

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
THE ADELAIDE**

This Declaration made this 16<sup>th</sup> day of June, 2004 by Jens C. Sorensen, a resident of Nicholson, Pennsylvania (hereinafter referred to as "Declarant");

**WITNESSETH:**

**WHEREAS**, the Declarant is the sole owner of the fee simple title to certain real estate in Marion County, Indiana, which is more fully described as follows:

See legal description attached as Exhibit A.

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

**WHEREAS**, Declarant by execution of this Declaration, hereby creates a Horizontal Property Regime upon the Real Estate, subject to Indiana Code 32-25 et. seq, and the terms and conditions of this Declaration.

**WHEREAS**, Declarant desires to create The Adelaide Condominium Owners' Association under the laws of the State of Indiana as a not-for-profit corporation to promote and enhance the value and amenities in said community, maintain the exterior of the building located thereon, maintain and administer all common facilities, enforce the covenants, conditions and restrictions and reservations and collect and disburse the assessments and charges therein created;

**NOW, THEREFORE**, Declarant hereby makes this Declaration as follows:

1. **Definitions.** The following words and terms used in this Declaration shall mean the following:

a. "Act" shall mean Indiana Code 32-25 et. seq. formerly known as the Indiana Horizontal Property Law. The Act is incorporated herein by reference.

b. "The Adelaide" means the name by which the Property as hereinafter defined shall be known.

c. "Association" shall mean and refer to The Adelaide Condominium Owners' Association, an Indiana not-for-profit corporation, its successors and assigns, being the association of Co-Owners of The Adelaide.

d. "Board of Managers" means the governing body of the Association, being the initial Board of Managers referred to in the By-Laws or subsequent Board of Managers elected by the Co-Owners in accordance with the By-Laws. The term "Board of Managers," as used herein and in the By-Laws, shall be synonymous with the term "Board of Directors" as used in the Act.

e. "Building" means the only improvement on the Real Estate which contains Condominium Units, Common Areas, and Limited Areas.

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

g. "Common Expenses" means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Areas (to the extent provided herein) and all sums lawfully assessed against the Owners by the Association or as declared by the Act, the Declaration or the By-Laws.

h. "Common Area" is defined in paragraph 6 below.

i. "Condominium Unit" means the four (4) living units constituting The Adelaide, with the boundaries of each individual living unit being more particularly described in paragraph 5 below and identified on the Plans. Each Condominium Unit includes a dedicated laundry area located in the basement ("Laundry Area"), and an undivided interest in the Common Areas and Limited Areas appertaining to such Condominium Unit.

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

k. "Declarant" shall mean Jens C. Sorensen or his designee.

l. "Limited Areas" means an area dedicated to the sole use of the Owner which is located outside the perimeter of such Owner's Condominium Unit including the exterior sides and surfaces of doors, windows and frames surrounding the same in the perimeter walls of each Condominium Unit and the area of the porch outside each Condominium Unit as shown on the Plans.

m. "Mortgagee" means the holder of a first mortgage lien on a Condominium Unit.

n. "Owner" or "Ownership" shall mean the person, corporation, partnership, association, trust or other legal entity or any combination thereof who or which owns the fee simple title to any Condominium Unit, but excluding those persons or entities having any interest merely as security for the performance of an obligation. If the ownership of a Condominium Unit shall be held as joint tenants, tenants in common or tenants by the

entirety ("Multiple Owners"), each Multiple Owner shall appoint one representative to exercise his or her right to vote the Percentage Interest or to serve on the Board of Managers.

o. "Percentage Interest" shall mean a twenty-five percent (25%) undivided interest which each Owner or Multiple Owner of a Condominium Unit owns in the Common Areas.

p. "Plans" means the floor and building plans and elevations of the building and Condominium Units prepared and certified by Steven H. Logan, a licensed architect, dated April 26, 2004.

q. "Property" shall mean and refer to the Real Estate which is subject to the provisions of this Declaration and appurtenant easements, the Condominium Units, the Building, and other improvements, and property of every kind and nature whatsoever, real, personal, or mixed, located upon the Real Estate and used in connection with the operations, use and enjoyment of The Adelaide, not including the personal property of the Owners.

2. **Declaration.** Declarant hereby expressly declares that the Property shall be a Horizontal Property Regime in accordance with the provisions of the Act.

3. **Description of Property.** There is a total of one (1) Building, consisting of two (2) stories where each story contains two (2) Condominium Units for a total of four (4) Condominium Units, and a basement which contains separate laundry facilities for each Condominium Unit.

4. **Legal Description and Percentage Interest.** Each Condominium Unit is identified on the Plan by a number. The legal description for each Condominium Unit shall consist of the identifying number for such Condominium Unit as shown on the Plan, and shall be stated as "Condominium Unit (with identifying number) in The Adelaide Horizontal Property Regime." The Percentage Interest allocated to the Owner or Multiple Owners of each Condominium Unit shall be Twenty-Five percent (25%).

5. **Description of Condominium Units.**

a. **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, 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 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, 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.

b. **Boundaries.** The boundaries of each Condominium Unit shall be as shown on the Plans and shall be measured between the interior finished 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 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.

6. **Common Areas and Facilities.** "Common Areas" means (1) the Property, excluding the Condominium Units and Limited Areas, (2) the foundations, columns, girders, beams, supports and exterior surfaces of roots of the building, (3) the yards, sidewalks, driveways, parking areas, basement areas (excluding the laundry areas assigned to a particular Condominium Unit), attics, stairways, entrances and exits and corridors, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Areas, (4) central electricity, gas, water, air conditioning and sanitary sewer mains serving the Building and not specifically for the use of an individual Condominium Unit, if any, (5) exterior lighting fixtures and electrical service lighting the exterior of the Building unless separately metered to a particular Condominium Unit, (6) pipes, ducts, electrical wiring and conduits and public floors, roof and exterior perimeter walls of the Building, except as otherwise determined to be part of the Condominium Unit as described in paragraph 5 above to the extent the same are otherwise classified and defined herein as part of the Condominium Units or Limited Areas.

7. **Limited Areas and Facilities.** The areas in the Building that are limited to a Condominium Unit Owner's use are:

a. The exterior sides and surfaces of doors, windows and frames surrounding the perimeter walls in each Condominium Unit.

b. The porch located outside each Condominium Unit.

c. Any other areas designated and shown on the Plan as Limited Areas shall be limited to the Condominium Unit or Condominium Units to which they appertain.

8. **Ownership of Common Areas and Percentage Interest.** Each Owner shall have an undivided interest in the Common Areas and Limited Areas, as tenants in common with

all other Owners, equal to such Owner's or Multiple Owner's Percentage Interest. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Areas shall be of a permanent nature and shall not be altered without the consent of the Owners as provided in paragraph 19 herein and then only if in compliance with all requirements of the Act.

9. **Encroachments, Easements for Common Areas and Ingress and Egress Easements.**

a. If, by reason of the location, construction, settling or shifting of the Building, a Common Area or Limited Area now encroaches or shall hereafter encroach upon any Condominium Unit, then in such event an easement shall be deemed to exist and run to the Co-Owners and the Association for the maintenance, use and enjoyment of such Common Area or Limited Area.

b. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Condominium Units and serving his Condominium Unit.

c. Each Owner shall have an easement over the Common Areas for the purposes of ingress and egress from his Condominium Unit and the parking lot and such easement shall be perpetual and appurtenant to the Condominium Unit.

d. Each Condominium Unit, together with Common Area, will be subject to utility easements for sewer, water, gas, cable, television, electricity, telephone and any other necessary utilities, as shown on the survey of the Property.

e. An easement is hereby created for the Association to maintain the exterior of all buildings and the grounds surrounding the same in any and all manner consistent with the terms of this Declaration.

10. **Real Estate Taxes.** Real estate taxes are to be separately assessed and taxed to each Condominium Unit as provided in the Act. In the event that for any year real estate taxes are not separately assessed and taxed to each Condominium Unit, but are assessed and taxed on the Property as a whole, then each Owner shall pay his Percentage Interest of such taxes to the extent attributable to the Property.

11. **Utilities.** Each Owner shall pay for those utilities which are separately metered to his or her Condominium Unit. Utilities which are not separately metered shall be treated as and paid as a part of the Common Expenses, unless otherwise agreed by a majority of Co-Owners.

12. **Association of Owners.** Subject to the rights of Declarant reserved in paragraph 24 hereof, the maintenance, repair, upkeep, replacement, administration, management and operation of the Property shall be performed by the Association. Upon becoming an Owner of a Condominium Unit, each Owner shall become a member of the Association. Each membership shall include participation on the Board of Managers. Membership in the Association and

participation on the Board of Managers shall terminate upon sale or transfer of ownership of the Condominium Unit.

The Board of Managers shall be the governing body of the Association, representing all of the Owners and shall provide the management, administration, operation, maintenance, repair, replacement and upkeep of the Property exclusive of the Condominium Units.

The Association and/or any aggrieved Owner shall have a right of action against any other Owner for failure to comply with the provisions of the Declaration, By-Laws or decisions of the Association which are made pursuant to authority granted the Association in such documents. The Owners shall have a similar right of action against the Association.

13. **Use of Common Areas and Maintenance, Repairs and Replacements.** The Board of Managers shall adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas as it deems appropriate, and may amend and modify the same from time to time as it deems advisable, necessary or appropriate.

Each Owner shall, at his expense, be responsible for the maintenance, repairs, and decoration within his or her Condominium Unit and Laundry Area associated with such Condominium Unit as shown on the Plans as is provided in the By-Laws. Each Owner shall repair any defect occurring in his Condominium Unit which, if not repaired, might adversely affect any other Condominium Unit, Limited Areas, or the Common Area. Funds for maintenance, repairs, replacement and upkeep of the Common Areas and Limited Areas shall be furnished by the Association and shall be considered the Common Expenses, except as otherwise provided herein or in the By-Laws.

The Board of Managers or their designated agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required), to enter into each individual Condominium Unit for the purpose of inspection of the Common Areas and Limited Areas appurtenant thereto and replacement, repair and maintenance of such Common Areas and Limited Areas.

14. **Alterations, Additions and Improvements.** No Owner shall make any alterations or additions to, or which would affect, the Common Areas or Limited Areas without the prior written approval of the Board of Managers, and, if required, the approval of the Indianapolis Historic Preservation Commission, 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. Declarant reserves the right to change the interior design and arrangement of all Condominium Units and alter the boundaries between Condominium Units so long as Declarant owns the Condominium Units so altered. No such change shall increase the number of Condominium Units or change the Percentage Interest applicable to such Condominium Unit. If the Declarant shall make any changes in the Condominium Units so authorized, such changes shall be reflected by a supplement to the Plans and such supplement to the Plans need not be approved by the Association or any other Owners.

15. **Insurance.**

a. The Co-Owners, through the Association, shall purchase a Master casualty insurance policy issued in the name of the Association for the use and benefit of the Co-Owners affording fire and extended coverage insurance insuring the Property in an amount consistent with the full replacement value of all improvements including the individual Condominium Unit, or the Common Areas and Limited Areas, and including fixtures, building service equipment and common personal property and supplies belonging to the Association. For all Condominium Units which are subject to a first mortgage, the insurance must cover fixtures, equipment and other personal property inside individual Condominium Units if they are financed by the first mortgage. Certificates of Insurance shall be issued to each Condominium Unit Owner and each Mortgagee upon request and no such policy shall be cancelled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee listed as Mortgagee in the policies. The insurance policy must contain the standard mortgage clause and must name the Mortgagee or the servicer of the Mortgagee. If a servicer is named as Mortgagee, its name should be followed by the phrase "its successors and assigns." The Board of Managers shall be responsible for reviewing at least annually the amount and type of such insurance. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each Owner upon the following terms and conditions:

i. 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 the Association or to the Board of Managers, who shall act as the insurance trustees and hold such proceeds for the benefit of the insured parties. The sole duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose elsewhere stated herein, and for the benefit of the Owners and their respective Mortgagee. The proceeds shall be used or disbursed by the Association or Board of Managers, as appropriate, only in accordance with the provisions of this Declaration.

ii. 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.

b. Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (i) waives its right to subrogation as to any claim against the Association, the Board of Managers, its agents and employees, Owners, their respective agents and guests, and (ii) waives any defense based on invalidity arising from the acts or omissions of the individual Condominium Unit Owners that are not under the control of the Association, and providing further, (A) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted and (B) 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 16 of this Declaration.

c. The Co-Owners, through the Association, shall also purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Managers shall deem appropriate from time to time; however, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Such comprehensive general liability insurance policy shall cover the Association, the Board of Managers, and any executive committee or organ of the Association or Board of Managers, 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 respect to the Property, all Owners of Condominium Units and all other portions of the Property. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas and Limited Areas, and, if available, legal liability arising out of lawsuits related to employment contracts of the Association. Such policy shall also provide that it may not be cancelled or substantially modified by any party without at least ten (10) days prior written notice to the Association and to each holder of a first mortgage on any Condominium Unit in the Property which is listed as a scheduled holder of a first mortgage in the insurance policy.

d. The Co-Owners, through the Association, shall also obtain any other insurance required by law to be maintained.

e. Each Owner shall be deemed to have appointed the Board of Managers to represent each Owner in any proceedings, negotiations, settlements or agreements with the insurance companies to adjust all losses under policies purchased by the Board of Managers.

f. 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.

g. In no event shall any distribution of proceeds be made by the Board of Managers directly to an Owner where there is a mortgage endorsement on the certificates of insurance. In such event any remittance shall be to the Owner and his Mortgagee jointly.

h. Each Owner shall be solely responsible for, and may obtain, such additional insurance as he or she deems necessary or desirable at his or her own expense affording coverage upon his or her personal property, the contents of his 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, and for his personal liability.

i. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, an authorized representative, including any trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each Owner appoints the Association as attorney-in-fact for the purpose of purchasing and maintaining such insurance, and the following additional purposes: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability related thereto; the execution of all documents necessary in connection therewith; and the performance of all other acts necessary to accomplish such purposes.

16. **Casualty and Restoration; Condemnation; Termination.**

a. Except as hereinafter provided, damage to or destruction of the 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; provided, however, that repair and reconstruction shall not be compulsory in the event of "complete destruction of the entire Building" (hereinafter defined) and shall only be done in accordance with the provisions hereinafter set forth. As used herein, the term "complete destruction of the entire Building" 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 the entire Building has occurred. A special meeting of the Board of Managers shall be called and held within thirty (30) days after any fire or any other casualty or disaster damaging or destroying any of the Building. If such a special meeting is not called and held within such thirty (30) day period, or if the determination of whether or not there has been a complete destruction of the Building has not been made within such thirty (30) day period, then it shall be conclusively presumed that the Co-Owners determined that there was not a complete destruction of all of the Building, and the Association shall proceed with repair and reconstruction as herein provided.

b. If, under subparagraph (a) above, it is determined by the Co-Owners that there has been a complete destruction of the Building, the Co-Owners shall, at said same special meeting, vote to determine whether or not such complete destruction of the Building shall be repaired or reconstructed. The Building shall not be repaired or reconstructed if it is the determination of the Co-Owners at said special meeting that there has been a complete destruction of the building, unless all of the Co-Owners vote and unanimously decide that the Building is to be rebuilt, reconstructed and repaired, in which case the insurance proceeds, if any, received by the Association shall be applied to the repair or reconstruction of the Building and any excess of construction costs over

insurance proceeds, if any, received by the Association shall be contributed and paid as hereinabove provided in paragraph 15, subparagraphs (a) and (b).

c. For purposes of (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, and subject to the review and approval of the Indianapolis Historic Preservation Commission.

d. If the insurance proceeds, 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 no 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 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 proportion to each Owner's Percentage Interest. Any 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.

e. If, in the case of the complete destruction of the Building, there is no unanimous vote in favor of the rebuilding, reconstruction and repair of the Building, the Building shall not be rebuilt, reconstructed or repaired, and the Property shall be deemed and considered as to be removed from the provisions of the Act under IC 32-25-8-6 and, in accordance with IC 32-25-8-12:

i. The Property shall be deemed to be owned in common by each of the Owners;

ii. The undivided interest in the Property owned in common which shall appertain to each Owner shall be determined by the Percentage Interest of 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 Interest of the undivided interest of the Owner in the Property; and

iv. The Property shall be subject to an action for partition at the suit of any 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 Owners in a percentage equal to their Percentage Interest after first paying out of the respective shares of the Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Owner.

f. Immediately after a fire or other casualty or disaster causing damage, the Board of Managers shall obtain reliable and detailed estimates of the cost to place the

damaged property in condition as good as that before the casualty and which is approved by the Indianapolis Historic Preservation Commission. Such costs may include professional fees and premiums for such bonds as the Board of Managers desires.

g. The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Managers from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, 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), payment from the construction fund shall be made upon authorization from the Board of Managers.

ii. If the estimated cost of reconstruction and repair of the building or other improvement is more than Five Thousand Dollars (\$5,000.00), then payment of such costs from the construction fund shall be made upon approval of an architect qualified to practice in Indiana and employed by the Board of Managers to supervise such work, from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and material furnished; (2) that there is no other outstanding indebtedness known to the architect for the services and materials described; and (3) that the costs estimated by the architect for the work remaining to be done subsequent to the date of such certificate do not exceed the amount of the construction fund remaining after payment of the sum so requested.

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

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

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

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

17. **Covenants and Restrictions.** The covenants and restrictions applicable to the use and enjoyment of the Condominium Units and the Common Areas and Limited Areas are set forth in the By-Laws, including the limitation that each of the Condominium Units shall be limited to residential use. These covenants and restrictions are for the mutual benefit and protection of the present and future Owner or Owners, and the Association. Present or future Owners and the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the By-Laws, including but not limited to any covenants and restrictions set forth in the By-Laws, Declarant shall have, until the Applicable Date as defined in Article III of the By-Laws, the right to use and maintain any Condominium Units owned by Declarant, such other portions of the Property (other than individual Condominium Units owned by persons other than Declarant), as Declarant may deem advisable or necessary in its sole discretion to aid in the construction, reconstruction or rehabilitation of Condominium Units and sale of Condominium Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model sales offices, management offices and business offices. Declarant shall further have the right to lease Condominium Units owned by Declarant to tenants with a minimum initial term of one (1) year. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by the Declarant, and Declarant shall have the right to remove the same from the Property at any time.

18. **Sale, Lease or Other Transfer of Condominium Unit by Owner.** For the purpose of maintaining the congenial and residential character of The Adelaide, and for the protection of the Owners by having financially responsible residents, the lease of any Condominium Unit by any Owner other than Declarant shall be subject to the following conditions and restrictions:

a. **Lease.** No Owner shall lease his Condominium Unit or enter into any other rental or letting arrangement for his Condominium Unit without first submitting the written application to the Board of Managers for review. Unless the Board of Managers refuses to consent to the application within seventy-two (72) hours after receipt, it shall be deemed to be approved. Such consent shall not be unreasonably withheld. No lease for a term of less than one (1) year, however, shall be approved. Owner shall use the lease form which has been approved by the Board of Managers.

b. **Sale.** An Owner of a Condominium Unit who wishes to sell his Condominium Unit ("Seller"), after receiving a bona fide offer to purchase at a price acceptable to Seller ("Sale Price"), must offer to sell the Condominium Unit to the other Co-Owners for the Sale Price prior to acceptance of the bona fide offer ("Right of First Refusal"). A Co-Owner who is willing to purchase the Condominium Unit at the Sale Price must notify the Seller in writing within 24 hours of receipt of oral or written notice from Seller of his or her acceptance of Sale Price and execute a purchase agreement with Seller within five (5) days. If no Co-Owner desires to purchase the Condominium Unit being offered for sale at the Sale Price, the Owner may accept the bona fide offer.

c. **Miscellaneous.** The above provisions with respect to the Association's right to approve a lease of a Condominium Unit shall remain in full force and effect only until the Property is removed from the provisions of the Act. Any lease or attempted lease by an Owner of his Condominium Unit, except in accordance with the provisions of this paragraph shall be void ab initio.

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

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

b. **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Managers or Owners having in the aggregate at least a majority of the Percentage Interests.

c. **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

d. **Adoption.** Any proposed amendment of a material nature as hereinafter defined (hereinafter referred to as "Material Amendment") must be approved by a vote of

not less than Sixty-Six and two-thirds percent (66 2/3%) in the aggregate of the Percentage Interests. In the event any Condominium Unit is subject to a first mortgage, the Mortgagee (hereinafter referred to as "Eligible Mortgagee") shall be notified of the meeting and the proposed Material Amendment in the same manner as an Owner if the Eligible Mortgagee has given prior notice of its mortgage interest to the Board of Managers in accordance with the By-Laws, and any proposed Material Amendment must be approved by a vote of not less than fifty-one percent (51%) of Eligible Mortgagees. An Eligible Mortgagee who receives a written request to approve non-material additions or amendments and does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request. A change to any of the following shall be deemed to be a Material Amendment:

- i. Voting rights;
- ii. Assessments, assessment liens, or subordination of assessment liens;
- iii. Reserves for maintenance, repair and replacement of Common Areas;
- iv. Responsibility for maintenance and repairs;
- v. Reallocation of interests in the Common Areas or Limited Areas, or rights to their use;
- vi. Boundaries of any Unit;
- vii. Convertibility of Units into Common Areas or vice versa;
- viii. Insurance or imposition of the requirement for fidelity bonds;
- ix. Leasing of Condominium Units;
- x. Imposition of any restrictions on an Owner's right to sell or transfer his or her Condominium Unit;
- xi. A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage holder;
- xii. Restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;
- xiii. Any action to terminate the legal status of the Property after substantial destruction or condemnation occurs; or
- xiv. Any provision that expressly benefits Mortgage holders, insurers or guarantors.

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

f. 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 of Managers, any Mortgagees or any other person to amend or supplement this Declaration, the By-Laws or other documents from time to time if (i) such amendment or supplement is necessary to conform this Declaration of the Act, as amended from time to time, (ii) such amendment or supplement is made to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or any other public, quasi public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (iii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages, or, (iv) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this paragraph on behalf of each Owner as proxy or attorney-in-fact. Each deed, mortgage, or other instrument affecting a Condominium Unit and acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute and record any such amendments. But the right of the Declarant to act pursuant to rights reserved or granted under this paragraph shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Property.

20. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of Managers as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Condominium Unit shall constitute an agreement that the provisions of this Declaration, the Act, the By-Laws and rules and regulations as each may be amended or supplemented from time to time are accepted and ratified by each such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Condominium Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Condominium Unit or Condominium Units or any part of the Property in any manner shall be subject to the Declarations, the Act, the By-Laws, and the rules and regulations as each may be amended or supplemented from time to time.

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

22. **Granting of Easements.** The Board of Managers is granted the authority to grant easements to utility companies (excluding transportation companies) upon such terms and conditions and for such consideration as it deems appropriate.

23. **Reservation of Rights to Use the Common Areas.** Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas and, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining, repairing, replacing, relocating and otherwise servicing utility equipment, facilities and installations to serve the Property, to provide access to and ingress and egress to and from the Property, to make improvements to and within the Property, and to provide for the rendering of public and quasi public services to the Property. The foregoing easement shall be a transferable easement and Declarant may at any time and from time to time grant similar easements, rights or privileges to other persons and parties for the same purposes. By way of example, but not in limitation of the generality of the foregoing, Declarant, and others to whom Declarant may grant such similar easement, rights, or privileges, may so use the Common Areas and, to the extent necessary, the Limited Areas, to supply utility services to the Property and any portions of the Real Estate which are not part of the Property and to permit public and quasi public vehicles and privately owned delivery vehicles, and their personnel to enter upon and use the streets, the Common Areas and to the extent necessary, the Limited Areas of the Property in the performance of their duties.

24. **Initial Management.** As set forth in the By-Laws, the Initial Board of Managers consists and will consist of persons selected by Declarant. Prior to the Applicable Date, as defined in Article III of the By-Laws, all contracts or leases including any management agreement, entered into by the Board of Managers shall provide a right of termination without cause or penalty, at any time after the Applicable Date upon sixty (60) days notice to the other party. The Board of Managers may enter into a management agreement under which Declarant will provide supervisions, fiscal and general management and maintenance of the Common Areas, and, to the extent the same is not otherwise the responsibility of Owners of individual Condominium Units, the Limited Areas, and, in general, perform all the duties and obligations of the Association.

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



26. **Failure of Owner to Pay Assessments.**

a. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Condominium Unit. Each Owner shall be personally liable for the payment of all assessments by the Association.

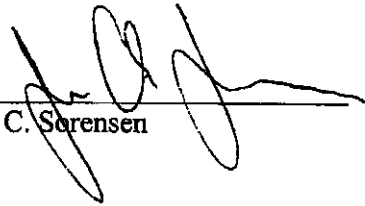
b. Upon failure by any Owner to make any payment of assessment on the date when due, the lien against the Owner's Unit may be foreclosed against as provided for by Section 5.05 of the By-Laws and applicable law. Any lien for assessments becoming payable after the recordation of a first mortgage on Owner's Unit shall be subordinate to the first mortgage on the Owner's Unit as more fully set forth in Section 5.05 of the By-Laws.

27. **Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability or effect the rest of this Declaration or the attached By-Laws.

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

29. **Floor Plans.** The Plans setting forth the layout, locations, 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, in Horizontal Property Plan file \_\_\_\_\_ as of July 15, 2004 as instrument no. 2004-0149687.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed  
June 16, 2004.

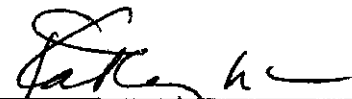
  
\_\_\_\_\_  
Jens C. Sorensen

STATE OF Indiana )  
  ):  
COUNTY OF Marion )

Before me the undersigned, a Notary Public in and for said county and state, personally appeared Jens Sorensen, who acknowledged the execution of the above and foregoing instrument on behalf of such individual.

Witness my hand and Notarial Seal this 16<sup>th</sup> day of June, 2004.

NOTARY PUBLIC  
JENNIFER L. WILSON  
5314 64th St  
Indianapolis, IN 46214  
My Commission Expires 7/24/09

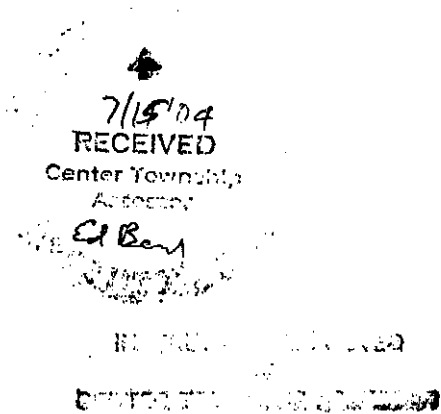
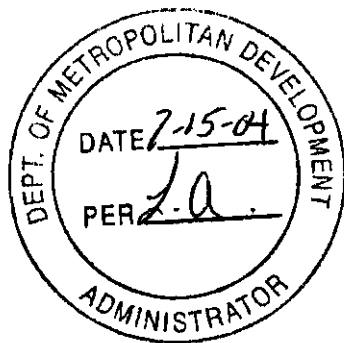
  
\_\_\_\_\_  
Signature - Notary Public

Kathryn M. Kunz  
\_\_\_\_\_  
Printed Name - Notary Public

My Commission Expires: July 24, 2009  
My County of Residence: Marion

This instrument prepared by Paula L. Zelman, Attorney at Law, Kunz & Opperman, P.C.,  
135 N. Pennsylvania Street, Suite 1750, Indianapolis, IN 46204.

S:\DOCUMENTS\CLIENTS\Long, Michael\DECLARATION OF COVENANTS(redline2).doc



**EXHIBIT A**

Lot Number 37 in Thomas A. Morris Second Addition to the City of Indianapolis, as per plat thereof, recorded in Plat Book 10, Page 170, in the Office of the Recorder of Marion County, Indiana.

**CODE OF BY-LAWS  
OF  
THE ADELAIDE  
and  
THE ADELAIDE CONDOMINIUM OWNERS' ASSOCIATION**

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**ARTICLE I**

**Identification and Applicability**

**Section 1.01. Identification and Adoption.** These By-Laws are adopted simultaneously with the execution of a certain Declaration creating The Adelaide to which these By-Laws are attached and made a part thereof. The Declaration is incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation by these By-Laws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these By-Laws. The provisions of these By-Laws shall apply to the Property and the administration and conduct of the affairs of the Association. These By-Laws shall also constitute the By-Laws of the Association.

**Section 1.02. Individual Application.** All of the Owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy a Condominium Unit or any part of the Property, shall be subject to the restrictions, terms and conditions set forth in the Declaration, these By-Laws and the Act, and to any rules and regulations adopted by the Board of Managers as herein provided.

**ARTICLE II**

**Meetings of Board of Managers**

**Section 2.01. Board of Managers.** Each Owner shall be a member of the Board of Managers except in the case where an Owner is a Multiple Owner or business entity, in which case the Owner shall designate a single representative to serve on the Board of Managers. Since the same parties are affected and have the same Percentage Interest in either meeting, meetings of the Association and Board of Managers will be subject to the same provisions as set forth hereinafter.

**Section 2.02. Purpose of Meetings.** The Co-Owners shall meet at least annually to elect officers of the Board of Managers, to approve the annual budget, to provide for the collection of Common Expenses and for such other purposes as may be required by the Declaration, these By-Laws or the Act.

**Section 2.03. Annual Meetings.** The annual meeting of the Co-Owners of the Association shall be held on Friday of the first full week of October in each calendar year or at any other time chosen by Board of Managers.

**Section 2.04. Special Meetings.** A special meeting of the Co-Owners may be called by resolution of the Board of Managers or upon a written petition of Owners who have not less than a majority of the Percentage Interest. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

**Section 2.05. Notice and Place of Meetings.** All meetings of the Association or the Board of Managers shall be held at any suitable place in Marion County, Indiana, as may be designated by the Board of Managers. Written notice stating the date, time and place of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each member entitled to vote thereat not less than ten (10) days prior to the date of such meeting. The notice shall be mailed or delivered to the Owners at their designated addresses. A copy of each such written notice shall also be delivered or mailed simultaneously by the Secretary of the Association, to each Mortgagee (a) who requests in writing that such notices be delivered to it, and (b) who has furnished the Association with its name and address in accordance with Section 8.01 of these By-Laws.

**Section 2.06. Waiver of Notice.** An Owner, either before or after a meeting of the Association or the Board of Managers, may waive notice of the meeting, and his waiver shall be deemed the equivalent of giving notice. Attendance at a meeting of the Association or Board of Managers, either in person or by proxy, of a person entitled to notice shall constitute a waiver of notice of the meeting unless he attends expressly for the purpose of objecting to the transaction of business on the ground that the meeting was not lawfully called.

**Section 2.07. Voting.**

(a) **Number of Votes.** Each Owner shall be entitled to cast one vote for each Condominium Unit he owns on each matter coming before the meeting.

(b) **Multiple Owner.** Where the Owner of a Condominium Unit is a Multiple Owner such Multiple Owner shall appoint one representative in writing to the Secretary who shall be empowered to vote the appointing Multiple Owner's Percentage Interest. The written appointment of a representative shall remain in effect until another representative is designated in writing to the Secretary.

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

**Section 2.08. Quorum.** Except where otherwise expressly provided in the Declaration, these By-Laws, the Act or the Indiana Not-for-Profit Corporation Act of 1971 (hereinafter referred to as the "Statute"), the Owner representing Thirty-Three and One Third (33 1/3%) of the Percentage Interest shall constitute a quorum at all meetings.

**Section 2.09. Conduct of Annual Meeting.** The President of the Association shall act as the Chairman of all annual meetings of the Association if he is present. At all annual meetings, the Chairman shall call the meeting to order at the duly designated time and business will be conducted in the following order:

(a) **Reading of Minutes.** The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto, unless such reading is waived by a majority of the Percentage Vote.

(b) **Treasurer's Report.** The Treasurer shall report to the Owners concerning the financial condition of the Association and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed budget for the current year.

(c) **Budget.** The proposed budget for the current fiscal year shall be presented to the Owners for approval or amendment.

(d) **Other Business.** Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Association at least seven (7) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of the Percentage Vote.

**Section 2.10. Conduct of Special Meetings.** The President of the Association shall act as Chairman of any special meeting of the Association if he is present. The Chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be consideration of the matters for which such meeting was called, as set forth in the notice of such special meeting.

**Section 2.11. Power of Attorney.** Each Owner, by acceptance of a deed to a Condominium Unit, or by acquisition of any interest in a Condominium Unit, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines on all matters as to which members are entitled to vote under the Declaration, these By-Laws, the Act, or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same.

### ARTICLE III

#### **Duties and Powers of the Board of Managers**

**Section 3.01. Management.** The affairs of the Association of The Adelaide shall be governed and managed by a Board of Managers (herein collectively called "Board" or "Managers" and individually called "Managers"). After the Applicable Date the Board of Managers shall be composed of four (4) persons consisting of each Owner or in the case of a Multiple Owner such Multiple Owner's representative. No person shall be eligible to serve as a Manager unless he is, or is deemed in accordance with the Declaration to be, an Owner or a representative of a Multiple Owner.

**Section 3.02. Initial Board of Managers.** The Initial Board of Managers shall be herein referred to as the "Initial Board", and shall consist of one to four directors, all of whom have been or shall be appointed by virtue of ownership of a Condominium Unit. The Initial Board shall hold office until the earliest of (1) December 31, 2004 or (2) one hundred twenty (120) days after the date by which three (3) Condominium Units have been conveyed to Owners (the applicable date being herein referred to as the "Applicable Date").

**Section 3.03. Term of Office and Vacancy.** The Initial Board shall be deemed to be elected and re-elected as the Board of Managers at each annual meeting until the Applicable Date provided in Section 3.02 hereof. After the Applicable Date, each member of the Board of Managers shall hold his or her designated office for one (1) year. At each annual meeting the Board of Managers shall elect officers for the next term.

**Section 3.04. Duties of the Board of Managers.** The Board of Managers shall provide for the administration of the Property, the maintenance, upkeep and replacement of the Common Areas and Limited Areas (unless the same are otherwise the responsibility or duty of Owners of Condominium Units), and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Association, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent shall assist the Board in carrying out its duties, which include, but are not limited to:

(a) protection, surveillance and replacement of the Common Areas and Limited Areas, unless the same are otherwise the responsibility or duty of Owners of Condominium Units; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

(b) procuring of utilities used in connection with the Property, removal of garbage and waste, and snow removal from the Common Areas;

(c) landscaping, painting, decorating, furnishing, maintenance and upkeep of the Common Areas and, where applicable, the Limited Areas;

(d) assessment and collection from each Owner of the Owner's share of the Common Expenses;

(e) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;

(f) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with the delivery of the proposed annual budget for the current year;

(g) keeping a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours; payment vouchers for all expenditures shall, prior to payment, be approved by a member of the Board or such other person (which may include the Managing Agent) as the Board may delegate;

(h) procuring and maintaining for the benefit of the Owners, the Association and the Board all insurance coverage required under the Declaration and such other insurance coverage as the Board, in its sole discretion, may deem necessary or advisable; and

(i) making available to Owners and Mortgagees current copies of the Declaration, By-laws and other rules governing the Condominium and any other books, records and financial statements of the Association. The Association shall also make available to prospective purchasers current copies of the Declaration, By-Laws, other rules governing the Condominium, and the most recent annual audited financial statement, if such statement has been prepared. "Available" shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances. Upon written request by the United States Department of Housing and Urban Development, the Veterans Administration or Federal National Mortgage Association, the Association shall also prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding fiscal year.

**Section 3.05. Powers of the Board of Managers.** The Board of Managers shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

(a) to employ a Managing Agent to assist the Board in performing its duties; provided, that after the Applicable Date any employment agreement with the Declarant (or a corporation or other entity affiliated with the Declarant) either as Managing Agent or for any other service shall be subject to termination by either party without cause and without payment of a termination fee, upon ninety (90) days' prior written notice to the other party;



(b) to purchase for the benefit of the Owners such equipment, materials, labor and services as may be necessary in the judgment of the Board of Managers;

(c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Managers may be necessary or desirable in connection with the business and affairs of the Property;

(d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Managers may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas and, where applicable, the Limited Areas;

(e) to include the cost of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(f) to open and maintain a bank account or accounts in the name of the Association; and

(g) to adopt, revise, amend and alter from time to time rules and regulations with respect to use, occupancy, operation and enjoyment of the Property.

**Section 3.06. Limitation on Board Action.** Prior to the Applicable Date all contracts or leases entered into by the Board of Managers shall provide a right of termination without cause or penalty at any time after the Applicable Date upon ninety (90) days notice to the other party. After the Applicable Date, the authority of the Board of Managers to enter into a contract shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00) without obtaining the prior approval of a majority of the Percentage Interest, except that in the following cases such approval shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Areas or Limited Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

(c) expenditures necessary to deal with emergency conditions in which the Board of Managers reasonably believes there is insufficient time to call a meeting of the Owners.

**Section 3.07. Compensation.** No Manager shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority of the Percentage Interest. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

**Section 3.08. Quorum.** At all meetings of the Board, one third (33 1/3%) of the Managers shall constitute a quorum for the transaction of business.

**Section 3.09. Non-Liability of Managers.** The Managers shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Managers, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Managers against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Property or the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or By-Laws. It is intended that the Managers shall have no personal liability with respect to any contract made by them on behalf of the Property or the Association and that in all matters the Board is acting for and on behalf of the Owners as their agent. The liability of any Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Managers shall be limited to such percentage of the total Percentage Interest.

**Section 3.10. Additional Indemnity of Managers.** The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Manager of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Manager is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Manager the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority of the Percentage Interest that such Manager was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Manager, no Manager shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Manager relies on the books and records of the Association or statements or advice made by or prepared by the Managing Agent or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Manager had actual knowledge of the falsity or incorrectness thereof; nor shall a Manager be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Managers.

## **ARTICLE IV**

### **Officers**

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

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

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

**Section 4.04. The Vice-President.** The Vice-President shall be elected from among the Managers. The Vice-President shall assist the President in all duties as determined by the President.

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

**Section 4.06. The Treasurer.** The Board shall elect from among the Managers a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and who shall perform such other duties incident to the office of Treasurer. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Association. He shall immediately deposit all funds of the Association coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account or accounts in the name of the Association. The Treasurer may permit the Managing Agent to handle and account for monies and other assets of the Association to the extent appropriate as part of its duties.

## **ARTICLE V**

## **Assessments and Maintenance and Repairs**

**Section 5.01. Annual Accounting.** Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner an unaudited financial statement, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year. Any Mortgagee shall be entitled to have an audited financial statement prepared at its own expense.

**Section 5.02. Proposed Annual Budget.** Annually, on or before the date of the annual meeting of the Co-Owners, the Board of Managers shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Co-Owners at the annual meeting for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Co-Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority of the Percentage Interest; provided, however, that in no event shall the annual meeting of the Co-Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles, applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana, selected from time to time by the Board. The annual budget and the Regular Assessments shall also be established to include an allowance or reserve to meet unforeseen contingencies or expenditures. Any amounts paid into this fund shall not be considered as advance payment of Regular Assessments. Each Condominium Unit's share of the working capital fund will be collected at the time the sale of the Unit is closed and transferred to the Association for deposit to a segregated fund. The failure or delay of the Board of Managers to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Association, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred ten percent (110%) of such last approved budget, as a temporary budget.

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

(a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether quarterly or monthly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

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

The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Condominium Unit as of the first day of each fiscal year of the

Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Condominium Unit or any interest therein, shall not relieve or release such owner or his successor as owner of such Condominium Unit from payment of the Regular Assessment for such Condominium Unit as finally determined, and such Owner and his successor as owner of such Condominium Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 8.02 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Quarterly or monthly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board of the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same.

**Section 5.04. Special Assessments.** From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in these By-Laws, the Declaration or the Act, the Board of Managers shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Condominium Unit, prorated in accordance with the Percentage Interest of each Condominium Unit (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Managers from time to time to pay for capital expenditures, to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disasters to the extent insurance proceeds are insufficient therefor under the circumstances described in the Declaration.

**Section 5.05. Failure of Owner to Pay Assessments.**

(a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and, in the proper case, of the Limited Areas, of the Building, and toward any other expenses lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Condominium Unit belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The Board shall cause to be notified in writing any mortgage holder, insurer or guarantor of a Condominium Unit which has a delinquency of sixty (60) days or more of assessments or charges. If any

Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments when due, the lien for such Assessments on the Owner's Condominium Unit may be filed and foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessments or Special Assessments, when due, the Board may in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Condominium Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Condominium Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Condominium Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover interest, costs and expenses of such action incurred, including but not limited to reasonable attorneys' fees, from the Owner of the respective Condominium Unit.

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

**Section 5.06. Initial Budgets and Assessments.** Notwithstanding anything to the contrary contained herein, in the Declaration, in the Act, or otherwise, until the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board.

**Section 5.07. Maintenance and Repairs.** Every Owner shall promptly perform all maintenance and repair within his own Condominium Unit which, if neglected, would

affect the value of the Property. In addition, each Owner shall furnish, and shall be responsible at his own expense for, the maintenance, repairs and replacements of his Condominium Unit, and Limited Areas, and all equipment serving the same. Such maintenance, repairs and replacements which each Owner is responsible to make at his own expense include, but are not necessarily limited to, water lines, gas lines, plumbing and electric lines which service the Owner's Condominium Unit only and are located within exterior walls of the Condominium Unit including any lines in the area from below the floor to above the roof if they are within an extension of the exterior walls of the Condominium Unit; all partitions and interior walls, ceilings and floors; appliances, to include garbage disposals, dishwashers, stoves, ranges and refrigerators, telephones, air conditioning and heating equipment (whether located wholly or partially inside or outside the Condominium Unit), doors, screens and windows (including exterior and interior of all glass and screen surfaces), lamps, and interior and exterior grouting and/or caulking, and all other accessories appurtenant to the Condominium Unit or belonging to the Owner thereof.

If, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant or other occupant or visitor of such Owner, damage shall be caused to the Common Areas or to a Condominium Unit or Limited Area owned by or reserved for the use of others, or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. Maintenance, repairs and replacements to the Common Areas or the Condominium Units or Limited Areas shall be subject to the rules and regulations adopted from time to time by the Board.

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 any Common Areas or Limited Areas, then the use thereof by the Owner of such Condominium Unit shall be subject to the rules and regulations adopted from time to time by the Board. The authorized representatives of the Association or Board of Managers or the Managing Agent for the Association, shall be entitled to reasonable access to any Condominium Unit as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or Limited Areas or any parts thereof, or any equipment, facilities or fixtures affecting or serving other Condominium Units or any Common Areas or Limited Areas.

## **ARTICLE VI**

### **Restrictions, Entry and Rules and Regulations**

**Section 6.01. Restrictions on Use.** The following restrictions on the use and enjoyment of the Condominium Units, Common Areas, Limited Areas and the Property



shall be applicable to the Property and in addition to those set forth in the Declaration. These are as follows:

(a) All Condominium Units shall be used exclusively for residential purposes and no Condominium Unit may be partitioned or subdivided.

(b) No additional buildings shall be erected or located on the Real Estate other than the Building designated in the Declaration, except that construction of a garage may be approved by the Board of Managers and its design is subject to the approval of the Indianapolis Historic Preservation Commission.

(c) Nothing shall be done or kept in any Condominium Unit or in the Common Areas or Limited Areas which will cause an increase in the rate of insurance on the Building or the contents thereof. No Owner shall permit anything to be done or kept in his Condominium Unit or in the Common Areas or Limited Areas which will result in a cancellation of insurance on the Building or any part of the Common Areas or contents thereof, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(d) No nuisance shall be permitted and no waste shall be committed in any Condominium Unit, Common Areas, or Limited Areas.

(e) No owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of the Building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Building without the prior consent of the Board.

(f) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Condominium Unit or in the Common Areas or Limited Areas or on the Property, except that pet dogs, cats or customary household pets may be kept in a Condominium Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its Owner and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Areas or Limited Areas, caused by his pet. The tethering of pets in any area outside an Owner's Condominium Unit does not constitute "attended". Pets shall be walked only in an area not common to residents and pet leavings on the main grounds and walks shall be picked up by the pet's owner and disposed of in a proper receptacle. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time including, but not limited to, a requirement that any Owner desiring to bring a pet on the Property shall deposit with the Board a security deposit in an amount to be determined by the Board to cover any damage that may be caused by such pet to the Common Areas. Any such security deposit shall be returned to the Owner when the pet is permanently removed from the Property, except to the extent said deposit has been used to repair damage caused by such pet. Any requirement for the depositing of such a security deposit

shall not be deemed to release or in any way limit an Owner's responsibility and liability for injury and damage caused by his pets. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property within ten (10) days after written notice from the Board to the respective Owner to do so.

(g) Nothing shall be done or permitted in any Condominium Unit which will impair the structural integrity of the Building or which would structurally change the Building or which would affect the exterior appearance of any Condominium Unit, except as otherwise provided in the Declaration or these By-Laws. No Condominium Unit shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the Property or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Condominium Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.

(h) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.

(i) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Property.

(j) No "for sale", "for rent" or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Property or any Condominium Unit without the prior consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Property in connection with any unsold or unoccupied Condominium Units.

(k) All Owners and members of their families, their guests, or invitees, and all occupants of any Condominium Unit or other persons entitled to use the same and to use and enjoy the Common Areas and the Limited Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Condominium Units, the Common Areas and Limited Areas.

(l) No boats, campers, trailers of any kind, buses, mobile homes, trucks, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the Property without the prior consent of the Board. No repair work shall be done on the Property on any vehicles, including passenger automobiles.

(m) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas or Limited Areas, except with express permission from the Board.

(n) No Owner shall be allowed to place or cause to be placed in the vestibules, stairways, hallways or areas of a similar nature and used for a similar purpose, both Common Areas and Limited Areas, any furniture, packages or objects of any kind, without the consent of the Board of Managers.

(o) All garbage, trash and refuse shall be placed in dumpsters located on the Tract. If no dumpsters shall exist, all garbage, trash, and refuse shall be stored in appropriate containers inside the Condominium Unit and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collection as are designated by the Board.

(p) Common Areas and Limited Areas shall be used only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

**Section 6.02. Right of Entry.** All Owners and occupants of a Condominium Unit shall be deemed to have granted the right of entry thereto to the Managing Agent or any other person authorized by the Board in case of any emergency originating in or threatening his Condominium Unit or the Building, whether the Owner is present at the time or not. Any Owner shall permit other persons, or their representatives when so required, to enter his Condominium Unit for the purpose of performing installations, alterations or repairs to the mechanical or electrical services, or to make structural repairs, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of emergencies, such right of entry shall be immediate.

**Section 6.03 Right of Board to Adopt Rules and Regulations.** The Board may promulgate such additional rules and regulations regarding the operation of the Property, including but not limited to the use of the Common Areas and Limited Areas, as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board, and the Board shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Owners.

## **ARTICLE VII**

### **Amendment to By-Laws**

**Section 7.01.** Subject to any contrary, overriding or superceding 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 paragraph 19 of the Declaration. 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 Applicable Date without the consent and approval of the Declarant.

## **ARTICLE VIII**

### **Mortgages**

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

**Section 8.02. Notice of Unpaid Assessments.** The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Condominium Unit, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments against the Condominium Unit, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Condominium Unit shall not be liable for nor shall the Condominium Unit conveyed be subject to a lien for any unpaid assessments in excess of the amount set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 5.03 hereof.

### **Section 8.03. Mortgagee's Rights.**

(a) **Notices of Action.** An eligible holder of a first mortgage, upon written request to the Association, (such request to state the name and address of the eligible holder and the condominium Unit number), shall be entitled to timely written notice of:

- (1) any proposed amendment of the Declaration or By-Laws effecting a change in (i) the boundaries of any Condominium Unit or the

exclusive easement rights appertaining thereto, (ii) the interests in the Common Areas or Limited Areas appertaining to any Condominium Unit or the liability for Common Expenses appertaining thereto, (iii) the number of votes in the Association appertaining to any Condominium Unit or (iv) the purpose to which any Condominium Unit or the Common Areas are restricted;

(2) any proposed termination of the condominium regime;

(3) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Condominium Unit on which there is a first mortgage;

(4) any delinquency in the payment of assessments or charges owed by an Owner of a Condominium Unit subject to the mortgage where such delinquency has continued for a period of sixty (60) days;

(5) any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to the Declaration; and

(6) any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

**(b) Other Provisions for Mortgagees.**

(1) Any restoration or repair of the Property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration, the original plans and specifications and the Indianapolis Historic Preservation Commission requirements.

(2) Any election to terminate the Condominium Regime after substantial destruction or a substantial taking in condemnation of the Property must require the approval of the eligible holders of first mortgages on Condominium Units to which at least fifty-one percent (51%) of the votes of Condominium Units subject to mortgages held by such eligible holders are allocated.

(3) No reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of the Property may be effected without the approval of the eligible holders of first mortgages on Condominium Units to which at least fifty-one (51%) of the votes of Condominium Units subject to mortgages held by such eligible holders are allocated.

(4) As used in this Section, the term "eligible holder", shall mean a holder, insurer or guarantor of a first mortgage on a Condominium Unit who has requested notice in accordance with the provisions of Section 8.03(a) above.

## **ARTICLE IX**

### **Miscellaneous**

**Section 9.01. Fiscal Year.** The fiscal year of the Association shall begin on the first day of September in each year and end on the last day of August next following.

**Section 9.02. Seal.** The Association may have and use a corporate seal, which seal (if one is adopted) shall be circular in form and mounted upon a metal die, suitable for impressing the same upon paper. About the upper periphery of the seal shall appear the words "The Adelaide Condominium HOMEOWNERS ASSOCIATION, INC.", and about the lower periphery thereof the word "Indiana". In the center of the seal shall appear the word "Seal". PROVIDED, HOWEVER, that the use of said seal or an impression thereof shall not be required upon, and shall not affect the validity of, any instrument whatsoever.

**Section 9.03. Membership Certificates.** Each member of the Association shall receive a certificate from the Association, signed by the President or Vice President, and Secretary thereof, stating that he is a Member of the Association. Such certificates shall be non-transferable and a member's certificate shall become void and of no force and effect upon sale by a member of his Condominium Unit. Such membership certificate shall be in a form and style determined by the Board.

**Section 9.04. Personal Interests.** No member of the Association shall have or receive any earnings from the Association, except a member who is an employee of the Association may receive fair and reasonable compensation for his services as an employee.

End of By-Laws

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FIRST AMENDMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
THE ADELAIDE

This First Amendment to the Declaration of Covenants, Conditions, and Restrictions for The Adelaide made this 16 day of September, 2004 by Jens C. Sorensen, a resident of Nicholson, Pennsylvania ("Declarant")

WITNESSETH

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions for The Adelaide was recorded July 15, 2004 as Instrument Number 2004-0140686 (the "Declaration"); and

WHEREAS, the Declarant reserved the right to amend the Declaration in paragraph 19(f) to conform this Declaration to the provision in Indiana Code 32-25-7-1 et seq.

NOW, THEREFORE, Declarant hereby amends this Declaration as follows:

Pursuant to IC §32-25-7-5, a verified statement of a registered architect which certifies that the floor plan recorded as instrument 2004-140687 for The Adelaide condominiums located at 1225 N. Alabama Street, Indianapolis, Indiana, fully and accurately depicts the layout, location, unit numbers, and dimensions of the condominium units as built is, incorporated by reference into the Declaration and is attached hereto as Exhibit A.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed September 16, 2004.

Jens C. Sorensen  
Jens C. Sorensen

NOTARIAL SEAL  
MARTHA A. WOLACKS  
CLERK OF SUPERIOR COURT  
554412 NOV 16 38  
DUEY ENGINEERING & ARCHITECTURE  
SUBJECT OF INSTRUMENT AND THE  
FOR TRANSFER

STATE OF PA  
COUNTY OF LACKAWANNA

Before me the undersigned, a Notary Public in and for said county and state, personally appeared Jens C. Sorensen, who acknowledged the execution of the above and foregoing instrument on behalf of such individual.

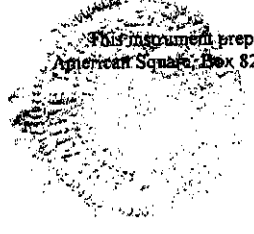
Witness my hand and Notarial Seal this 16 day of SEPT, 2004.

My Commission Expires: MAY 10, 2008

Suzanne Kelleher  
Signature - Notary Public

My County of Residence: LACKAWANNA

Suzanne Kelleher  
Printed Name - Notary Public



This instrument prepared by Paula L. Zelman-Finch, Attorney at Law, Lewis & Kappes, 1700 One American Square, Box 82053, Indianapolis, IN 46282-0003.

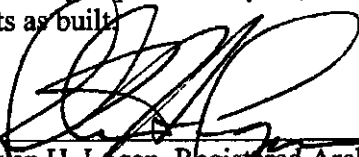
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SUZANNE KELLEHER, NOTARY PUBLIC  
CITY OF SCRANTON, LACKAWANNA COUNTY  
MY COMMISSION EXPIRES MAY 10, 2008

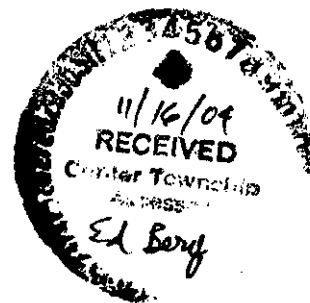
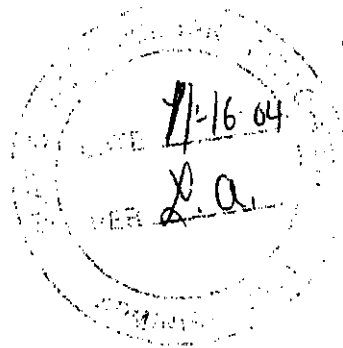
Inst # 2004-021553  
11/16/04 01:47PM MARIA MARTIN WILSON CITY RECORDER  
LW 13.00 PAGES: 2

Exhibit 'A'

Verified Statement of Registered Architect

I hereby certify that the floor plan recorded as instrument 2004-140687 for The Adelaide condominiums located at 1225 N. Alabama Street, Indianapolis, Indiana, fully and accurately depicts the layout, location, unit numbers, and dimensions of the condominium units as built.

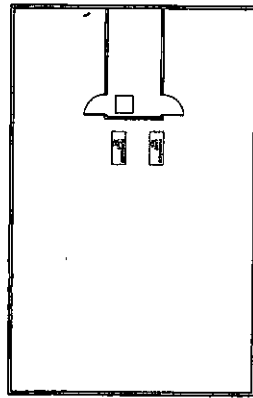
  
Steven H. Logan, Registered Architect



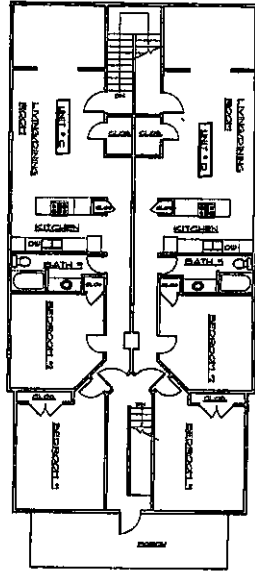
INSTRUMENT APPROVED  
BY  
CENTER TOWNSHIP ADDRESS



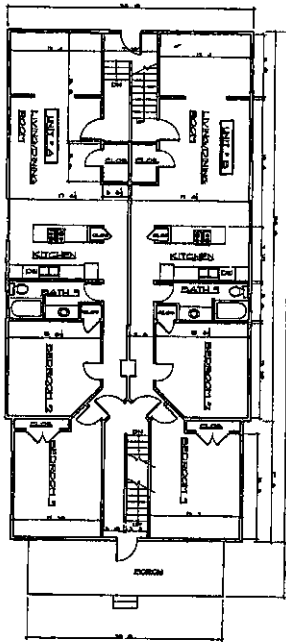
MARION COUNTY RECORDER  
 6711 ECHOLS  
 2004-140687



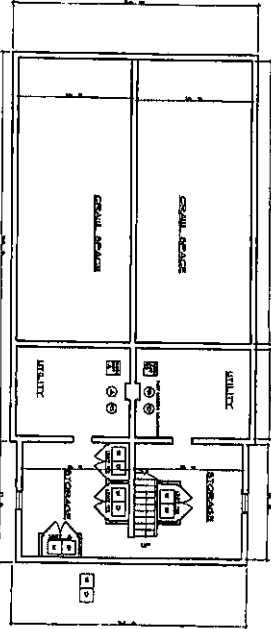
4 ATTIC FLOOR PLAN  
 SCALE 1/8" = 1'-0"



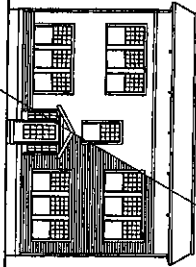
3 SECOND FLOOR PLAN  
 SCALE 1/8" = 1'-0"



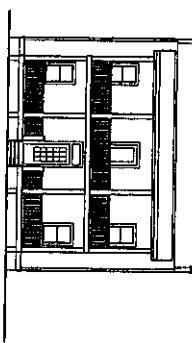
2 FIRST FLOOR PLAN  
 SCALE 1/8" = 1'-0"



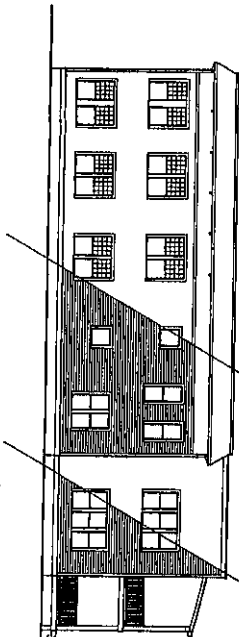
1 BASEMENT PLAN  
 SCALE 1/8" = 1'-0"



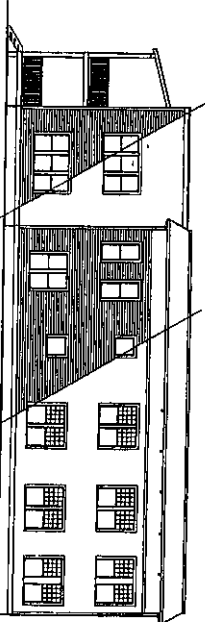
3 WEST ELEVATION  
 SCALE 1/8" = 1'-0"



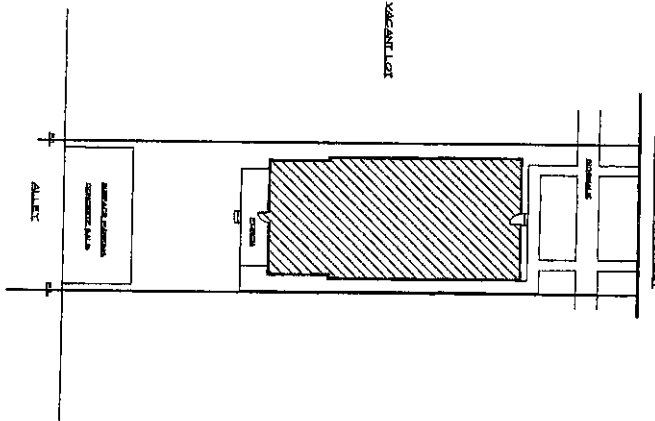
7 EAST ELEVATION  
 SCALE 1/8" = 1'-0"



6 SOUTH ELEVATION  
 SCALE 1/8" = 1'-0"



5 NORTH ELEVATION  
 SCALE 1/8" = 1'-0"



3 SITE PLAN  
 SCALE 1/8" = 1'-0"

MARION COUNTY RECORDERS  
 535485 AC 14.8  
 08/11/2004 10:41 AM  
 FOR TALKING



MARION COUNTY RECORDER  
 6711 ECHOLS  
 2004-140687

NORTH ALABAMA STREET

VACANT LOT

ALBERT

LOGAN ARCHITECTS

4422 N. Washington, SUITE 400  
 INDIANAPOLIS, IN 46208  
 (317) 424-4000

These drawings and specifications are the property of Logan Architects. They are to be used only for the project and site for which they were prepared and are not to be used for any other project without the written consent of Logan Architects.

MARION COUNTY RECORDER  
 67162004  
 2004-140687

PROJECT  
 Existing Conditions for  
 The Adelaide  
 1225 N. Alabama  
 Indianapolis, Indiana  
 Center Township



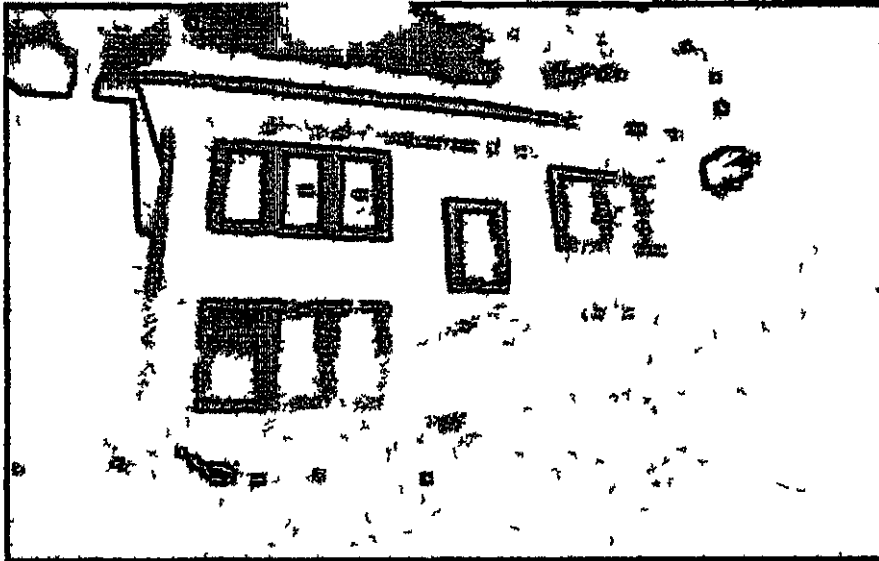
FLOOR PLANS,  
 ELEVATIONS &  
 SITE PLAN

# SURVEYOR LOCATION REPORT

**THIS REPORT IS DESIGNED FOR USE BY A TITLE INSURANCE COMPANY WITH RESIDENTIAL LOAN POLICIES. NO CORNER MARKERS WERE SET AND THE LOCATION DATA HEREIN IS BASED ON LIMITED ACCURACY MEASUREMENTS NO LIABILITY WILL BE ASSUMED FOR ANY USE OF THE DATA FOR CONSTRUCTION OF NEW IMPROVEMENTS OR FENCES.**

Property Address 1225 N Alabama St  
Indianapolis, IN 46205

Date 7/14/2004



Scanned Image Illegible

MCR

Subject real estate DOES NOT lie within a Special Flood Hazard Zone A as delineated on FIRM Community Panel No 180159-0142E Federal Emergency Management Agency National Flood Insurance Program Effective date 01/05/2001

DESIGNATED PARTIES Sorensen, Jens Christian

MORTGAGEE  
OR ASSIGNS

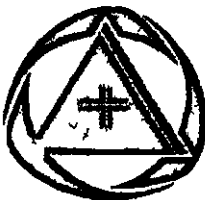
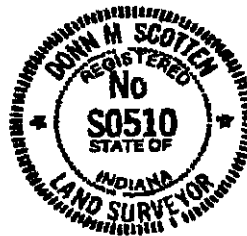
TITLE CO REFERENCE NO Long Michael

I HEREBY CERTIFY TO THE PARTIES NAMED ABOVE THAT THE REAL ESTATE DESCRIBED HEREIN WAS INSPECTED UNDER MY SUPERVISION ON THE DATE INDICATED AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THIS REPORT CONFORMS WITH THE REQUIREMENTS CONTAINED IN SECTIONS 27 THROUGH 29 OF TITLE 865 I A C ARTICLE 1 RULF 12 FOR A SURVEYOR LOCATION REPORT THE ACCURACY OF ANY FLOOD HAZARD STATEMENT SHOWN ON THIS REPORT IS SUBJECT TO MAP SCALE UNCERTAINTY AND TO ANY OTHER UNCERTAINTY IN LOCATION OR ELEVATION ON THE REFERENCED FLOOD INSURANCE RATE MAP.

Signature

Job Number

2-62604



## BENCHMARK LAND SERVICES, INC

Land Surveying Civil Engineering Environmental / Geotechnical Engineering  
9855 Crosspoint Boulevard, Suite 110  
Indianapolis IN 46256 (317) 841 1506 FAX (317) 841 1507  
www.BenchmarkLS.com



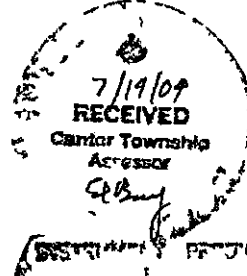
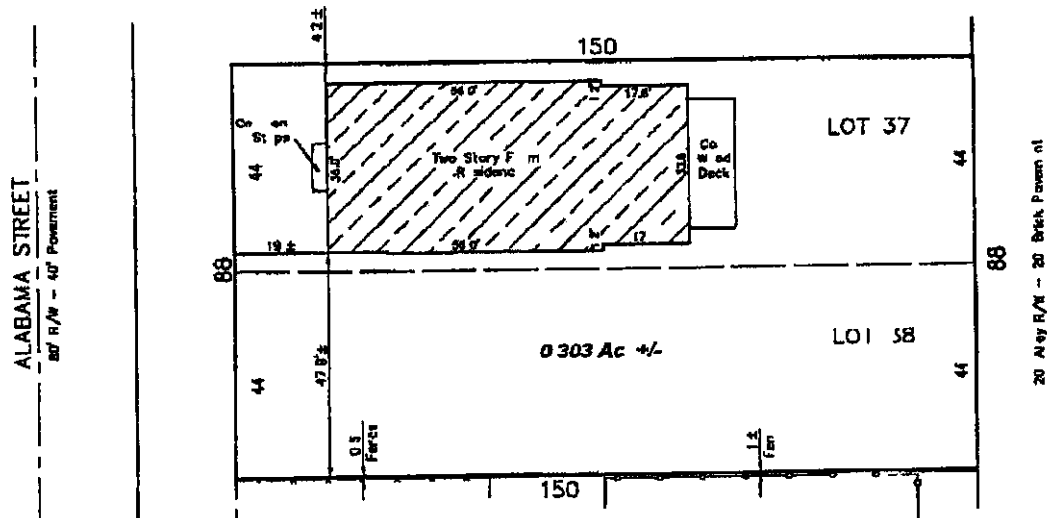
# BENCHMARK LAND SERVICES, INC

Land Surveying Civil Engineering Geotechnical Engineering Environmental Engineering  
 9855 Crosspoint Blvd Suite 110 Indianapolis IN 46256  
 Phone (317) 841-1506 Fax (317) 841-1507

## Property Description

Lot Numbered 37 and 38 in Thomas A Morris Second Addition to the City of Indianapolis as per plat thereof recorded in Plat Book 10 Page 170 in the Office of the Recorder of Marion County Indiana

Benchmark Land Services Job No 2-62604



*Marion*  
 County of Residence  
 Expires Feb, 15, 2017  
*Robert Dominguez*



ENTER TO THE RECORDS  
 This Report is Designed For Use By A Title Insurance Company With Residential Loan Policies No Corner Markers Were Set And The Location Data Herein is Based On Limited Accuracy Measurements

Note: Unless Otherwise Noted, No Substantial Physical Evidence Was Observed Along Perimeter Lines Of The Subject Tract.

### SURVEYOR LOCATION REPORT

LEGEND	
Scale 1" = 30'	Drawn by WT
Date July 13, 2004	Drawing No 2-62604

