said Northwest quarter; thence North 89 degrees 54 minutes 37 seconds East along the North line of said quarter section 330.00 feet; thence South 00 degrees 00 minutes 15 seconds East parallel with the West line of said quarter section 337.50 feet to the point of Beginning; thence North 89 degrees 54 minutes 37 seconds East parallel with the North line of said quarter section 261.47 feet to the point of curvature of a curve to the left, having a central angle of 10 degrees 24 minutes 37 seconds, the radius point of which bears North 00 degrees 05 minutes 23 seconds West a distance of 123.39 feet from said point; thence Easterly along said curve 22.42 feet to the point of tangency thereof; the radius point of said curve bears North 10 degrees 30 minutes 00 seconds West a distance of 123.39 feet from said point; thence North 79 degrees 30 minutes 00 seconds East 64.75 feet to the point of curvature of a curve to the right having a central angle of 10 degrees 24 minutes 37 seconds; the radius point of which bears South 10 degrees 30 minutes 00 seconds East a distance of 229.01 feet from said point; thence Easterly along said curve 41.61 feet to the point of tangency thereof, the radius point of said curve bears South 00 degrees 05 minutes 23 seconds East, a distance of 229.01 feet from said point; thence North 89 degrees 54 minutes 37 seconds East parallel with the North line of said quarter section 136.78 feet to a point on a curve to the right having a central angle of 9 degrees 52 minutes 29 seconds, the radius point of which bears North 80 degrees 02 minutes 08 seconds East a distance of 157.44 feet from said point; thence Northerly along said curve 27.13 feet to the point of tangency thereof, the radius point of said curve bears North 89 degrees 54 minutes 37 seconds East a distance of 157.44 feet from said point; thence North 00 degrees 05 minutes 23 seconds West, 48.76 feet to the point of curvature of a curve to the left having a central angle of 11 degrees 54 minutes 37 seconds the radius point of which bears South 89 degrees 54 minutes 37 seconds West a distance of 112.82 feet from said point; thence Northerly along said curve 23.45 feet to the point of tangency thereof, the radius point of said curve bears South 78 degrees 00 minutes 00 seconds West a distance of 112.82 feet from said point; thence North 12 degrees 00 minutes 00 seconds West, 31.64 feet; thence North 00 degrees 05 minutes 23 seconds West 190.00 feet to the North line of said quarter section and the terminus of this description.

EXHIBIT "A"

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DESCRIPTION OF PERCENTAGE  
INTERESTS OF CONDOMINIUM UNITS

The Percentage Interests of the Owners of the respective Condominium Units in the Common Areas and Facilities and Limited Areas and Facilities are now as follows:

<u>Condominium Unit</u>	<u>Percentage Interest</u>
-------------------------	----------------------------



Such Percentage Interests are subject to adjustment and alteration, upon expansion of Heritage Commons, as provided in this Declaration.

CHICAGO TITLE

EXHIBIT "B"

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EXHIBIT "C"

CODE OF BY-LAWS

OF

HERITAGE COMMONS HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I

Identification

Section 1. Name. The name of the Association is the Heritage Commons Homeowners' Association, Inc. (hereinafter referred to as the "Association").

Section 2. Principal Office and Resident Agent. The post-office address of the principal office of the Association is 1030 Merchants Plaza, East Tower, Indianapolis, Indiana 46204; and the name and post-office address of its Resident Agent in charge of such office is John W. Van Buskirk, 1030 Merchants Plaza, East Tower, Indianapolis, Indiana 46204.

Section 3. Fiscal Year. The fiscal year of the Association shall begin at the beginning of the first day of January in each year and end at the close of the last day of December next succeeding.

ARTICLE II

Association Members

Section 1. Membership. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 2. Place of Meeting. All meetings of the members of the Association shall be held on the Property, or at such other reasonable place as may be determined by the Board of Directors and specified in the notices or waivers of notice thereof or proxies to represent members at such meetings.

Section 3. Annual Meetings. The initial meeting of the voting Members shall be held upon ten (10) days' written notice given by Declarant. Such written notice may be given at any time after at least 75% of the Condominium Units are occupied by Owners, but must be given not later than thirty (30) days after 90% of the Condominium Units are occupied by Owners or twenty-four (24) months from the date hereof, whichever first occurs. The formation of the Association by Declarant shall not require Declarant to call the initial meeting of the voting Members any earlier than provided in the preceding sentence. Thereafter, there shall be an annual meeting of the voting members on the first Tuesday of October following such initial meeting, and on the first Tuesday of October of each succeeding year thereafter at 7:30 P.M., or at such other reasonable time or date (not more than thirty (30) days before or after such date) as may be designated by written notice of the Board delivered to the voting Members not less than ten (10) days prior to the date fixed for said meeting.

Section 4. Special Meetings. Special meetings of the members may be called at any time for the purpose of considering matters which require the approval of all or some of the voting Members, or for any other reasonable purpose.

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Any such Special Meeting shall be called by written notice, authorized by a majority of the Board, or by the voting Members having one-fourth (1/4) of the total votes, and delivered not less than ten (10) days prior to the date fixed for such meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

Section 5. Notice of Meetings. Written or printed notice stating the place, day and hour of a meeting and, in case of a special meeting, the purpose or purposes for which such meeting is called shall be delivered or mailed by the Secretary of the Association to each member of record of the Association entitled to vote at the meeting, at such address as appears on the records of the Association, at least ten (10) days before the date of the meeting. Notice of any meeting of the members may be waived in writing by any Member if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place thereof. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 6. Voting at Meetings.

(a) Voting Rights. There shall be one person with respect to each Condominium Unit who shall be entitled to vote at any meeting of the Members. Such person shall be known as a "Voting Member". Such Voting Member may be the Owner or one of the group composed of all the Owners of a Condominium Unit, or may be some person designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner. Any or all of such Voting Members may be present at any meeting of the Voting Members and may vote or take any action as a Voting Member, either in person or by proxy. The total number of votes of all Voting Members shall be one hundred (100), and each Owner or group of Owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the Common Areas and Facilities applicable to his or their Condominium Unit as set forth in Exhibit "B" attached to the Declaration. Declarant (or its nominee) may exercise the voting rights with respect to any Condominium Unit owned by it.

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

(c) Quorum and Adjournments. The presence in person or by proxy of the Voting Members having a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total votes present at such meetings.

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Any meeting of the Voting Members, including both annual and special meetings and any adjournments thereof, may be adjourned to a later date without notice other than announcement at the meeting, even though less than a quorum is present.

Section 7. List of Voting Members. At least five (5) days before each meeting of Voting Members, the Secretary shall prepare or cause to be prepared a complete list of the Voting Members of the Association entitled to vote at such meeting arranged in alphabetical order with the address and number of votes entitled to be cast by each. Such list shall be on file in the principal office of the Association and shall be subject to inspection by any record Voting Member. The original or duplicate membership register shall be the only evidence as to the persons who are entitled as Voting Members to examine such lists, or to vote at such meeting.

Section 8. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Voting Members may be taken without a meeting, if prior to such action, a written consent thereto, setting forth the action so taken, is signed by all the Voting Members entitled to vote with respect to the subject matter thereof, and such written consent is filed with the minutes of the proceedings of the Voting Members. Such consent shall have the same effect as a unanimous vote of the Voting Members.

### ARTICLE III

#### Board of Directors

Section 1. Number, Term of Office and Qualifications. The Board of Directors shall consist of three (3) Owners, all of whom must reside on the Property, except for the Board Members nominated or designated by Declarant. The terms of at least one-third (1/3) of the members of the Board shall expire annually. Directors shall serve without compensation unless such compensation is approved by the Voting Members holding a majority of the total votes. The Board shall be elected by the Voting Members at their annual meeting and shall hold office until the next ensuing annual meeting of the Voting Members or until their successors have been duly elected and qualified. If a member of the Board of Directors shall cease to meet any qualification herein required for a member of the Board, such member shall thereupon cease to be a member of the Board and his place on the Board shall be deemed vacant. The Voting Members may remove any member of the Board with or without cause, and elect a successor at a meeting of the Voting Members called expressly for such purpose.

Section 2. Vacancies. Vacancies occurring in the membership of the Board of Directors caused by resignation, death or other incapacity, or increase in the number of members of the Board shall be filled by a majority vote of the remaining members of the Board, and each member so elected shall serve until the next meeting of the Voting Members, or until his successor shall have been duly elected and qualified. Notice specifying any increase in the number of members of the Board and the name, address and principal occupation of and other pertinent information about any member elected to fill any vacancy shall be given in the next mailing sent to the Voting Members after such increase or election.

Section 3. Annual Meetings. The Board of Directors shall meet annually, without notice, immediately following and at the same place as, the annual meeting of the Voting Members.

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Section 4. Regular Meetings. Regular meetings shall be held at such times and places, either within or without the State of Indiana, as may be determined by the President or Board of Directors.

Section 5. Special Meetings. Special meetings of the Board of Directors may be called by the President or by two (2) or more members of the Board, at any place within or without the State of Indiana, upon twenty-four (24) hours' notice specifying the time, place and general purposes of the meeting, given to each personally, by telephone or telegraph; or notice may be given by mail if mailed at least three (3) days before such meeting.

Section 6. Waiver of Notice. Any member of the Board of Directors may waive notice of any meeting in writing. Attendance by a member at any meeting shall constitute a waiver of notice of such meeting.

Section 7. Quorum. A majority of the entire Board of Directors then qualified and acting shall constitute a quorum and be sufficient for the transaction of any business, except for filling of vacancies in the Board of Directors which shall require action by a majority of the remaining members of the Board. Any act of the majority of the members of the Board present at a meeting at which a quorum shall be present shall be the act of the Board unless otherwise provided for by law or by these By-Laws. A majority of the Members present may adjourn any meeting from time to time. Notice of an adjourned meeting need not be given other than by announcement at the time of adjournment.

Section 8. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting, if prior to such action, a written consent thereto is signed by all the members of the Board or of such committee, as the case may be, and such written consent is filed with the minutes of the proceedings of the Board.

#### ARTICLE IV

##### Officers

Section 1. Number of Officers. The officers of the Association shall consist of a President, a Secretary, a Treasurer and such officers or assistant officers as the Board shall from time to time create and so elect. Any two (2) or more offices may be held by the same person, except that the duties of the President and the Secretary shall not be performed by the same person. The President shall be chosen from among the Members of the Board. Officers shall serve without compensation unless such compensation is approved by the Voting Members holding a majority of the total votes.

Section 2. Election and Terms. Each officer shall be elected by the Board of Directors at the annual meeting thereof and shall hold office until the next annual meeting of the Board or until his successor shall have been elected and qualified or until his death, resignation or removal. Any officer may be removed at any time, with or without cause, by vote of a majority of the whole Board, but such removal shall be without prejudice to the contract rights, if any, of the person so removed; provided, however, that election of an officer shall not of itself create contract rights.

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Section 3. Vacancies. Whenever any vacancy shall occur in any office by death, resignation, increase in the number of officers of the Association, or otherwise, the same shall be filled by the Board of Directors, and the officer so elected shall hold office until the next annual meeting of the Board or until his or her successor is duly elected or appointed.

Section 4. President. The President shall be the chief executive officer of the Association; shall preside at all meetings of the Voting Members and of the Board of Directors; shall have general and active supervision, control and management of the affairs and business of the Association, subject to the orders and resolutions of the Board; shall have general supervision and direction of all officers, agents and employees of the Association; shall see that all orders and resolutions of the Board are carried into effect; and in general shall exercise all powers and perform all duties incident to such office and such other powers and duties as may from time to time be assigned to him by the Board.

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

Section 5. Secretary. The Secretary shall attend all meetings of the Board and of the Voting Members and shall act as Secretary at such meetings; shall give or cause to be given all notices provided for in these By-Laws or required by law; shall record all votes and the minutes of all proceedings of the meetings of the Voting Members and the Board in a book or books to be kept for that purpose and wherein resolutions shall be recorded; shall be custodian of the records of the Association; and, in general, shall exercise all powers and perform all duties as may be from time to time assigned to him or her by the Board or by the President.

Section 6. Treasurer. The Treasurer shall keep correct and complete financial records and books of account showing accurately at all times the financial condition of the Association; shall be the custodian of the Association funds; shall immediately deposit, in the name and to the credit of the Association all monies and other valuable effects of the Association in such depositories as may be designated by the Board of Directors; shall disburse the funds of the Association as may be ordered by the Board or by the President; and in general shall exercise all powers, perform all duties customarily incident to such office and such other powers and duties as may from time to time be assigned to him by the Board or by the President.

## ARTICLE V

### Books and Records

Section 1. Books and Records, in General. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures effecting the Common Areas and Facilities, specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and other expenses incurred. Such records and the vouchers authorizing the payments shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be

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requested by the Owner. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Owner shall be furnished a statement of his account, setting forth the amount of any unpaid assessments or other charges due and owing from such Owner, and such amount shall be binding upon the Board and the Association, and any mortgagee or grantee of such Owner furnished with such statement shall not be liable for, and the Condominium Unit of such Owner shall not be conveyed subject to a lien for, any unpaid assessment in excess of the amount set forth in such statement. Any mortgagee of any Condominium Unit who wishes to participate in any decision or consent in which it is entitled to participate by reason of the Declaration or these By-Laws shall provide the Secretary of the Board with its name and address and the Condominium Unit on which it holds a mortgage so that it may be notified of any such pending decision or consent and participate therein. Failure to so notify the Board shall constitute waiver by any such mortgagee of the right to participate in such decision or consent.

#### ARTICLE VI

##### Administration

Section 1. Board of Directors; Association. The direction and administration of the Property shall be vested in the Board of Directors ("Board"). The Owners, as described in the Declaration and in these By-Laws, shall elect the Board subject to any subsequent incorporation as provided in Article X of the Declaration of Condominium Ownership duly recorded herewith. Notwithstanding any other provisions herein contained to the contrary, all duties, functions and obligations herein imposed upon the Board are so imposed with the express understanding that the Board is the governing body and agent of the Owners and the Association.

Section 2. Determination of Board to be Binding. Notwithstanding that the words "Board" and "Association" may in some instances be used interchangeably in various sections of these By-Laws or the Declaration, matters of dispute or agreement between Owners relating to the Property or with respect to interpretation or application of the provisions of the Declaration or these By-Laws, shall be determined by the Board, which determination shall be final and binding on the Association and on all Owners.

Section 3. General Powers of the Board. The Board shall have the following general powers and duties:

- (a) To elect the officers of the Association as hereinabove provided;
- (b) To administer the affairs of the Association and the Property;
- (c) To engage the services of a manager or managing agent who shall manage and operate the Property and the Common Areas and Facilities thereof for all of the Owners, upon such terms and for such compensation and with such authority as the Board may approve (subject to Section 6 of this Article);
- (d) To formulate policies for the administration, management and operation of the Property and the Common Areas and Facilities thereof;

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(e) To adopt administrative rules and regulations governing the administration, management, operation and use of the Property and the Common Areas and Facilities and to amend such rules and regulations from time to time;

(f) To provide for the maintenance, repair and replacement of the Common Areas and Facilities and payments therefor, and to approve payment vouchers or to delegate such approval to the officers of the manager or managing agent;

(g) To provide for the designation, hiring and removal of employees and other personnel, including accountants, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Property and the Common Areas and Facilities and to delegate any such powers to the manager or managing agent (and any such employees or other personnel who may be employees of the managing agent);

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

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

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

Section 4. Specific Powers of the Board. The Board, for the benefit of the Board, the Association and all Owners, shall provide and shall pay for out of the maintenance fund hereinafter provided, the following:

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

(b) Casualty Insurance. Insurance for the Property against loss or damage by fire and those perils contained in extended coverage, vandalism and malicious mischief endorsements and such other hazards as the Board may deem desirable, for the full insurable replacement cost of the Common Areas and Facilities and the Condominium Units in accordance with Article VIII of the Declaration. Premiums for such insurance shall be common expenses. Such insurance coverage shall be written in the name of, losses under shall be adjusted by, and the proceeds of such insurance shall be payable to, the members of the Board as trustees for each of the Owners and their respective mortgagees in their respective percentages of ownership interest in the Common Areas and Facilities as established in Exhibit "B" to the Declaration. The Board may engage the services of any

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

The proceeds of such insurance shall be applied by the Board or by the corporate trustee on behalf of the Board for the reconstruction of the Buildings, or shall be otherwise disposed of, in accordance with the provisions of the Declaration and the Act; and the rights of the mortgagee of any Condominium Unit under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions in the Act with respect to the application of insurance proceeds to reconstruction of a Building. Payment by an insurance company to the Board or to such corporate trustee of the proceeds of any policy, and the receipt of release from the Board of the Company's liability under such policy shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust under which such proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or to see to the application of any payments of the proceeds of any policy by the Board or the corporate trustee;

(c) Liability Insurance. Comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and other liability insurance as it may deem desirable, insuring each Owner, the Association, its officers, members of the Board, Declarant, the manager and managing agent of the Buildings, if any, and their respective employees and agents, from liability in connection with the Common Areas and the streets and sidewalks adjoining the Property and insuring the officers of the Association and members of the Board from liability for good faith actions beyond the scope of their respective authorities. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. The premiums for such insurance shall be Common Expenses;

(d) Workmen's Compensation. Workmen's compensation insurance to the extent necessary to comply with any applicable laws;

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

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organization, operation and enforcement of the rights of the Association;

(f) Care of Common Areas and Facilities.

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

(g) Additional Expenses.

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

(h) Certain Maintenance of Condominium Units.

Maintenance and repair of any Condominium Unit as provided in the Declaration, and maintenance and repair of any Condominium Unit if such maintenance or repair is necessary in the discretion of the Board to protect the Common Areas or any portion of a Building and the Owner or Owners of said Condominium Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair shall have been delivered by the Board to said Owner or Owners, provided that the Board shall levy a special assessment against such Owner for the cost of said maintenance or repair. The Board or its agents may enter any Condominium Unit when necessary in connection with any maintenance or construction for which the Board or Association is responsible; any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund. The Board or its agents may enter any Condominium Unit when necessary in connection with any maintenance or construction for which the Board or Association is responsible; any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund. The Board reserves the right to retain a pass key to each Condominium Unit, and no locks or other devices shall be placed on the doors to the Condominium Units to obstruct entry through the use of such pass key. In the event of any emergency originating in, or threatening, any Condominium Unit, or in the event of the Owner's absence from the Condominium Unit at a time when required alterations or repairs are scheduled, the management agent or his representative or any other person designated by the Board may enter the Condominium Units immediately, whether the Owner is present or not.

(i) Capital Additions and Improvements.

The Board's powers hereinabove enumerated shall be limited to the extent that the Board shall have no authority to acquire or provide or pay for out of the maintenance fund any capital additions and improvements (other than for purposes of replacing or restoring portions of the Common Areas, subject to all the provisions of the Declaration) having a total cost

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in excess of Seventy-Five Thousand Dollars (\$75,000.00), nor shall the Board authorize any structural alterations, capital additions to, or capital improvements of the Common Areas requiring an expenditure in excess of Seventy-Five Thousand Dollars (\$75,000.00), without in each case the prior approval of the Voting Members holding a majority of the total votes.

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

Section 5. Vouchers. All vouchers for payment of expenditures by the Board shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such vouchers shall be signed by the Treasurer and countersigned by the President of the Board.

Section 6. Rules and Regulations; Management.

(a) Rules. The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Owners and occupants of the property. Written notice of such rules and regulations shall be given to all Owners and occupants and the entire Property shall at all times be maintained subject to such rules and regulations.

(b) Notwithstanding any other provisions herein, the Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board; provided, however, that it is expressly understood and agreed that Declarant expressly reserves the right to designate an initial managing agent or agents for a period not to exceed one (1) year from the date of the recording of those By-Laws and the rights of the Board to designate a different managing agent shall be in all respects subject to any or all contractual rights resulting from such initial designation of managing agent.

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

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## ARTICLE VII

### Assessments - Maintenance Fund

Section 1. Preparation of Estimated Budget. Each year on or before December 1, the Board shall estimate the total amount necessary to pay the cost of wages, payroll taxes, materials, insurance, services, management fees, supplies, maintenance, repairs, landscaping, fuel, power and other common utilities and Common Areas and Facilities, which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall, on or before December 15, notify each Owner in writing as to the amount of such estimate, with reasonable itemization thereof. Said "estimated cash requirement" shall be assessed to the Owners according to each Owner's percentage of ownership in the Common Areas and Facilities as set forth in Exhibit "B" of the Declaration. On or before January 1 of the ensuing year, each Owner shall be obligated to pay to the Board, or as it may direct, one-twelfth (1/12) of the assessment made pursuant to this Section. On or before the date of the Annual Meeting of each calendar year, the Board shall supply to all Owners an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures, plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Owner's percentage of ownership in the Common Areas and Facilities to the next monthly installments due from Owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each Owner's percentage of ownership in the Common Areas and Facilities to the installments due in the succeeding six (6) months after rendering of the accounting.

Section 2. Reserve for Contingencies and Replacements. The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year, shall be charged first against such reserve. If said "Estimated Cash Requirement" proves inadequate for any reason, including non-payment of any Owner's assessment, the Board may, at any time, levy a further assessment, which shall be assessed to the Owners according to each Owner's percentage of ownership in the Common Areas and Facilities. The Board shall serve notice of such further assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly maintenance payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted monthly amount.

Section 3. Budget for First Year. When the first Board elected hereunder takes office, it shall determine the "estimated cash requirement", as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31 of the calendar year in which said election occurs. Assessments shall be levied against the Owners during said period as provided in Section 1 of this Article.

Section 4. Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the

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maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and, in the absence of any annual estimate or adjusted estimate, the owner shall continue to pay the monthly maintenance charge at the then existing monthly rate established for the previous period until the monthly maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

Section 5. Status of Collected Funds. All funds collected hereunder shall be held and expended for the purposes designated herein and (except for such special assessments as may be levied hereunder against less than all the Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Owners in the percentages set forth in Exhibit "B" attached to the Declaration.

Section 6. Remedies for Failure to Pay Assessments. Each Owner shall be personally liable for all assessments made hereunder or pursuant to the Declaration and conveyance of the Condominium Unit by an Owner shall not extinguish the personal debt for all such assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall default in the payment of any charge or assessment imposed by the Board as herein provided, the Board shall have the authority, for and on behalf of itself and the Association and as the representative of all Owners, to exercise and enforce any and all rights and remedies as may be provided in the Act, these By-Laws, the Declaration or otherwise available at law or in equity for the collection of all such unpaid charges or assessments. Upon the failure of any Owner to pay any delinquent assessment within fifteen (15) days after written notice, the Board shall have the right to accelerate the entire unpaid balance of all assessments. In addition, if an Owner is in default in the monthly payments of the aforesaid charges or assessments after such notice, the Board may bring suit for and on behalf of itself and as representative of all Owners, to enforce collection thereof or to foreclose the lien therefor as hereinafter provided; and there shall be added to the amount due the costs of said suit, together with legal interest and reasonable attorneys' fees to be fixed by the Court. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest costs and fees as above provided, shall be and become a lien or charge against the Condominium Unit of the Owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate. Unless otherwise provided in the Declaration, the members of the Board and their successors in office, acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Said lien shall take effect and be in force when and as provided in the Act; provided, however, notwithstanding any other provision of the Declaration or By-Laws, any first mortgage owned or held by or on behalf of any bank, insurance company, savings and loan association or other mortgagee shall be prior to any lien for Common Expenses, and where the mortgagee of a first mortgage of record or other purchaser of a Condominium Unit obtains title to the Condominium Unit as a result of foreclosure of the first mortgage or as a result of a deed in lieu of foreclosure, such acquirer of title, his successors and assigns shall not be liable for the shares of Common Expenses chargeable to such Condominium Unit which became due prior to the acquisition of title to such Condominium Unit by such acquirer.

800024894

ARTICLE VIII

Execution of Instruments

Section 1. Checks, Drafts, Etc. All checks, drafts, bills of exchange or other orders for the payment of money, obligations, notes or other evidences of indebtedness of the Association shall be signed or endorsed by such officer or officers, employee or employees of the Association as shall from time to time be designated by the Board.

Section 2. Contracts. All contracts, agreements, deeds, conveyances, mortgages and similar instruments authorized by the Board of Directors shall be signed, unless otherwise directed by the Board or required by law, by the President and attested by the Secretary.

ARTICLE IX

Amendments

Section 1. Amendments. Subject to any contrary, overriding or superseding provisions set forth herein or in the Declaration, these By-Laws may be amended in the same manner, and subject to the same limitations and requirements, as amendments to the Declaration, as set forth in Article XI of the Declaration, including the rights of Declarant to make amendments. Amendments to these By-Laws shall be considered as amendments of the Declaration and shall be recorded in the office of the Recorder of Marion County, Indiana, as required by the Declaration and the Act. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration or these By-Laws prior to the earlier of the date on which Declarant shall have conveyed twenty three (23) Condominium Units or January 1, 1986, without the consent and approval of Declarant.

ARTICLE X

The Indiana Horizontal Property Act

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

CHICAGO TITLE

860024894

860069136

CROSS REFERENCE

AMENDMENT TO DECLARATION AND  
BY-LAWS OF HERITAGE COMMONS  
HORIZONTAL PROPERTY REGIME

800

THIS AMENDMENT, executed this 23rd day of July 1986, by E & F Realty Co., an Indiana general partnership ("Declarant"), witnesses the following:

DUPLICATE  
FOR TAXATION  
JUL 29 1986 020548  
COUNTY AUDITOR  
Marion County, Indiana

WHEREAS, Declarant on March 26, 1986, executed the Declaration and By-Laws of Heritage Commons Horizontal Property Regime ("Declaration") and caused said Declaration to be recorded as Instrument No. 86-24894 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant caused the Plans of Phase I of Heritage Commons to be recorded as Instrument No. 86-31550 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, pursuant to the terms and provisions of the Declaration, Declarant reserved the right to subject additional real estate to the Heritage Commons Horizontal Property Regime established by the Declaration and Declarant now wishes to add additional real estate to Heritage Commons:

RECEIVED FOR RECORD  
JUL 29 11 08 AM '86  
SHERMAN & HEATH, C.C.  
CHICAGO, ILL. 60601

NOW, THEREFORE, in accordance with its rights under the Declaration and under the Indiana Horizontal Property Law, Declarant now amends the Declaration to expand Heritage Commons as follows:

1. The Real Estate more particularly described in Exhibit "A" attached hereto and by reference made a part hereof, being a portion of the Real Estate (as defined in the Declaration) is hereby subjected to the Declaration and is hereby made a part

APPROVED THIS 29th  
DAY OF July 1986  
ASSESSOR OF WARREN TOWNSHIP  
[Signature] DRAFTSMAN



of Heritage Commons Horizontal Property Regime. The plans depicting the condominium units within such real estate have been recorded as Instrument No. 86 69135 in the Office of the Recorder of Marion County, Indiana.

IN WITNESS WHEREOF, the Declarant, E & F Realty Co., has caused the Amendment to be executed as of the day and year first written above.

E & F REALTY CO.

By: Franklin L. Jackson  
Franklin L. Jackson, General Partner

STATE OF INDIANA )  
COUNTY OF MARION ) SS:

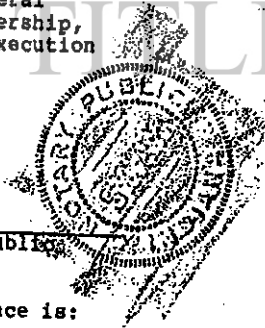
86069136



Before me, a Notary Public in and for said County and State, personally appeared Franklin L. Jackson, a general partner of E & F Realty Co., an Indiana general partnership, who, after having been duly sworn, acknowledged the execution of the foregoing Amendment for and on behalf of said partnership.

Witness my hand and notarial seal this 23rd day of July, 1986.

Joanne M. Orme  
(Joanne M. Orme) Notary Public



My Commission Expires:

January 2, 1988

My County of Residence is:

Marion

This instrument was prepared by Brian J. Tuchy, Attorney.

LEGAL DESCRIPTION

A part of the fractional Northwest Quarter of Section 31, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Northwest Quarter Section; thence North 89 degrees 54 minutes 37 seconds East along the North line of said Quarter Section 330.00 feet; thence South 00 degrees 00 minutes 15 seconds East parallel with the West line of said Quarter Section 450.00 feet to the Northwest corner of Chatham Walk, Second Section, a subdivision in Marion County, Indiana, the plat of which is recorded as Instrument Number 71-2005 in the Office of the Recorder of Marion County, Indiana; thence North 89 degrees 54 minutes 37 seconds East along the North line of said Chatham Walk, Second Section 269.34 feet to the Northeast corner of said Chatham Walk, Second Section, said point also being the Northwest corner of Chatham Walk, First Section, a subdivision in Marion County, Indiana, the plat of which is recorded as Instrument Number 71-40535 in the Office of the Recorder of Marion County, Indiana; thence continuing North 89 degrees 54 minutes 37 seconds East parallel with said North line 100.73 feet to the POINT OF BEGINNING; thence North 00 degrees 20 minutes 20 seconds West 117.13 feet to a point on a 26.40237 degree curve to the right, the radius point of said curve being South 05 degrees 13 minutes 41 seconds East 217.01 feet from said point; thence easterly along said curve 19.46 feet to the point of tangency of said curve, the radius point of said curve being North 00 degrees 05 minutes 23 seconds West 217.01 feet from said point; thence North 89 degrees 54 minutes 37 seconds East 139.22 feet to a point on a 36.39214 degree curve to the right, the radius point of said curve being South 78 degrees 55 minutes 33 seconds West 157.44 feet from said point; thence southerly along said curve 30.18 feet to the point of tangency of said curve, the radius point of said curve being South 89 degrees 54 minutes 37 seconds West 157.44 feet from said point; thence South 00 degrees 05 minutes 23 seconds East 88.00 feet to a point on the North line of the aforesaid Chatham Walk, First Section; thence South 89 degrees 54 minutes 37 seconds West 161.03 feet to the place of beginning, containing 0.436 acres, more or less, subject to all legal highways, rights-of-way, easements and restrictions of record.

EXHIBIT "A"

860069136

CROSS REFERENCE 860074882

950  
④

SECOND AMENDMENT TO DECLARATION AND BY-LAWS OF HERITAGE COMMONS HORIZONTAL PROPERTY REGIME

Aug 11 86 022268

THIS AMENDMENT, executed this 8 day of August, 1986, by E & F Realty Co., an Indiana general partnership ("Declarant") witnesses the following:

WHEREAS, Declarant on March 26, 1986 executed the Declaration and By-Laws of Heritage Commons Horizontal Property Regime ("Declaration") and caused said Declaration to be recorded as Instrument No. 86-24894 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant caused the Plans of Phase I of Heritage Commons to be recorded as Instrument No. 86-31550 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant subjected certain real estate to the Heritage Commons Horizontal Property Regime by causing a certain Amendment to Declaration to be recorded on July 29, 1986, as Instrument No. 86-69136 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, pursuant to the terms and provisions of the Declaration, Declarant reserved the right to subject additional real estate to the Heritage Commons Horizontal Property Regime established by the Declaration, and Declarant now wishes to add additional real estate to Heritage Commons:

NOW, THEREFORE, in accordance with its rights under the Declaration and under the Indiana Horizontal Property Law, Declarant now amends the Declaration to expand Heritage Commons as follows:

1. The Real Estate more particularly described in Exhibit "A" attached hereto and by reference made a part hereof, being a portion

APPROVED THIS 11th DAY OF August 1986  
ASSESSOR'S OFFICE  
William Deputy CLERK

RECEIVED FOR RECORD  
DEPT OF LAUREN  
RECORDER-MARION CO.  
Aug 11 1 10 PM '86

CHICAGO TITLE

subjected to the Declaration and is hereby made a part of Heritage Commons Horizontal Property Regime. The plans depicting the condominium units within such real estate have been recorded as Instrument No. 96-74981 in the Office of the Recorder of Marion County, Indiana.

2. Declarant hereby amends the description of Percentage Interests of Condominium Units which was attached to the Declaration as Exhibit "B" by allocating all Percentage Interests in accordance with the schedule set out in Exhibit "B" attached hereto and by reference made a part hereof.

IN WITNESS WHEREOF, the Declarant, E & F Realty Co., has caused this Amendment to be executed as of the day and year first above written.

E & F REALTY CO.

By: Franklin L. Jackson  
Franklin L. Jackson, General Partner

STATE OF INDIANA )

COUNTY OF MARION )

SS:

Before me, a Notary Public in and for said County and State, personally appeared Franklin L. Jackson, a General Partner of E & F Realty Co., an Indiana general partnership, who, having been duly sworn, acknowledged the execution of the foregoing Amendment for and on behalf of said partnership.

WITNESS my hand and notary seal this 9th day of August, 1987

Barbara L. Jones  
Barbara L. Jones, Notary Public

My Commission Expires:

October 25, 1987

My County of Residence is:

Hendricks

86007-1882

This instrument was prepared by Brian J. Tuchy, Attorney.

PLOT PLAN FOR  
UNIT 21 \* HERITAGE COMMONS

A part of the fractional Northwest Quarter of Section 31, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Northwest Quarter Section; thence North 89 degrees 54 minutes 37 seconds East along the North line of said Quarter Section 330.00 feet; thence South 00 degrees 00 minutes 15 seconds East parallel with the West line of said Quarter Section 225.001 feet; thence North 89 degrees 54 minutes 37 seconds East 265.059 feet to THE POINT OF BEGINNING; thence North 00 degrees 00 minutes 15 seconds East 35.00 feet; thence North 89 degrees 54 minutes 37 seconds East 52.20 feet; thence South 00 degrees 05 minutes 23 seconds East 127.07 feet; thence South 79 degrees 30 minutes 00 seconds West 36.48 feet to the point of curvature of a 51.43709 degree curve to the right, the radius point of said curve being North 10 degrees 30 minutes 00 seconds West 111.39 feet from said point; thence westerly along said curve 16.48 feet to a point on said curve; the radius point of said curve being North 02 degrees 01 minutes 21 seconds West 111.39 feet; thence North 00 degrees 05 minutes 23 seconds West 100.44 feet to the place of beginning, containing 0.158 acres, more or less, subject to all legal highways, rights-of-way, easements & restrictions of record.

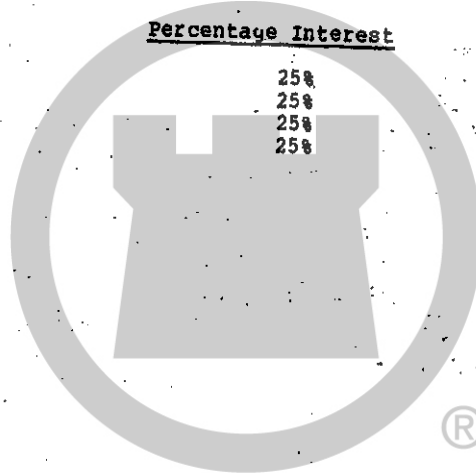
86007-1882

EXHIBIT "A"

DESCRIPTION OF PERCENTAGE  
INTERESTS OF CONDOMINIUM UNITS

The Percentage Interests of the Owners of the respective  
Condominium Units in the Common Areas and Facilities and Limited  
Areas and Facilities are now as follows:

<u>Condominium Unit</u>	<u>Percentage Interest</u>
9	25%
10	25%
11	25%
21	25%



CHICAGO TITLE

860074882

EXHIBIT 'B'

860091925

CROSS REFERENCE

DULY ENTERED  
FOR TAXATION

950  
④

AMENDMENT TO DECLARATION AND BY-LAWS OF  
HERITAGE COMMONS HORIZONTAL PROPERTY REGIME Sep 17 86 027032

COUNTY AUDITOR

*Gray A. Newery*

THIS AMENDMENT, executed this 8th day of September, 1986, by  
E & P Realty Co., an Indiana general partnership ("Declarant"),  
witnesses the following:

WHEREAS, Declarant on March 26, 1986, executed the Declaration  
and By-Laws of Heritage Commons Horizontal Property Regime  
("Declaration") and caused said Declaration to be recorded as  
Instrument No. 86-24894 in the Office of the Recorder of Marion  
County, Indiana; and

RECEIVED FOR RECORD  
BETH O'LAUGHLIN  
RECORDER-MARION CO.  
SEP 17 12 57 PM '86

WHEREAS, Declarant caused the Plans of Phase I of Heritage  
Commons to be recorded as Instrument No. 86-31550 in the Office of  
the Recorder of Marion County, Indiana; and

WHEREAS, Declarant subjected certain real estate to the Heritage  
Commons Horizontal Property Regime by causing certain Amendments to  
Declaration to be recorded on July 29, 1986 as Instrument  
No. 86-69136 and on August 11, 1986 as Instrument No. 86-74882 in  
the Office of the Recorder of Marion County, Indiana; and

WHEREAS, pursuant to the terms and provisions of the  
Declaration, Declarant reserved the right to subject additional real  
estate to the Heritage Commons Horizontal Property Regime  
established by the Declaration, and Declarant now wishes to add  
additional real estate to Heritage Commons:

NOW, THEREFORE, in accordance with its rights under the  
Declaration and under the Indiana Horizontal Property Law, Declarant  
now amends the Declaration to expand Heritage Commons as follows:

APPROVED THIS 17th  
DAY OF Sept 1986  
ASSESSOR OF WARREN TOWNSHIP  
*M. J. ...* DRAFTSMAN

subjected to the Declaration and is hereby made a part of Heritage Commons Horizontal Property Regime. The plans depicting the condominium units within such real estate have been recorded as Instrument No. 86-91924 in the Office of the Recorder of Marion County, Indiana.

2. Declarant hereby amends the description of Percentage Interests of Condominium Units which was attached to the Declaration as Exhibit "B" by allocating all Percentage Interests in accordance with the schedule set out in Exhibit "B" attached hereto and by reference made a part hereof.

IN WITNESS WHEREOF, the Declarant, E & F Realty Co., has caused this Amendment to be executed as of the day and year first above written.

E & F REALTY CO.

✓ By: Franklin L. Jackson <sup>®</sup>  
Franklin L. Jackson, General Partner

STATE OF INDIANA )  
COUNTY OF MARION )

SS:

Before me, a Notary Public in and for said County and State, personally appeared Franklin L. Jackson, a General Partner of E & F Realty Co., an Indiana general partnership, who, having been duly sworn, acknowledged the execution of the foregoing Amendment for and on behalf of said partnership.

WITNESS my hand and notary seal this 8th day of September, 1986.

✓ Barbara L. Jones  
( Barbara L. Jones ) Notary Public

My Commission Expires:

October 25, 1987

My County of Residence is:

Hendricks

This instrument was prepared by Bryan J. Tuohy, Attorney.

860031925



BUILDING NUMBER 5  
HERITAGE COMMONS

A part of the fractional Northwest Quarter of Section 31, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Northwest Quarter-Section; thence North 89 degrees 54 minutes 37 seconds East along the North line of said Quarter-Section 330.00 feet; thence South 00 degrees 00 minutes 15 seconds East parallel with the West line of said Quarter-Section 450.00 feet to the Northwest corner of Chatham Walk, Second Section, a subdivision in Marion County, Indiana, the plat of which is recorded as Instrument Number 71-2005 in the Office of the Recorder of Marion County, Indiana; thence North 89 degrees 54 minutes 37 seconds East along the North line of said Chatham Walk, Second Section 254.00 feet to the POINT OF BEGINNING; thence North 00 degrees 05 minutes 23 seconds West 100.50 feet; thence North 89 degrees 54 minutes 37 seconds East 7.64 feet to the point of curvature of a 46.43470 degree curve to the left, the radius point of said curve being North 00 degrees 05 minutes 23 seconds West 123.39 feet from said point; thence easterly along said curve 24.60 feet to point of tangency of said curve, the radius point of said curve being North 10 degrees 30 minutes 00 seconds West 123.39 feet from said point; thence North 79 degrees 30 minutes 00 seconds East 16.61 feet; thence South 00 degrees 05 minutes 23 seconds East 105.73 feet to a point on the North line of Chatham Walk, First Section, a subdivision in Marion County, Indiana the plat of which is recorded as Instrument Number 71-40535 in the Office of the Recorder of Marion County, Indiana; thence South 89 degrees 54 minutes 37 seconds West along the North line of said Chatham Walk, First and Second Sections 48.44 feet to the place of beginning, containing 0.114 acres, more or less, subject to all legal highways, rights-of-way, easements and restrictions of record.

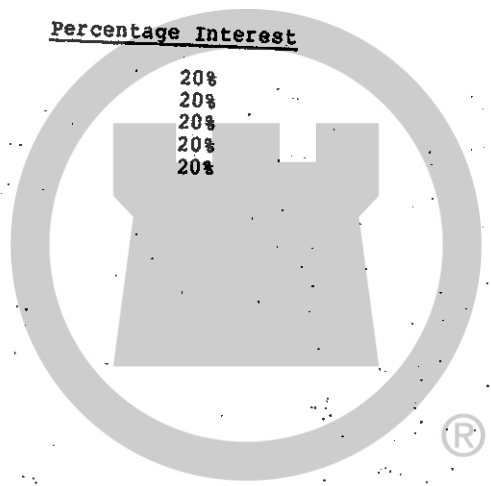
860091925

EXHIBIT "A"

DESCRIPTION OF PERCENTAGE  
INTERESTS OF CONDOMINIUM UNITS

The Percentage Interests of the Owners of the respective  
Condominium Units in the Common Areas and Facilities and Limited  
Areas and facilities are now as follows:

<u>Condominium Unit</u>	<u>Percentage Interest</u>
5	20%
9	20%
10	20%
11	20%
21	20%



CHICAGO TITLE

860091925

EXHIBIT "B"

860096414

CROSS REFERENCE  
Indianapolis, Indiana 850  
September 25, 1986

DEVELOPER'S CORRECTIVE AFFIDAVIT  
AND CERTIFICATE OF CORRECTION

(2)

✓ Brady R. Justice, Jr. Affiant, being first duly sworn upon his oath, states and certifies the following:

1. Affiant is one of the general partners of E & F Realty Co., an Indiana general partnership ("E & F"), and that he is familiar with the books and records of E & F.

2. E & F is the developer of Heritage Commons Horizontal Property Regime, an expandable condominium development located in Indianapolis, Indiana.

3. E & F executed the Declaration and By-Laws of Heritage Commons Horizontal Property Regime ("Declaration") and caused the Declaration to be recorded on May 27, 1986 as Instrument No. 86-24894 in the Office of the Recorder of Marion County, Indiana.

4. As a result of recording the Declaration, E & F subjected certain real estate to the terms and conditions of the Declaration.

5. E & F subjected certain additional real estate and improvements to the terms and conditions of the Declaration by causing certain as-built site plans ("Plans") depicting the location and construction of certain condominium units as recorded on July 29, 1986 and August 11, 1986 as Instrument No. 86-69135 and Instrument No. 86-74881 in the Office of the Recorder of Marion County, Indiana.

6. Through a scrivener's error, the Plans contain certain errors and omissions described and corrected as follows:

I. Instrument No. 86-69135

A. Page 1 of Instrument No. 86-69135 incorrectly identifies the owner of certain described real estate and improvements as "Dalton/Jackson, Inc."

Therefore, Affiant for purposes of correcting such error hereby certifies and represents that, at the time of recording such instrument, E & F was the owner of such real estate and improvements.

B. Pages 2, 3 and 4 of Instrument No. 86-69135 incorrectly identifies certain improvements as "Units S, C and P", respectively.

RECORDED FOR RECORD  
BETH B. LAUGHLIN  
RECORDER-MARION CO.  
SEP 26 2 58 PM '86

CHICAGO TITLE

Therefore, Affiant for purposes of correcting such errors hereby certifies and represents that such improvements are correctly identified as Buildings or Units #9, #10 and #11.

II. Instrument No. 86-74881

Page 2 of Instrument No. 86-74881 incorrectly identifies a certain improvement as "Unit E".

Therefore, Affiant for purposes of correcting such error hereby certifies and represents that such improvement is correctly identified as Building or Unit #21.

8. Affiant makes the representations herein for the purpose of correcting the errors described above and contained in Instrument No. 86-69135 and Instrument No. 86-74881 as recorded in the Office of the Recorder of Marion County, Indiana

IN WITNESS WHEREOF, the Affiant, a general partner of E & F Realty Co., has caused this Developer's Corrective Affidavit and Certificate of Correction to be executed as of the day and year first above written.

E & F REALTY CO.

BY: Brady R. Justice, Jr.  
(Brady R. Justice, Jr.)

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

SG0096-114 (R)

Before me, a Notary Public in and for said County and State, personally appeared Brady R. Justice, Jr., one of the general partners of E & F Realty Co., an Indiana general partnership, who, having been duly sworn, acknowledged the execution of the foregoing Developer's Corrective Affidavit and Certificate of Correction for and on behalf of said Partnership.

WITNESS my hand and notary seal this 25th day of September, 1986

Marilyn J. Duran  
(Marilyn J. Duran) Notary Public

My Commission Expires:  
June 27, 1989

My County of Residence is:  
Marion

This instrument was prepared by Brian J. Tuohy, Attorney.

ORIGINAL RECORDS

CROSS REFERENCE

860110424

800  
3

CORRECTIVE AMENDMENT TO DECLARATION AND BY-LAWS OF  
HERITAGE COMMONS HORIZONTAL PROPERTY REGIME

THIS CORRECTIVE AMENDMENT, executed this 27th day of October, 1986, by E & F Realty Co., an Indiana general partnership ("Declarant"), witnesses the following:

WHEREAS, Declarant on March 26, 1986, executed the Declaration and By-Laws of Heritage Commons Horizontal Property Regime ("Declaration") and caused said Declaration to be recorded as Instrument No. 86-24894 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, pursuant to the terms and provisions of the Declaration, Declarant amended the Declaration by a certain Amendment to Declaration and By-Laws of Heritage Commons Horizontal Property Regime recorded September 17, 1985 as Instrument No. 86-91925 in the office of the Recorder of Marion County, Indiana ("Amendment"); and

WHEREAS, the Amendment contains a certain scrivener's error and omission in the form of an incomplete sentence at the beginning of the second page of the Amendment;

NOW, THEREFORE, in order to correct the Amendment, Declarant hereby desires that page 2 of the Amendment be stricken and the page 2 attached hereto as Exhibit "A" be inserted in its place. In all other respects, the Amendment shall remain the same as previously filed in the office of the Recorder of Marion County, Indiana.

SOLELY ENTERED FOR TAXATION  
86-24894-32096  
COUNTY CLERK  
MARION COUNTY, INDIANA

CHICAGO TITLE

RECORDED  
BETH O'LEIGH  
RECORDER-MARION CO.

OCT 29 8 55 AM '86

APPROVED THIS 28th  
DAY OF OCTOBER 1986  
TOWNSHIP CLERK OF WARREN TOWNSHIP  
DRAJ

ORIGINAL FILED

IN WITNESS WHEREOF, Declarant E & F Realty Co. has caused this Corrective Amendment to be executed as of the day and year first above written.

E & F REALTY CO.

By: Franklin L. Jackson  
Franklin L. Jackson

STATE OF INDIANA )  
                          )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Franklin L. Jackson, a general partner of E & F Realty Co., an Indiana general partnership; who, after having been duly sworn, acknowledged the execution of the foregoing Corrective Amendment for and on behalf of said partnership.

Witness my hand and notarial seal this 27<sup>th</sup> day of October, 1986.

Marilyn J. Duran  
Marilyn J. Duran Notary Public

My Commission Expires: June 27, 1989 My County of Residence is: Marion

This instrument was prepared by Brian J. Tuohy, Attorney.

860110-124

1. The Real Estate more particularly described in Exhibit "A" attached hereto and by reference made a part hereof, being a portion of the Real Estate (as defined in the Declaration) is hereby subjected to the Declaration and is hereby made a part of Heritage Commons Horizontal Property Regime. The plans depicting the condominium units within such real estate have been recorded as Instrument No. 86-91924 in the Office of the Recorder of Marion County, Indiana.

IN WITNESS WHEREOF, the Declarant, E & F Realty Co., has caused the Amendment to be executed as of the day and year first written above.

E & F REALTY CO.

By Franklin L. Jackson  
Franklin L. Jackson, General Partner

STATE OF INDIANA )  
                          )SS:  
COUNTY OF MARION )

860110124

Before me, a Notary Public in and for said County and State, personally appeared Franklin L. Jackson, a general partner of E & F Realty Co., an Indiana general partnership, who, after having been duly sworn, acknowledged the execution of the foregoing Amendment for and on behalf of said partnership.

Witness my hand and notarial seal this 8th day of September, 1986.

Marilyn A. Duran  
(Marilyn A. Duran) Notary Public

My Commission Expires:

June 27, 1989

My County of Residence is:

Marion

This instrument was prepared by Brian J. Tuchy, Attorney.

EXHIBIT "A"

ORIGINAL NOT LEGIBLE

RECEIVED FOR RECORD  
BETH C. LAUGHLIN  
RECORDER-MARION CO.

880110425

CROSS REFERENCE

81  
2

CORRECTIVE AMENDMENT TO DECLARATION AND BY-LAWS  
OF HERITAGE COMMONS HORIZONTAL PROPERTY REGIME

Oct 29 8 55 AM '86

THIS CORRECTIVE AMENDMENT, executed this 27th day of October, 1986, by E & F Realty Co., an Indiana general partnership ("Declarant"), witnesses the following:

WHEREAS, Declarant on March 26, 1986 executed the Declaration and By-Laws of Heritage Commons Horizontal Property Regime ("Declaration") and caused said Declaration to be recorded as Instrument No. 86-24894 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, pursuant to the terms and provisions of the Declaration, Declarant amended the Declaration by a certain Amendment to Declaration and By-laws of Heritage Commons Horizontal Property Regime recorded August 11, 1986 as Instrument No. 86-74882 in the office of the Recorder of Marion County, Indiana

("Amendment"); and

WHEREAS, the Amendment contains a certain scrivener's error and omission in the form of an incomplete sentence at the beginning of the second page of the Amendment;

NOW, THEREFORE, in order to correct such Amendment, Declarant hereby desires that paragraph No. "1" of the Amendment be stricken and that paragraph no. "1" as set forth in Exhibit "A" attached hereto and by reference made a part hereof be inserted in its place. In all other respects, the Amendment shall remain the same

previously filed in the office of the Recorder of Marion County, Indiana.

DULY ENTERED  
FOR TAXATION  
Oct 29 86 03 20 95  
COUNTY AUDITOR  
George A. Spencer

RECEIVED FOR RECORD  
BETH C. LAUGHLIN  
RECORDER-MARION CO.

Oct 29 8 55 AM '86

RECEIVED FOR RECORD  
BETH C. LAUGHLIN  
RECORDER-MARION CO.

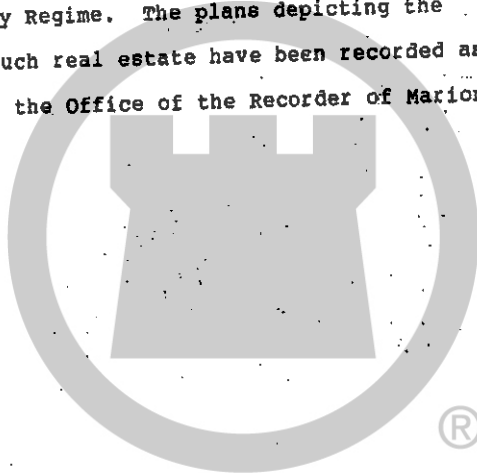
Oct 29 8 55 AM '86

APPROVED THIS 28th  
DAY OF October 1986  
ASSET OFFICER OF COUNTY TREASURY  
[Signature] DRAFTSMAN





1. The Real Estate more particularly described in Exhibit "A" attached hereto and by reference made a part hereof, being a portion of the Real Estate (as defined in the Declaration) is hereby subjected to the Declaration and is hereby made a part of Heritage Commons Horizontal Property Regime. The plans depicting the condominium units within such real estate have been recorded as Instrument No. 86-74881 in the Office of the Recorder of Marion County, Indiana.



CHICAGO TITLE

860110-125

EXHIBIT "A"

ORIGINAL, ILLEGIBLE

86011252

CROSS REFERENCE

AMENDMENT TO DECLARATION AND BY-LAWS OF HERITAGE COMMONS HORIZONTAL PROPERTY REGIME

950  
A

APPROVED THIS 30th DAY OF October 1986 ASSESSOR OF WARREN TOWNSHIP DRAFTSMAN

THIS AMENDMENT, executed this 2nd day of October, 1986, by E & F Realty Co., an Indiana general partnership ("Declarant"), witnesses the following:

WHEREAS, Declarant on March 26, 1986, executed the Declaration and By-Laws of Heritage Commons Horizontal Property Regime ("Declaration") and caused said Declaration to be recorded as Instrument No. 86-248 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant caused the Plans of Phase I of Heritage Commons to be recorded as Instrument No. 86-31550 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant subjected certain real estate to the Heritage Commons Horizontal Property Regime by causing certain Amendments to Declaration to be recorded on July 29, 1986 as Instrument No. 86-69136 on August 11, 1986 as Instrument No. 86-74882 and on September 17, 1986 as Instrument No. 86-91925 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, pursuant to the terms and provisions of the Declaration, Declarant reserved the right to subject additional real estate to the Heritage Commons Horizontal Property Regime established by the Declaration, and Declarant now wishes to add additional real estate to the Heritage Commons:

NOW, THEREFORE, in accordance with its rights under the Declaration and under the Indiana Horizontal Property Law, Declarant now amends the Declaration to expand Heritage Commons as follows:

- 1. The real estate more particularly described in Exhibit "A" attached hereto and by reference made a part hereof, being a portion of the "Real Estate" (as defined in the Declaration), is hereby

RECORDED BY REC'D REPORTER-MARION CO. OCT 30 12 42 PM '86

CHICAGO TITLE  
03-06032314  
COUNTY JUDGE

subjected to the Declaration and is hereby made a part of Heritage Commons Horizontal Property Regime. The plans depicting the condominium units within such real estate have been recorded as Instrument No. 86-11251 in the Office of the Recorder of Marion County, Indiana.

2. Declarant hereby amends the description of Percentage Interests of Condominium Units which was attached to the Declaration as Exhibit "B" by allocating all Percentage Interests in accordance with the schedule set out in Exhibit "B" attached hereto and by reference made a part hereof.

IN WITNESS WHEREOF, the Declarant, E & F Realty Co., has caused this Amendment to be executed as of the day and year first above written.

E & F REALTY CO.

By: Franklin L. Jackson <sup>®</sup>  
Franklin L. Jackson, General Partner

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Franklin L. Jackson, a General Partner of E & F Realty Co., an Indiana general partnership, who, having been duly sworn, acknowledged the execution of the foregoing Amendment for and on behalf of said partnership.

WITNESS my hand and notary seal this 2nd day of October, 1986

Barbara L. Jones  
( Barbara L. Jones ) Notary Public

My Commission Expires:

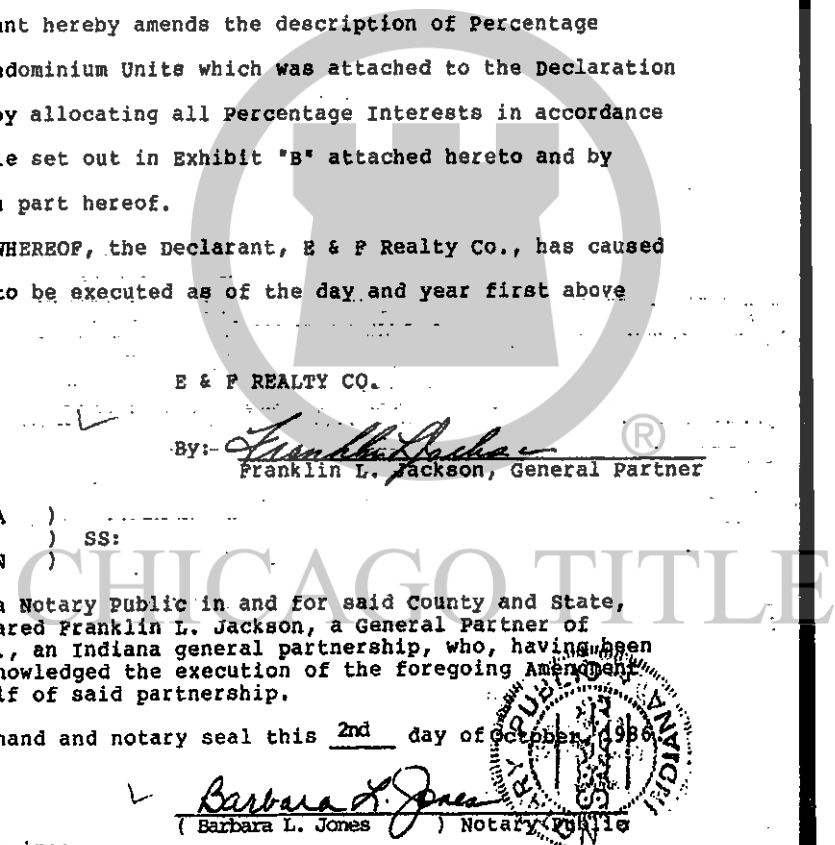
October 25, 1987

My County of Residence is:

Hendricks

This instrument was prepared by Brian J. Tuohy, Attorney.

ORIGINAL ILLEGIBLE

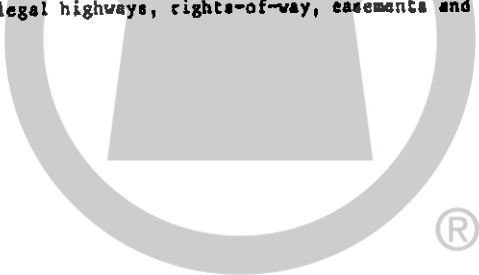


860111252

LEGAL DESCRIPTION  
BUILDINGS #1, 2, 3, 64 HERITAGE COMMONS

A part of the fractional Northwest Quarter of Section 31, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Northwest Quarter-Section; thence North 89 degrees 54 minutes 37 seconds East along the North line of said Quarter-Section 330.00 feet; thence South 00 degrees 00 minutes 15 seconds East parallel with the West line of said Quarter-Section 349.50 feet to the POINT OF BEGINNING; thence continuing South 00 degrees 00 minutes 15 seconds East 100.50 feet to the Northwest corner of Chatham Walk, Second Section, a subdivision in Marion County, Indiana, the plat of which is recorded as Instrument Number 71-2005 in the Office of the Recorder of Marion County, Indiana; thence North 89 degrees 54 minutes 37 seconds East along the North line of said Chatham Walk, Second Section 254.00 feet; thence North 00 degrees 05 minutes 23 seconds West 100.50 feet; thence South 89 degrees 54 minutes 37 seconds West 253.84 feet to the place of beginning, containing 0.586 acres, more or less, subject to all legal highways, rights-of-way, easements and restrictions of record.



CHICAGO TITLE

560111252

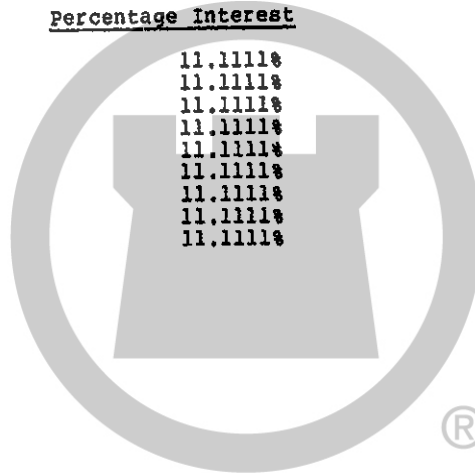
EXHIBIT "A"

ORIGINAL ILLEGIBLE

**DESCRIPTION OF PERCENTAGE  
INTERESTS OF CONDOMINIUM UNITS**

The Percentage Interests of the Owners of the respective  
Condominium Units in the Common Areas and Facilities and Limited  
Areas and Facilities are now as follows:

<u>Condominium Unit</u>	<u>Percentage Interest</u>
1	11.1111%
2	11.1111%
3	11.1111%
4	11.1111%
5	11.1111%
9	11.1111%
10	11.1111%
11	11.1111%
21	11.1111%



CHICAGO TITLE

860111252

870064909

RECORDED

AMENDMENT TO DECLARATION AND BY-LAWS OF  
HERITAGE COMMONS HORIZONTAL PROPERTY REGIME

JUN 5 11 04 AM '87

*M. J. Conrad* 850  
MARION COUNTY AUDITOR  
581016693  
ONLY TAXED  
FOR TAXATION

This Amendment, executed this 3rd day of June, 1987, by *San* Development Co., an Indiana general partnership ("Successor Declarant"), WITNESSES THE FOLLOWING:

WHEREAS, on March 26, 1986, E & F Realty Co., an Indiana general partnership ("Declarant"), executed a certain Declaration and By-Laws of Heritage Commons Horizontal Property Regime ("Declaration") and caused the Declaration to be recorded as Instrument No. 86-24894 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant caused the plans of Phase I of Heritage Commons Horizontal Property Regime to be recorded as Instrument No. 86-31550 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, as a result of recording the Declaration and recording certain amendments thereto, Declarant subjected certain real estate and improvements to the terms and conditions of the Declaration.

WHEREAS, on November 6, 1986 Declarant, pursuant to its rights under the Declaration, transferred its rights, duties and obligations under the Declaration to Successor Declarant by transferring its interest in the Real Estate (as defined in the Declaration) to Successor Declarant; and

WHEREAS, pursuant to the terms and provisions of the Declaration, Declarant reserved the right to subject additional real estate to the Heritage Commons Horizontal Property Regime established by the Declaration, and Successor Declarant now wishes to add additional real estate to Heritage Commons:

NOW, THEREFORE, in accordance with its rights under the Declaration and under the Indiana Horizontal Property Law, Successor Declarant now amends the Declaration to expand Heritage Commons as follows:

RECORDED IN  
MARION COUNTY

*W. J. Bailey*  
27

1. The real estate more particularly described in Exhibit "A" attached hereto and by reference made a part hereof, being a portion of the real estate (as defined in the Declaration), is hereby subjected to the Declaration and is hereby made a part of the Heritage Commons Horizontal Property Regime. The plans depicting the condominium units within such real estate have been recorded as Instrument No. 87-69107 in the Office of the Recorder of Marion County, Indiana.

2. Successor Declarant hereby amends the Description of Percentage Interests of Condominium Units which was attached to the Declaration as Exhibit "B" by allocating all percentage interest in accordance with the schedule set out in Exhibit "B" attached hereto and by reference made a part hereof.

IN WITNESS WHEREOF, Successor Declarant Sanibel Development Co. has caused this Amendment to be executed as of the date and year first above written.

SANIBEL DEVELOPMENT CO.

BY: Ronald Hicks  
RONALD HICKS  
General Partner

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

870064909

Before me, a Notary Public in and for said County and State, personally appeared RONALD HICKS, who, having been duly sworn upon his oath, acknowledged the execution of the foregoing Amendment to Declaration and By-Laws of Heritage Commons Horizontal Property Regime.

WITNESS my hand and notary seal this 3rd day of June, 1987.

Jessie M. Orms  
(JESSIE M. ORMS) Notary Public

My Commission Expires:

My County of Residence is:

Jan 2, 1988

Marion

This instrument was prepared by Brian J. Tuohy, Attorney.



BUILDING 18 \* HERITAGE COMMONS

A part of the fractional Northwest Quarter of Section 31, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Northwest Quarter Section; thence North 89 degrees 54 minutes 37 seconds East along the North line of said Quarter Section 330.00 feet; thence South 00 degrees 00 minutes 15 seconds East parallel with the West line of said Quarter Section 225.00 feet; thence North 89 degrees 54 minutes 37 seconds East 265.059 feet; thence North 00 degrees 00 minutes 15 seconds West 35.001 feet; thence North 89 degrees 54 minutes 37 seconds East 143.50 feet to THE POINT OF BEGINNING; thence continuing North 89 degrees 54 minutes 37 seconds East 33.50 feet; thence South 74 degrees 19 minutes 52 seconds East 18.10 feet; thence South 00 degrees 05 minutes 23 seconds East 113.08 feet; thence South 89 degrees 54 minutes 37 seconds West 50.92 feet; thence North 00 degrees 05 minutes 23 seconds West 118.00 feet to the place of beginning, containing 0.137 acres, more or less, subject to all legal highways, rights-of-way, easements & restrictions of record.

CHICAGO TITLE

EXHIBIT "A"

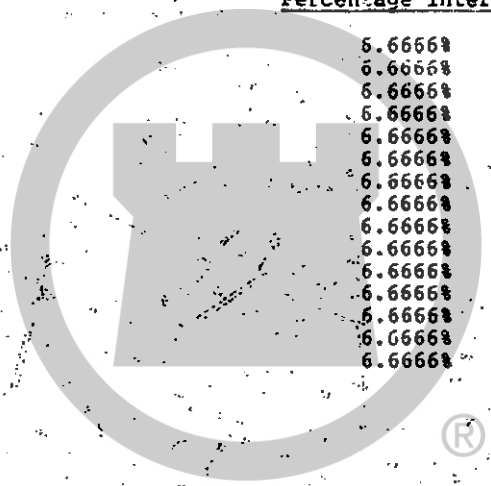
8669/LIV/55  
06/2/87

870061909

DESCRIPTION OF PERCENTAGE  
INTERESTS OF CONDOMINIUM UNITS

The Percentage Interests of the Owners of the respective Condominium Units in the Common Areas and Facilities and Limited Areas and Facilities are now as follows:

<u>Condominium Unit</u>	<u>Percentage Interest</u>
1	6.6666%
2	6.6666%
3	6.6666%
4	6.6666%
5	6.6666%
8	6.6666%
9	6.6666%
10	6.6666%
11	6.6666%
12A	6.6666%
14	6.6666%
18	6.6666%
19	6.6666%
21	6.6666%
22	6.6666%



CHICAGO TITLE  
870061909

EXHIBIT "B"

4. K. 870107685

CROSS REFERENCE

Indianapolis, Indiana  
August 31, 1987

(2) 10.50

DEVELOPER'S CORRECTIVE AFFIDAVIT  
AND CERTIFICATE OF CORRECTION

Brady R. Justice, Jr., Affiant, being first duly sworn upon his oath, states and certifies the following:

1. Affiant is one of the general partners of Sanibel Development Co., an Indiana general partnership ("Sanibel"), and he is familiar with the books and records of Sanibel.

2. E & F Realty Co., an Indiana general partnership ("E&F"), was the original developer of Heritage Commons Horizontal Property Regime, an expandable condominium development located in Indianapolis, Indiana.

3. E & F executed the Declaration and By-Laws of Heritage Commons Horizontal Property Regime ("Declaration") and caused the Declaration to be recorded on May 27, 1986, as Instrument No. 86-24894 in the Office of the Recorder of Marion County, Indiana.

4. Pursuant to Warranty Deed, E & F conveyed the property covered by the Heritage Commons Horizontal Property Regime to Sanibel. Said Warranty Deed was recorded in the Office of the Marion County Recorder on November 6, 1986, as Document No. 86-113940.

5. As a result of recording the Declaration, E & F subjected certain real estate to the terms and conditions of the Declaration.

6. It has recently been discovered that scrivener's errors were committed in the preparation of the Declaration, which errors require correction as follows:

(a) Paragraph 15 of Article VI, appearing at Page 24, should be deleted in its entirety by reason of the fact that it is duplicative of the language set forth in Paragraph 12 of Article VI, appearing at Page 23.

(b) The language appearing at Paragraph 8 (f) of Article X, entitled "Recording", and appearing at Page 43, should be amended to read as follows:

(f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association

CHICAGO TITLE

MARION COUNTY AUDITOR  
DULY ENTERED  
FOR TAXATION  
SEP 16 1987 02:31:44

SEP 15 10 28 AM '87  
RECORDER-MARION



870108819

REC'D - E. J. B. RECORDS  
REC'D - CLAUSSON  
RECORDED - 10/18/87

*Chas. L. Cannon*  
MARION COUNTY AUDITOR  
SEP 18 1987 028662  
FILED  
FOR TAXATION  
*10/16*

AMENDMENT TO DECLARATION AND BY-LAWS  
OF HERITAGE COMMONS HORIZONTAL PROPERTY REGIME

THIS AMENDMENT, executed this 4 day of September, 1987, by Sanibel Development Co., an Indiana general partnership ("Successor Declarant") WITNESSES THE FOLLOWING:

WHEREAS, on March 26, 1986, E & F Realty Co., an Indiana general partnership ("Declarant"), executed a certain Declaration and By-Laws of Heritage Commons Horizontal Property Regime ("Declaration") and caused the Declaration to be recorded as Instrument No. 86-24894 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant caused the plans of Phase I of Heritage Commons Horizontal Property Regime to be recorded as Instrument No. 86-31550 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, as the result of recording the Declaration and recording certain Amendments thereto, Declarant subjected certain real estate and improvements to the terms and conditions of the Declaration; and

WHEREAS, on November 5, 1986, Declarant, pursuant to its rights under the Declaration, transferred its rights, duties and obligations under the Declaration to Successor Declarant by transferring its interest in the Real Estate (as defined in the Declaration) to Successor Declarant; and

WHEREAS, pursuant to the terms and provisions of the Declaration, Declarant reserved the right to subject additional real estate to the Heritage Commons Horizontal Property Regime

APPROVED THIS 18th DAY OF September 1987  
*London S. Cannon*  
WARREN TOWNSHIP  
CLERK

SEP 18 3 27 PM '87

CHICAGO TITLE

established by the Declaration, and Successor Declarant now wishes to add additional real estate to Heritage Commons:

NOW, THEREFORE, in accordance with its rights under the Declaration and under the Indiana Horizontal Property Law, Successor Declarant now amends the Declaration to expand Heritage Commons as follows:

1. The real estate more particularly described in Exhibit A, attached hereto and, by this reference, made a part hereof, being a portion of the real estate (as defined in the Declaration), is hereby subjected to the Declaration and is hereby made a part of the Heritage Commons Horizontal Property Regime. The plans depicting the condominium units within such real estate have been recorded as Instrument No. 870108819 in the Office of the Recorder of Marion County, Indiana.

2. Successor Declarant hereby amends the description of percentage interest of condominium units which was attached to the Declaration as Exhibit B by allocating all percentage interest in accordance with the schedule set out in Exhibit B attached hereto and by reference made a part hereof

IN WITNESS WHEREOF, Successor Declarant, Sanibel Development Co., has caused this amendment to be executed as of the day and year first above written.

SANIBEL DEVELOPMENT CO.

870108819

By: Franklin B. Jackson

Printed: Franklin B. Jackson

Title: General Partner

STATE OF Indiana )  
                                  ) SS:  
COUNTY OF Marion )

Before me, a Notary Public, in and for said County and State,  
personally appeared Franklin L. Jackson a  
general partner of Haribel Development Co., an Indiana partnership,  
and after having been duly sworn, acknowledged the execution of the  
foregoing Corrective Amendment for and on behalf of said  
partnership.

Witness my hand and Notarial Seal this 4 day of September  
1987.

My Commission Expires:  
6/18/91 ✓

Francine A. White  
Notary Public  
FRANCINE A. WHITE

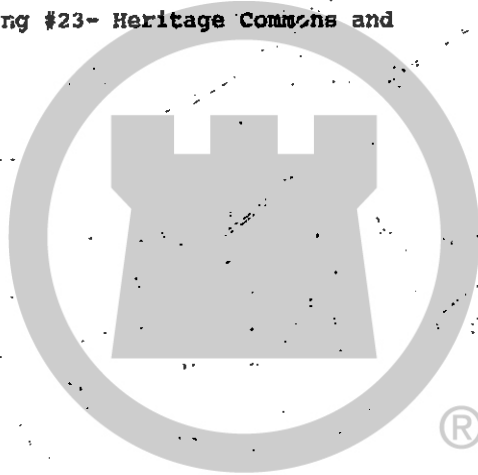
This instrument was prepared by Rex E. Bennett, Attorney.

CHICAGO TITLE

870109019

Exhibit A

Building #23- Heritage Commons and



CHICAGO TITLE

870108619



Exhibit B

The Percentage Interests of the Owners of the respective Condominium Units in the Common Areas and Facilities and Limited Areas and Facilities are now as follows:

<u>Condominium Unit</u>	<u>Percentage Interest</u>
1	5.8823%
2	5.8823%
3	5.8823%
4	5.8823%
5	5.8823%
8	5.8823%
9	5.8823%
10	5.8823%
11	5.8823%
12A	5.8823%
14	5.8823%
18	5.8823%
19	5.8823%
20	5.8823%
21	5.8823%
22	5.8823%
23	5.8823%

CHICAGO TITLE

870108819

EXHIBIT C

A part of the fractional Northwest Quarter of Section 31, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Northwest Quarter Section; thence North 89 degrees 54 minutes 37 seconds East along the North line of said Quarter Section 330.00 feet; thence South 00 degrees 00 minutes 15 seconds East parallel with the West line of said Quarter Section 225.00 feet; thence North 89 degrees 54 minutes 37 seconds East 165.00 feet to the POINT OF BEGINNING; thence North 89 degrees 54 minutes 37 seconds East 61.059 Feet; thence South 00 degrees 05 minutes 23 seconds East 100.50 Feet; thence South 89 degrees 54 minutes 37 seconds West 61.059 feet; thence North 00 degrees 05 minutes 23 seconds West 100.50 feet to the place of beginning, containing 0.141 acres more or less, subject to all legal highways, rights-of-way, easements, and restrictions of record.

®

870108819

CHICAGO TITLE

APPROVED THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_ 1987  
ALICE BOLLER WEAVER, DRAFTSMAN

570111839

CROSS REFERENCE

1251/6

AMENDMENT TO DECLARATION AND BY-LAWS  
OF HERITAGE COMMONS HORIZONTAL PROPERTY REGIME

THIS AMENDMENT, executed this 1 day of September, 1987, by Sanibel Development Co., an Indiana general partnership ("Successor Declarant") WITNESSES THE FOLLOWING:

WHEREAS, on March 26, 1986, E & F Realty Co., an Indiana general partnership ("Declarant"), executed a certain Declaration and By-Laws of Heritage Commons Horizontal Property Regime ("Declaration") and caused the Declaration to be recorded as Instrument No. 86-24894 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant caused the plans of Phase I of Heritage Commons Horizontal Property Regime to be recorded as Instrument No. 86-31550 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, as the result of recording the Declaration and recording certain Amendments thereto, Declarant subjected certain real estate and improvements to the terms and conditions of the Declaration; and

WHEREAS, on November 6, 1986, Declarant, pursuant to its rights under the Declaration, transferred its rights, duties and obligations under the Declaration to Successor Declarant by transferring its interest in the Real Estate (as defined in the Declaration) to Successor Declarant; and

WHEREAS, pursuant to the terms and provisions of the Declaration, Declarant reserved the right to subject additional real estate to the Heritage Commons Horizontal Property Regime

CHICAGO TITLE

567670-1886  
MARION COUNTY RECORDS  
RECORDED  
SEP 28 11 41 AM '87

SEP 28 11 41 AM '87

established by the Declaration, and Successor Declarant now wishes to add additional real estate to Heritage Commons:

NOW, THEREFORE, in accordance with its rights under the Declaration and under the Indiana Horizontal Property Law, Successor Declarant now amends the Declaration to expand Heritage Commons as follows:

1. The real estate more particularly described in Exhibit A, attached hereto and, by this reference, made a part hereof, being a portion of the real estate (as defined in the Declaration), is hereby subjected to the Declaration and is hereby made a part of the Heritage Commons Horizontal Property Regime. The plans depicting the condominium units within such real estate have been recorded as Instrument No. 87011838 in the Office of the Recorder of Marion County, Indiana.

2. Successor Declarant hereby amends the description of percentage interests of condominium units which was attached to the Declaration as Exhibit B by allocating all percentage interest in accordance with the schedule set out in Exhibit B attached hereto and by reference made a part hereof.

IN WITNESS WHEREOF, Successor Declarant, Sanibel Development Co., has caused this Amendment to be executed as of the day and year first above written.

SANIBEL DEVELOPMENT CO.

87011838

By: Franklin L. Jackson

Printed: FRANKLIN L. JACKSON

Title: General Partner

STATE OF Indiana )  
COUNTY OF Marion ) SS:

Before me, a Notary Public, in and for said County and State, personally appeared Francis A. White a general partner of Sanibel Development Co., an Indiana partnership, and after having been duly sworn, acknowledged the execution of the foregoing Corrective Amendment for and on behalf of said partnership.

Witness my hand and Notarial Seal this 4 day of September 1987.

My Commission Expires:

6/18/91

Francis A. White  
Notary Public  
Francis A. White

This instrument was prepared by Rex E. Bennett, Attorney.

CHICAGO TITLE

870111839

Exhibit A

Building #20- Heritage Commons and



CHICAGO TITLE

870111839

Exhibit B

The Percentage Interests of the Owners of the respective Condominium Units in the Common Areas and Facilities and Limited Areas and Facilities are now as follows:

<u>Condominium Unit</u>	<u>Percentage Interest</u>
1	5.8823%
2	5.8823%
3	5.8823%
4	5.8823%
5	5.8823%
8	5.8823%
9	5.8823%
10	5.8823%
11	5.8823%
12A	5.8823%
14	5.8823%
18	5.8823%
19	5.8823%
20	5.8823%
21	5.8823%
22	5.8823%
23	5.8823%

CHICAGO TITLE

870111839

LEGAL DESCRIPTION ✓

A part of the fractional Northwest Quarter of Section 31, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Northwest Quarter Section; thence North 89 degrees 54 minutes 37 seconds East along the North line of said Quarter Section 330.00 feet; thence South 00 degrees 00 minutes 15 seconds East parallel with the West line of said Quarter Section 225.00 feet; thence North 89 degrees 54 minutes 37 seconds East 265.059 feet; thence North 00 degrees 00 minutes 15 seconds West 35.001 feet; thence North 89 degrees 54 minutes 37 seconds East 52.20 feet to THE POINT OF BEGINNING; thence continuing North 89 degrees 54 minutes 37 seconds East 42.83 feet; thence South 00 degrees 05 minutes 23 seconds East 119.69 feet to the point of curvature of a 25.01890 degree curve to the left, the radius point of said curve being South 00 degrees 05 minutes 23 seconds East 229.01 feet from said point; thence westerly along said curve 15.20 feet to a point on said curve; the radius point of said curve being South 07 degrees 14 minutes 40 seconds East 229.01 feet; thence South 79 degrees 30 minutes 00 seconds West 28.27 feet; thence North 00 degrees 05 minutes 23 seconds West 127.07 feet to the place of beginning, containing 0.121 acres, more or less, subject to all legal highways, rights-of-way, easements and restrictions of record.

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CHICAGO TITLE

870111839

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1300  
9/17

AMENDMENT TO DECLARATION AND BY-LAWS  
OF  
HERITAGE COMMONS HORIZONTAL PROPERTY REGIME

THIS AMENDMENT, executed this 20th day of July, 1992, by THE GERMAN AMERICAN BANK, an Indiana banking association and the successor in interest under an Assignment of Declarant Rights, dated March 28, 1990, and recorded on March 29, 1990, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 90-29727 to SANIBEL DEVELOPMENT CO., an Indiana partnership and the successor in interest to E & F REALTY CO., an Indiana general partnership, ("Declarant"), witnesses the following:

WHEREAS, Declarant desires to amend the Declaration and By-Laws of Heritage Commons Horizontal Property Regime, dated March 26, 1986, and recorded on March 27, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-24894, as amended by Amendment to Declaration and By-Laws of Heritage Commons Horizontal Property Regime, dated July 23, 1986, and recorded on July 29, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-69136, as further amended by Second Amendment to Declaration and By-Laws of Heritage Commons Horizontal Property Regime, dated August 8, 1986, and recorded on August 11, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-74882, as further amended by Amendment to Declaration and By-Laws of Heritage Commons Horizontal Property Regime, dated September 8, 1986, and recorded on September 17, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-91925, as corrected by Developer's Corrective Affidavit and Certificate of Correction, dated September 25, 1986, and recorded on September 26, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-96514, as further corrected and amended by Corrective Amendment to Declaration and By-Laws of Heritage Commons Horizontal Property Regime, dated October 27, 1986, and recorded on October 29, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-110424, and as further amended by Amendment to Declaration and By-Laws of Heritage Commons Horizontal Property Regime, dated October 2, 1986, and recorded on October 30, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-111252 (the above referenced Declaration and all amendments thereof and revisions thereto shall be referred to hereinafter as the "Declaration");

WHEREAS, pursuant to the terms and provisions of the Declaration, the Declarant may expand the Heritage Commons Horizontal Property Regime ("Heritage Commons") by subjecting additional real estate to the Declaration;

NOW, THEREFORE, in accordance with the rights set forth under the Declaration and under the Indiana Horizontal Property Law, Declarant hereby amends the Declaration to expand Heritage Commons as follows:

The real estate more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Real Estate"), is hereby subjected to the Declaration and made a part of Heritage Commons for all purposes, and the owner of the Real Estate from time to time and at all times shall adhere to the terms and provisions of the Declaration. The plans depicting the condominium unit within such Real Estate were recorded on July 17, 1992, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 92-0109414.

IN WITNESS WHEREOF, Declarant has caused the Amendment to be executed as of the day and year first written above.

19 14  
AUG 6 1992  
Signature M. Staver

REC'D  
130023825  
JOHN R. VON ARX  
REC'D

THE GERMAN AMERICAN BANK, an Indiana banking association and the successor in interest to Sanibel Development Co., an Indiana partnership and the successor in interest to E & F Realty Co., an Indiana general partnership

By: *Stan Rube*  
Printed: STAN RUBE  
Title: SR. VICE PRESIDENT

STATE OF INDIANA )  
COUNTY OF DUBOIS )

Before me, a Notary Public in and for said County and State, personally appeared Stan Rube, a Sr. Vice President of German American Bank, an Indiana banking association and the successor in interest to Sanibel Development Co., an Indiana partnership and the successor in interest to E & F Realty Co., an Indiana general partnership, who, having been duly sworn, acknowledged the execution of the foregoing Amendment on behalf of said banking association.

WITNESS my hand and Notarial Seal this 20th day of July, 1992.

*Annette Benson*

Annette Benson  
Printed Signature, Notary Public

ANNETTE BENSON

My Commission Expires June 23, 1995  
A Notary Public  
Residing in Dubois County

I am a resident of Dubois County, Indiana.  
My commission expires: June 23, 1995.

\*Return after recording to Mark E. Wright, Attorney-at-Law, Baker & Daniels, 300 North Meridian Street, Suite 2700, Indianapolis, Indiana, 46204.

This instrument was prepared by Mark E. Wright, Attorney-at-Law, Baker & Daniels, 300 North Meridian Street, Suite 2700, Indianapolis, Indiana, 46204.

Exhibit A

A part of the fractional Northwest Quarter of Section 31, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Northwest Quarter Section; thence North 89 degrees 54 minutes 37 seconds East along the North line of said Quarter Section 330.00 feet; thence South 00 degrees 00 minutes 15 seconds East parallel with the West line of said Quarter Section 225.00 feet; thence North 89 degrees 54 minutes 37 seconds East 50.00 feet to the Point of Beginning; thence North 89 degrees 54 minutes 37 seconds East 76.82 feet; thence South 00 degrees 05 seconds 23 minutes East 100.50 feet; thence South 89 degrees 54 minutes 37 seconds West 76.97 feet; thence North 00 degrees 00 minutes 15 seconds West 100.50 feet to the place of beginning containing 0.177 acres more or less, subject to all legal highways, rights-of-way, easements and restrictions of record.

CHICAGO TITLE

920109415

EXHIBIT B

DESCRIPTION OF PERCENTAGE INTERESTS  
OF CONDOMINIUM UNITS

The Percentage Interests of the Owners of the respective  
Condominium Units in the Common Areas and Facilities and  
Limited Areas and Facilities are now as follows:

<u>Condominium Unit</u>	<u>Percentage Interest</u>
1	5.5555%
2	5.5555%
3	5.5555%
4	5.5555%
5	5.5555%
8	5.5555%
9	5.5555%
10	5.5555%
11	5.5555%
12A	5.5555%
14	5.5555%
18	5.5555%
19	5.5555%
20	5.5555%
21	5.5555%
22	5.5555%
23	5.5555%
25	5.5555%

CHICAGO TITLE

920109415

4

AMENDMENT TO DECLARATION AND BY-LAWS

HERITAGE COMMONS HORIZONTAL PROPERTY REGIME

THIS AMENDMENT, executed this 24<sup>TH</sup> day of October, 1994, by THE GERMAN AMERICAN BANK, an Indiana banking association, and the successor in interest under an Assignment of Declarant Rights, dated March 28, 1990, and recorded on April 12, 1990, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 90-29727, to SANIBEL DEVELOPMENT CO., an Indian Partnership and the successor in interest to E & F REALTY CO., an Indiana general partnership, ("Declarant"), witnesses the following:

**WHEREAS**, Declarant desires to amend the Declaration and By-Laws of Heritage Commons Horizontal Property Regime, dated March 26, 1986 and recorded on March 27, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument no. 86-24834, as amended by Amendment to Declaration and By-Laws of Heritage Commons Horizontal Property Regime, dated July 23, 1986, and recorded on July 29, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-69136, as further amended by Second Amendment to Declaration and By-Laws of Heritage Commons Horizontal Property Regime, dated August 8, 1986, and recorded on August 11, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-74832, as further amended by Amendment to Declaration and By-Laws of Heritage Commons Horizontal Property Regime, dated September, 8, 1986, and recorded on September 17, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-91925, as corrected by Developer's Corrective Affidavit and Certificate of Correction, dated September 25, 1986, and recorded on September 28, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-96514, as further corrected and amended by Corrective Amendment to Declaration and By-Laws of Heritage Commons Horizontal Property Regime, dated October 27, 1986, and recorded on October 29, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-110424, and as further amended by Amendment to Declaration and By-Laws of Heritage Commons Horizontal Property Regime, dated October 2, 1986, and recorded on October 30, 1986, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 86-111252 (the above referenced Declaration and all amendments thereof and revisions thereto shall be referred to hereinafter as the "Declaration");

**WHEREAS**, pursuant to the terms and provisions of the Declaration, the Declarant may expand the Heritage Commons Horizontal Property Regime ("Heritage Commons") by subjecting additional real estate to the Declaration;

**NOW THEREFORE**, in accordance with the rights set forth under the Declaration and under the Indiana Horizontal Property Law, Declarant hereby amends the Declaration to expand Heritage Commons as follows:

The real estate more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Real Estate"), is hereby subjected to the Declaration and made a part of Heritage Commons for all purposes, and the owner of the Real Estate from time to time and at all times shall adhere to the terms and provisions of the Declaration.

CHICAGO TITLE

11/23/94 02:45PM JOAN N. ROMERIL MARION CITY RECORDER C.L.P. 13.00 PAGES: 4

Inst # 1994-0165068

13.00  
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IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed as of the day and year first written above.

THE GERMAN AMERICAN BANK, an Indiana banking association and the successor in interest to Sanibel Development Co., an Indiana Partnership, and the successor in interest to E & F Realty Co., an Indiana General Partnership.

JOSEPH VON ARX  
NOTARY PUBLIC  
386.72710

BY: Stan Ruhe  
STAN RUHE  
Sr. Vice President

STATE OF INDIANA )  
COUNTY OF DUBOIS )

SS:

Before me, a Notary Public in and for said County and State, personally appeared Stan Ruhe, Sr. Vice President of German American Bank, an Indiana banking association and the successor in interest to Sanibel Development Co., an Indiana partnership and the successor in interest to E & F Realty Co., and Indiana general partnership, who having been duly sworn, acknowledged the execution of the foregoing Amendment on behalf of said banking association.

Witness my hand and Notarial Seal this 27<sup>th</sup> day of October, 1994.

Annette Benson  
NOTARY PUBLIC  
Printed: Annette Benson  
Residing in Dubois County, IN

My Commission Exp:  
June 23, 1995

This Instrument Prepared by Ross McMahan, Attorney at Law



CHICAGO TITLE

EXHIBIT A

A part of the fractional Northwest Quarter of Section 31, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the northwest corner of said Northwest Quarter Section, thence North 89 degrees 54 minutes 37 seconds East along the North line of said Quarter Section 330.00 feet; thence South 00 degrees 00 minutes 15 seconds East parallel with the west line of said Quarter Section 225.00 feet; thence North 89 degrees 54 minutes 37 seconds East 126.82 feet to the Point of beginning; thence continuing North 89 degrees 50 minutes 37 seconds East 38.18 feet; thence South 00 degrees 05 minutes 23 seconds East 100.50 feet; thence South 89 degrees 54 minutes 37 seconds West 38.18 feet; thence North 00 degrees 05 minutes 23 seconds West 100.50 feet to the place of beginning.

Commonly known as: P116 Heritage Commons, Indianapolis, IN

Unit 24 - Heritage Commons

ALSO

A part of the fractional Northwest Quarter of Section 31, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Northwest Quarter Section; thence North 89 degrees 54 minutes 37 seconds East along the North line of said Quarter Section 330.00 feet; thence South 00 degrees 00 minutes 15 seconds East parallel with the West line of said Quarter Section 450.00 feet to the Northwest corner of Chatham Walk, Second Section, a Subdivision in Marion County, Indiana, the plat of which is recorded as Instrument No. 71-2005 in the Office of the Recorder of Marion County, Indiana; thence North 89 degrees 54 minutes 37 seconds East parallel with the North line of said Quarter Section 269.34 feet to the Northeast corner of said Chatham Walk, Second Section, said point also being the Northwest corner of Chatham Walk, First Section a subdivision in Marion County, Indiana, the plat of which is recorded as Instrument No. 71-40535 in the Office of the Recorder of Marion County, Indiana; thence continuing North 89 degrees 54 minutes 37 seconds East parallel with said North line 390.56 feet; thence North 00 degrees 00 minutes 15 seconds West 207.83 feet to the POINT OF BEGINNING; thence South 89 degrees 54 minutes 37 seconds West 114.88 feet to a point on a curve concave Westerly, the radius point of said curve being South 88 degrees 57 minutes 32 seconds West 124.62 feet from said point; thence Northerly along said curve 23.87 feet to the point of tangency of said curve, the radius point of said curve being South 78 degrees 00 minutes 00 seconds West 124.82 feet from said point; thence North 12 degrees 00 minutes 00 seconds West 29.11 feet; thence North 89 degrees 54 minutes 37 seconds East parallel with the said North line 123.64 feet; thence South 00 degrees 00 minutes 15 seconds East 52.17 feet to the place of beginning.

Commonly known as: 2047 Heritage Commons Lane, Indianapolis, IN

Unit 16 - Heritage Commons

CHICAGO TITLE

EXHIBIT B

DESCRIPTION OF PERCENTAGE INTERESTS  
OF CONDOMINIUM UNITS

The percentage Interest of the Owners of the respective  
Condominium Units in the Common Areas, Facilities and Limited  
Areas and Facilities are now as follows:

Condominium Unit	Percentage Interest
1	5.00
2	5.00
3	5.00
4	5.00
5	5.00
8	5.00
9	5.00
10	5.00
11	5.00
12A	5.00
14	5.00
16	5.00
18	5.00
19	5.00
20	5.00
21	5.00
22	5.00
23	5.00
24	5.00
25	5.00



CHICAGO TITLE