



**Chicago Title Insurance Company**  
Indianapolis Metro Offices  
Telephone (317) 684-3800



## **COVENANTS AND RESTRICTIONS**

# **THE TOWNES @ NOBLE WEST**

**(Hamilton County, IN)**

***The materials made available here are for general information only and should NOT be relied upon for making any major or final decisions with respect to any of the properties referenced.***

***The most current and up-to-date copies of Covenants, Restrictions or other Data relative to any property should be obtained from the current governing body of the Subdivision (generally the Home Owner's Association) if applicable. Chicago Title makes NO representations or warranties with respect to any of the materials contained herein.***

**DOS-8-18-09**

DULY ENTERED FOR TAXATION  
Subject to final acceptance for transfer

6<sup>th</sup> day of October, 2004

*Robin Mills* Auditor of Hamilton County

Parcel # \_\_\_\_\_

200400069113  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
JENNIFER J HAYDEN  
10-06-2004 At 09:01 a.m.  
DEC COV RES 131.00

BEST POSSIBLE IMAGE  
ALL PAGES

131.00  
62

**THE TOWNES AT NOBLE WEST CONDOMINIUM DECLARATION**

This is the Declaration of The Townes at Noble West Condominium made on or as of the 11<sup>th</sup> day of June, 2004, pursuant to the provisions of the Indiana Horizontal Property Law, (I.C. 32-25-1-1 as amended, the "Condominium Act").

**Recitals**

A. Portrait Homes-Noble West LLC, an Illinois limited liability company qualified to do business in the State of Indiana, "Declarant", is the owner in fee simple of all of the real property described in Exhibit "A" attached hereto and the improvements thereon and appurtenances thereto (the "Property").

B. The Declarant desires to create of the Property a site of individually owned Units, and commonly owned areas and facilities, and to these ends to submit the Property to Condominium ownership under the provisions of the Condominium Act.

NOW, THEREFORE, Declarant hereby makes and establishes the following plan for Condominium ownership of the Property under and pursuant to the Condominium Act:

**Definitions**

The terms used in this document shall have these meanings, unless the context requires otherwise:

1. "Articles" and "Articles of Incorporation" mean the Articles, filed with the Secretary of State of Indiana, incorporating The Townes at Noble West Condominium Association, Inc. as a non-profit corporation under the provisions of Indiana Code, as the same may be lawfully amended from time to time.

2. "Association" and "The Townes at Noble West Condominium Association, Inc." means the non-profit corporation created by the filing of the Articles and is also one and the same as the Association created for the Condominium pursuant to the provisions of the Condominium Act.

3. "Board" and "Board of Directors" mean those persons who, as a group, serve as the Board of Directors of the Association and are also one and the same as the Board of Directors

of the Condominium established for the Condominium pursuant to the provisions of the Condominium Act.

4. "Building" means a structure containing six (6) or less Units and having a garage facility appurtenant to each Unit, and which may be shown on Exhibit "A", as constructed from time to time.

5. "By-Laws" means the By-Laws of the Association, as the same may be lawfully amended from time to time, created under and pursuant to the provisions of the Condominium Act for the Condominium. A true copy of the By-Laws is attached hereto as Exhibit "C" and made a part hereof.

6. "Common Areas" means all of the Condominium Property, except that portion thereof described in this Declaration as constituting a Unit or Units, and is that portion of the Condominium Property constituting "Common Areas and facilities" of the Condominium under the provisions of the Condominium Act, including, but not limited to, streetlights, entry signs, mailboxes, master television antenna, if any, sprinkler system, if any, retention/detention ponds, private walks, private roads and streets shown on the Plans, private utilities and recreational facilities, if any, constructed by Declarant on the Property for the benefit of all Unit Owners. Roads, streets, water distribution system, sanitary sewer system and storm water system may be dedicated to public entities in which case such shall not be Common Areas and shall not be considered private to the extent they are dedicated to public entities.

7. "Common Expenses" means the proposed or actual expenses affecting the Condominium Property, including reserves, if any, lawfully assessed by the Board, including, without limitation, the items described in Section 3 (A) (1) of Article XV.

8. "Condominium" and "The Townes at Noble West Condominium" mean the Condominium regime for the Condominium Property created under and pursuant to the provisions of the Condominium Act.

9. "Condominium Act" means the statutory law of the State of Indiana regulating the creation and operations of Condominiums and is presently the Indiana Horizontal Property Law, (I.C. 32-25-1-1 as amended).

10. "Condominium Organizational Documents" means the Articles, the By-Laws, the Plans, and this Declaration, as the same may lawfully be amended from time to time.

11. "Condominium Property" or "Property" means the tract of land hereinafter described as being submitted to the Condominium Act, all Buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto.

12. "Declarant" means Portrait Homes-Noble West LLC, a limited liability company formed under the laws of the State of Illinois, and its successors and assigns, provided the rights specifically reserved to Declarant under the Condominium Organizational Documents shall accrue to such successors and assigns as are designated in writing by Declarant as successors and assigns of such rights.

13. "Declaration" means this instrument by which Condominium Property is submitted to the Condominium Act, as this instrument may be lawfully amended from time to time.

14. "Director" and "Directors" means that Person or those persons serving, at the time pertinent, as a trustee or trustees of the Association, and mean that same Person or those persons serving in the capacity of a member of the Board of Directors of the Association, as defined in the Condominium Act.

15. "Eligible Holder of the First Mortgage Lien" means the holder of a valid recorded first mortgage on a Unit, which holder has given written notice to the Association requesting notification of any proposed action that requires the consent of a specified percentage of Eligible Holders of First Mortgage Liens.

16. "Limited Common Areas" means those Common Areas serving exclusively one Unit or more than one but less than all Units, the enjoyment, benefit or use of which are reserved to the Occupants of that Unit or Units either in this Declaration, or by the Board, and is that portion of the Condominium Property constituting "Limited Common Areas and facilities" of the Condominium under the provisions of the Condominium Act.

17. "Occupant" means a Person lawfully residing in a Unit, regardless of whether that Person is a Unit Owner.

18. "Person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

19. "Plans" means the floor plans and other information of the Units as filed in the Office of the Recorder of Hamilton County, Indiana in Horizontal Property Plan File, ~~Book~~ **PC 3**, Pages ~~Slide through 423~~ **Slide through 423**, which Plans are incorporated herein by this reference, as the same may be lawfully amended from time to time.

20. "Plat" means that Plat recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument No. ~~200400041507~~, as the same may be lawfully amended from time to time.

21. "Unit" and "Units" means that portion or portions of the Condominium Property described as a Unit or Units in this Declaration, and is that portion of the Condominium constituting a "Unit" or "Units" of the Condominium under the provisions of the Condominium Act, provided that no structural components of the Building in which such Unit is located, and no pipes, wires, conduits, ducts, flues, shafts or public utility lines situated within such Unit and forming part of any system serving one or more other Units or the Common Areas, shall be deemed to be a part of such Units.

22. "Unit Owner" and "Unit Owners" mean that Person or those persons owning a fee-simple interest in a Unit or Units, each of whom is also a "member" of the Association, as defined in Indiana's non-profit corporation statutory act.

## ARTICLE I.

### THE LAND

A legal description and a site plan of the land constituting a part of the Condominium Property, located in Hamilton County, Indiana, is attached hereto and marked "Exhibit A".

## ARTICLE II.

### NAME

The name by which the Condominium shall be known is "The Townes at Noble West Condominium."

## ARTICLE III.

### PURPOSE; RESTRICTIONS

**Section 1. Purposes.** This Declaration is being made to establish separate individual parcels from the Condominium Property, to which fee simple interests may be conveyed; to establish a Unit Owners' Association to administer the Condominium; to provide for the preservation of the values of Units and the Common Areas; to provide for and promote the benefit, enjoyment and well being of Unit Owners and Occupants; to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth; and to raise funds through assessments to accomplish these purposes.

**Section 2. Restrictions.** The Condominium Property shall be subject to the following restrictions:

(A) **Unit Uses.** No garage sale, moving sale, rummage sale or similar activity shall be conducted by an Owner within the Condominium Property without approval of the Association. No trade or business may be conducted in or from any Unit, except that an Owner or Occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the Unit; (ii) the business activity conforms to all zoning requirements for the Condominium Property; (iii) the business activity does not involve persons coming onto the Condominium Property or door-to-door solicitation of residents of the Condominium Property; and (iv) the business activity is consistent with the residential character for the Condominium Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security of safety of the other residents of the Condominium Property, as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefor. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this

Section. This Section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Condominium Property or its use of any Units which it owns within the Condominium Property. Declarant has the right to use any Unit it owns for sales office, model, and/or construction/business purposes and the Unit shall be a part of the Condominium. Declarant may have up to four models, which may be relocated from time to time within the Condominium, whose size and floor plan is reflected in the Plans.

(B) **Common Areas Uses.** The Common Areas (except the Limited Common Areas) shall be used in common by Unit Owners and Occupants and their agents, servants, customers, invitees and licensees, in accordance with the purpose for which they are intended, and as may be required for the purpose of access, ingress to, egress from, use, occupancy and enjoyment of Units, provided, however, that unless expressly provided otherwise herein, no Common Areas shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Unit Owners and Occupants, subject to such rules and regulations as may from time to time be promulgated by the Board.

(C) **Limited Common Areas Uses.** Except as specifically provided otherwise herein, those portions of the Common Areas described herein and shown on the Plans as Limited Common Areas shall be used and possessed exclusively by the Unit Owners and Occupants of the Unit or Units served by the same, subject to the restrictions on use of Common Areas and Limited Common Areas set forth in this Declaration and such rules and regulations as may from time to time be promulgated by the Board.

(D) **Visible Areas.** Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except inoffensive drapes or curtains) or placed on the outside walls of a Building or otherwise outside of a Unit, or any part thereof, and no sign (except those of the Declarant), awning, canopy, shutter or television or citizens' band or other radio antenna or transmitter, satellite dish or any other device or ornament shall be affixed to or placed upon the exterior walls or roof or any part thereof, or in or on a patio unless authorized by the Board, and subject to such rules and regulations as the Board may adopt from time to time.

(E) **Nuisances.** No portion of the Condominium Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be visibly obnoxious; nor shall any substance, thing, or material be kept upon any portion of the Condominium Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of other Unit Owners. No noxious, illegal or offensive activity shall be carried on upon any portion of the Condominium Property. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Condominium Property. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Condominium Property. It shall be the responsibility of each Unit Owner to prevent the development of any unclean, unhealthy, unsightly or unkept condition in his or her Limited Common Areas. The pursuit of

hobbies or other activities, specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkept conditions shall not be pursued or undertaken on any part of the Condominium Property.

(F) **Vehicles.** Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trucks weighing in excess of three-fourths of a ton, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages. Stored vehicles and vehicles which are either obviously inoperable or do not have operating licenses shall not be permitted on the Condominium Property except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with tarpaulin for seven (7) consecutive days without the prior written approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Condominium Property during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Areas. Any vehicles parked in violation of this Section or parking rules promulgated by the Board may be towed. The driveway parking spaces may not be used unless the attached garage parking space is already being used for vehicle parking. The use of the attached garage for storage of anything which interferes with the storage of vehicles is prohibited.

(G) **Signs.** No sign of any kind shall be displayed to the public view on the Condominium Property except: (a) on the Common Areas, signs regarding and regulating the use of the Common Areas, provided they are approved by the Board; (b) on the interior side of the window of a Unit, one professionally prepared sign advertising the Unit for sale or rent provided the use is approved by the Board; and (c) on the Common Areas and model Units, signs advertising the sale of Units by the Declarant during the initial sales/rental period, which shall continue until all Units have been sold to parties unrelated to the Declarant.

(H) **Structural Integrity.** Nothing shall be done in any Unit, or in, on or to the Common Areas, which may impair the structural integrity of any improvement.

(I) **Building on Easements.** Within the easements for the installation and maintenance of utilities and drainage facilities, no structure, planting or other material (except such as exist at the time of this Declaration) shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

(J) **Animals.** Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Areas. Notwithstanding the foregoing, household domestic pets, not bred or maintained for

commercial purposes, may be maintained in a Unit, provided that: (i) no animals shall be permitted in any portion of the Common Areas except on a leash (not longer than six feet in length) maintained by a responsible Person, (ii) the permitting of animals on the Common Areas shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, the right to place limitations on the size, number and type of such pets, and the right to levy fines and enforcement charges against persons who do not clean up after their pets; and (iii) the right of an Occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Condominium or other Units or Occupants.

(K) **Conveyances.** Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof. The legal description of each Unit shall consist of the identifying number of symbol of such Units as shown on the Plat. The undivided interest of a Unit in the Common Areas shall be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage or other instrument of conveyance or encumbrance. The right of a Unit Owner to sell, transfer or otherwise convey that owner's Unit is not subject to any right of first refusal or similar restriction, and any Unit Owner may transfer that owner's Unit free of any such limitation. To enable the Association to maintain accurate records of the names and addresses of Unit Owners, each Unit Owner agrees to notify the Association, in writing, within five days after an interest in that Unit owner's Unit has been transferred to another Person. In addition, each Unit Owner agrees to provide to a purchaser of that owner's Unit a copy of the Condominium Organizational Documents and all effective rules and regulations.

(L) **Architectural Control.** Except as hereinafter specifically provided, no fence, wall, sign or other structure shall be commenced, erected or maintained upon the Condominium Property, or any part thereof, nor shall any exterior addition to or change or alteration therein be made, until the Plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board or its designated representative, as to lawfulness and appropriateness, and as to harmony of external design, color and location in relation to surrounding structures and topography.

(M) **Decorating.** Each Unit Owner, at his own expense, shall furnish and be responsible for all decorating within his own Unit and Limited Common Areas serving his Unit, as may be required from time to time, including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lighting and other furnishings and decorating. Each Unit Owner, at his own expense, shall also furnish and be responsible for an exterior light on each Unit, in such location as the Board shall approve, which light shall include a photocell causing such light to be illuminated from dusk to dawn. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, doors, floor and ceilings, and such Unit Owner shall maintain said interior surfaces in good condition at his sole expense. Decorating of the Common Areas (other than interior surfaces within the Units as above provided and other than interior surfaces of Limited Common Areas), and expressly



including without limitation, the exterior surfaces of all outside doors (including garage doors) to each of the Buildings shall be furnished by the Association as part of the Common Expenses. The interiors and exteriors of all windows forming part of the perimeter wall of a Unit shall be cleaned and washed at the expense of the Unit Owner of that Unit.

(N) **Flooring.** Each Unit Owner shall maintain a floor covering upon all floor areas within his Unit with the exception of those floor areas utilized as a kitchen, bathroom or closet so as to provide an insulation from sound transmission in accordance with standards set forth by the Board.

(O) **Water Discharge.** No clear water sources, including but not limited to foundation drains, sump pumps and road drains shall be permitted to the discharge into the sanitary sewers.

(P) **Dusk-to-Dawn Lights.** Each Owner shall operate the dusk-to-dawn lights installed on the exterior of the Unit to provide lighting from dusk-to-dawn, and each Owner shall replace the light bulbs as a part of the operation of the dusk-to-dawn lights.

(Q) **Refuse.** All rubbish, trash or garbage shall be kept so as not to be seen from neighboring units and streets, and shall be regularly removed from the Property and shall not be allowed to accumulate thereon. Garbage may not be burned on the Property. No clothes, sheets, blankets, laundry of any kind, or other articles shall be hung out in any portion of the Property. The Association shall contract for the removal of refuse with a scavenger service for the Unit Owners in the Property.

(R) **Occupants.** All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Unit Owners and which provided for sanctions against Unit Owners shall also apply to all Occupants, guests and invitees of any Unit. Every Unit Owner shall cause all Occupants of his or her Unit to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such Occupants, notwithstanding the fact that such Occupants of a Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations adopted pursuant thereto.

(S) **Arbitration.** In the event of any dispute between Unit Owners as to the application of these restrictions or any rule or regulation promulgated by the Board, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing thereon within sixty (60) days thereafter, and give written notice to each party thereof no less than three days in advance. The Board shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within thirty (30) days thereafter.

## ARTICLE IV.

### IMPROVEMENT DESCRIPTIONS

The residential Buildings of the Condominium contain up to six (6) Units, and the principal material of which these Buildings are constructed are wood frame, siding, partial brick veneer, shingle roofs, on a slab on grade or poured basement foundation. The Buildings are tentatively located as shown on the Plans, and the Buildings and Plans are subject to amendment by Declarant.

## ARTICLE V.

### UNITS

**Section 1. Unit Designations.** Each of the Units is designated on the Plans by a number, the first two digits indicate the Building number and the last two digits indicate the Unit number within a Building. Information concerning the Units, with a listing of proper Unit designations, is shown on Exhibit "B" attached hereto.

**Section 2. Composition of Units.**

(A) **Unit Composition.** Each Unit consists of the space in the Building designated by that Unit's designation on the Plans that is bounded by the undecorated interior surfaces of the vertical, perimeter walls; the unfinished surface of the floor or garage floor, and the unfinished interior surface of the ceiling, all projected, if necessary by reason of structural divisions such as interior walls and partitions, to constitute a complete enclosure of space, and all improvements within that space. Without limiting the generality of the foregoing, each Unit shall include:

- (1) the decorated surfaces, including paint, lacquer, varnish, wallpaper, tile and other finishing material applied to floors, ceilings, and interior surfaces of the perimeter walls and carpets, paneling and other finishing material attached to the interior surfaces of the perimeter walls;
- (2) all windows, screens and doors, including storm doors and windows, if any, and including the frames, sashes and jambs and the space occupied thereby, and the hardware therefor;
- (3) all fixtures and appliances installed for the exclusive use of that Unit, commencing at the point of disconnection from the structural body of the Building and from utility pipes, lines or systems serving the entire Building or more than one Unit thereof, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal Units, refrigerators, stoves and hoods, televisions antennas and cables, furnaces, hot water heaters, and air-conditioning Units, and components thereof, if any (even if located outside of the bounds of the Unit), serving only that Unit;

(4) all control knobs, switches, thermostats and electrical outlets and connections affixed to or projecting from the walls, floors and roof decks which service either the Unit or the fixtures located therein, together with the space occupied thereby;

(5) all interior walls, that are not necessary for support of the structure, and all components thereof and all space encompassed thereby;

(6) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts or conduits which serve either the Unit or the fixtures located therein, and which are located within the bounds of the Unit, or within the exterior walls of that Unit; excluding therefrom, however, all of the following items located within the bounds of that Unit:

(a) any structural element of the Building contained in interior walls; and

(b) all plumbing, electric, heating, cooling and other utility or service lines, pipes, sump pumps and accessories thereto, wires, ducts and conduits which serve any other Unit.

(B) **Unit Sizes, Locations and Components.** The location of each part of each Unit, the approximate size of each Unit's interior, and the number of rooms in each Unit are shown on the Plans.

## ARTICLE VI.

### COMMON AND LIMITED COMMON AREAS

**Section 1. Common Areas - Description.** All of the Condominium Property, including all of the land and all improvements thereon and appurtenances thereto, including the private streets and roadways, private water distribution system, private storm water system and private sanitary sewer system, except (i) those portions labeled or described herein or in the Plans as a part of a Unit and (ii) those roads, streets, water distribution system, sanitary sewer system and storm water system to the extent they are dedicated to public entities, are Common Areas.

**Section 2. Limited Common Areas - Description.** Those portions of the Common Areas that are labeled or designated "LCA" or "Limited Common Areas" on the Plans, are Limited Common Areas. In the case of each Unit, the Limited Common Areas appurtenant to that Unit consist of patios on the main level of a Unit, driveway and front door stoop, if any. All such Limited Common Area is reserved for the exclusive use of the owners and Occupants of the Unit(s) designated to be served by the same.

**Section 3. Undivided Interest.** The initial undivided interest in the Common Areas of each Unit is based upon the size of the Unit as described on Exhibit "B". The minimum and maximum undivided interest in the Common Areas is described in Exhibit "F" attached hereto. The Common Areas shall be owned by the Unit Owners as tenants in common, and ownership thereof shall remain undivided. No Unit Owner may waive or release any rights in the Common

Areas. Further, the undivided interest in the Common Areas of a Unit shall not be separated from the Unit to which it appertains. Any attempted conveyance, encumbrance, judicial sale or other transfer of a Unit Owner's fee interest in Common Areas will be void unless the Unit to which such interest is allocated is also transferred.

If at a later time the Condominium is expanded, as hereinafter provided, the undivided interests of Units in the Common Areas shall be uniformly reallocated so that all Units, whether originally in the Condominium or added at a later date, have undivided percentage interests in the Common Areas based upon the size of the Unit.

**Section 4. Dedication Rights Reserved.** In addition to all easements and rights previously granted by recorded documents against the Property, Declarant hereby reserves the right at its sole discretion to dedicate or otherwise convey portions of the Property (but not those portions on which a Unit is situated) to any public agency or governmental authority or quasi-public utility for purposes of streets, roads, roadways, utilities, recreation areas, storm detention basins, storm outfall, storm trunk piping, water, sidewalks and other benefits and improvements, and rights-of-way and easements therefor. Such right to make such dedications or conveyances shall not require the consent, approval or signatures of either the Board or any Unit Owner, and such dedication or conveyance shall be considered fully accomplished and conclusively binding upon each of said Unit Owners and upon the Association when set forth in writing or in a Plat of Dedication executed by the Declarant which has been recorded in the Office of the Recorder of Hamilton County, Indiana, provided, however, that nothing in this paragraph shall be construed to in any manner require or obligate Declarant to make any such conveyance or dedication.

In further of the foregoing, an irrevocable power coupled with an interest is hereby granted to the Declarant and the Board as agent and attorney-in-fact, to grant such easements or make such dedications or conveyances. Each deed, mortgage, trust deed or other instrument with respect to a Unit and the acceptance thereof shall be deemed a grant and acknowledgment of the consent to such power to each of said attorney-in-fact and shall be deemed to reserve to Declarant and the Board the foregoing powers and rights.

## ARTICLE VII.

### UNIT OWNERS' ASSOCIATION

**Section 1. Establishment of Association.** The Association has been formed to be and to serve as the Unit Owners' Association of the Condominium. The Declarant is presently the sole member of the Association. The Association shall be managed in accordance with the By-Laws.

**Section 2. Membership.** Membership in the Association shall be limited to the Unit Owners, and every Person or entity who is or becomes a record owner of a fee or undivided fee-simple interest in a Unit is a Unit Owner and shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit, and transfer of a Unit shall automatically transfer membership to the transferee.

**Section 3. Voting Rights.** Each Unit Owner shall be entitled to vote its undivided interest in the Common Areas for each Unit owned in fee simple, and a proportionate part of a vote for ownership of an undivided fee simple interest in a Unit, provided, that unless timely challenged by an owner of a fee simple interest in a Unit, any owner of a fee simple interest in that Unit may cast the entire vote with respect to that Unit and a trustee of a voting trust and an officer of a corporation owning a Unit shall have the right to vote with respect to a Unit.

**Section 4. Board of Directors.** The Board initially shall be those five (5) persons named as the initial Directors pursuant to the provisions of the Articles, or such other Person or persons as may from time to time be substituted by Declarant. The Board shall serve in accordance with the provisions of the By-Laws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time as the Board deems advisable. Notwithstanding the foregoing, Declarant shall have the right to any time to waive its right to select one or more Directors or to vote in an election of Directors.

**Section 5. Authority.** The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Areas, negotiate agreements and contracts with public or private utilities, including cable companies, and assess and collect funds for the payment thereof, and do all things, and exercise all rights provided by the Condominium Organizational Documents, or the Condominium Act, that are not specifically reserved to Unit Owners.

In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of the Declaration or By-Laws, the determination thereof by the Board shall be final and binding on each Unit Owner.

**Section 6. Delegation of Authority; Professional Management.** The Board may delegate all or any portion of its authority to discharge its responsibilities to a managing agent. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a part of Common Expenses, provided, however, that any agreement for professional management shall not exceed two years unless renewed by agreement of the parties for successive two-year periods; and shall be bona fide and commercially reasonable at the time entered into under the circumstances then prevailing. Subject to the foregoing, nothing contained herein shall preclude Declarant, or any other entity designated by Declarant, from being employed as managing agent. The managing agent, or the Board, if there is no managing agent, shall have the authority to enter into contracts with Declarant, for goods, services, or for any other thing, including without limiting the generality of the foregoing, contracts for the providing of management, maintenance and repair services, provided the same are bona fide and commercially reasonable to the Unit Owners at the time entered into under the circumstances then prevailing and are terminable by the Association, without cause and without penalty, on sixty (60) days' written notice. Initially, the management of the Association shall be performed by Encore Real Estate Co., at a monthly rate of the greater of \$400.00 or \$14.00 per Unit for each Unit which has been subjected to the Declaration.

The decision by the Board not to have professional management, or to terminate professional management and assume self management, shall not be made without the consent of Eligible Holders of the First Mortgage Liens on Units to which at least fifty-one percent (51%) of votes of Units subject to such mortgages appertain.

## ARTICLE VIII.

### AGENT FOR SERVICE

The name of the Person to receive service of process for the Association, and that person's residence or place of business, is:

Greg A. Bouwer, Esq.  
Koransky & Bouwer, P.C.  
425 Joliet Street, Suite 425  
Dyer, Indiana 46311

In the event this individual for any reason ceases to be registered with the Secretary of State of Indiana as Statutory Agent for the Association, the Person so registered shall be the Person to receive service of process for the Association.

## ARTICLE IX.

### MAINTENANCE AND REPAIR

**Section 1. Association Responsibility.** The Association shall maintain and repair the Common Areas, including and not limited to the private sewer system, private utility facilities serving more than one Unit, private utility lines in the Common Areas, water lines serving one or more Units to the connection into the public water distribution system, including any requirements of instruments of record, private streets including cul-de-sac necks, lawns, shrubs, trees, private walkways, and all Buildings which are a part of the Common Area and which may be located within a sanitary sewer or utility easement, and, provided, however, that the Association shall not be required to provide routine maintenance or cleaning or snow removal with respect to the driveways and sidewalks, nor shall it repair or maintain any improvements within such Limited Common Areas.

**Section 2. Individual Responsibility.** Each Unit Owner shall repair and maintain the Unit or Units, and all components thereof, owned by that Unit Owner; and shall provide routine maintenance and cleaning and snow removal with respect to the driveways (unless responsibility is undertaken by the Association through the Board), sidewalks and patios, appurtenant to that Owner's Unit. Without limiting the generality of the foregoing, the repair and maintenance responsibility shall include repair and maintenance of all windows, screens and doors, including the frames, sashes and jambs, and the hardware therefor; and repair and maintenance of the interior of the garages facilities, patios, porches, and any improvements therein, including but not limited to outside lights and fences, if any. The Board shall have the right and authority at its discretion to assess the costs for the repair, maintenance or replacement of Limited Common Areas, in whole or in part to the Unit or Units within the Building where so located or assigned or to require the Unit Owners to pay for, or cause the repair, maintenance and replacement to be performed by the Unit Owners. In the event a Unit Owner shall fail to make any such repair or perform such maintenance, or in the event the need for maintenance or repair of any part of the Common Areas or Limited Common Areas is caused by the negligent or intentional act of any

Unit Owner or Occupant, or its agent, invitee, licensee or pet, or is as a result of the failure of any Unit Owner or his, her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, and the cost of repair is not covered by insurance, the cost of such maintenance and repair shall constitute a special individual Unit assessment, as hereinafter defined, on the Unit Owner by such Unit Owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

#### ARTICLE X.

##### UTILITY SERVICES

Each Unit Owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to that Unit. In the event any utility service is not separately metered the cost thereof shall be a part of Common Expense and paid by the Association, except that, with respect to any meters measuring the use of light or heat or water on the basis of the consumption thereof for one or more Units in a Building or the entire Condominium Property, at the option of the Board and its sole discretion, the expenses therefor may be allocated to and assessed against the Unit or Units located within that Building or the entire Condominium Property. In such an event, all of the Units in each said Building or the entire Condominium Property shall be responsible for the total cost of said metered expense for said Building or the entire Condominium Property, and among themselves each of said Units shall be responsible for that proportion of said cost equal to the proportion which the Percentage Ownership of Common Areas of said Unit bears to the total Percentage Ownership of Common Areas of all of the Units in the Building or the entire Condominium Property.

#### ARTICLE XI.

##### INSURANCE; LOSSES BONDS

**Section 1. Fire and Extended Coverage Insurance.** The Board shall have the authority to and shall obtain insurance for all Buildings, structures, supplies, machinery, fixtures and equipment and common personal property and supplies now or at any time hereafter constituting a part of the Common Areas or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, policies issued in the locale of the Condominium Property, in amounts at all times sufficient to prevent the Unit Owners from becoming co-insurers under the terms of any applicable co-insurance clause or provision and not less than one hundred percent (100%) of the current replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage), as determined from time to time by the insurer, with a deductible not greater than the less of \$10,000 or 1% of the face amount of the policy. The deductible expense shall be shared among the Unit Owners who incurred a loss on an equitable basis. This insurance:

(A) shall provide coverage for improvements, alterations, fixtures and equipment located within Units; interior walls, windows and doors and the frames,

sashes, jambs and hardware therefor, even through these improvements may be parts of Units but shall not include additions or improvements to the Units and interior decorating of the Units by the Unit Owners; and any other items of personal property for which coverage is required by The Mortgage Corporation, Federal National Mortgage Association, or any similar holder, insurer or guarantor of first mortgage loans upon Units in the Condominium;

(B) shall provide that no assessment may be made against a first mortgage lender, or its insurer or guarantor, and that any assessment under such policy made against others may not become a lien on a Unit and its appurtenant interests superior to a first mortgage;

(C) shall be obtained from a insurance company authorized to write such insurance in the State of Indiana which has a current rating of Class B/111, or better, or, if such company has a financial rating of Class 11, then such company must have a general policy holder's rating of at least A, all as determined by the then latest edition of Best's Insurance Reports, or its successor guide, or such higher rating as may, from time to time, be required by The Mortgage Corporation, Federal National Mortgage Association, or any similar holder, insurer or guarantor of first mortgage loans upon Units in the Condominium; or, if the insurer does not satisfy these rating requirements, that insurer is reinsured by a company that has a B/111 or better rating;

(D) shall provide that its coverage is primary, and be written in the name of Association for the use and benefit of the individual Unit Owners and their mortgage holders, or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Unit Owners and their mortgage holders.

(E) shall contain or have attached the standard mortgage clause commonly accepted by institutional mortgage investors in the area in which the Condominium Property is located, naming the holder, insurer, guarantor or servicer of first mortgages on Units, which must provide that the insurance carrier shall notify all holders of first mortgages named at lease ten (10) days in advance of the effective date of any reduction in, cancellation of, or substantial change in the policy, and which standard mortgagee clause must further be endorsed to provide that any loss shall be paid to the Association (or its insurance trustee), as a trustee for each Unit Owner and each such Unit owner's mortgagee;

(F) shall contain a waiver of subrogation of rights by the carrier as to the Association, its officers and Directors, and all Unit Owners, and the rights of the various parties to collect pursuant to such insurance shall not be prejudiced by the acts or failure to act of any Unit Owner or Person under the control of the Association; and

(G) shall contain such other endorsements and meet such other requirements as are, from time to time, required by The Mortgage Corporation, Federal National Mortgage Association, or any similar holder, insurer or guarantor of first mortgage loans upon Units in the Condominium.



The cost of this insurance and all insurance described in this Article XI (excluding Section 6) shall be a Common Expense, payable by the Association; however, if there is a cost of insurance which is applicable to some but not all of the Units, the Board, in its discretion, may charge an additional assessment to each Unit Owner the amount of the additional insurance premium charged.

**Section 2. Liability Insurance.** The Association shall obtain and maintain a comprehensive policy of general liability insurance covering all of the Common Areas, insuring the Association, the Board, and the Unit Owners and Occupants, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by private institutional mortgage investors for projects similar in construction, location and use, and (b) one million dollars (\$1,000,000), for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association, the Board, or other Unit Owners and shall include, without limitation, coverage for 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, legal liability arising out of lawsuits related to employment contracts of the Association, and additional coverages as are ordinarily obtained with respect to projects similar in construction, location and use. Each such policy must provide that it may not be canceled or substantially modified by any party, without at least 10 days' prior written notice to the Association and to each Eligible Holder of a First Mortgage Lien upon any Unit.

**Section 3. Fidelity Coverage.** The Board shall obtain and maintain, or cause to be obtained and maintained, fidelity coverage for the Association against dishonest or fraudulent acts on the part of the Board, managers, employees, agents, or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance shall name the Association as the named obligee or insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of: (i) 150% of the estimated annual operating expense of the Association, including reserves; (ii) the maximum funds that will be in the custody of the Association or its agent at any time; or (iii) the sum of three months worth of assessments plus the Association's reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The bond or policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least 10 days' prior written notice to the Association, any insurance trustee, and any holder, insurer, guarantor or servicer on behalf of any holder of any mortgage on a Unit who requires such rights. Any managing agent that handles funds for the Association shall be required to obtain its own fidelity bond providing similar coverage.

**Section 4. Other Association Insurance.** In addition, the Board may purchase and maintain contractual liability insurance, directors' and officers' liability insurance, and such other insurance as the Board may determine.

**Section 5. Insurance Representative; Power of Attorney.** Notwithstanding any of the foregoing provisions of this Article, or any requirement relating to property or liability insurance herein, there may be named, under any policy obtained by the Association, as an insured on behalf of the Association, its 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 such policy. Each Unit Owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for Unit Owners and their first mortgage holders, as their interests may appear. This power is for the benefit of each and every Unit Owner, and their respective first mortgage holders, and the Association, and the Condominium, runs with the land, and is coupled with an interest.

**Section 6. Unit Owners' Insurance.** Any Unit Owner or Occupant may carry such insurance in addition to that provided by the Association pursuant hereto as the Unit Owner or Occupant may determine, subject to the provisions hereof, and provided that no Unit Owner or Occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Association. In the event any Unit Owner or Occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Unit Owner who acquired or whose Occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, a Unit Owner or Occupant may obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and losses to improvements owned by the Unit Owner or Occupant, provided that if the Association obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Unit Owner with respect to improvements within the Unit shall be limited to the type and nature of coverage commonly referred to as "tenants' improvements and betterments". All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and trustees, and all other Unit Owners and Occupants. Unit Owners shall be responsible for the deductible of any insurance policy, prorated among the Unit Owners in proportion to their loss.

**Section 7. Sufficient Insurance.** In the event the improvements forming a part of the Common Areas or any portion thereof shall suffer damage or destruction from any cause of peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Board in payment therefor; provided, however, that in the event of complete destruction of all of the Buildings such as causes the termination of the Condominium pursuant to Article XII, Section 1, below, the Condominium shall be terminated, in which event such repair, restoration or reconstruction shall not be undertaken.

**Section 8. Insufficient Insurance.** In the event the improvements forming a part of the Common Areas or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless there is complete

destruction of all Buildings such as causes the termination of the Condominium pursuant to Article XII, Section 1, below, the Association shall make repairs, restoration or reconstruction of the Common Areas so damaged or destroyed at the expense (to the extent not covered by insurance) of all Unit Owners in proportion to their respective undivided interests in the Common Areas. Should any Unit Owner refuse or fail after reasonable notice to pay that Unit owner's share for such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Unit of such Unit Owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

## ARTICLE XII.

### DAMAGE; RECONSTRUCTION

**Section 1. Complete Destruction.** In the event of the complete destruction of all of the Buildings containing Condominium Units [as determined by a vote of Unit Owners holding two-thirds (2/3) of the voting power held by all Unit Owners] the Buildings shall not be reconstructed, and the insurance proceeds, if any, shall be divided among the Unit Owners and their respective mortgages in the percentage by which each Unit Owner owns an undivided interest in the Common Areas and facilities, and the property shall be considered as removed from the Condominium under section 32-25-8-10 of the Indiana Code, unless, by a vote of two-thirds (2/3) of the voting power held by all Unit Owners, a decision is made to rebuild the Building, in which case the insurance proceeds shall be applied and any excess of construction costs over insurance proceeds shall be contributed as provided herein for capital contributions.

**Section 2. Reconstruction.** In case of fire or any other casualty or disaster, other than complete destruction of all Buildings containing the Condominium Units, unless the Unit Owners elect for reconstruction as provided above, the improvements shall be promptly reconstructed and the insurance proceeds applied to reconstruct the improvements.

**Section 3. Failure to Reconstruct.** If it is determined by the Unit Owners to not rebuild after casualty or disaster has occurred, then in that event:

(A) The Property shall be deemed to be owned in common by the Unit Owners;

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

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

(D) The Property shall be subject to an action for partition at the suit of any Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Unit Owners in a percentage equal to the percentage of undivided interest

owned by each Unit Owner in the Property, after first paying out of the respective shares of the Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Unit Owner.

### ARTICLE XIII.

#### CONDEMNATION

**Section 1. Standing.** Except as hereinafter provided, the Association, or its designated representative, or authorized successor, as trustee, shall represent the Unit Owners in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of all or any part of the Condominium Property, and shall have the sole and exclusive right to settle the loss with the condemning authority and to receive the award or proceeds of settlement, for the use and benefit of the Unit Owners and their mortgagees as their interests may appear except that any award or proceeds of settlement for the withdrawal of a Limited Common Area will be for the use and benefit of the Unit Owners entitled to their use. Notwithstanding the foregoing, in the event that a Unit Owner may lawfully separately pursue and realize upon a claim for incidental and consequential losses or damage to that Unit Owner resulting from a taking under the power of eminent domain, such as for relocation and moving expenses, loss of favorable mortgage terms, and other such individual incidental or consequential loss, that Unit Owner may, at his, her or its election, separately pursue such claim, provided, that the pursuing of the same, or the realization of an award thereof, neither jeopardizes, in any way, an action by the Association to recoup the losses incurred by it, any other Unit Owner, or the direct loss with respect to the Unit itself, or with regard to the usability thereof, nor diminishes any award for any such loss.

**Section 2. Use of Proceeds.** The award of proceeds of settlement in any such proceedings, after reduction by the cost, if any, incurred in obtaining the same, shall be applied first to the cost of restoring or replacing all damaged improvements on the remaining Condominium Property in accordance with the Plans, or in accordance with any new Plans and specifications therefor approved by Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Unit Owners, and the Eligible Holders of the First Mortgage Liens on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Holders of the First Mortgage Liens appertain. If the award of proceeds is insufficient for such purpose, the excess cost shall be paid by the Association and, to the extent funds of the Association are insufficient therefor, in the judgment of the Board, such excess cost shall be a part of Common Expense and assessed among the Units in the same manner as special assessments for capital improvements are assessed. Except as hereinafter provided, the balance of any such award or proceeds of settlement, if there is an excess, shall be allocated and distributed to the Unit Owners, and their first mortgages, as their interests may appear, in proportion to the relative undivided interests of the Units in the Common Areas. Notwithstanding the foregoing, in the event that as a result of any such taking, and consequent restoration or replacement, any Unit could not reasonably be restored to condition comparable to that which existed prior to the taking, or could not be replaced, prior to the allocation and disbursement of any sum to any other Unit Owner or his, her or its mortgagee, there shall be allocated and disbursed from such award or proceeds, to each Unit Owner whose Unit cannot be so restored or replaced, and his, her or its respective first mortgagee, as their interests may appear, such amount as is equal to the then fair market value of the Unit that cannot be so

restored or replaced. Thereupon, such Unit or Units, and the owners thereof, shall be immediately and automatically divested of any interest in the Condominium, the Condominium Property, and the Association, including, without limiting the generality of the foregoing, divestment of an undivided interest, vote, membership in the Association, and future liability for Common Expenses. All such rights and interests shall be reallocated among all other Units and Unit Owners in the same relative proportions as those rights and interests were prior to such taking. To illustrate, upon a Unit being divested from the Condominium, (a) the voting right of that Unit will be equally allocated among all other Units, since each Unit prior thereto had an equal vote, and (b) the undivided interest of that Unit will be reallocated among all other Units in the proportions of their relative undivided interests prior to such taking.

**Section 3. Power of Attorney.** Each Unit Owner, by acceptance of a deed to a Unit, appoints the Association, or its designated representative, or authorized successor, as his, her or its attorney-in-fact to represent that Unit Owner, settle losses, receive and utilize the award or proceeds of settlement, and do all things necessary or desirable for such attorney-in-fact to exercise the rights and fulfill the responsibilities of the Association set forth in this Article with respect to condemnation or eminent domain proceedings. This power is for the benefit of each and every Unit Owner, each holder of a first mortgage on a Unit, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

#### ARTICLE XIV.

#### GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

**Section 1. Easements of Enjoyment; Limitations.** Every Unit Owner shall have a right and easement of enjoyment in, over and upon the Common Areas and a right of access to and from his, her or its Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Areas, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof, or to that Unit's Limited Common Areas. Any Unit Owner may delegate that Unit owner's right to enjoyment to the Common Areas and to ingress and egress to the members of that Unit owner's family and to Occupants. Each Unit Owner shall have an easement for the installation, use, repair, replacement and relocation of a sprinkler system in the Common Area adjacent to such Owner's Unit, provided that the construction of any such sprinkler system be approved by the Declarant or, after the sale of all Units in the Condominium Property, by the Board of Directors of the Association.

**Section 2. Right of Entry for Repair, Maintenance and Restoration.** The Association, and its assigns, agents and authorized contractors, shall have a right of entry and access to, over, upon and through all of the Condominium Property, including, in the case of the Association, each Unit, to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any items, things or areas of or in the Condominium Property. In the event of an emergency, the Association's right of entry to a Unit and its appurtenant Limited Common Areas may be exercised without notice; otherwise, the Association shall give the Owners or Occupants of a Unit no less than 24-hours advance notice prior to entering a Unit or its appurtenant Limited Common Areas.

**Section 3. Easement for Encroachments.** Each Unit and the Common Areas shall be subject to easements for encroachments on any other Unit and upon the Common Areas created or arising by reason of overhangs; or by reason of deviations in construction, reconstruction, or repair; or by reason of shifting, settlement, or movement of the structures; or by reason of errors in the Plans. Valid easements for these encroachments and for the maintenance of the same, so long as the encroaching structures remain, shall and do exist. However, no easement shall be permitted and no pavement or concrete, including driveways and sidewalks, if installed, shall be constructed on or within one foot horizontal distance of any sanitary sewer manhole or cleanout casting.

**Section 4. Easement for Support.** Every portion of a Building or utility line or any improvement on any portion of the Condominium Property contributing to the support of another Building, utility line or improvement on another portion of the Condominium Property shall be burdened with an easement of support for the benefit of all other such Buildings, utility lines, improvements and other portions of the Condominium Property.

**Section 5. Easements for Utilities.** There is hereby created upon, over and under all of the Condominium Property easements to the Association and all public agencies, governmental authorities and quasi-public utilities, for ingress and egress to, and the constructing, installation, extending, operating, inspecting, reconstructing, replacing, removing, repairing and maintaining of all utilities, including, but not limited to, water, sanitary sewer, storm sewer, gas, telephone, electricity, security systems, master television antennas and cable television. By this easement it shall be expressly permissible for such companies to construct and maintain the necessary poles and equipment, wires, circuits and conduits on, above, across and under the Condominium Property, so long as such poles, equipment, wires, circuits and conduits do not unreasonably interfere with the use and enjoyment of the Condominium Property. Should any such company furnishing a service request a specific easement by separate recordable document, the Board shall have the right to grant such easement without conflicting with the terms hereof and without the approval of any mortgagee, which consent is hereby given.

**Section 6. Easement for Services.** A non-exclusive easement is hereby granted to all police, fireman, ambulance operators, mailmen, deliverymen, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Areas in the performance of their duties.

**Section 7. Easements Reserved to Declarant.** Non-exclusive easements are hereby reserved to the Declarant, their contractors, subcontractors, agents, successors and assigns, over and upon the Common Areas (a) for access for and for the purpose of completing improvements for which provision is made in this Declaration, provided that such right of access shall be to the extent, but only to the extent, that access thereto is not otherwise reasonably available, (b) for the periods for warranties hereunder, for purposes of making repairs required pursuant to those warranties or pursuant to contracts of sale made with Unit purchasers, and (c) to maintain one or more Units for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for the Declarant and its agents, employees, successors and assigns to maintain and

carry on such facilities and activities as may be reasonably required, convenient or incidental to the completion, improvement and sale of Units or the developing of Units and Common Areas and Additional Property (as hereafter defined), including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model dwellings. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units as model residences and to use any Units as an office for the sale of Units and for related activities and to use any Unit as a construction office.

So long as Declarant owns any Property described on Exhibit "A," Declarant reserves blanket easements and the right to grant such specific easements over all the Property, including Units and Common Elements, as may be necessary in conjunction with the orderly development of the Property described on Exhibit "A" or any adjacent property (including without limitation the planning, construction, marketing, leasing, management and maintenance of improvements) for use, enjoyment, access, construction and maintenance of public or private utilities and storm drainage (whether subsurface or surface). No such easements may be located within the area beneath any building located thereon. All Units shall be subject to easements for the encroachment of initial improvements constructed on adjacent Units by the Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves and walls. Declarant reserves access easements over all Units for construction, either for that Unit or any adjacent property and easements for the installation of public or private utilities and storm drainage (whether subsurface or surface).

In addition, a non-exclusive perpetual easement is hereby reserved to Declarant, its successors and assigns, for its benefits and the benefit of future owners and Occupants of the area into which the Condominium may be expanded (the "Additional Property"), hereinafter described, for pedestrian and vehicular access over roadways and footpaths within the Condominium Property, for ingress and egress to and from the Additional Property, and each part thereof, and to extend the same onto the Additional Property. Additionally, Declarant, for itself and its successors and assigns, reserve an easement across the Common Areas to reach, and right to extend and tie into, utility lines in the Common Areas, as permitted by public authority and the utility company involved, to extend such lines into the Additional Property to service the same. These easements shall continue in effect whether or not all of the Additional Property, or any part thereof, is added to the Condominium.

**Section 8. Power of Attorney.** Each Unit Owner, by acceptance of a deed to a Unit, hereby irrevocably appoints the President of the Association, his, her or its attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Unit Owner, such deeds of easement and other instruments as may be necessary or desirable, in the sole discretion of the Board, to further establish or effectuate the foregoing easements. This power is for the benefit of each and every Unit Owner, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

**Section 9. General.** The easements and grants provided herein shall in no way affect any other recorded grant or easement.

## ARTICLE XV.

### ASSESSMENTS AND ASSESSMENT LIENS

**Section 1. Types of Assessments.** Each Unit Owner by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association: (1) annual operating assessments, (2) special assessments for capital improvements, (3) special individual Unit assessments, (4) working capital assessments, and (5) such assessments as are required or permitted to be paid under this Declaration, all of such assessments to be established and collected as hereinafter provided or as provided in this Declaration. Each Unit Owner as instructed by the Association shall either pay the Assessments under the Declaration directly to Association.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of Unit Owners and Occupants and the best interests of the Condominium Property.

#### **Section 3. Elements-Appportionment: Due Dates.**

##### **(A) Annual Operating Assessments.**

(1) At such time prior to the closing by Declarant of the sale of the first Unit, and prior to the beginning of each fiscal year of the Association thereafter, the Board shall estimate, and prorate among the Units on the basis of the undivided interest of each Unit in the Common Areas, Common Expenses of the Association consisting of the following:

(a) the estimated next fiscal year's cost of the maintenance, repair, and other services to be provided by the Association;

(b) the estimated next fiscal year's costs for insurance and bond premiums to be provided and paid for by the Association;

(c) the estimated next fiscal year's costs for utility services not separately metered;

(d) an amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacements and usual and ordinary repair expenses, and for the funding of insurance deductibles in the event of casualty loss;

(e) a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas and facilities, which funds shall be used for the purpose and not for usual and ordinary repair expenses of the Common Areas and facilities. This fund for capital expenditures and replacement and repair of Common Areas and facilities shall be maintained in a separate interest bearing account with a bank or savings and loan association. Assessments collected for contributions to



this fund may not be subject to Indiana gross income tax or adjusted gross income tax;

(f) the estimated next fiscal year's costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting Common Expenses not otherwise herein specifically excluded; and

(g) the Association's share of any expense of maintenance, repair and replacement of private streets and roads on the Additional Property.

(2) The Board shall thereupon allocate to each Unit that Unit's share of all of these items, prorated in accordance with each respective Unit's undivided interest in the Common Areas, and thereby establish the annual operating assessment for each separate Unit. For administrative convenience, any such assessment may be rounded so that monthly installments will be in whole dollars.

(3) The annual operating assessment shall be payable in advance, in equal monthly installments, provided that nothing contained herein shall prohibit any Unit Owner from prepaying assessments in annual, semi-annual, quarterly or monthly increments. The due dates of any such installments shall be established by the Board, and, unless otherwise provided, the Association shall collect on or before the first day of each month from those who own the Unit an equal monthly pro-rata share of the annual operating assessment for that Unit.

(4) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Units on the same basis as heretofore set forth.

(5) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained by the Association, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Unit Owners.

(6) Except for its responsibilities as a Unit Owner as provided in this Declaration, the Declarant shall not have any responsibility for the maintenance, repair or replacement of any part of the Common Areas.

**(B) Special Assessments for Capital Improvements.**

(1) In addition to the annual operating assessments, the Board may levy, in any fiscal year, special assessments to construct, reconstruct or replace capital improvements on the Common Areas to the extent reserves therefor are insufficient, provided that new capital improvements not replacing existing improvements shall not be constructed nor funds assessed therefor, if the cost thereof in any fiscal year would exceed an amount equal to twenty-five percent (25%) of that fiscal year's budget, without the prior consent of Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Unit Owners.

(2) Any such assessment shall be prorated among all Units in proportion to their respective undivided interests in the Common Areas, and shall become due and payable on such date or dates as the Board determines following written notice to the Unit Owners.

**(C) Special Individual Unit Assessments.** The Board may levy an assessment against an individual Unit, or Units, to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of making repairs which are or were the responsibility of a Unit Owner, the cost of insurance premiums separately billed to a Unit Owner, and a Unit owner's enforcement and arbitration charges). Any such assessment shall become due and payable on such date as the Board determines, and gives written notice to the Unit Owners subject thereto. Additionally, the Association shall have the right to pay the real estate taxes and assessments attributable to the Condominium Property in the event the same have not been paid, when due, and assess each Unit Owner for his, her or its share of such real estate taxes and assessments as a special individual Unit assessment. The share of those taxes and assessments attributable to a Unit shall be computed by multiplying the total taxes and assessments for all of the Condominium Property by the undivided interest in Common Areas attributable to that Unit. The calculation by the Association of the Units' shares of taxes and assessments shall be binding upon all Unit Owners.

**(D) Working Capital Assessments.** Each Unit Owner shall pay to Association at the closing of the purchase of that Unit three months' estimated Common Expenses for each Unit for use as working capital. The initial contribution of working capital shall be collected at the closing of each Unit, and such initial amounts paid shall not be considered as advance payments of regular assessments.

**Section 4. Effective Date of Assessments.** Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, on the date approved by the Board (with respect to assessments described in Section 3 of this Article XV), and upon the date that any installment of such assessment becomes delinquent (with respect to late charges and interest), and/or the date costs are incurred by the Association (with respect to costs of collection). Written notice of the amount of the assessments established pursuant to Section 3 of this Article XV shall be sent by the Board to the Unit Owner subject thereto prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Written

notice mailed or delivered to a Unit owner's Unit shall constitute notice to that Unit Owner, unless the Unit Owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit Owner. Failure of the Board to deliver such notice in accordance with the foregoing shall not invalidate the assessment, nor constitute a defense by any party to the collection of the assessment or enforcement of the lien therefor. Notwithstanding anything to the contrary contained herein, Declarant shall be excused from paying any of the assessments described in this Article XV for any Units owned by Declarant and offered for the first time for sale for a period of time that begins on the day this Declaration is recorded and terminates the earlier of: (i) five (5) years thereafter or (ii) upon Declarant recording an amendment waiving such right ("Exempt Period"). Declarant guarantees to each Unit Owner that the annual operating assessments will not increase over \$1800 for Cedarcrest and Ashland Units, \$2000 for Oakmont Units and \$2400 for Silverton Units annually ("Maximum Amount") during such Exempt Period, and Declarant shall pay the amount by which the expenses incurred during such Exempt Period exceed the annual operating assessments at the Maximum Amount that are receivable during such Exempt Period from the Unit Owners, excluding Declarant.

**Section 5. Effect of Nonpayment of Assessment; Remedies of the Association.**

(A) If any assessment or any installment of any assessment is not paid when due, the Board, at its option, without demand or notice, may (i) declare the entire unpaid balance of the assessment immediately due and payable, (ii) charge interest on the entire unpaid balance at the rate of interest of ten percent (10%) per annum, or at such rate as the Board may from time to time determine, and (iii) charge a reasonable, uniform late fee, as determined from time to time by the Board, as well as the cost of collection, including, without limitation, reasonable attorneys' fees to the extent not prohibited by Indiana law. The interest, late fees, and costs of collection shall be considered to be part of the "Assessment" for all purposes herein.

(B) Annual operating and both types of special assessments, together with interest, late charges and costs, shall be a charge and a continuing lien in favor of the Association upon the Unit against which each such assessment is made, from the effective date thereof.

(C) At any time after an installment of an assessment levied pursuant hereto remains unpaid after the same has become due and payable, a certificate of lien for all or any part of the unpaid balance of that assessment, and interest and costs, (including attorneys' fees), may be filed with the Recorder of Hamilton County, Indiana, pursuant to authorization given by the Board. The certificate shall contain a description of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the then current amount of the unpaid portion of the assessment. The failure to include current interest, fees, and costs of collection, in such certificate shall not invalidate the Association's right to collect such interest, fees, and costs of collection accruing before or after the filing of such certificate.

(D) Any Unit Owner who believes that an assessment chargeable to his, her or its Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the Hamilton County,

Indiana, courts for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Unit, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.

(E) Each such assessment together with interest, fees, and costs of collection, (including, without limitation, reasonable attorneys' fees to the extent not prohibited by Indiana law), shall also be the joint and several personal obligation of the Unit Owners who owned the Unit at the time when the assessment fell due.

(F) Any grantee of an interest in a Unit shall be entitled to a statement from the Board setting forth the amount of the unpaid installments of the assessments against the grantor, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth in such certificate.

(G) The Association, as authorized by the Board, may file a lien or liens to secure payment of delinquent assessments, interest, late fees and costs, (including attorneys' fees), bring an action at law against the Unit Owner or owners personally obligated to pay the same, and an action to foreclose a lien, or any one or more of these. In any foreclosure action, the Unit Owner or owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action, and the Association as plaintiff in any such action shall be entitled to the appointment of receiver to collect such rent, and to become a purchaser at the foreclosure sale, and acquire, hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or having the lien securing the same. In any such action, interest and costs of such action (including attorneys' fees) shall be added to the amount of any such assessment, to the extent not prohibited by the Indiana law.

(H) No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common Areas, or any part thereof, or by abandonment of his, her or its Unit.

**Section 6. Subordination of the Lien to First Mortgages.** The lien of the assessments and charges provided for herein shall be subject and subordinate to the tax liens on the Unit in favor of any assessing Unit and special district, and the lien of any duly executed first mortgage on a Unit recorded prior to the effective date of such assessment.

## ARTICLE XVI.

### NOTICE TO MORTGAGEES

Any holder, insurer or guarantor of a first mortgage, upon written request to the Association (which request states the name and address of such holder, insurer or guarantor and the Unit designation or address), shall be entitled to timely written notice, (delivered by certified or registered mail, return receipt requested), by the Association of:

(1) any proposed addition or amendment of the Condominium Organizational Documents effecting a change or addition in provisions establishing, providing for, governing or regulating (a) voting, (b) assessments, assessment liens or subordination of such liens, (c) reserves for maintenance, repair and replacement of Condominium Property, (d) insurance or fidelity bonds, (e) rights to use of the Common Areas, (f) responsibility for maintenance and repair, (g) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium, (h) the boundaries or composition of any Unit; (i) the interests in the Common or Limited Common Areas, (j) the convertibility of Units into Common Areas or of Common Areas into Units, (k) the leasing of any Unit or part thereof, (l) the imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit, (m) the management of the Condominium, (n) the restoration or repair of the Condominium, or (o) any provisions which are for the express benefit of the holder, insurer or guarantor of any first mortgage on a Unit.

(2) any proposed termination of the Condominium as a Condominium regime;

(3) any condemnation, eminent domain proceeding, or casualty loss which may affect a material portion of the Condominium Property or any Unit on which there is a first mortgage held, insured or guaranteed by such Eligible Holder of the First Mortgage Lien;

(4) any decision by the Association not to restore or repair any portion of the Condominium Property (after damage or destruction or partial condemnation), or not to restore or repair such property in a manner specified by the Condominium Organizational Documents;

(5) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, (the Secretary of the Association shall furnish each Unit Owner and each Eligible Holder of the First Mortgage Lien whose interest may be affected, prompt notice of the obtaining, change or termination of any insurance policy.);

(6) any decision by the Association to reconstruct the Condominium Buildings where all Buildings containing Units have been destroyed;

(7) any decision by the Association to construct significant new capital improvements to replacing existing improvements;

(8) times and places of Unit Owners' meetings;

(9) any default under the Condominium Organizational Documents which gives rise to a cause of action against a Unit Owner whose Unit is subject to the mortgage of such holder or insurer, where the default has not been cured in sixty (60) days;

(10) any decision by the Association to establish self-management when professional management had been required previously by an Eligible Holder of the First Mortgage Lien; and

(11) any proposed action which requires the consent of a specified percentage of Eligible Holders of the First Mortgage Liens.

No notice shall be required for any addition or amendment of the Condominium Organizational Documents made for the purpose of correcting technical errors or for clarification only, nor to any mortgagee who is not an Eligible Holder of the First Mortgage Lien.

## ARTICLE XVII.

### AMENDMENTS

**Section 1. Power to Amend.** Except as hereinafter provided, amendment of this Declaration (or the other Condominium Organizational Documents) shall require (a) the consent of Unit Owners exercising not less than seventy-five percent (75%) of the voting power of Unit Owners (including Declarant), and (b) notice to all Eligible Holders of the First Mortgage Liens on Units. Notwithstanding the foregoing:

(A) The prior written consent of all Unit Owners shall be required for any amendment effecting a change in:

- (1) the boundaries of any Unit;
- (2) the undivided interest in the Common Areas appertaining to a Unit or the liability for Common Expenses appertaining thereto except as permitted by the expansion provisions in this Declaration;
- (3) the number of votes in the Association appertaining to any Unit except as permitted by the expansion provisions in this Declaration;
- (4) to terminate the Condominium or remove any interest from the Property; or
- (5) the fundamental purposes to which any Unit or the Common Areas are restricted.

(B) Unless at least seventy-five percent (75%) of the Eligible Holders of the First Mortgage Lien (based upon one vote for each mortgage owned), and seventy-five percent (75%) of Unit Owners have given their prior written approval (except in some cases a greater majority or unanimous approval may be needed as provided herein or in the Act) the Association shall not be entitled to (a) take any action, or (b) make any change, which materially affects the operation of the Association, including the following:

- (1) Voting rights;

- (2) Assessments, assessment liens, or subordination or assessment liens;
- (3) Reserves for maintenance, repair and replacement of Common Areas;
- (4) Responsibility for maintenance and repairs;
- (5) Reallocation of interest in the general or Limited Common Areas, or rights to their use except as permitted by the expansion provisions in this Declaration;
- (6) Boundaries of any Units;
- (7) Convertibility of Units into Common Areas or visa versa;
- (8) Expansion or contraction of the Property, or the addition, annexation or withdrawal of property to or from the Property except as permitted by the expansion provisions in this Declaration;
- (9) Insurance or fidelity bonds;
- (10) Imposition of any restrictions on a Unit owner's right to sell or transfer his or her Unit;
- (11) A decision by the Association to establish self-management when professional management had existed previously;
- (12) Restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;
- (13) Any action to terminate the legal status of the Property after substantial destruction or condemnation occurs;
- (14) Provisions that specifically and explicitly expressly benefit Eligible holders of a first mortgage lien, mortgage holders, insurers or guarantors;
- (15) The prorata interest or obligations of any individual Unit for the purpose of: (a) levying assessments or charges or allocating distributions or hazard insurance proceeds or condemnation awards or (b) determining the prorata share of the ownership of each Unit in the Common Areas, except as provided in the expansion provisions;
- (16) Dimensions of any Unit by partition or subdivision;
- (17) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas;

(18) Use hazard insurance proceeds for losses to any Condominium Property (whether to Units or to Common Areas) for other than repair, replacement or reconstruction of such Condominium Property, except as provided by statute in case of substantial loss to the Units and/or Common Areas.

Notwithstanding the above, the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas by the Condominium Property shall not be deemed a transfer within the meaning of this clause.

(C) Eligible Holders of the First Mortgage Lien shall have the right to examine the books and records of the Association or the Condominium project.

(D) The consent of Eligible Holders of the First Mortgage Liens on Units to additions or amendments to the Condominium Organizational Documents shall not be required except in those instances, previously described, in which the Eligible Holders of the First Mortgage Liens on Units are entitled to written notice of such proposed additional or amendment.

(E) Any Eligible Holders of the First Mortgage Liens who obtain title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's unpaid dues or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee.

(F) In any event, and notwithstanding any provision to the contrary, Declarant reserves the right and power, and each Unit Owner by acceptance of a deed to a Unit is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable (except by Declarant), without the consent, approval or signature of each Unit Owner, to (i) amend the Condominium Organizational Documents, to the extent necessary to confirm to the requirements then governing the purchases or insurance of mortgages by The Mortgage Corporation, Federal National Mortgages Association, Governmental National Mortgages Association, Federal Home Loan Mortgage Corporation, Mortgage Guaranty Insurance Corporation, Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other similar agency or organization, (ii) induce any such agencies or entities to make, purchase, sell, insurance or guarantee first mortgages covering Unit ownership, (iii) to correct typographical errors, surveyor errors in descriptions or otherwise or obvious factual errors the correction of which would not impair the interest of any Unit Owner or mortgagee, (iv) bring this Declaration into compliance with the Act (v) to amend Exhibits "A", "B", "D", "E" and "F" for each expansion; or (vi) to amend this Declaration in any manner that does not materially interfere with the use and enjoyment of a Unit by a Unit Owner and further provided that if there is a Unit Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and consent to the reservation of, the power of Declarant to vote in favor of, make, execute and record any of the foregoing amendments. The rights of



Declarant under this Section shall terminate at such time as Declarant no longer holds or controls title to a Unit and the right of Declarant to add the Additional Property has expired.

An Eligible Holder of the First Mortgage Lien on a Unit who receives a written request to approve additions or amendments who does not deliver or post to the request party a negative response within thirty (30) days after it receives such written notice (provided that notice was delivered by certified or registered mail, return receipt requested), shall be deemed to have approved such request. The rights of Declarant shall terminate at such time as Declarant no longer holds or controls title to a Unit and the right to expand the Condominium has expired.

**Section 2. Method to Amend.** An amendment to this Declaration (or the Plans or the By-Laws), adopted with the consents hereinbefore provided, shall be executed with the same formalities as this Declaration by two officers of the Association and shall contain their certification that the amendment was duly adopted in accordance with the foregoing provisions. Any amendment adopted by the Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to the Declaration shall be duly executed by it with the same formalities as to execution as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in the Declarant or any duly empowered successor Declarant by the Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Recorder of Hamilton County, Indiana.

## ARTICLE XVIII.

### EXPANSIONS

**Section 1. Reservation of Expansion Option and Option not to Expand.** Declarant expressly reserves the option to expand the Condominium Property as provided in this Article. Notwithstanding the foregoing, the Declarant reserves an option to not expand the Condominium.

**Section 2. Limitation on Option.** Declarant has no limitation on its option to expand the Condominium Property except as provided in this Article, or elsewhere in this Declaration, and except as otherwise so expressly limited, has the sole right, power, and authority to expand the Condominium Property. No Unit owner's consent is required to enable Declarant to expand the Condominium Property.

**Section 3. Maximum Expansion Time.** Declarant's option to expand the Condominium Property shall expire and terminate at the end of seven years from the date this Declaration is filed for record, unless Declarant, by written notice to the Association, elects to waive that option effective at a time prior to the expiration of that seven-year period. There are no other circumstances that will terminate that option prior to the expiration of that seven-year period.

**Section 4. Legal Description.** A legal description, by metes and bounds, of all Additional Property that, through exercise of Declarant's option, may be added to the Condominium Property by submission to the Condominium Act as part of this Condominium, is attached hereto and marked "Exhibit E", and referred to herein as the "Additional Property".

**Section 5. Composition of Portions Added.** Neither all nor any portion of the Additional Property must be added to the Condominium Property, nor, if any of the Additional Property is added, shall it be required that a particular portion of the Additional Property must be added, provided that portions added meet all other requirements set forth in this Article, and all improvements on portions added are substantially completed prior to the time added to the Condominium. Except as expressly provided in this Article, there are no limitations on the portions of the Additional Property that may be added to the Condominium Property.

**Section 6. Time for Adding Portions.** Portions of the Additional Property may be added to the Condominium Property from time to time, and at different times, within the time limit previously described. There are no limitations fixing the boundaries of portions added, or regulating the order in which portions are added.

**Section 7. Improvement Location Limitations.** There are no established or defined limitations as to the location of any improvements that may be made or any portion of the Additional Property added to the Condominium Property except such limitations as may then be in effect by reason of the laws and lawful rules and regulations of the appropriate governmental bodies and authorities having jurisdiction.

**Section 8. Maximum Number of Units.** The maximum total number of Units that may be created on the Additional Property and added to the Condominium Property is one hundred (100), provided, that the foregoing shall neither limit nor restrict nor be so construed as to limit or restrict the number of dwelling Units that may be constructed on all or any portion of the Additional Property that is not added to the Condominium Property. Subject to the foregoing total maximum of Units that may be added to the Condominium Property there is no limit as to the maximum number of Units per acre that may be created on any portion of the Additional Property added to the Condominium Property.

**Section 9. Non-Residential Uses.** The maximum percentage of the aggregate land and floor area of all Units that may be created on the Additional Property or portions thereof and added to the Condominium Property that are not restricted exclusively to residential use is zero, since no such Unit may be so created and added. There is no restriction on the use of the Additional Property, or any portion thereof, which is not added to the Condominium Property.

**Section 10. Compatibility of Structures.** All structures erected on all or any portion of the Additional Property and added to the Condominium Property will be consistent with and be reasonably compatible with, but need not be substantially identical to, the structures then on the Condominium Property in terms of quality of construction, the principal materials to be used, and architectural style and design. Consistency and compatible style and design shall be deemed to exist if the exterior appearance of the structures on the Additional Property is compatible and harmonious with those then on the Condominium Property. Design shall not be deemed to be incompatible or not compatible because of changes in the number of dwelling Units in a Building, variances in set-backs or locations of structures in relation to other improvements, or changes in layout of Units.

**Section 11. Improvements other than Structures.** With respect to improvements other than structures on any Additional Property added to the Condominium Property, there is no

requirement that any such improvements must be made and there are no restrictions or limitations upon what, if any, such non-structural improvements shall be made; except that any such non-structural improvements shall not be incompatible with other improvements than then on the Condominium Property.

**Section 12. Types of Units.** The types of Units and recreational facilities, if any, which may be constructed upon the all or any portion of the Additional Property and added to the Condominium Property are shown on the Plans filed herewith, but need not be substantially identical to such Plans or to any of the types of Units then on the Condominium Property.

**Section 13. Limited Common Areas.** Declarant reserves the right with respect to all or any portion of the Additional Property added to the Condominium Property to create Limited Common Areas therein consistent in type, size, and number as those areas then so designated as such in the Condominium Property, including, without limiting the generality of the foregoing, patios, porches, and limited common driveway areas in front of garages. The precise size and number of such newly created Limited Common Areas cannot be ascertained precisely, because those facts will depend on how large each portion added may be, the size and location of the Buildings and other improvements on each portion, and other factors presently undetermined.

**Section 14. Supplementary Plans.** Declarant does not consider any other drawings or Plans, other than the Condominium Plans, presently appropriate in supplementing the foregoing provisions of this Article. However, at such time as Declarant adds all or any portion of the Additional Property to the Condominium Property it shall file drawings and Plans with respect to the Additional Property as required by the Condominium Act.

**Section 15. Procedures for Expansion.** All or any portion of the Additional Property shall be added to the Condominium Property by the execution and filing for record by the Declarant and all owners and ground lessees of the land so added, in the manner provided by the Condominium Act, of an amendment to the Declaration that contains the information, drawings and Plans with respect to the Additional Property and improvements thereon added required by the Condominium Act.

**Section 16. Effects of Expansion.** Upon the filing for record of an amendment to the Declaration adding all or any portion of the Additional Property to the Condominium Property:

(A) the added portion shall thereafter be subject to all of the terms and provisions hereof, to the same extent and with the same effect as if that added portion had been provided herein as constituting part of the Condominium Property, that is, the rights, easements, covenants, restrictions and assessment plan set forth herein shall run with and bind the added portion in the same manner, to the same extent, and with the same force and effect as the terms of this Declaration apply to the Condominium Property;

(B) the owner or owners of the added portion shall thereupon become members, to the same extent, with the same effect, subject to the same obligations, and imbued with the same rights, as all other members; and

(C) the undivided interests of Units in the Common Areas, as so expanded, shall be reallocated as follows. Each amended Declaration shall include (i) an amended

Exhibit "D" which shall amend Exhibit "D" hereto by setting forth the legal description of such addition, and (ii) an amended Exhibit "B" which shall amend Exhibit "B" hereto by setting forth the amended percentages of the undivided interests in the Common Areas (as amended and added to by such amended Declaration) allocated to each Unit (including all previous Units and the additional Units added by such amended Declaration). The percentage of the undivided ownership interest in the Common Areas as amended by each amended Declaration, and as set forth in the amended Exhibit "B", shall be determined and adjusted in the following manner:

(1) The Common Areas as amended by such amended Declaration shall be deemed to consist of:

(a) the Common Areas as existing immediately prior to the recording of such amended Declaration (hereinafter referred to as the "Existing Common Areas"); and

(b) the Common Areas added by such amended Declaration (hereinafter referred to as the "Added Common Areas").

(2) The Units as amended by such amended Declaration shall be deemed to consist of:

(a) the Units existing immediately prior to the recording of such amended Declaration (hereinafter referred to as the "Existing Units"); and

(b) the Units added by such amended Declaration (hereinafter referred to as the "Added Units").

The size of each of the Added Units shall be added to the current aggregate size of the Existing Units and the total thereof shall be deemed to be the new size of all Units of the Property. "Size" as used in this paragraph shall be determined by the Declarant as of the date of such recording of the amended Declaration. Such determination by the Declarant shall be conclusive and binding upon all Unit Owners, mortgagees and other parties who then or in the future have any interest in the Property.

(3) The percentage of undivided ownership interest, as amended and adjusted by such amended Declaration, in the entire Common Areas, consisting of the Existing Common Areas, plus the Added Common Areas, to be allocated among all the Units, consisting of the Existing Units plus the Added Units, shall be computed by taking as a basis the size of each Unit in relation to the size of all Units of the Property, determined as aforesaid.

The Existing Units shall be entitled to their respective percentages of ownership, as amended and adjusted and set forth in amended Exhibit "B" attached to such amended Declaration, in the Added Common Areas, as well as in the Existing Common Areas.

(4) Each and all of the provisions of this Declaration and the Exhibits attached hereto, as amended by each such successive amended Declaration and the amended Exhibits attached thereto, shall be deemed to apply to each and all of the Units, including all such Added Units as well as all Existing Units, and to all of the Common Areas, including all such Added Common Areas as well as all Existing Common Areas.

(5) The recording of an amended Declaration shall not alter or affect the amounts of any liens for Common Expenses due from any Existing Unit Owners prior to such recording, nor the respective amounts theretofore assessed to or due from Existing Unit Owners for Common Expenses or other assessments.

(6) The lien of any mortgage encumbering any Existing Unit, together with its appurtenant percentage of undivided ownership interest in the Existing Common Areas, shall automatically be deemed to be adjusted and amended when an amended Declaration is recorded, in accordance with the respective percentage of undivided ownership interest in the Common Areas for such Existing Unit as set forth in the amended Exhibit "B" attached to such amended Declaration, and the lien of such mortgage shall automatically attach in such percentage to the Added Common Areas.

(a) In all other respects, all of the provisions of this Declaration shall include and apply to such additional portions, and to the owners, mortgagees and lessees thereof, with equal meaning and of like force and effect.

(b) Each owner by acceptance of the deed conveying his Unit, agrees for himself and all those claiming under him, including mortgagees, that this Declaration and each amended Declaration is and shall be deemed to be in accordance with the Act and for purposes of this Declaration and the Act, any changes in the respective percentages of ownership in the Common Areas as set forth in each such amended Declaration shall be deemed to be made by agreement of all Unit Owners.

(c) The foregoing provisions of the Declaration and deeds and mortgages of the Units and Common Areas contain and will contain clauses designed to accomplish a shifting of the Common Areas. None of said provisions shall invalidate the other toward the end that a valid shifting of the percentage interest in the Common Areas can be accomplished.

## ARTICLE XIX.

### GENERAL PROVISIONS

**Section 1. Covenants Running With the Land.** The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Condominium Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.

**Section 2. Enforcement.** In addition to any other remedies provided in this Declaration, Declarant, the Association, and each Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the By-Laws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Unit Owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Unit Owner shall have rights of action against each other for failure to comply with the provisions of the Condominium Organizational Documents, rules and regulations, and applicable law, and with respect to decisions made pursuant to authority granted thereunder, and the Association shall have the right to assess reasonable charges against a Unit Owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration.

**Section 3. Severability.** Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with mandatory provisions of the Condominium Act, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no wise affect any other provisions of this Declaration, which provisions shall remain in full force and effect.

**Section 4. Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, limited liability companies, men or women, shall in all cases be assumed as though in such case fully expressed.

**Section 5 Captions.** The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

**Section 6. Perpetuities and Restraints on Alienation.** If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the incumbent President of the United States and the Governor of Indiana.

**Section 7. Notices.** Notices provided for in the Act, Declaration or By-Laws shall be in writing and shall be addressed to the Association or Board, as the case may be, at 6880 North Frontage Road, Suite 100, Burr Ridge, Illinois, 60527 or to the Unit Owner at the address of his Unit, or at such other address as hereinafter provided. The Association or Board may designate a different address or addressees for notices to them, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

**Section 8. Litigation/Arbitration.** Excluding (a) any suit by the Association to collect Assessments under Article XV; (b) any suit by the Association to obtain a temporary restraining order to enforce the provisions of Article III; and (c) arbitration conducted by the Board under Article III, any and all claims, disputes and controversies by and between the Association, a Unit Owner, Developer, Declarant, Managing Agent or any other party connected in any way to the Association, or any combination of the foregoing, arising from or related to the Property, the Association, any improvements to the Property, the sale of any Unit on the Property, including, without limitation, any claim of breach of contract, negligence, negligent or intentional misrepresentation or non disclosure in the inducement, execution or performance of any contract, including this arbitration agreement, and breach of any alleged duty of good faith and fair dealings, shall be submitted to arbitration by and pursuant to the rules of Construction Arbitration Services, Inc. (hereinafter CAS) in effect at the time of the request for arbitration or by such other arbitration service as Declarant shall, in its sole discretion select, and pursuant to the rules of that arbitration service in effect at the time of the request for arbitration. This arbitration agreement shall inure to the benefit of, and be enforceable by all successors and assigns of the parties. Any party shall be entitled to recover reasonable attorneys' fees and costs incurred in enforcing this arbitration agreement, and the arbitrator shall have sole authority to award such fees and costs. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any state or federal court of competent jurisdiction. This arbitration agreement shall be deemed to be a self executing arbitration agreement. Any disputes concerning interpretation or the enforceability of this arbitration agreement, including without limitation, its revocability or voidability for any cause, the scope of arbitrable issues and any defense based on waiver, estoppel or laches shall be decided by the arbitrator. The initiation of or participation by any party in any judicial proceedings concerning this arbitration agreement or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this arbitration agreement, and notwithstanding provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration agreement. Any party who shall commence a judicial proceeding concerning a dispute that is arbitrable, however, shall also be deemed a party requesting arbitration within the meaning of this arbitration agreement. The arbitrator's compensation shall be borne equally by the arbitrating parties. Any additional fees may be assessed in accordance with the arbitration rules and fees. Parties expressly agree that this arbitration agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 USC §1 *et seq.*) now in effect as the same may from time to time be amended, supplanted or replaced, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any local law, ordinance or judicial rule may be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rule shall govern the conduct of the proceedings. If any provision of this arbitration agreement shall be determined by arbitrator or by any court to be (i) non-enforceable or

(ii) have been waived, the remaining provision shall be deemed to be severable therefrom and enforceable according to their terms. Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage owned), and seventy-five percent (75%) of the Unit Owners (other than the sponsor, developer or builder) of the individual Units have given their prior written approval (except in some cases a greater majority or unanimous approval may be needed as provided herein or in the Act) the Association shall not be entitled to commence any arbitration against the Developer, Declarant, or any other party connected in any way to the Association. No lawsuit shall be permitted in any circumstance against Declarant.

**Section 9. Exculpation.** Notwithstanding anything contained in this Declaration, if at any time Declarant shall fail to perform or pay any covenant or obligation to be performed or paid under this Declaration or any other agreement, and as a consequence thereof a Unit Owner or third party claiming by, through or under a Unit Owner, shall recover a money judgment against Declarant, such judgment shall be enforced against and satisfied out of only the proceeds of sale produced upon execution of such judgment and levy thereon against Declarant's interest in the Condominium Property, the rents, issues or other income receivable from the Condominium Property after such judgment is obtained, or the consideration received by Declarant from the sale of other disposition of the Condominium Property after such judgment is obtained. The provisions of this Section 9 are not intended to relieve Declarant from the performance of any of its obligations hereunder, but rather to limit Declarant's liability as aforesaid.

**Section 10. Non-Liability of the Board, Officers and Declarant.** Neither the Board, Officers of the Association nor Declarant shall be personally liable to the Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever of such Board, Officers or Declarant, except for any acts or omissions found by a court to constitute gross negligence, fraud or criminal intent. The Unit Owners shall indemnify and hold harmless each member of the Board, Officers and Declarant, and their respective members, heirs, executors, administrators, successors and assigns in accordance with the provisions of the By-Laws.

**Section 11 Disclaimer of Warranties.** Declarant hereby disclaims and excludes any and all warranties, express or implied, (included without limitation, any implied warranty of habitability, merchantability, quality or fitness for a particular purpose), with respect to the Property, Units, Common Areas and Limited Common Areas. In any event, Declarant shall not be liable for any personal injury, emotional distress, loss of income, loss of value and adverse health affects and or other special, indirect, punitive, consequential or secondary damages and/or losses which may arise out of the Property, Units, Common Areas and Limited Common Areas. The Association's and Unit Owners' remedies, if any, are limited to repair and replacement.

**Section 12. Disclaimer of Other Entities.** Unit Owners and the Association acknowledge and understand that their relationship is with the Declarant, pursuant to the written terms of this Declaration, and no other entity notwithstanding anything to the contrary in advertising, promotional or other materials. Unit Owners and the Association acknowledge that they have no claim against any entity including affiliates, subsidiaries, parents or otherwise under common control of Declarant, and Unit Owners and the Association waive and release any such claims, if any.



**Section 13. Assignments by Declarant.** All rights which are specified by this Declaration to be the rights of the Declarant are assignable, mortgageable, pledgeable or transferable. Any successor to, or assignee of, the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of the Declarant hereunder as fully as if named as such party herein. No party exercising rights as Declarant hereunder shall have or incur any liabilities for the acts of any other party, which previously exercised or subsequently shall exercise such rights.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 11<sup>th</sup> day of June, 2004.

PORTRAIT HOMES-NOBLE WEST LLC, an  
Illinois limited liability company

By: [Signature]  
Its: John J. Giampoli

STATE OF Illinois )  
                                  ) SS:  
COUNTY OF Cook )

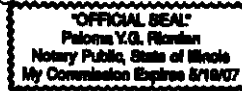
Before me, a notary public, personally appeared John J. Giampoli, an officer of Portrait Homes-Noble West LLC, an Illinois limited liability company, the Declarant in the foregoing instrument, who acknowledged the execution of this instrument to be the signatory's free act and deed, on behalf of the Declarant, for the uses and purposes set forth herein.

In Witness whereof, I have hereunto set my names this 11<sup>th</sup> day of June, 2004.

[Signature]  
Paloma Y.G. Floridan  
Notary Public

My Commission Expires: 5/19/07

County of Residence: Cook



This instrument prepared by  
Greg A. Bower, Attorney at Law, Koransky & Bower, P.C., 425 Joliet Street, Suite 425, Dyer, Indiana 46311.

**Consent of Mortgage Holder**

The undersigned Lender ("Lender") is the owner and holder of a Second Amended and Restated Promissory Note (the "Note") dated January 15, 2004 in the original principal amount of \$80,000,000, which Note is secured by a lien upon the herein described Property pursuant to that certain Mortgage, Security Agreement, Financing Statement, Assignment of Rents and Leases and Fixture Filing ("Mortgage") dated January 20, 2004, recorded as Document Number 20040004719 in the Office of the Recorder of Hamilton County, Indiana.

Lender hereby consents to the execution and recording of this Declaration, consents to the creation of the covenants, conditions and restrictions herein established against the Property pursuant to the Declaration and agrees that the Mortgage and the lien and security interests thereof (together with any and all other liens and security interests in favor of Lender against the Property given to secure the payment and performance by Declarant of the indebtedness and the other obligations of Declarant under the Note, the Mortgage and any and all other instruments and agreements given to secure payment of the Note) are hereby subordinated to this Declaration and to the covenants, conditions and restrictions contained herein; provided, however, that no lien or assessment created by or arising under this Declaration (including, specifically, but without limitation, the lien for assessments created in this Declaration) shall be prior or superior to the Mortgage, and as to any which liens or assessments created by or arising under this Declaration the lien and security interests of the Mortgage shall remain prior and superior at all times. It is the intention of Lender and Declarant that in the event of any foreclosure of the Mortgage or in the event of any conveyance in lieu of such Mortgage this Declaration and all covenants, conditions, restrictions and other rights and duties created herein will remain in place and in full force and effect against the Property and all parties bound by the Declaration as if no such foreclosure or transfer in lieu of foreclosure had occurred.

LENDER:

**BANK OF AMERICA**

Stephen A. Windell

By: Stephen A. Windell

Title: Senior Vice President

**CONCRETE CONSTRUCTION**  
**CONCRETE CONSTRUCTION**  
 1501 NORTH WINDY STREET, SUITE 200  
 INDIANAPOLIS, INDIANA 46204  
 (317) 786-8871  
**THE SCHNEIDER CORPORATION**  
 5001 OTIS AVENUE  
 INDIANAPOLIS, INDIANA 46210  
 (317) 828-7100



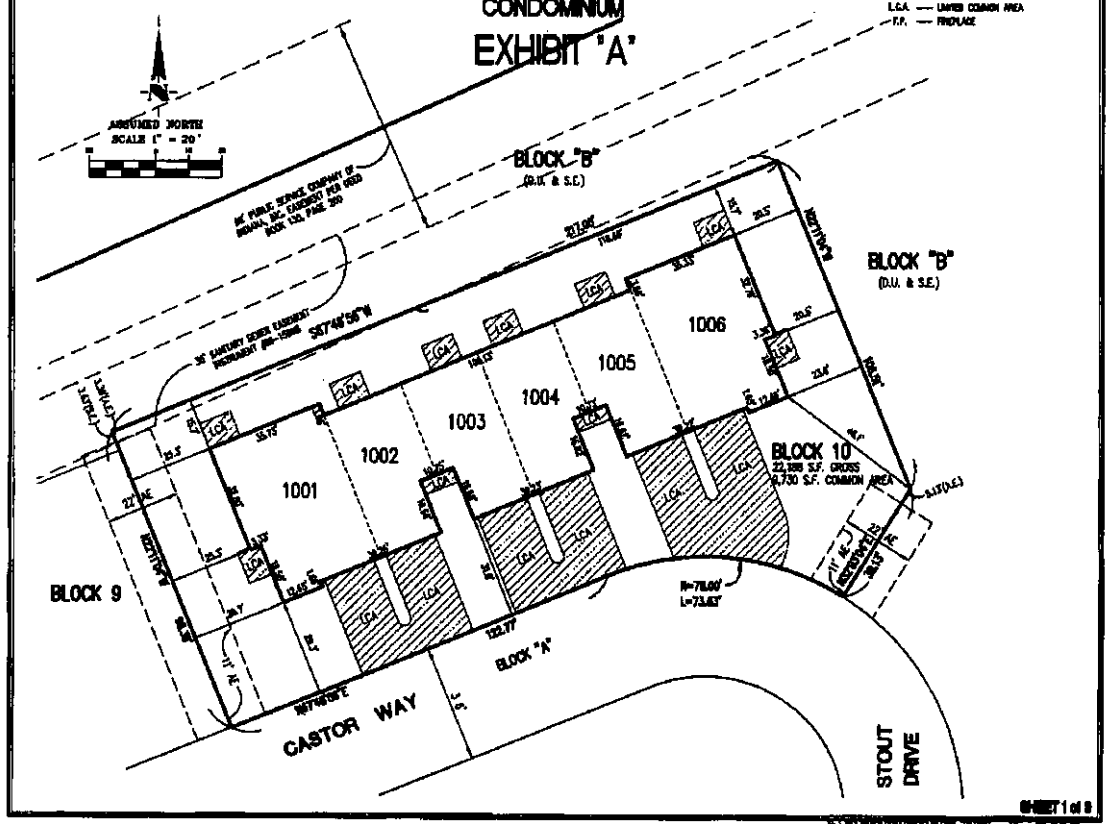
# BUILDING 10 IN BLOCK 10 OF THE TOWNES AT NOBLE WEST

PART OF THE S.E. 1/4 OF SEC.16-T16N-R4E  
 HAMILTON COUNTY, INDIANA  
 CONDOMINIUM  
 EXHIBIT 'A'

THIS INSTRUMENT WAS PREPARED  
 BY BRYAN F. CALUM  
 PROFESSIONAL LAND SURVEYOR  
 INDIANA, #1076  
 5801 OTIS AVENUE  
 INDIANAPOLIS, INDIANA 46210  
 TELEPHONE (317) 828-7100

**LEGEND**

- S.F. — SQUARE FOOTAGE
- DASH — DRAINAGE UTILITY AND SENIOR EASEMENT
- (M) — NON-BUILD
- AE — ACCESS EASEMENT
- L.C.A. — LIMITED COMMON AREA
- F.P. — FIREPLAZE



SHEET 1 of 8

IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE BOARD OF SURVEYORS OF THE STATE OF INDIANA

CONDOMINIUM  
 COMMON INTERESTS  
 6535 NORTH WINDHAM STREET, SUITE 300  
 INDIANAPOLIS, INDIANA 46220  
 (317) 708-0872

BY ORDER OF  
 THE SCHNEIDER CORPORATION  
 METROFC FORT ASSOCIATE  
 8801 OTIS AVENUE  
 INDIANAPOLIS, INDIANA 46219  
 (317) 621-7100

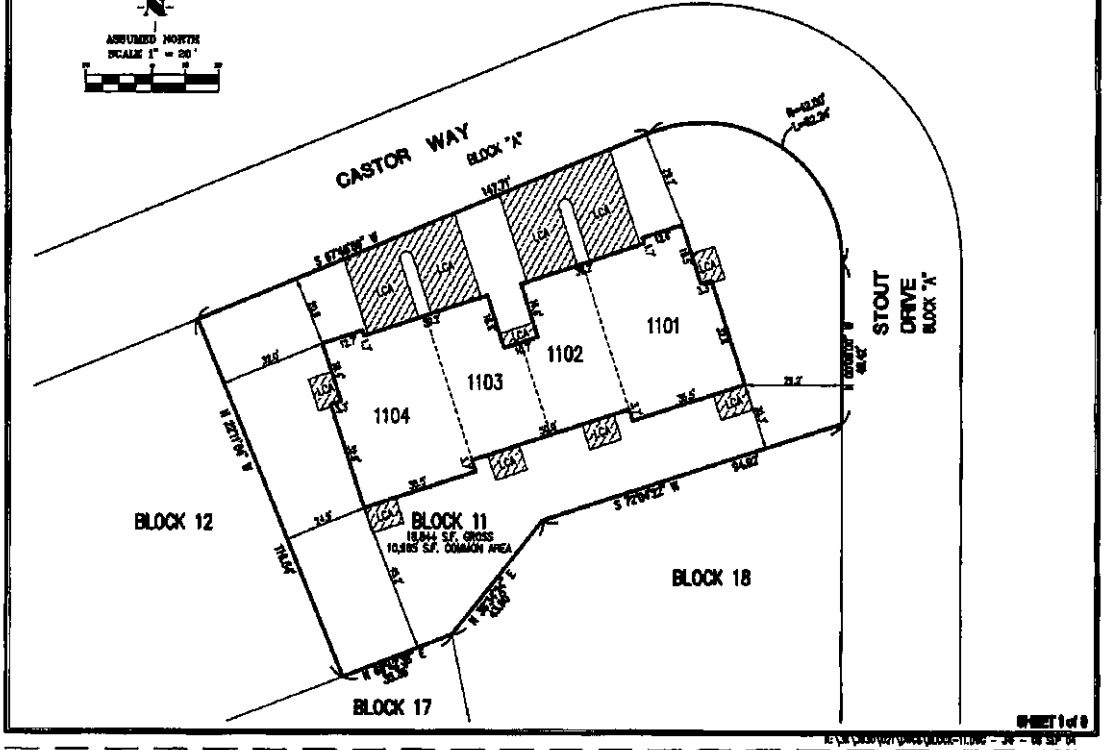


# BUILDING 11 IN BLOCK 11 OF THE TOWNES AT NOBLE WEST

PART OF THE S.E. 1/4 OF SEC.16-T18N-R4E  
 HAMILTON COUNTY, INDIANA  
 CONDOMINIUM  
 EXHIBIT 'A'

THIS INSTRUMENT WAS PREPARED  
 BY BRYAN F. CATLIN  
 PROFESSIONAL LAND SURVEYOR  
 INDIANA #016263  
 8801 OTIS AVENUE  
 INDIANAPOLIS, INDIANA 46219  
 TELEPHONE (317) 628-7100

- LEGEND**
- S.F. — SQUARE FOOTAGE
  - BASE — IRONNAGE, UTILITY AND SEWER EASEMENT
  - (NO) — NON-GRASS
  - AE — ACCESS EASEMENT
  - L.C.A. — LIMITED COMMON AREA
  - F.P. — FIREPLACE



**EXHIBIT B**  
**TO**  
**THE TOWNES AT NOBLE WEST CONDOMINIUM DECLARATION**  
**BUILDING 10 and 11**

---

**PERCENTAGE OF INTEREST TABLE FOR CONDOMINIUM UNITS**

<b>UNIT NUMBER</b>	<b>PERCENTAGE OF INTEREST</b>
1001	11.930364%
1002	10.247056%
1003	10.247056%
1004	10.247056%
1005	10.247056%
1006	11.930364%
1101	8.083717%
1102	9.491807%
1103	9.491807%
1104	8.083717%
	100.000000%

EXHIBIT C  
BY-LAWS  
OF  
THE TOWNES AT NOBLE WEST CONDOMINIUM ASSOCIATION, INC.

**ARTICLE I**

Members  
(Unit Owners)

SECTION 1. Eligibility. There shall be one class of Members of The Townes at Noble West Condominium Association, Inc. The Members shall consist of the respective Unit Owners of the Property known as The Townes at Noble West Condominium located within Hamilton County, Indiana (called "Property"), in accordance with the respective percentages of ownership interest in the Common Areas of the Property owned by the respective Unit Owners (these and other terms are used in these By-Laws as they are defined in The Townes at Noble West Condominium Declaration for The Townes at Noble West Condominium Association, Inc., which Declaration is recorded in the Office of the Recorder of Hamilton County, Indiana. The words "member" or "members" as used in these By-Laws means and shall refer to "Unit Owner" or "Unit Owners", as the case may be, as defined in the Declaration). If a Unit Owner is a trust, then the member shall be a beneficiary of such trust, and if a Unit Owner or such a beneficiary is a corporation or partnership, the member may be an officer, partner, or employee of such Unit Owner or beneficiary.

SECTION 2. Succession. The membership of each Unit Owner shall terminate when he ceases to be a Unit Owner, and upon the sale, transfer or other disposition of his ownership interest in the Property, his membership in the Association shall automatically be transferred to the new Unit Owner succeeding to such ownership interests.

SECTION 3. Regular Meetings. The first regular annual meeting of Unit Owners as determined by Declarant (the "First Meeting") may be held within the limits of Hamilton County, subject to the terms hereof, on any date, at the option of the Board, provided, however, that said First Meeting shall be held not later than either (a) sixty (60) days after Portrait Homes-Noble West LLC ("Declarant") has sold and delivered its deed for at least 75% of the Units, or (b) twenty-four (24) months from the recording date of the Declaration, whichever is earlier, provided, however, that (a) in computing the aforementioned "75%" figure, the numerator shall be the number of Units which have been sold and for which a deed had been delivered, and the denominator shall be the maximum number of Units which may be created in the Property together with the Additional Property, as said maximum number is set forth in Section 8 of Article XVIII of the Declaration, and (b) if additional property is added pursuant to the Declaration, then the aforementioned two (2) year period shall be extended for an additional two (2) years from the date of recording the amendment to this Declaration and the amendment to the Plat which establishes the addition of the Additional property. Subsequent to the First Meeting, there shall be a regular annual meeting of the Unit Owners held each year within limits of Hamilton County, within fifteen (15) days of the anniversary of the First Meeting, one of the

purposes of which shall be to elect members of the Board. All such meetings of Unit Owners shall be held at such place in Hamilton County, Indiana, and at such time, and for purposes as specified in the written notice of such meeting which shall be mailed to all Unit Owners at least ten (10) days and not more than sixty (60) days prior to the date of such meeting, except that notice of the First Meeting shall be given at least twenty-one (21) days prior to the date of such Meeting. Regarding the First Meeting, the Declarant shall provide to any Unit Owner the names, addresses, telephone numbers (if available), and weighted vote of each Unit Owner entitled to vote at the Meeting within three (3) working days of the request. Unit Owners shall receive this same information with three (3) working days of request for each subsequent meeting to elect members of the Board. The method of calling meetings shall be by the aforesaid written notice sent by the Board, copies of which notice may also be either delivered personally to the Unit Owners or to the entry door of their Unit or posted conspicuously in the hallways, lobbies, or on bulletin boards or other parts of the Common Areas, at the discretion of the Board.

**SECTION 4. Special Meetings.** Special meetings of the Unit Owners may be called by the President or by a majority of the directors of the Board, or by twenty percent (20%) of the Unit Owners. Said special meetings shall be called by delivering written notice to all Unit Owners not less than ten (10) days nor more than sixty (60) days prior to the date of said meeting, stating the date, time and place of said special meeting within Hamilton County and the matters to be considered. Matters to be submitted by the Unit Owners shall first be submitted to the Board, at least five (5) days prior to the special meeting, who shall then submit such matters to the special meeting.

**SECTION 5. Voting Member.** There shall be one Person with respect to each Unit who shall be entitled to vote at any meeting of the Unit Owners (Voting Member). Such Voting Members shall be the Unit Owner or one of the group composed of all the Unit Owners of a Unit or may be some Person designated by such Unit Owners to act as proxy of his or their behalf and who need not be a Unit Owner. The proxies shall give the Unit Owner the right to express a preference from among the known candidates or to write in a name. Such designations shall be dated, shall be made in writing to the Board prior to the meeting, shall be executed by the Unit Owner or his duly authorized attorney in fact or by any of multiple owners of a Unit as set forth below, and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Unit Owner or Unit Owners, and such designations shall be invalid after 11 months from their date unless provided otherwise therein. Any or all Unit Owners of a Unit, and their designee, if any, may be present at any meeting of the Voting Members, but only the Voting members of the Unit may vote or take any other action as a Voting Member either in person or by proxy. The Declarant shall designate the voting member with respect to any Unit owned by the Declarant. In the absence of any written designation with respect to a particular Unit, the Board shall be entitled to conclusively rely on a vote cast by anyone of the group composed of all Unit Owners of that particular Unit.

**SECTION 6. Voting.** The aggregate number of votes for all Unit Owners shall be one hundred percent (100%), and shall be divided among the respective Unit Owners in accordance with their respective percentage of ownership interest in the Common Areas. If any Unit Owner consist of more than one Person, and if only one of the multiple owners of a Unit is present at a meeting of the Association, he is entitled to cast all the votes allocated to that Unit, if more than one of the multiple owners are present, the votes allocated to that Unit may be cast only in

accordance with the agreement of a majority in interest of the multiple owners; there is majority agreement if any one of the multiple owners cast the votes allocated to that Unit without protest being made promptly to the Person presiding over the meeting by any of the other owners of the Unit.

SECTION 7. Quorum. A quorum of Unit Owners for any meeting shall be constituted by Unit Owners represented in Person or by proxy and holding an aggregate of at least twenty percent (20%) of the total ownership interest in the Common Areas.

SECTION 8. Miscellaneous.

- (A) No merger or consolidation of the Association; sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all of the Property and assets of the Association; and the purchase or sale of property of Units on behalf of all Unit owners shall be effectuated unless there is an affirmative vote of two-thirds (2/3) of the votes of Unit Owners, or such greater percentage as may be provided for in the Declaration and an affirmative vote of three-fourths (3/4) of the Eligible Holder of the First Mortgage Lien.
- (B) When thirty percent (30%) or fewer of the Unit Owners, by number, possess over fifty percent (50%) in the aggregate of the votes in the Association, any percentage of vote of members specified in the Declaration, or the Act, shall require instead the specified percentage of number of Units, rather than by percentage of interest in the Common Areas allocated to Units that would otherwise be applicable.
- (C) In the event of a resale of a Unit from other than the Declarant under an installment contract, while the purchaser resides in the Unit he shall be counted toward a quorum for the election of Board members at any meeting of the Unit Owners called for the purposes of such election, shall have the right to vote for election of Board members and shall have the right to be elected and serve on the Board unless the Seller expressly retains in writing all or any of such rights. In no event may both the Purchaser and Seller be counted toward a quorum, permitted to vote, elected or permitted to serve on the Board. Satisfactory evidence of the installment contract shall be given to the Board or its agents.

**ARTICLE II**

Board of Directors

SECTION 1. Number, Election and Term of Office. The Board of Directors of the Association (referred to in the Condominium Declaration as Directors of the Association shall consist of five (5) members (hereinafter referred to as "directors"). Directors shall be elected at large at the regular annual meeting of Association members by the vote of Unit Owners, except that, until the election of directors at the First Meeting of Members, the directors and number thereof (hereinafter called "members of the First Board") shall be appointed by the Declarant. At such annual meetings, directors, or their representatives shall have the right to be present at the counting of the ballots cast during such annual meetings. The Board may, but shall not be



obligated to, distribute to Unit Owners, biographical and background information about candidates for election to the Board provided that (1) no preference is expressed in favor of any candidate, and (2) reasonable efforts are made to identify all candidates and (3) all candidates are given an opportunity to include biographical and background information in the information to be distributed. Those candidates for election as Director receiving the greatest number of votes cast either in Person or by proxy at the meeting shall be elected. At the initial election held at the First Meeting of Members, those two (2) directors receiving the greatest number of votes shall hold office for a term of three (3) years, the two (2) directors receiving the next greatest number of votes shall hold office for a term of two (2) years, and the remaining one (1) Director shall hold office for a term of one (1) year. Thereafter, every Director shall hold office for a term of two (2) years and until his successor shall be elected and qualified. Members of the Board may succeed themselves.

**SECTION 2. Qualifications.** Except for members of the First Board and those appointed by Declarant, each Director shall be a resident of a Unit and shall be a Unit Owner (or, if a Unit Owner is a trustee of a trust, a Director may be a beneficiary of such trust, and if a Unit Owner or such a beneficiary is a corporation or partnership, a Director may be an officer, partner or employee of such Unit Owner or beneficiary). If a Director shall cease to meet such qualifications during his term, he shall thereupon cease to be a Director and his place of the Board shall be deemed vacant.

**SECTION 3. Vacancies.** Any vacancies occurring in the Board shall be filled by a two-thirds (2/3) vote of the remaining members thereof, except that a vacant position of the Board which was last filled by a member of the First Board may be filled by a Person appointed by the Declarant. Any Director so elected or appointed to fill a vacancy shall hold office for a term equal to the time until the next meeting of Unit Owners or thirty (30) days following the filing of a petition signed by Unit Owners holding 20% of the Association's votes requesting a meeting of the Unit Owners to fill the vacancy for the balance of its unexpired term. Such a meeting shall be called no later than sixty (60) days following the filing of such a petition signed by Unit Owners holding 20% of the Association's votes.

**SECTION 4. Meetings.** A regular annual meeting of the Board shall be held within ten (10) days following the regular annual meeting of Unit Owners. Special meetings of the Board shall be held upon a call by the President or by a majority of the Board on not less than forty-eight (48) hours notice in writing to each Director, delivered personally or by mail or telegram.

Any Director may waive notice of a meeting, or consent to the holding of meeting without notice, or consent to any action proposed to be taken by the Board without a meeting. A director's attendance at a meeting shall constitute his waiver of notice of said meeting. The Board shall meet at least four (4) times annually, and at such other times as the Board deems necessary. Meetings of the Board shall be open to any Unit Owner, except for the portion of any meeting held (i) to discuss litigation when an action against or on behalf of the particular Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such action is probable or imminent, (ii) to consider information regarding appointment, employment or dismissal of an employee, or (iii) to discuss violations of rules and regulations of the Association or a Unit owner's unpaid share of Common Expenses; however, any vote on these matters shall be taken at a meeting or portion thereof open to any Unit Owner. Any Unit Owner may record the proceedings at meetings required to be open by this Act by tape,

film or other means. The Board may prescribe reasonable rules and regulations to govern the right to make such recordings. Notice of any such meeting shall be mailed or delivered at least forty-eight (48) hours prior thereto, unless a written waiver of such notice is signed by the Person or persons entitled to such notice pursuant to the Declaration, By-Laws, or provision of law before the meeting is convened. Copies of notices of any such meetings shall be posted conspicuously in hallways, lobbies or bulletin boards at least 48 hours prior to such meeting, except if there is no common lobby for seven (7) or more Units, the Board may designate locations near said Units.

SECTION 5. Removal. Any Director may be removed from office for cause by the vote of two-thirds (2/3) of the total undivided ownership of the Common Areas.

SECTION 6. Compensation. Directors shall receive no compensation for their services as directors, unless expressly provided for in resolutions adopted by the Unit Owners.

SECTION 7. Quorum. Three (3) Directors shall constitute a quorum.

SECTION 8. General Powers and Duties of the Board. The powers and duties of the Board shall include, but shall not be limited to, the following matters:

- (A) operation, care, upkeep, maintenance, replacement and improvement of the Common Areas;
- (B) preparation, adoption and distribution of the annual budget for the Property;
- (C) levying of assessments;
- (D) collection of assessments from Unit Owners;
- (E) employment and dismissal of the personnel necessary to advisable for the maintenance and operation of the Common Areas;
- (F) obtaining adequate and appropriate kinds of insurance;
- (G) owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to or purchased by it;
- (H) adoption and amendment of rules and regulations covering the details of the operation and use of the Property;
- (I) keeping of detailed accurate records of the receipts and expenditures affecting the use and operation of the Property;
- (J) having access to each Unit from time to time as may be necessary for the maintenance, repair or replacement of any Common Areas therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Areas or to any other Unit.

SECTION 9. Other Powers and Duties. The Board shall also have the following powers and duties:

- (A) to elect and remove the officers of the Association as hereinafter provided;
- (B) to administer the affairs of the Association and the Property;
- (C) to engage, if the Board deems desirable, the services of an agent (hereinafter sometimes called the "Managing Agent") to maintain, repair, replace, administer and operate the Property or any part thereof for all of the Unit Owners, upon such terms and for such compensation and with such authority as the Board may approve; provided however, that the First Board, appointed as provided herein, shall ratify and approve the Management Agreement between the Declarant, on behalf of the Association, and Encore Real Estate Co. to act as Managing Agent for the Property for a term commencing on the date this Declaration is recorded and terminating two (2) years thereafter, which ratification and approval shall not be subject to the provisions of Article IV, Section 6 hereof;
- (D) to formulate policies for the administration, management and operation of the Property and the Common Areas thereof;
- (E) to provide for payments for all debts, obligations, and contracts of the Association and to approve payment vouchers or to delegate such approval to the officers or the manager or Managing Agent;
- (F) to provide for the designation, hiring and removal of employees and other personnel, including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Property and the Common Areas and to delegate any such powers to the Managing Agent (and any such employees or other personnel who may be the employees of a Managing Agent);
- (G) to appoint committees of the Board and to delegate to such committees the Board's authority to carry out certain duties of the Board;
- (H) to determine the fiscal year of the Association and to change said fiscal year from time to time as the Board deems advisable;
- (I) to acquire such furnishing, equipment, and other personal property for the Common Areas as the Board shall determine are necessary and proper;
- (J) to maintain and repair any Unit if such maintenance and repair is necessary, in the discretion of the Board, to protect the Common Areas or any other portion of the Building, and, if a Unit Owner or any Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair mailed or delivered by the Board to said

Unit Owner, the Board may levy a special assessment against such Unit Owner for the cost of said maintenance or repair;

- (K) the Board or its agent upon reasonable notice, may enter any Unit when necessary in connection with any maintenance or construction for which the Board is responsible. Such entry shall be made with as little inconvenience to the Unit Owner as practicable and any damage caused thereby shall be repaired by the Board as a common expense;
- (L) the Board may, in accordance with the Act, adopt such reasonable rules and regulations not consistent herewith, as it may deem advisable for the maintenance, administration, management, operation, use, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Unit Owners and Occupants of the Property. Written notice of such rules and regulations shall be given to all Unit Owners and Occupants and the entire Property shall at all times be maintained subject to such rules and regulations;
- (M) upon authorization by a two-thirds (2/3) vote of the members of the Board or by the affirmative votes of not less than a majority of the voting members at a meeting duly called for such purposes, the Board, acting on behalf of all Unit Owners, shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments and any other special taxes or charges of the State of Indiana or any political subdivision thereof, or any other lawful taxing or assessing body, which are authorized by law to be assessed and levied on real property and to charge and collect all expenses incurred in connection therewith as Common Expenses;
- (N) Unless otherwise provided herein or in the Declaration, to comply with the instructions of a majority (51%) of the undivided interest in the Common Areas, Unit Owners as expressed in a resolution duly adopted at any annual or special meeting of the Unit Owners;
- (O) to exercise all other power and duties of the Board or Unit Owners as group referred to in the Act, and all powers and duties of a Board or a Board of Directors referred to in the Declaration or these By-Laws or as permitted by law.

SECTION 10. Non-Delegation. Nothing in this Article or elsewhere in these By-Laws shall be considered to grant to the Board, the Association or to the officers of the Association any powers or duties which, by law, have been delegated to the Unit Owners.

SECTION 11. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting at which time they could take at a meeting by obtaining the written approval of all of the directors. Any action so taken shall have the same effect as though taken at a meeting of the directors.

### ARTICLE III

#### Officers

SECTION 1. Designation. At each regular annual meeting, the directors present at said meeting shall elect the following officers of the Association by a majority vote:

- (A) a President, who shall be a Director and who shall preside over the meetings of the Board and the Unit Owners, and who shall be the chief executive of the Association;
- (B) a Secretary, who shall keep the minutes of all meetings of the Board and the Unit, owners, and who shall, in general, perform all the duties incident to the office of Secretary, and who may be a representative of the Managing Agent;
- (C) a Treasurer, who shall be responsible for financial records and books of account and the manner in which such records and books are kept and reported;
- (D) such additional officers as the Board sees fit to elect.

SECTION 2. Powers. The respective officers shall have the general powers usually vested in such officers, provided that the Board may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit. Either the President or the Secretary may mail and receive notices and execute amendments to the Declaration as provided for in the Act and in the Declaration.

SECTION 3. Term of Office. Each officer shall hold office for the term of one (1) year and until his successor shall have been appointed or elected and qualified.

SECTION 4. Vacancies. Vacancies in any office shall be filled by the Board by a two-thirds (2/3) vote of the remaining members thereof, at a special meeting of said Board. Any officer so elected to fill a vacancy shall hold office for a term equal to the time until the next meeting of Unit Owners or thirty (30) days following the filing of a petition signed by Unit Owners holding 20% of the Association's votes requesting a meeting of the Unit Owners to fill the vacancy for the balance of its unexpired term. Such a meeting shall be called no later than sixty (60) days following the filing of such petition signed by Unit Owners holding 20% of the Association's votes. Any officer may be removed for cause at any time by vote of two thirds (2/3) of the total membership of the Board at a special meeting thereof.

SECTION 5. Compensation. The officers shall receive no compensation for their services as officers, unless expressly provided for in a resolution duly adopted by the Unit Owners.

## ARTICLE IV

### Assessments

SECTION 1. Annual Budget. The Board shall cause to be prepared an estimated annual budget for each fiscal year of the Association. Such budget shall take into account the estimated Common Expenses and cash requirements for the year, including but not limited to salaries, wages, payroll taxes, legal and accounting fees, working capital fund, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power, real estate taxes, and all other Common Expenses. To the extent that the assessments and other cash income collected from the Unit Owners during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account. The annual budget shall also take into account the estimated net available cash income for the year from the lease, operation or use of the Common Areas. The annual budget shall provide for a reserve for contingencies for the year and a reserve for capital expenditures, in reasonable amounts as determined by the Board. The reserve for capital expenditures shall be held in a segregated account in the name of the Association.

SECTION 2. Assessments. The estimated annual budget for each fiscal year shall be approved by the Board, and copies of the proposed annual budget, together with an indication of which portions are intended for capital expenditures or repairs or payment of real estate taxes, shall be furnished by the Board to each Unit Owner, not later than thirty (30) days prior to the adoption thereof. On or before the first day of the first month and of each succeeding month of the year covered by the annual budget, each Unit Owner shall pay, as his respective monthly assessment for the Common Expenses, on twelfth (1/12) of his proportionate share of the Common Expenses for such year as shown by the annual budget. Unless otherwise provided in the Declaration, such proportionate share for each Unit Owner shall be in accordance with his respective ownership interest in the Common Areas as set forth in Exhibit B of the Declaration. In the event that the Board shall not approve an estimated annual budget or shall fail to determine new monthly assessments for any year, or shall be delayed in doing so, each Unit Owner shall continue to pay each month the amount of his respective monthly assessment as last determined. Each Unit Owner shall pay his monthly assessment on or before the first day of each month to the Managing Agent or as may be otherwise directed by the Board. No Unit Owner shall be relieved of his obligation to pay his assessment by abandoning or not using his Unit, the Common Areas, or the Limited Common Areas. Each Unit Owner shall receive notice, in the same manner as is provided herein for membership meetings, of any meeting of the Board concerning the adoption of the proposed annual budget or any increase or establishment of an assessment.

SECTION 3. Partial Year or Month. For the first fiscal year, the annual budget shall be as approved by the First Board. If such first fiscal year, or any succeeding fiscal year, shall be less than a full year, then the monthly assessments for each Unit Owner shall be proportionate to the number of months and days in such period covered by such budget. Commencing with the date of occupancy of his Unit, each Unit Owner shall pay his assessment for the following month or fraction of a month, which assessment shall be in proportion to his respective ownership interest in the Common Areas and the number of months and days remaining of the period covered by the Current annual budget, and which assessment shall be as computed by the Board.

SECTION 4. [Intentionally omitted.]

SECTION 5. Supplement Budget. In the event that during the course of a year, it shall appear to the Board that the monthly assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated Common Expenses for the remainder of such year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit Owner, and thereupon a supplemental assessment shall be made to each Unit Owner for his proportionate share of such supplemental budget.

SECTION 6. Expenditures. Except with respect to such expenditures with (i) are specifically authorized by the Declaration or By-Laws, or (ii) are required by law, or (iii) can be paid from the proceeds of insurance received by or for the account of the Board, or (iv) are immediately necessary for the emergency repair, preservation, safety or protection of the Unit Owners or the Common Areas, the Board shall have no authority to approve or authorize any structural alterations, capital additions to, or capital improvements of the Common Areas requiring an expenditure in excess of the Twenty Thousand Dollars (\$20,000.00) or any contract for a term of more than four (4) years, unless such expenditure or contract shall have been approved by two-thirds (2/3) of the total votes cast at a meeting called for that purpose.

Any non-recurring Common Expense not set forth in the budget as adopted, and any increase in assessment over the amount adopted shall be separately assessed against all Unit Owners. Any such separate assessment shall be subject to the approval by the affirmative votes of at least two-thirds (2/3) of the Unit Owners voting at a meeting of Unit Owners duly called for the purpose of approving the assessment if it involves proposed expenditures resulting in a total payment assessed to a Unit equal to the greater five (5) time Unit's most recent Common Expense assessment calculated on a monthly basis or \$500.00.

SECTION 7. Lien. It shall be the duty of every Unit Owner to pay his proportionate share of the Common Expenses, as provided in the Declaration, and as assessed in the manner herein provided.

If any Unit Owner shall fail or refuse to make any such payment of the Common Expenses, when due, the amount thereof together with interest thereof at the rate of 10% per annum or such greater percentage as may then be permitted under the laws of the State of Indiana after said Common Expenses become due and payable, late charges, reasonable attorneys' fees and cost of collection or amount of any unpaid fine shall constitute a lien, as provided in the Act, enforceable by the Board, on the interest of such Unit Owner in the Property, provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage held by an insurance company, bank, savings, and loan, mortgage broker and FNMA or other lending institution on the interest of such Unit Owner, except for the amount of the proportionate share of Common Expenses which are due and payable from and after the date on which such mortgage owner or holder either takes possession of the Unit, accepts a conveyance of any interest therein (other than as security), or accepts a deed in lieu of foreclosure for its mortgage and causes a receiver to be appointed, in suit to foreclosure its mortgage, all as provided in the Declaration. The provisions of this paragraph of this Section 7 shall not be amended, changed, modified or rescinded in any way without the prior written consent of all

such lien holders of record. The Association or its successors and assigns, or the Board or its agents, shall have the right to maintain a suit to foreclose any such lien, and there shall be added to the amount due the costs of said suit and other fees and expenses, together with legal interest and reasonable attorneys' fees to be fixed by the Court. Furthermore, if any Unit Owner shall fail or refuse to pay when due his proportionate share of the Common Expenses and such Unit Owner withholds possession of his Unit after demand by the Board or the Association in writing setting forth the amount claimed, the Board or the Association shall have the right to possession of such Unit. The Board and the Association shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Act, the Declaration or these By-Laws, or as are otherwise available at law or in equity, for the collection of all unpaid assessments.

**SECTION 8. Records and Statement of Accounts.** The Board shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Areas, and Limited Common Areas, specifying and itemizing the Common Expenses and limited Common Expenses incurred. Payment vouchers may be approved in such manner as the Board may determine. Further, the Association, within a reasonable time, shall produce audited financial statements of the Association upon the reasonable, appropriate written request of a Unit Owner or Eligible Holder of the First Mortgage Lien.

The Board shall, upon receipt of ten (10) day written notice to it or the Association and upon payments of a reasonable fee, furnish to any Unit Owner a statement of his account setting forth the amount of any unpaid assessments of other charges due and owing from such owner.

**SECTION 9. Discharge of Liens.** The Board may cause the Association to discharge any mechanic's lien or other encumbrance which in the opinion of the Board may constitute a lien against the property of the Common Areas, rather than a lien against only a particular Unit. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorneys' fees, incurred by reason of such lien.

**SECTION 10. Holding of Funds.** All funds collected hereunder shall be held and expended for the purpose designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in the percentage set forth in Exhibit "B".

**SECTION 11. Forbearance.** The Association shall have no authority to forbear the payment of assessments by any Unit Owner, except as provided in the Declaration.

## **ARTICLE V**

### **Contractual Powers**

No contract or other transaction between the Association and one or more of its Directors or between the Association and any corporation, firm or association in which one or more of the Directors of the Association are directors, or are financially interested, is void or voidable because such Director or directors are present at the meeting of the Board or a committee thereof



which authorizes or approves the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

- (A) the fact of the common directorship or financial interest is disclosed or known to the Board or committee and noted in the minutes and the Board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Director or directors; or
- (B) the contract or transaction is just and reasonable as to the Association at the time it is authorized or approved.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies a contract or transaction.

## ARTICLE VI

### Amendments

These By-Laws may be amended or modified from time to time by action or approval of seventy-five percent (75%) of the total ownership, and such amendment shall be effective upon the recording, in the Office of the Recorder of Hamilton County, Indiana, of a certificate of the Secretary of the Association setting forth the amendment and certifying the requisite percentage vote of the total ownership; provided, however, that no change, modification or amendment which affects the rights, privileges, or obligations of the Declarant, shall be effective without the prior written consent of the Declarant.

## ARTICLE VII

### Indemnification

SECTION 1. General. The Association shall indemnify and hold harmless each of its directors and officers, each member of any committee appointed pursuant to the By-Laws of the Association, and the Board and Declarant, and each of its members, against all contractual and other liabilities to others arising out of contracts made by or other act of such directors, Board, officers, committee members, Declarant or its members, on behalf of the Unit Owners, or arising out of their status as directors, Board, officers, committee members, Declarant or its members unless any such contract or act is contrary to the provisions of the Declaration or these By-Laws or shall have been made fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all cost and expenses (including, but not limited to, counsel fees, amounts of judgment paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit, or proceeding, whether civil, criminal, administrative or other, in which any such Director, officer, Board, Committee member, Declarant or its members may be involved by virtue of such persons being or having been such directors, officer, Board, committee member, Declarant or its members; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such Person shall have been finally adjudged in such action, suit or

proceeding to be liable for gross negligence or fraud in the performance of his duties as such Director, officer, Board, committee member, Declarant or its members; of (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for gross negligence or fraud in the performance of his duties as such Director, Board, officer, committee member, Declarant or its members.

**SECTION 2. Success on Merits.** To the extent that the Declarant or its members or a member of the Board of Directors or an officer of the Association or a member of any committee appointed pursuant to the By-Laws of the Association has been successful on the merits or otherwise in defense of any action, claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

**SECTION 3. Advance Payment.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of any undertaking by or on behalf of the Person or entity seeking such indemnification or payment in advance to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article VIII.

**SECTION 4. Miscellaneous.** The Association and the Board shall have the power to raise and the responsibility for raising by special assessment or otherwise, any sums required to discharge its obligations under this Article, provided, however, that the liability of any Unit Owner arising out of any contract made by or other acts of the directors, Board, officers, members of such committees, Declarant or its member, or out of the aforesaid indemnity in favor of the directors, Board, officers, members of such committees, Declarant or its members, shall be limited to such proportion of the total liability hereunder as said Unit owner's percentage of interest in the Common Areas bears to the total percentage interest of all the Unit Owners in the Common Areas. Every agreement made by the directors, Board, officers, members of such committees, Declarant or its members or by the Managing Agent on behalf of the Unit Owners shall provide that the directors, Board, officers, members of such committees, Declarant or its members or the Managing Agent, as the case may be, are acting only as agents for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Areas bears to the total percentage interest of all Unit Owners in the Common Areas. The indemnification provided by this Article VII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Board of Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. Such right to indemnification shall continue as to a Person or entity who has ceased to be the Declarant or its members or a member of the Board of Directors, officer of the Association or a member of such committee, and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of such Person or entity.

## **ARTICLE VIII**

### **Definition of Terms**

The terms used in these By-Laws, to the extent they are defined therein, shall have the same definition as set forth in The Townes at Noble West Condominium Declaration, which Declaration is recorded in the Office of the Recorder of Hamilton County, Indiana.

The term "member", as used in these By-Laws, means "Unit Owner" as defined in the Declaration.

**EXHIBIT D**

**TO**

**THE TOWNES AT NOBLE WEST CONDOMINIUM DECLARATION**

---

**BUILDING 10**

A part Block "10" in the Secondary Plat of The Townes at Noble West (recorded as Instrument # 200400041507 in the Office of the Recorder, Hamilton County, Indiana), in being a part of the Southeast Quarter Section 16, Township 18 North, Range 4 East in Noblesville Township, Hamilton County, Indiana.

**BUILDING 11**

A part Block "11" in the Secondary Plat of The Townes at Noble West (recorded as Instrument # 200400041507 in the Office of the Recorder, Hamilton County, Indiana), in being a part of the Southeast Quarter Section 16, Township 18 North, Range 4 East in Noblesville Township, Hamilton County, Indiana.

**EXHIBIT E**  
**TO**  
**THE TOWNES AT NOBLE WEST CONDOMINIUM DECLARATION**

---

**Legal Description of Additional Land**

A part of the Southeast Quarter Section 16, Township 18 North, Range 4 East in Noblesville Township, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the southeast corner of said quarter section; thence North 00 degrees 09 minutes 25 seconds East (assumed bearing) along the east line thereof a distance of 1768.08 feet; thence North 89 degrees 50 minutes 35 seconds West a distance of 70.00 feet to the **Point of Beginning**; thence North 89 degrees 41 minutes 58 seconds West a distance of 1272.29 feet to the west line of the east half of said quarter section; thence North 00 degrees 08 minutes 06 seconds East along said west line a distance of 284.99 feet to the centerline of the abandoned railroad right-of-way; thence North 65 degrees 59 minutes 37 seconds East along said centerline a distance of 1394.58 feet to a point being 70.00 feet (measured perpendicular) from said east line of said quarter section; thence South 00 degrees 09 minutes 25 seconds West parallel with said east line a distance of 859.04 feet to the **Point of Beginning**, containing 16.71 acres, more or less.

Except the following described parcel:

**WALKING PATH**

A part of the Southeast Quarter Section 16, Township 18 North, Range 4 East in Noblesville Township, Hamilton County, Indiana, being described as follows:

Commencing at the southeast corner of said Southeast Quarter; thence North 00 degrees 09 minutes 25 seconds East (assumed bearing) along the east line thereof a distance of 1768.08 feet; thence North 89 degrees 50 minutes 35 seconds West a distance of 70.00 feet said point being 70.00 feet (measured perpendicular) from said east line of said Southeast Quarter; thence North 00 degrees 09 minutes 25 seconds East parallel with said east line a distance of 796.36 feet to the **Point of Beginning**; thence continuing North 00 degrees 09 minutes 25 seconds East parallel with said east line a distance of 62.68 feet to the centerline of the abandoned railroad right-of-way; thence South 65 degrees 59 minutes 37 seconds West along said centerline a distance of 1348.33 feet; thence South 24 degrees 00 minutes 23 seconds East a distance of 5.00 feet; thence North 65 degrees 59 minutes 37 seconds East parallel with said centerline a distance of 578.00 feet; thence South 79 degrees 58 minutes 47 seconds East a distance of 62.55 feet; thence North 65 degrees 59 minutes 37 seconds East parallel with said centerline a distance of 654.53 feet; thence South 89 degrees 50 minutes 35 seconds East a distance of 41.98 feet to the **Point of Beginning**, containing 0.75 acres, more or less.

**EXHIBIT E**  
**TO**  
**THE TOWNES AT NOBLE WEST CONDOMINIUM DECLARATION**

---

Except the following described parcel:

**BUILDING 10**

A part Block "10" in the Secondary Plat of The Townes at Noble West (recorded as Instrument # 200400041507 in the Office of the Recorder, Hamilton County, Indiana), in being a part of the Southeast Quarter Section 16, Township 18 North, Range 4 East in Noblesville Township, Hamilton County, Indiana.

Except the following described parcel:

**BUILDING 11**

A part Block "11" in the Secondary Plat of The Townes at Noble West (recorded as Instrument # 200400041507 in the Office of the Recorder, Hamilton County, Indiana), in being a part of the Southeast Quarter Section 16, Township 18 North, Range 4 East in Noblesville Township, Hamilton County, Indiana.

**EXHIBIT F**

**TO**

**THE TOWNES AT NOBLE WEST CONDOMINIUM DECLARATION**

---

**MAXIMUM PERCENTAGE OF INTEREST 1.513999%**

**MINIMUM PERCENTAGE OF INTEREST 0.659334%**