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CONDOMINIUM DECLARATION  
FOR  
WATERFRONT CONDOMINIUMS AT MORSE LAKE

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CHICAGO TITLE

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WATERFRONT CONDOMINIUMS AT MORSE LAKE**

THIS DECLARATION (the "Declaration"), made this 31<sup>st</sup> day of May,  
2006 by F.C. Realty Twenty Eight LLC, an Indiana limited liability company (the "Declarant"),

WITNESSETH:

A. Declarant is the sole owner of the fee simple title to the parcel of real estate in Hamilton County, Indiana, identified in Exhibit "A", attached hereto and made a part hereof, and which is designated therein as "Phase 1 of the Condominium Property" and/or "Condominium Property." Declarant reserves the right to include other owners of the real estate described in Exhibit "B" for expansion of the Condominium Property.

B. Declarant, by the execution of this Declaration hereby creates a condominium upon the Condominium Property subject to the provisions of the Indiana Horizontal Property Law, IC 32-25-1-1 et seq., as amended from time to time, hereinafter called the "Act", and the terms and conditions of this Declaration. Condominium, as used herein, shall have the same meaning as Horizontal Property Regime as used in the Act.

C. This Condominium shall be referred to as Waterfront Condominiums at Morse Lake.

ARTICLE I  
DESCRIPTIONS AND ESTABLISHMENT OF FREEHOLD ESTATES

Section 1.1. Description. Condominium Units ("Units") are hereby established on the Condominium Property as shown on the Plans for the Condominium. Each Unit will be designated by an arabic numeral beginning with Unit 1. The legal description of each Unit shall use that Unit number shown on the Plans and shall be stated as "Condominium Unit \_\_\_ (using the Unit number) in Waterfront Condominiums at Morse Lake." The Plans for the Condominium (the "Plans") shall consist of the following: A legal description of the Condominium Property, a Site Plan showing the layout, location, and identification numbers of all of the Units in the Condominium, and Floor Plans and Elevations of each of the Units and proposed Units are included with such Plans. The initial Plans for the first phase will be recorded concurrently herewith, or as soon as the first phase is completed, in the office of the Recorder of Hamilton County, Indiana, as Instrument No. \_\_\_\_\_ 200600034424, and such Plans are incorporated herein by reference.

Section 1.2. Establishment of Freehold Estates. Each separately numbered Unit will be established as a separate freehold estate, and each such Unit shall hereinafter be referred to as a "Unit". As used herein, Unit shall mean a "condominium unit" as defined under the Act.

**Section 1.3. Boundaries of Units.** The boundaries of each Unit shall be as shown on the Plans, without regard to the existing construction, measured between the interior unfinished surface of the floors, ceilings and perimeter walls of each Unit. In the event any horizontal or vertical boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Unit because of construction, or for any other reasons, the boundary lines of each Unit shall be deemed to be and shall be treated for purposes of occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction and/or condition. In such case permanent easements for his exclusive use shall exist in favor of the Owner of each Unit ("Unit Owner") in and to such space lying outside of the actual boundary line of the Unit but within the appropriate wall, floor or ceiling surfaces of the Unit. Any apparatus, ducts, conduits, lines, mains, wires, or other items which extend beyond the boundaries of a Unit, but which serve solely that Unit, shall be deemed a part of the Unit and appurtenant thereto, and title thereto and the responsibility for maintenance thereof, shall pass with the Unit. However, porches and patios shall be repaired by the Association at their expense, except when damaged as the result of the negligence or misuse by the Unit Owner. In the aforementioned case, the Association shall make such repairs and charge the Unit Owner for the repair work.

Interior walls and layouts of Units as shown on the Plans are for reference only to planned or existing interior improvements, and such walls and layouts are not warranted by the Declarant to be accurate. Any Unit Owner may make changes within his or her Unit subject only to the restrictions in this Declaration which apply thereto.

**Section 1.4. Common Areas.** The remainder of the improvements and the land subjected to this Declaration shall be "Common Areas" which term shall include all "Common Areas and Facilities" as those terms are used in the Act. The Common Areas shall include all real and personal property owned by the Association, and any and all real or personal property leased by the Association. Common Areas shall include all land and all areas outside of the buildings, including, but not limited to, all utility systems, and common pipes, conduits, wiring, yards, gardens, driveways, parking areas and boat slips for guests and invitees, sidewalks, drainage systems, boat docks (not individual slips), courtesy garage spaces, and other areas not contained within a unit. The structural elements of buildings containing Units, roofs, perimeter walls and all other parts of the buildings not within a Unit are part of the Common Areas.

The Common Areas, other than any Limited Common Areas as defined in Section 1.7 herein, subject to any Rules and Regulations adopted by the Association, shall be available to all the Unit Owners, and shall include but not be limited to, walks and driveways, landscaping, the parking areas, all pipes, wires, ducts, conduits, utility lines and other facilities which serve more than one Unit or any common area. The Association shall have an easement thereto, and it shall have the right, at reasonable times and at any time in case of emergency, to enter into any Unit and to the extent necessary to enter or go into any walls, floors, or ceilings of a Unit to get to any such pipes, wires, conduits and utility lines, or to any other Common Areas. The Association shall repair any damage done to any Unit as a result of an exercise of this right.

**Section 1.5. Ownership of Common Areas and Percentage Interest.** Each Unit Owner shall have an undivided interest in the Common Areas ("Percentage Interest") as tenants in common with all other Unit Owners equal to the percentage by which one (1) bears to the total number of Units

in the Condominium from time to time, which interest shall include the right to use the Common Areas subject to any rules and regulations governing such use as may be adopted by the Declarant or the Association. When completed, the clubhouse and related Common Areas shall be conveyed to the Association. The initial Percentage Interest of each Unit prior to any amendments of the Declaration is 5.55 %.

**Section 1.6. Appurtenances to Each Unit.** The Owner of each Unit shall own the following rights in the Condominium which are appurtenant to and belong to his or her Unit, including, but not limited to, those items listed below some of which may be appurtenant to several "Units". No such appurtenance may be severed from the Unit and such appurtenance shall pass with the transfer of title to a Unit.

(a) **Common Areas.** Each Unit shall be entitled to its Percentage Interest in the Common Areas. There may be no restriction upon any Unit Owner's right of ingress and egress to his or her Unit, which right shall be perpetual and appurtenant to ownership of the Unit. However, reasonable rules and controls over vehicular and pedestrian access, such as speed limits, stop signs and confining traffic to reasonable areas shall not be deemed a violation of this provision.

(b) **Association Membership.** Each Unit Owner shall be a member of the Association, which term as used in this Declaration shall mean the Association described in Section 2.1 below. The interest of each Unit Owner in the funds and assets held by the Association, shall be equal to his percentage interest in the Common Areas of the Condominium.

(c) **Parking Areas, Storage Units and Boat Slips.** Outside parking areas, garage spaces, underground parking spaces, storage units and boat slips are a part of the Common Areas and Limited Common Areas. All entrances, exits, fixtures, equipment and associated facilities are part of the Common Areas. The Declarant or the Association may also allocate parking spaces, storage units and boat slips by license on such reasonable basis as the Declarant or the Association deems appropriate and they may prescribe such rules and regulations with respect to the same as they may deem fit. All parking spaces, storage units and boat slips that are licensed to Unit Owners may not be severed from the Unit and shall remain as an appurtenance thereto.

(d) **Land.** The land in the Condominium shall be a Common Area.

(e) **Pool and Clubhouse.** The Declarant or the Association shall have the right to construct a pool or pools and a clubhouse/fitness center, which shall be Common Areas.

**Section 1.7. Limited Common Areas.**

(a) The Association may provide for Limited Common Areas which are to be reserved for the exclusive use of one or more Unit Owners, their families, servants and invitees, but which shall not be available to all Unit Owners generally. The Limited Common Areas shall not be altered, diminished, or enlarged by any custom or practice of the Unit Owners and their neighbors. Limited Common Areas shall not be construed or interpreted to be separate and apart from Common Areas, but shall only be limited with respect to the reserved use thereof to one or more Units.

(b) Each of the porches, patios and balconies attached to or serving a Unit shall be a Limited Common Area and shall be reserved for the use of the Owner of the Unit and his or her family and invitees. Except for the exterior of such appurtenances, the Owner of the Unit for whose use such porch, patio or balcony is reserved shall be responsible for the cost of the maintenance and upkeep of the same.

Section 1.8. Encroachments. If any portion of the Common Areas shall encroach upon a Unit, or any Unit shall encroach upon another Unit, then a valid easement shall exist, for such encroachment and the maintenance thereof. If a Unit shall encroach upon any Common Area or upon any other Unit by reason of the original construction, reconstruction, or by the non-purposeful or non-negligent act of the Unit Owner, or with the consent of the Association, then an easement shall exist for such encroachment and the maintenance thereof. If any Common Areas shall encroach upon any Unit by reason of original construction or by the non-purposeful or non-negligent act of the Association or of the Declarant, then an easement for such encroachment shall exist so long as such encroachment shall exist. If there should be conflicting easements hereunder, the easement of the Unit Owner shall be superior.

Section 1.9. Supplemental Plot Plans. The Association and the Declarant each shall have the right, at any time and from time to time, to cause to be prepared and filed of record, supplements to the Site Plan of the Condominium (Page 2 of the Plans) in order to show the location of driveways, parking areas, other land improvements, underground pipes, conduits or lines, utility lines, mains and easements, and the location of any other improvements located in the Condominium, for the purpose of establishing of record their location and the fact of their existence. No Supplemental Site Plans shall adversely affect any rights of a Unit Owner without the Unit Owner's consent thereto, unless the same corrects a manifest error, or is expressly permitted in this Declaration.

## ARTICLE II ASSOCIATION

Section 2.1. Association. Subject to the rights of the Declarant reserved in Section 5.2 below, the maintenance, repair, upkeep, replacement, administration, operation and management of the Condominium shall be by the Waterfront Condominium at Morse Lake Owners Association, Inc., a corporation organized as a not-for-profit corporation under the laws of the State of Indiana ("Association") which shall fulfill its duties and functions pursuant to the following provisions of this Article II. A copy of the By-Laws governing both the Condominium and the Association is attached hereto and made a part hereof. The Association shall have the power and authority to do anything not prohibited by the Act or by this Declaration or the Bylaws which it believes to be in the best interest of the Unit Owners, whether or not such power is expressly conferred upon it herein.

Section 2.2. Membership in Association. (a) The Owner of each Unit shall, automatically upon becoming the Owner of the Unit, be a member of the Association until such time as his ownership ceases for any reason. Membership in the Association shall be an appurtenance to each Unit in the Condominium and shall pass with the conveyance of the Unit to each successive Owner.

Each Unit Owner by the acceptance of a deed or other instrument evidencing his ownership interest, shall accept membership in the Association, and shall be subject to the power and authority of the Association; (b) The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Unit.

Class B. The Class B member shall be the Declarant and shall be entitled to five (5) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) Fifteen (15) years from the date of the conveyance of the first Unit in the Condominium.

Section 2.3. Voting Percentage. The Owners of each Unit, collectively, shall be a Class A member and be entitled to one (1) vote on each matter or question coming for a Vote in the Association's affairs since the Percentage Interest of each Unit in the Condominium will always be equal. Whenever hereunder a specified percentage of the Unit Owners is required, such percentage shall mean votes cast adding up to that percentage, or Unit Owners having such an aggregate Percentage Interest. The By-Laws may provide procedures for holding such voting.

Section 2.4. Board of Managers. The Members shall elect a Board of Managers of the Association annually as prescribed by the By-Laws. Until the Board of Managers is formed, the Declarant or its nominee shall exercise the power, rights, duties and functions of such Board, thereafter, the Board of Managers shall be the governing body of the Association, representing all of the Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Condominium Property exclusive of the Condominium Units.

Section 2.5. Compliance with Documents and Rules and Regulations. The Association shall have the power to promulgate for the common benefit of all Unit Owners Rules and Regulations governing the use of the Condominium including all Common Areas and including the imposition of reasonable Rules and Regulations which may limit the use of their Units by Unit Owners. Each owner, tenant or occupant of a Unit and their guests and invitees, shall comply with the provisions of the Declaration, the By-Laws, and the Rules, Regulations and decisions of the Association or its representatives, as lawfully amended from time to time. The Association may impose fines for the violation of its Rules and Regulations and all such fines shall be added to the next payment due on the Annual Assessment and shall be secured by the lien of the Association therefor. The Association may also bring an action to recover sums due for damages, for fines, or for injunctive relief resulting from a violation or failure to comply with such Rules and Regulations.

Section 2.6. Easement of Association. The Association shall have an easement for access to all Units in the Condominium as required by its officers, Board of Managers, employees and their agents and independent contractors, in order to perform the obligations and duties of the Association



as set forth in this Declaration and any other applicable documents. This easement is also reserved for the benefit of the Declarant so long as Declarant or an affiliate thereof is managing the Condominium. The Association shall have the right of entry to any Unit to perform emergency repairs and/or to do other work reasonably necessary for the proper maintenance and operation of the Condominium.

**Section 2.7. Delegation by Association.** Nothing in this Declaration shall limit the discretion of the Board of Managers of the Association to delegate authority to any officer, manager or a management agent.

**Section 2.8. Professional Management.** Initially, the Declarant or its nominee, and later the Association upon and after assuming the management and control of the Common Areas of the Condominium, shall contract with a reputable management company for the provision of accounting, bookkeeping and managerial services to include the preparation of, notices for and collection of all assessments, the preparation of notices for all meetings or of any other kind required by this Declaration, and the performance of such other services as the Board of Managers may designate. The expenses for such managerial services shall be Common Expenses. Any contract with a management agent shall have a maximum term of one year at a time, although such contract may be renewed from year to year, and shall be subject to termination by the Association at any time for cause.

**Section 2.9. Property and Debt by the Association.** The Association may purchase property and take title thereto in its corporate name. All such property although owned by the Association, shall be treated under the terms of this Declaration as if it were part of the Common Areas and shall be subject to the Rules and Regulations of the Association. The Association may mortgage or encumber any of the property it owns, and may incur debt with respect to its property or otherwise, as it may deem to be in the best interest of the majority of the Unit Owners. Any costs or expenses incurred by the Association, including an obligation to make debt payments and other obligations, shall be treated as part of the Common Expenses of the Condominium. Such expenses shall be included in the Annual Budget and in any necessary Supplemental Budget, and shall be used in determining the Annual Assessment and any Special Assessments to the Unit Owners, to the same extent as any other expenses and obligations of the Association and of the Condominium.

**Section 2.10. Condemnation Proceedings.** The Association shall have the exclusive right to represent the Unit Owners in any Condemnation Proceedings and to adjust any losses and handle all proceeds from insurance resulting from damage or destruction to the Condominium.

**Section 2.11. Control of Common Areas.** The Association shall have the right to establish Rules and Regulations governing the Common Areas. The Association shall have the right to grant permits, licenses and easements over the Common Areas for utilities, roads and other purposes necessary or reasonably appropriate for the proper operation of the Condominium. Either the Association or the Declarant shall have the right to enter into agreements governing the use of the lake abutting the Condominium with any adjoining landowners, including the Declarant.

Section 2.12. Condominium Documents. The Association shall keep current copies of a) this Declaration, b) the Bylaws as the same may be amended from time to time, c) all Rules and Regulations then in effect, as well as d) its own books, records and financial statements, and shall make them available for inspection by the Unit Owners, and by holders, insurers and guarantors of first mortgages that are secured by Units in the Condominium, during normal business hours or under other reasonable circumstances.

### ARTICLE III USE RESTRICTIONS

Section 3.1. Residential Purposes. All Units in the Condominium shall be, and the same hereby are, restricted exclusively to residential use. No structures of a temporary character, nor any trailer, basement, tent, shack, carport, garage, barn or other outbuilding, shall be used as a residence on any portion of the Condominium Property at any time, either temporarily or permanently, and no temporary structure, trailer, shack or outbuilding shall be placed on the Condominium Property at any time without the prior written consent of the Association. Nothing shall be done or permitted in any Unit which would structurally change any building, or affect any Common Areas or plumbing, electrical, mechanical or other services or systems, unless first approved in writing by the Association.

The use restrictions in this Section 3.1 shall not, however, be construed in such a manner as to prohibit a Unit Owner from: (i) maintaining his or her personal professional library therein; (ii) keeping his or her personal business or professional records or accounts therein; (iii) handling his or her personal business or professional telephone calls or correspondence therefrom; or (iv) conducting any home occupation permitted under the applicable zoning code in residential districts. Such uses are expressly declared to be incident to the principal residence use and not in violation of this Section 3.1, provided that such use does not involve customers, employee, licensees or invitees coming to the unit.

Section 3.2. Construction and Sale Period. Notwithstanding any provisions contained herein to the contrary, it shall be expressly permissible for the Declarant or the builder of said Units and structures to maintain, during the period of construction and sale of said Units, upon such portion of the Condominium Property as the Declarant may deem advisable, such facilities as in the sole opinion of the Declarant may be reasonably required for, or be convenient or incidental to, the construction and sale of the said Units, including, but without limitation, storage areas, construction yards, signs, model residences, construction offices, sales offices and business offices.

Section 3.3. No leasing of Units. Units, parking spaces and docks may not be rented or sold as time shares. No room or portion of a Unit may be rented and no transient tenants accommodated.

Section 3.4. Use. Any Unit Owner may authorize the following persons to use the Common Areas and facilities: members of his or her family, guests while residing with or visiting the family, or contract purchasers who reside on the property.

Section 3.5. Rights of Unit Owners. Every Unit Owner shall have the non-exclusive right in common with all other Unit Owners to the use and enjoyment in and to the Common Areas, other than Limited Common Areas, and such rights shall pass with the title to his or her Unit, subject to the following rights which are hereby granted to the Association:

(a) The right of the Association to charge reasonable admission, maintenance, and other fees for the use of any facilities situated upon the Common Areas, and to make other charges as herein provided.

(b) The right of the Association to suspend the voting rights and right to use Common Areas by any Unit Owner other than access to his or her Unit for any period in which any assessment against his Unit remains unpaid, and for a period not to exceed sixty (60) days for any or each infraction of its published rules or regulations, and to impose reasonable fines for any such infractions or other infractions of its rules.

(c) The right of the Association to dedicate, transfer or grant rights-of-way and easements over or through all or any part of the Common Areas to any public agency, authority, utility, and to grant easements to private persons.

(d) The right of the Association to restrict portions of the Common Areas for parking, or for other uses, so long as such restrictions do not discriminate among the Unit Owners.

(e) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Areas, or which otherwise are deemed by it to be for the common good of the Unit Owners.

#### ARTICLE IV COMMON EXPENSE

Section 4.1. Common Expenses. Common Expenses shall include all expenses of the Association and the expenses of administration, expense of insurance, maintenance, upkeep, operation, repair, replacement and betterment of the Common Areas; rent, maintenance and other costs relating to recreational and/or common facilities; and any other costs or expenses declared to be Common Expenses under this Declaration and the By-Laws; and any other valid charges against the Condominium Property as a whole or which are duly adopted by and voted on by the Association. Common Expenses shall include those expenditures which are to be paid for by special assessments, as well as all other expenditures lawfully voted by the members of the Association, or as required by the Act, this Declaration or the By-Laws, and may include capital expenses and also other unusual or non-recurring items.

Section 4.2. Sharing of Common Expenses. Subject to the provisions of Section 4.5 below, all of the separate Unit Owners shall share in any common profits and be liable for a share of the Common Expenses in proportion to their Percentage Interest in the Common Areas. The Board of Managers of the Association may vote to round off any monthly assessments of Common Expenses Assessed against each Unit to the nearest even multiple of One Dollar (\$1.00), or it may vote to round off such monthly assessment to the next higher even multiple of One Dollar (\$1.00) or Five Dollars(\$5.00).

**Section 4.3. No Exemptions.** No Owner of a Unit may exempt himself or herself from liability for his or her contribution towards the Common Expenses by waiver of the use and enjoyment of any of the Common Areas or by the abandonment of his or her Unit.

**Section 4.4. Budget.** When required by the By-Laws, a budget of all anticipated Common Expenses, including capital expenditures and/or reserves, shall be prepared for each Fiscal Year of the Association. Such budget shall be prepared in time so that it can be reviewed by the Unit Owners in advance of the Annual Meeting of the Association as provided in the By-Laws.

**Section 4.5. Assessments.** Common Expenses shall be assessed against Unit Owners as provided in the By-Laws, except that any unoccupied Units which are owned by the Declarant and which are being offered for first time sale, shall not be subject to assessment, including special assessments, except as otherwise may be required by applicable law.

**Section 4.6. Unit Maintenance.** Except as otherwise provided herein and in the By-Laws, each Unit Owner shall be responsible for all maintenance, repair, decoration and replacement within his own Unit, and for paying for the same. The Association may perform repair work on a Unit, if a Unit Owner shall fail to maintain his Unit, and charge the cost thereof to the Unit Owner, which cost shall be secured by the lien of the Association on such Unit. The Association may also provide services to the Units as provided in Section 7.2(b) below.

**Section 4.7. Reserve for Contingencies and Replacements.** The Board shall build up and maintain reasonable reserves for contingencies and replacements, which reserves shall be segregated from the other funds of the Association. The replacement reserve may not be used for any purpose other than the replacement of or additions to the property of the Condominium. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year may be charged against the contingency reserve. If the "estimated cash requirement" proves inadequate for any reason or in the event a non-recurring Common Expense is anticipated for any year, then the Board may prepare and approve a supplemental budget covering the estimated deficiency or non-recurring expense for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit Owner. Then a separate assessment shall be made to each Unit Owner for his or her proportionate share of such supplemental budget. All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount. Such separate assessment may be made by the Board of Managers unless it involves proposed expenditures resulting in a total payment assessed to a Unit greater than four times a Unit's most recent monthly assessment, in which event the assessment shall be subject to approval by the Unit Owner as a Special Assessment pursuant to Section 5.05 of the By-Laws.

Each time a Unit is sold, conveyed or otherwise changes ownership, a Reserve Fund contribution of Five Hundred Dollars (\$500.00) shall be collected at the time ownership transfers. The contribution shall not be deleted or waived by the Association or the Board of Managers. The contribution cannot be reduced, but it may be increased subject to the approval of two-thirds (2/3) of the Owners.

Section 4.8. Working Capital Fund. At the time the Declarant first conveys a Unit in the Condominium to any person other than an affiliate, the Purchaser of the Unit shall make a deposit for working capital of the Association equal to three (3) monthly payments of the initial Annual Assessment.

**ARTICLE V**  
**DECLARANT'S RIGHTS**

Section 5.1. Use of Property by Declarant. Declarant reserves the right to grant to others and to reserve to itself easements for utilities for ingress, egress and access, and other reasonable purposes, across, over or under Common Areas; to use any of the Units as models; and to sell Units and to conduct other businesses in connection with and during the construction and development of the Condominium from and in any of the Units prior to their being sold. This reservation of right or privilege of the Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees, and to use any and all of the Common Areas and to show Units then unsold. Any improvements placed on the Condominium Property for the purpose of such sales, such as signs, telephones, or any other promotional items shall not be considered Common Areas nor attachments to the Condominium Property, but shall remain the property of the Declarant and may be removed at any time convenient to the Declarant. Declarant reserves the right to make prudent changes during the course of construction in the location or manner of construction of buildings and other improvements but no such changes shall be inconsistent with the Architect or Engineer's as-built certification.

Section 5.2. Management. Declarant shall initially manage the Condominium and it shall have the right to continue to do so, so long as it shall own any Units in the Condominium, subject to the right of the Owners to terminate management by the Declarant as provided in Section 2.8 above. Declarant's right and obligation to manage the Condominium shall include the right to exercise all of the powers of the Association, including the right to manage the Common Areas, the right to hire a management company to manage the Condominium, to set Assessments for Common Expenses as provided in the By-Laws (rather than for such right to be delegated to the Association as the By-Laws provide), subject to the limitations and requirements herein contained including those set forth in sections 4.4, 4.7 and 4.8 hereof, and to adopt the Rules and Regulations governing the use of the Condominium, until the first Annual Meeting of the members of the Association. Such rights shall be subject to the following:

- (a) Declarant shall manage the Common Areas and it shall have the right to assess the Unit Owners sums. (Such assessment shall be equal to the amount set forth in the By-Laws for the Annual Assessment during the year in which the first conveyance of a Unit is made to a Unit Owner.)
- (b) Declarant shall have the right to transfer the management of the Condominium to the Association at any time upon sixty (60) days prior notice. Declarant shall continue to manage the Condominium Property at the same per Unit cost as had been established, for the balance of the Fiscal Year of the Association in which the Declarant terminates its right to manage the Condominium, unless the Association shall have been advised that Declarant would not be managing the Condominium Property at the time the

Annual Assessment for such year is established, or unless the Association shall agree that the Declarant may so terminate its management.

**Section 5.3. Amendment by Declarant.** The Declarant shall have the right acting alone and without the consent or approval of the Unit Owners, the Association, any Mortgagees or any other person to amend or supplement this Declaration, the By-Laws or other documents from time to time if such amendment or supplement is (i) necessary to conform this Declaration to the Act, as amended from time to time, or (ii) made to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or any other public, quasi public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (iii) made to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages, (iv) made to correct clerical or typographical errors or (v) expand or contract the Condominium. However, no such amendment shall decrease the rights of any Unit Owners to use the Common Areas and facilities, to use their Unit, nor to restrict access to any Unit. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to those amendments permitted in this Section 5.3 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, or other instrument affecting a Condominium Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 5.3 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Condominium Property, but not longer than fifteen (15) years from the date of the conveyance of the first Unit in the Condominium.

**Section 5.4. Affiliates of Declarant.** The Declarant may assign any of its reserved rights to any affiliate or successor of the Declarant in which event the affiliate or successor may exercise all of such assigned rights and shall be deemed a successor Declarant hereunder.

**Section 5.5. Non-Liability of Declarant.** The Declarant does not guarantee or assure any Unit Owner of peaceful enjoyment of the Unit and shall not be responsible for noise levels between or among Units from time to time.

## ARTICLE VI ® RIGHTS AND LIABILITIES OF UNIT OWNERS

**Section 6.1. Separate Mortgages of Units.** Each Owner of a Unit shall have the right to mortgage or encumber his or her Unit together with his or her Percentage Interest in the Common Areas. No Owner of a Unit shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the Condominium Property or any part thereof except his or her own Unit and its Percentage Interest in the Common Areas as aforesaid. Any successor to a Unit, whether by foreclosure or otherwise, shall have the rights with respect to Limited Common Areas which are assigned to that Unit.

**Section 6.2. Separate Real Estate Taxes.** Real estate taxes are to be separately taxed to the Owner of each Unit, including taxes upon his or her share of ownership in the Common Areas, as provided in the Act. If for any year such taxes are not separately taxed to the owners of the Units, but are taxed on the property as a whole, then each Unit Owner shall pay his or her proportionate share thereof in accordance with his or her respective Percentage Interest in the Common Areas.

**Section 6.3. Maintenance by Unit Owners.** The owner of each Unit shall furnish and be responsible for, at his or her own expense, all the maintenance, repairs and replacements within his Unit, and any Limited Common Areas the exclusive use of which is limited to that Unit, unless otherwise provided herein, including the heating and air conditioning system. Routine maintenance and repairs of the refrigerators, ranges, and other kitchen appliances, air conditioning, lighting fixtures, windows, doors, sills, jams, frames, glass surfaces, partitions and interior walls, wall coverings, fixtures, internal water, electrical, gas and telephone lines, and other improvements and additions to the Unit shall be at the expense of the Unit Owner. However, replacement and major repairs (cost in excess of \$500.00) shall be the responsibility of the Association.

If, due to the negligent act or omissions of a Unit Owner or of a member of his or her family or household pet or of a guest or other occupant or visitor of such Unit Owner, damage shall be caused to the Common Areas or to a Unit owned by others, and if maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause.

To the extent that equipment, facilities and fixtures within any Unit shall be connected to similar equipment, facilities or fixtures affecting or serving other Units or any Common Areas, then the use thereof by the Owner of such Unit shall be subject to the Rules and Regulations of the Association. The authorized representatives of the Association or Board of Managers or the Managing Agent for the Association, shall be entitled to reasonable access to any Unit as may be required in connection with inspection, maintenance, repairs or replacements of or to the Common Areas or any part thereof, or any equipment, facilities or fixtures affecting or serving other Units or any Common Areas. If any Unit Owner shall fail to perform any maintenance which in the judgment of the Association is his obligation or shall fail to keep his Unit and any Limited Common Areas required to be maintained by such Unit Owner in good order and repair, the Association shall have the right to perform such maintenance and/or otherwise to put such Unit and areas in good order and repair and to charge the Unit Owner all costs thereof. All charges by the Association to a Unit Owner shall be a lien on such Unit to the same extent as delinquent installments of an Assessment.

**Section 6.4. Decorating.** The Owner of each Unit shall furnish and be responsible for, at his own expense, all of the decorating within his Unit, including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. The Owner of each Unit shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings, and such Owner shall maintain such interior surfaces in good condition at his sole expense. Decorating of Common Areas and any redecorating

of a Unit to the extent made necessary by any damage or replacement work on the Common Areas by the Association, shall be furnished by the Association as a part of the Common Expenses.

That portion of the window coverings that are visible from the exterior of the buildings must be white in color and approved by the Association, and maintained in good condition at all times. However, the type of window coverings may be solely determined by the Unit Owners. All hardware, doors, windows, etc. shall be uniform throughout the Condominium and cannot be altered or changed by the Unit Owners without the Association's approval. Model units, while they remain models, are exempt from the provisions of this paragraph.

Entertainment speakers inside Units shall be limited to directional speakers only that are enclosed on the back and ceiling or wall mounted only. Ceiling fans on terraces shall be huggers only, without attached lights, and be placed close to the ceiling from which they hang.

Section 6.5. Utility Services. Each 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. All other utility costs shall be common expenses and paid by the Association.

## ARTICLE VII MAINTENANCE AND CONTROL

Section 7.1. Maintenance of Common Areas. The Association shall be responsible for the maintenance, repair and replacement of all the Common Areas of the Condominium and all private streets located on the Condominium Property, except as may be otherwise herein provided. The Association shall also be responsible for such maintenance, repairs and replacements in the Common Areas as may be required for the bringing of utility services to the Units and to keep such services operating. All maintenance, repairs and replacements required of the Association shall be a Common Expense. However, the Association, or the Declarant, may provide that all or certain of the Limited Common Areas shall be maintained by the Unit Owners rather than the Association. In any event, the Association shall maintain all unfenced lawn areas.

Section 7.2. Maintenance Obligations of Association With Respect To Units. The Association's rights and obligations with respect to the maintenance of Units shall be as follows:

(a) The Association shall repair and restore any damage it may have done resulting from access and any activities within any portion of a Unit by the Association or its agents and employees. The cost of all such repairs by the Association shall be charged as a Common Expense and pro rated among all the Unit Owners, except to the extent that such repair work is caused by or necessitated by the negligence of a Unit Owner or a member of his family, or his guests or invitees, in which case the Unit Owner shall be obligated to reimburse the Association for the cost of such repairs as provided in Section 6.3 of this Declaration.

(b) The Association may permit its employees and agents to perform repair and service work in and to a Unit provided the same services are generally available to all Unit Owners. The Association may make reasonable charges for such services and/or it may wholly prohibit or otherwise restrict the rendering such services.



(c) The Association and its agents shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required), to enter into the Condominium Units for the purpose of inspection of the Common Areas and Limited Common Areas appurtenant thereto and for the replacement, repair, maintenance, alteration and improvement of such Common Areas and Limited Common Areas.

Section 7.3. Architectural Control.

(a) No Unit Owner other than the Declarant, shall make any alterations or additions to or which would affect the Common Areas or Limited Common Areas without the prior written approval of the Association, nor shall any Unit Owner make any alteration in or to his Unit and within the boundaries thereof which would affect the safety or structural integrity of, or any systems serving, the building in which the Unit is located.

(b) No terrace enclosures shall be allowed. No building, fence, wall or other structure shall be repaired, commenced, erected or maintained upon the Condominium Property nor shall any exterior addition to or change or alteration be made to any improvements on the Condominium Property other than by the Declarant or its successors or assigns, until the plans and specifications showing the nature, kind, shape, height, material and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Association. The Association may impose reasonable restrictions on the manner of performance of such work, time limits for its completion, and other restrictions or requirements, either as a condition of its approval, or otherwise. The Association may also require any such work to be done by a bonded contractor. If the Association fails to approve or disapprove such work within sixty (60) days after adequate plans and specifications for such work have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Any change in the appearance or the color of any part of the exterior of a Unit shall be deemed a change thereto and shall require approval therefor as above provided.

(c) The Association shall have an easement to and upon all Common Areas including Common Areas located within any walls of any structures or Units located on the property subject to this Declaration, and the Association shall have no liability whatsoever for entering any portion of such easement areas, including cutting through the walls of any Unit or similar damage to a Unit; provided, however, that the Association shall repair any damages committed by it to a Unit in a reasonable manner, and at its own expense.

(d) Declarant reserves the right to change the interior design, to increase the size or to reduce the number of any Units, to change the arrangement of any Condominium Units, and to alter the boundaries between Condominium Units so long as Declarant owns the Condominium Units so altered. No such change shall increase the number of Condominium Units nor decrease the Percentage Interest applicable to any Condominium Unit. If Declarant shall make any changes in the Condominium Units so authorized other than changes entirely within Units, such changes shall be reflected by a supplement to the Plans, and such supplement to the Plans need not be approved by the Association or any other Owners; provided however, no such change that shall substantially alter the roof lines, exterior

finishing or other exterior treatment of the Units shall be made without the consent of a majority of the other Unit owners.

(e) Boat covers shall be tan in color with the shade to be approved by the Association.

## ARTICLE VIII INSURANCE

**Section 8.1. Insurance.** The Unit Owners, through the Association, shall purchase a master casualty insurance policy issued in the name of the Association for the use and benefit of the Unit Owners and the Association affording fire and extended coverage insurance insuring the Condominium Property for the full replacement value of the improvements which, in whole or in part, comprise the Common Areas and Limited Common Areas, and also including the value of the exterior walls from the studs outward and all other exterior improvements to the Units, including doors, windows and roofs. The Association shall advise the Unit Owners annually in writing of the amount and type of insurance coverage with respect to the Condominium Property. Certificates of insurance shall be issued to each Unit Owner, and each mortgagee upon request, and no such policy shall be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each mortgagee listed as a mortgagee in the policies. If the Association can obtain such coverages for reasonable amounts it shall also obtain "all risk" coverage, Inflation Guard Endorsement, a construction code endorsement and a Special Condominium Endorsement. The Association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If it deems advisable, the Association may cause the full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of the Association, each Unit Owner, and, if applicable, the mortgagee of each Unit, upon the following terms and conditions:

(a) All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it and the Association shall act as the insurance trustee and hold such proceeds for the benefit of the Unit Owners. In the event that the Board of Managers has not posted a surety bond for the faithful performance of their duties as such Board or if such bond does not exceed the amount of funds which will come into its hands, and there is a damage to a part of or all of the property resulting in a loss, the Board of Managers shall obtain and post a bond for the faithful performance of its duties as insurance trustee in an amount equal to one hundred ten percent (110%) of the proceeds resulting from such loss, before the Board of Managers shall be entitled to receive the proceeds of the insurance payable as a result of such loss. As hereinafter provided the Association may utilize the services of an independent insurance trustee in which event it shall not be required to post a bond. The sole duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees. The proceeds shall be used or disbursed by the Association, as appropriate, only in accordance with the provisions of this Declaration.

(b) Such master casualty insurance policy, shall contain "all risk" coverage to the extent reasonably available, and shall (to the extent the same are obtainable on reasonable

terms) contain provisions that the insurer (i) waives its right to subrogation as to any claim against the Association, its Board of Managers, agents and employees, the Unit Owners, and their respective agents and guests, and (ii) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Association is able to obtain such insurance upon reasonable terms, (1) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Unit Owners as hereinafter permitted, and (2) that there shall be no provision thereof giving the insurer an election to repair damage in lieu of a cash settlement.

(c) The Unit Owners, through the Association, shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Managers shall deem appropriate from time to time; however, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Association, its Board of Managers, committees, organizations, any managing agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Condominium, all Owners of Units and if practicable all other persons entitled to occupy any Unit or other portions of the Condominium. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas, and, if available at a reasonable premium, legal liability arising out of lawsuits related to employment contracts of the Association. Such policy shall also provide that it may not be cancelled or substantially modified by any party without at least ten (10) days' prior written notice to the Association and to each Unit Owner and holder of a first mortgage on any Unit which is listed as a scheduled holder of a first mortgage in the insurance policy.

(d) The Association shall have a blanket fidelity bond covering any one who either handles or is responsible for funds that it holds or administers, whether or not that person receives compensation for services. The bond should name the Association as the obligee and the premiums therefor shall be paid as common expenses. The fidelity bond shall cover the maximum amount of funds that will be in the custody of the Association or its Management Agent (if the Management Agent does not carry its own bond for at least such amount) at any time while the bond is in force. Such bond shall include a provision that calls for 10 days' written notice to the Association before the bond can be cancelled or substantially modified for any reason.

(e) The Association, and the Unit Owners through the Association, shall also obtain any other insurance required by law to be maintained, or by VA, FHA or FNMA regulations applicable to the Project from time to time, including but not limited to workmen's compensation insurance, flood insurance if applicable, and fidelity coverage. The Association may also obtain any other insurance that it shall from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on any vehicles owned by the Association and officers' and directors' liability policies. Such insurance coverage shall provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Unit Owner, the Association, its Board of Managers and any employee, agent and managing agent acting

on behalf of the Association. Each Unit Owner shall be deemed to have delegated to the Association his right to adjust with the insurance companies all losses under policies purchased by the Association.

(f) The premiums for all insurance carried by the Association shall be paid for as part of the Common Expenses. When any such policy of insurance has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Unit Owner whose interest may be affected thereby, which notice shall be furnished by an officer of the Association or the managing agent.

(g) In no event shall any distribution of insurance proceeds be made by the Association directly to a Unit Owner where there is a mortgage endorsement on the certificate of insurance. In such event any remittances shall be to the Unit Owner and his mortgagee jointly.

(h) Each Unit Owner shall be solely responsible for and may obtain such additional insurance as he or she deems necessary or desirable at his or her own expense affording coverage upon his or her personal property, the contents of his or her Unit, all improvements from the drywall inward (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him or her) and his or her personal property stored elsewhere on the Condominium Property, and for his or her personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions with respect to the master casualty insurance policy to be obtained by the Association. Each Unit Owner may obtain any other insurance upon his or her Unit at his or her own expense but all such insurance shall provide that it shall be without contribution as against the casualty and other insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this Section 8.1, due to pro ration of insurance purchased by a Unit Owner, the Unit Owner shall assign the proceeds of his or her insurance to the Association to the extent of the amount of such reduction.

(i) Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, an authorized representative, including any trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee who shall have such authority as may be delegated to it under the insurance trust agreement, including authority to hold all the proceeds payable under an insurance policy for the benefit of the Association, authority or even exclusive authority to negotiate losses under any one or more policies providing such property or liability insurance, and/or to perform such other functions as are necessary to accomplish the reasonable purposes of such trust. The Association may retain authority to negotiate losses even if an insurance trustee is appointed, and it may reserve authority to direct the actions of the insurance trustee in any manner consistent with the Association's obligations under this Declaration. Each Unit Owner appoints the Association or any trustee or substitute trustee designated by the Association as attorney-in-fact for the purpose of purchasing and maintaining such insurance, and for the following additional purposes:

- (i) the collection and appropriate disposition of the proceeds thereof;
- (ii) the negotiation of losses and execution of releases of liability;
- (iii) the execution of all documents; and
- (iv) the performance of all other acts necessary to accomplish such purposes.

**Section 8.2. Casualty and Restoration.** Unless all of the buildings containing Condominium units are completely destroyed, in the event of any damage or destruction of Units or Common Areas, the damage shall be repaired and paid for, to the extent available, from the proceeds of insurance carried by the Association. A determination of the total destruction of the buildings containing Condominium units, and thereafter a vote to reconstruct the damaged Units, shall each be determined by a vote of at least sixty-seven percent (67%) of all the Unit Owners at a special meeting of the Association called for that purpose, or by such lesser vote as may then be permitted under the Act. Where the Association is to repair and restore any such damage or destruction, it shall cause all Common Areas to be repaired, and shall cause the Units to be repaired and restored to the same condition they were in prior to such damage or destruction, except that the Association shall not be obligated to provide painting of walls or providing other wall finishes, floor covering, other than subfloor, nor for painting ceilings or application of other ceiling finish, except to the extent the Association collects insurance proceeds for those items. The individual Unit Owners shall be responsible for replacing their property within their Units, together with the responsibility for replacing fixtures and improvements within their Units to the extent they exceed the building standard at the time of original construction. The Unit Owners shall also be responsible for any additional loss or damage to their personal property and to the contents of their Units. The Association shall be responsible for repairing and restoring the walls, floors and ceilings of any and all Common Areas and Limited Common Areas that may be damaged or destroyed, and also for installing walls, floors and ceilings within the Units, and to improvements made on Common Areas by any of the Unit Owners, to the extent that there are insurance proceeds payable therefor to the Association.

**Section 8.3. Restoration and Repair. Use of Insurance Proceeds.** The Association may advertise for open or sealed bids, or may negotiate privately without seeking competitive bids, with licensed contractors for any repair or restoration. The Association may reject any bids for any reason and it may further negotiate with any bidder. Unless the Association shall otherwise determine the successful contractor shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings, and/or other improvements. Excess insurance proceeds, if any, shall become a part of the Association's general funds to be used as the Association may deem to be appropriate.

**Section 8.4. Assessment of Unit Owners if Insurance Proceeds are Inadequate.** If any buildings are to be repaired or restored under the terms of Section 8.2 of the Declaration from the proceeds of insurance obtained by the Association, and if the insurance proceeds are inadequate to pay the complete cost of such repair or restoration required of the Association, Special Assessments shall be made against all the Unit Owners, in sufficient amounts to provide the funds necessary to complete such repair or restoration. Such Assessments may be made at any time and at more than one time, and to the extent so required shall not be subject to a vote of the Unit Owners.

Assessments on account of such damage shall be in proportion to each Owner's Percentage Interest in the Common Areas.

**Section 8.5. Allocation of Insurance Proceeds if No Repair or Restoration.** If after the complete destruction of all of the buildings containing Condominium Units the destroyed buildings are not to be restored, then the insurance proceeds payable on account of the damage to or destruction of such buildings shall first be used to pay the cost of removing any portion of the buildings that remain after such casualty and of restoring the site. The balance of the funds on hand shall then be distributed to the Unit Owners and the holders of liens on the Units in accordance with the relative value of the Units immediately prior to the damage if permitted by law; otherwise in proportion to their percentage interest in the Common Areas. Pursuant to law the land shall revert to the Unit Owners as tenants in common.

In order to determine the relative values of the Units the Board of Managers shall, if necessary, select a qualified appraiser who shall determine the relative values of each Unit. The determination of the appraiser shall be binding upon all parties except that if any of the affected Unit Owners challenges the appraiser's determination, such Unit Owner, or Unit Owners if more than one collectively, shall appoint a qualified appraiser skilled in valuation of damage and destruction to dwellings and the two appraisers shall appoint a third appraiser, similarly skilled. The average of the calculations of the three appraisers shall determine the question of such value. In the event that an Owner or Owners of Units challenge the determination of the original appraiser, the expense of the appraisers not appointed by the Association shall be charged to such challenging Owner or Owners. The determination of the Board of appraisers shall be final and binding upon the Association and all affected Unit Owners.

## ARTICLE IX

**Section 9.1. Disputes.** Matters of dispute or disagreement between Unit Owners or with respect to interpretation of the application of the provisions of this Declaration or By-Laws or any Rules or Regulations promulgated by the Association, shall be determined by the Board of Managers of the Association, which determination shall be final and binding upon all Unit Owners. If the Association shall deem it to be advisable, it shall have the power to employ experts to advise it in the settling of disputes and to charge the cost thereof as a Common Expense.

**Section 9.2. Right of Suit.** The Association and any aggrieved Unit Owner shall have a right of action against any Unit Owner or Owners for failure to comply with the provisions of the Declaration, By-Laws, the Rules, Regulations, and decisions of the Association which are made pursuant to authority granted the Association in such documents. Unit Owners shall have a similar right of action against the Association.

**Section 9.3 Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Condominium designed to make the community safer than it otherwise might be. Neither the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Condominium, however, and neither the

Association, the Declarant, nor any Successor Declarant shall be held liable for any loss or damage by reason or failure to provide adequate security or ineffectiveness of security measures undertaken. All Unit Owners and occupants of any Unit, and tenants, guests and invitees of any Unit Owner, as applicable, acknowledge that the Association and its Board of Directors, Declarant, or any Successor Declarant do not represent or warrant that any security system will be installed or that any security system which is implemented or installed by the Declarant or the Board will be effective in any or all situations. All Unit Owners and occupants of any Unit, and tenants, guests and invitees of any Unit Owner hereby release the Declarant and the Board from any liability for security efforts or for failure to implement security in the Condominium.

## ARTICLE X GENERAL PROVISIONS

Section 10.1. Enforcement. The Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration, By-Laws, or any Rules or Regulations governing the Condominium Property, including any fines levied by the Association. Failure by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any proceeding arising because of failure of a Unit Owner to make any payments required or to comply with any provisions of the Declaration, the Act, the By-Laws, or the Rules and Regulations adopted by the Association as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorney's fees incurred in connection with default or failure. Furthermore, all Unit Owners covenant to one another to do nothing detrimental nor damaging to the Condominium Property, as determined by the Association.

Section 10.2. Severability. Invalidation of any one of the provisions of this instrument or of the By-Laws by judgment or court order shall not affect the remaining provisions thereof and the same shall remain in full force and effect. Any provision of this Declaration that is determined to be in violation of or contrary to any law shall thereafter be interpreted so as to comply with the law in the manner that will be closest to the provisions of this Declaration so held invalid. Thus, if more than sixty-seven percent (67%) of the Unit Owners are required to vote or agree with respect to anything required hereunder or to have at least a vote of sixty-seven percent (67%) of the Unit Owners, the lowest percentage number of the Unit Owners that comply with the legal requirements shall thereafter apply.

Section 10.3. Undivided Common Areas. Common Areas will remain undivided. Prior to the total destruction of all the buildings in the Condominium no Unit Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Condominium.

Section 10.4. Amendment. Amendments to this Declaration shall be proposed and adopted in the following manner:

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

considered. Notice shall also be sent to any holder of a first mortgage on a Unit, which holder has requested the Association to notify it of any proposed amendment of the Articles or the Bylaws.

(b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Managers or by not less than 5% of the Unit Owners. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly held in accordance with the provisions of the Bylaws.

(c) **Approval.** Any proposed amendment to this Declaration shall be approved by a vote of not less than 67% of the Unit Owners entitled to vote. If the proposed amendment or other action of the Unit Owners shall affect any of the actions set forth in subparagraph (d), then such action shall also require approval by at least 51% of the holders of first mortgages on such units who or which have requested that the Association notify them of any proposal action by the Association; ("Eligible Mortgages").

(d) Any proposal to amend the Declaration or the Bylaws which shall affect a change and any of the following shall require approval by 51% of the holders of Eligible Mortgages on the units, namely:

- (i) Voting rights;
- (ii) Assessments, assessment liens, or the priority of assessment liens;
- (iii) Reserves for maintenance, repairs or replacement of common areas;
- (iv) Responsibility for maintenance and repairs;
- (v) Reallocation of interest in the general or limited common areas, or rights to their use;
- (vi) Redefinition of any Unit boundaries;
- (vii) Convertibility of any Units and Common Areas or vice versa;
- (viii) Expansion or contraction of the project, or addition, annexation or withdrawal of property to or from the project (except expansion as provided in Article XI hereof);
- (ix) Insurance or fidelity bonds;
- (x) Leasing of Units;
- (xi) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (xii) Any decision of the Association to establish self-management;
- (xiii) Restoration or repair of the Condominium after hazard damage or condemnation;
- (xiv) Any action to terminate the legal status of the condominium after substantial destruction or condemnation;
- (xv) Any provisions that expressly benefit mortgage holders, insurers or guarantors of mortgages of any of the Units;

(e) If the Unit Owners shall consider termination of the legal status of the project for reasons other than substantial destruction or condemnation of the property, approval of 67% of the Eligible Mortgages shall be required. However, for purposes of subparagraphs (d) and this subparagraph (e), if an Eligible Mortgagee fails to submit a response to any



written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal sent to it or delivered by certified or registered mail with return receipt requested, or otherwise after it shall receipt for receipt of notice, then such Eligible Mortgagee shall be deemed to have approved the proposed action.

(f) Recording. Each Amendment to this Declaration and each Supplemental Declaration shall be executed by the President or a Vice President and Secretary or an Assistant Secretary of the Association, or by the Declarant if made pursuant to Declarant's reserved rights, and shall be recorded in the office of the Recorder of Hamilton County, Indiana, and no such Amendment or Supplement shall become effective until recorded. The plans setting forth the layout, location, identification numbers, and dimensions of the Units ("as built plans") and the Property are incorporated into this Declaration by reference, and have been, or will be, filed in the Office of the Recorder of Hamilton County, Indiana.

(g) The provisions of this Section 10.4 shall not affect the right of the Declarant to expand the Condominium as set forth in Section 5.5 or in Article XI of this Declaration.

Section 10.5. Legal Actions. The Association may commence or maintain an action for the recovery of any damages caused to the Condominium if any Unit or any part of the Common Areas are damaged or destroyed, or for any other proper claim by the Association. Any such action where a Unit is damaged, may be maintained in the names of the affected Unit Owners, may be joined with any action brought by the Unit Owners, and may be prosecuted or settled by the Association as it sees fit. This provision shall survive the termination of this Declaration, and any recovery minus costs advanced by the Association shall be paid into the Reconstruction Fund, and paid out as provided for insurance proceeds under Article VIII.

Section 10.6. Costs and Attorney's Fees. In any proceeding arising because of failure of a Unit Owner to make any payments required, including fines, or to comply with any provisions of this Declaration, the Act, the By-Laws, or Rules and Regulations, as each may be amended from time to time, the Association shall be entitled to recover any fines duly imposed as well as its costs and reasonable attorney's fees incurred in connection with such default or failure. Such payments, costs, fines and attorney's fees shall be secured by the Association's lien on such Unit.

Section 10.7. Rights of Mortgagees.

(a) If any Mortgagee of a Unit shall so request in writing, identifying its interest in a Unit, it shall be given notice at least thirty (30) days prior to the effective date of any changes in the Condominium documents, other than Amended or Supplemental Declarations which are permitted to be made by the Declarant under the provisions of Section 5.3 above, and ten (10) days notice of any change in the management agent or manager of the Condominium, or any condemnation loss or any casualty loss which affects a material portion of the Condominium Property or the mortgaged Unit; and of any lapse of the Association's insurance policy or fidelity bond, or any action which requires consent of a specified percentage of eligible mortgage holders as specified in paragraphs (f) and (g) below.

(b) Unless all holders of first mortgage liens on individual Units of which the Association has been given notice, have given their prior written approval if they so request, the Association shall not:

(i) Change the pro rata interest of any Unit for purposes of assessment, or change the Percentage Interest of any Unit (except through expansion of the Condominium as provided in Article XI hereof).

(ii) Seek to abandon the Condominium status of the Condominium Property except as provided by statute in case of loss to the Units.

(c) Each Mortgagee which shall so request shall be entitled to written notice from the Association of any default by a Mortgagor of an individual Unit mortgaged to it in the performance of the Mortgagor's obligations under the Condominium documents and which is not cured within sixty (60) days. Nothing herein shall prohibit the Association from giving a Mortgagee notice of such a default at any time. Any Mortgagee which shall so request shall also be given a reasonable right to cure any default by the Unit Owner whose Unit is subject to such mortgage.

(d) The Association shall honor any powers of attorney given by any Unit Owner to his Mortgagee pursuant to its mortgage documents.

(e) In the case of fire or other casualty or disaster, other than complete destruction of all buildings containing the Units, the improvements shall be reconstructed substantially in accordance with the original plans and specifications so far as reasonably possible.

(f) No reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of any part of the Condominium property without the prior approval of eligible holders holding mortgages on the remaining Units, and which have at least 51% of the votes of the mortgage holders of such mortgages.

(g) Any decision by the Owners or the Association to provide for self-management shall not be effective unless approved by the Owners of 67% of the Units and by 51% of the Mortgagees holding mortgages on any of the Units. For purposes of determining the votes of Mortgagees, each shall have one vote per Unit on which they hold a mortgage.

Section 10.8. Definition of Terms. The following terms as used in this Declaration and the By-Laws shall have the meanings set forth as follows:

(a) "Act" shall mean the Horizontal Property Law, IC 32-25-1-1 et seq., as amended from time to time.

(b) "Adjacent Property" shall mean the property which may be annexed to the Condominium without vote of the Unit Owners as provided in Section 11.1 hereof.

(c) "Articles" shall mean the Articles of Incorporation of the Association as filed with the Indiana Secretary of State, and any duly adopted changes thereto.

(d) "Association" shall mean the Waterfront Condominium at Morse Lake Owners Association, Inc., an Indiana not-for-profit corporation.

(e) "Board of Managers" or "Board" as used herein shall refer to the Board of Managers of the Association.

(f) "By-Laws" shall mean the By-Laws of the Association attached hereto and made a part hereof, and any duly adopted changes thereto.

(g) "Common Expense" shall mean generally all expenses of administration of the Association and for the operation, management, upkeep, maintenance, repair and replacement of the Condominium Property and shall include all items of "Common Expenses" as that term is defined under the Act.

(h) "Condominium" shall mean and include all the Units and all Common Areas in the Condominium Property, including any and all property annexed hereto from the time so annexed. Such term and the term "Horizontal Property Regime" shall have the same meaning and such terms may be used interchangeably.

(i) "Condominium Property" shall mean the parcel of real estate in Marion County, Indiana, described in Exhibit "A", attached hereto and made a part hereof and designated therein as the "Condominium Property", and any additional property which may be annexed to the Condominium.

(j) "Declarant" shall mean F.C. Realty Twenty Eight LLC, an Indiana limited liability company and owners of the Expansion Property, their successors and assigns who shall improve the Condominium.

(k) "Declaration" shall mean this Declaration and any Amended Declaration and/or Supplemental Declarations pertaining to this Condominium.

(l) "Fiscal Year" shall mean the fiscal year of the Association determined as provided in Section 5.04 of the By-Laws.

(m) "Limited Common Area" shall mean any part of the Common Areas which is restricted to the use of one Unit, or to a designated group of Units to the exclusion of other Units.

(n) "Mortgagee" shall mean the holder, insurer or guarantor of any first mortgage on a Unit.

(o) "Percentage Interest" shall mean the interest of a Unit in Common Areas as provided in Section 1.5.

(p) "Percentage Vote" shall mean the voting percentage granted to each Unit Owner in Section 2.3 herein. Such term may sometimes be used to mean the aggregate of the voting percentage of all Unit Owners who vote the same way in a particular matter.

(q) "Unit" shall have the meaning set forth in Section 1.2.

(r) "Unit Owner" shall mean the owner or a collective owner, whichever the case may be, of a Unit.

(s) As used herein, the singular of any term shall mean and apply to the plural and the plural to the singular. Also the use of any gender shall mean and apply to any other gender where applicable.


Section 10.9. Water Level. Morse Reservoir is a primary water source of the Indianapolis Water Company ("Water Company"), which is now owned by the City of Indianapolis. The level of water in the reservoir will be variable, due to weather conditions and water usage. Neither the Declarant nor the Association shall be able to control the level of water in the inlet adjacent to the Condominium Property, and when there is any shortage of rain or an increase in usage of water by the Water Company, the water level in the inlet is likely to decrease. In such event, there may not be any water in the inlet or there may not be access from the inlet to the reservoir.

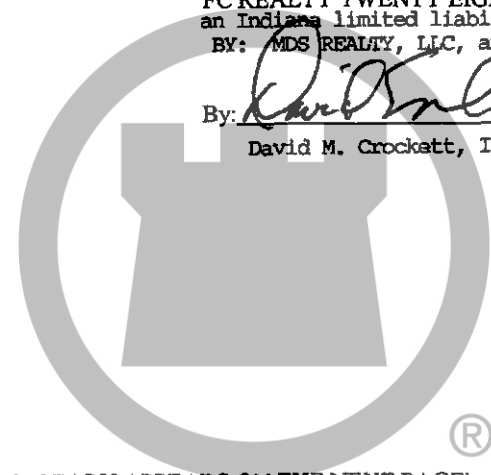
ARTICLE XI  
EXPANSION

Section 11.1. Expandable Condominium. This condominium shall be expandable as provided for in the Act and subject to the following provisions:

- (a) The expansion shall be limited to the property described on Exhibit "B attached hereto and made a part hereof.
- (b) The maximum number of additional units in the expansion area shall be limited to seventy-five (75).
- (c) The right and option to expand shall be entirely at the discretion of the Declarant and shall be done by filing an amendment to the Declaration along with the appropriate plans.
- (d) The percentage interest in the Common Areas which will appertain to each Unit in the Condominium after any expansion shall be equal to the number one (1) divided by the total number of Units which, from time to time, have been subjected to this Declaration.
- (e) Any such expansion shall be done on or before December 31, 2015.

IN WITNESS WHEREOF, the parties have entered into this Declaration Establishing a Plan for Condominium Ownership on the day and date first appearing.

FC REALTY TWENTY EIGHT LLC,  
an Indiana limited liability company  
BY: MDS REALTY, LLC, an Indiana limited liability  
company, Its Member  
By:   
David M. Crockett, Its Member



(NOTARY APPEARS ON THE NEXT PAGE)

CHICAGO TITLE

STATE OF INDIANA )

COUNTY OF MARION ) SS:

a member of MDS REALTY, LLC, an Indiana limited liability company, a member of F.C. REALTY TWENTY EIGHT LLC, an Indiana limited liability company, in and for said County and State, personally appeared David M. Crockett, on behalf of the Declarant, who acknowledged the execution of the foregoing Condominium Declaration on its behalf.

WITNESS MY HAND and Notarial Seal this 31<sup>st</sup> day of May, 2006.

Teresa Becker  
Notary Public  
Teresa Becker

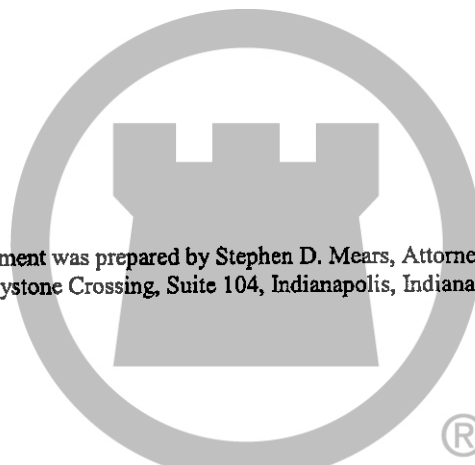


My Commission Expires:

8-10-2009

My County of Residence:

Hamilton



This instrument was prepared by Stephen D. Mears, Attorney at Law  
8395 Keystone Crossing, Suite 104, Indianapolis, Indiana 46240

®

CHICAGO TITLE

EXHIBIT "A"  
Condominium Property



CHICAGO TITLE

**LEGAL DESCRIPTION FOR F.C. REALTY TWENTY EIGHT LLC:**

**PHASE I  
EXHIBIT "A"**

ALL OF LOT FOUR (4) AND PART OF LOTS ONE (1), TWO (2) AND THREE (3) IN BLOCK NUMBER FIVE (5) AND PART OF LOT ONE (1) IN BLOCK SIX (6) OF THE JONES AND DEAN ADDITION, A PART OF THE ORIGINAL PLAT TO THE TOWN OF CICERO, HAMILTON COUNTY, AS PER PLAT THEREOF RECORDED IN DEED RECORD F, PAGE 2 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA, ALSO PART OF VANBUREN STREET AND PART OF THE FIRST ALLEY NORTH OF JACKSON STREET LYING WEST OF THE WEST LINE OF THE FIRST ALLEY WEST OF MAIN STREET, AS VACATED BY THE TOWN BOARD OF CICERO, JUNE 20, 1956 RECORDED IN DEED RECORD D, PAGE 295, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A CONCRETE MONUMENT MARKING THE SOUTHEAST CORNER OF THE SAID LOT THREE (3); THENCE SOUTH 01 DEGREE 49 MINUTES 10 SECONDS WEST ALONG THE WEST LINE OF A 16.5 FOOT ALLEY AND THE EAST LINE OF THE SAID LOT FOUR (4), 148.51 FEET TO A CONCRETE MONUMENT MARKING THE SOUTHEAST CORNER OF THE SAID LOT FOUR (4); THENCE CONTINUE SOUTH 01 DEGREE 49 MINUTES 10 SECONDS WEST 33.02 FEET TO THE CENTERLINE OF THE ORIGINAL JACKSON STREET, (A 66 FOOT RIGHT-OF-WAY); THENCE SOUTH 89 DEGREES 58 MINUTES 03 SECONDS WEST ALONG THE SAID CENTERLINE 93.05 FEET TO A POINT ON A LINE WHICH CROSSES THE CENTERLINE OF THE EAST APPROACH ROAD TO THE CICERO CREEK BRIDGE, AS NOW EXISTS, PERPENDICULARLY AT A POINT WHICH LIES 1000 FEET EAST OF THE EAST END OF THE CONCRETE HANDRAILS OF THE SAID BRIDGE; THENCE NORTH 00 DEGREES 21 MINUTES 46 SECONDS EAST ALONG SAID PERPENDICULAR LINE 35.30 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND 40 FEET NORTH OF THE SAID CENTERLINE OF THE EAST APPROACH ROAD, AS NOW EXISTS, SAID POINT LIES WITHIN LOT ONE (1) OF THE SAID BLOCK FIVE (5) ON A CURVE HAVING A RADIUS OF 11,419.15 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 00 DEGREES 21 MINUTES 46 SECONDS EAST; THENCE WESTERLY ALONG SAID CURVE AND PARALLEL LINE PASSING THROUGH LONT ONE (1) OF BLOCK FIVE (5) ACROSS VANBUREN STREET AND INTO LOT ONE (1) OF BLOCK SIX (6) 151.00 FEET TO A POINT WHICH BEARS SOUTH 01 DEGREE 07 MINUTES 13 SECONDS EAST 5.0 FEET TO THE SHORE LINE OF MORSE RESERVOIR, AS SAID SHORE LINE WOULD HAVE BEEN ESTABLISHED DECEMBER 30, 1960, PLUS ACCRETION AND MINUS EROSION (WITH THE WATER LEVEL THEREOF AT AN ELEVATION OF 810.00 FEET ABOVE MEAN SEA LEVEL); THENCE NORTHEASTERLY ALONG THE MEANDERING SHORE LINE TO A POINT (WITHIN VACATED VANBUREN STREET) WHICH BEARS NORTH 82 DEGREES 00 MINUTES 00 SECONDS WEST FROM A POINT ON THE SOUTH

LINE OF THE SAID LINE OF THE SAID LOT THREE (3) WHICH LIES SOUTH 89 DEGREES 58 MINUTES 03 SECONDS WEST 34.15 FEET FROM THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 82 DEGREES 00 MINUTES 00 SECONDS EAST (CROSSING THE SAID LOT TWO (2) AND INTO THE SAID LOT THREE (3), 158.7 FEET TO THE SAID POINT ON THE SOUTH LINE OF LOT THREE (3); THENCE NORTH 89 DEGREES 58 MINUTES 03 SECONDS EAST ALONG THE SOUTH LINE OF THE SAID LOT THREE (3) 34.15 FEET TO THE PLACE OF BEGINNING.

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CHICAGO TITLE



EXHIBIT "B"  
Expansion Property



CHICAGO TITLE

**LEGAL DESCRIPTION FOR WILLIAMS REALTY EIGHT LIMITED LIABILITY COMPANY:**

EXPANDABLE CONDOMINIUM  
EXHIBIT "B"

UNITS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, AND 212 IN THE WATERFRONT INN HORIZONTAL PROPERTY REGIME TOGETHER WITH AN UNDIVIDED PERCENTAGE INTEREST IN THE COMMON PROPERTY AS PER DECLARATION THEREOF RECORDED SEPTEMBER 15, 1977 IN THE MISCELLANEOUS RECORD 152, PAGES 278-292 WITH SITE PLANS AND FLOOR PLATS TO BUILDINGS II AND III, AS SHOWN IN PLAT BOOK 6, PAGES 140-141, IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA, AND AS AMENDED BY AMENDED DECLARATION RECORDED NOVEMBER 22, 1978 IN MISCELLANEOUS RECORD 155, PAGES 122-167, WITH SITE PLANS AND FLOOR PLANS TO BUILDING II, III, AND IV AS SHOWN IN PLAT BOOK 7, PAGES 61-71.

ALSO:

A FRACTIONAL PART OF LOTS 6 AND 7 IN BLOCK 2 IN THE ORIGINAL PLAT OF CICEROTOWN, AS RECORDED IN DEED RECORD "D", PAGE 95, INCLUDING THE NORTH-SOUTH VACATED ALLEY LYING BETWEEN LOTS 3 AND 6, ALSO A FRACTIONAL PART OF LOT 1 IN BLOCK 4 IN COLE AND JONES ADDITION TO CICEROTOWN, AS RECORDED IN DEED RECORD "F", PAGE 7, IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA, INCLUDING THE EAST-WEST VACATED ALLEY LYING NORTH OF SAID LOT 1, IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT A RE-ROD WITH I.D. CAP STAMPED "MILLER SURVEYING S00083" FOUND MARKING THE NORTHWEST CORNER OF LOT #1 OF BLOCK 3 IN THE ORIGINAL PLAT OF CICEROTOWN, AS RECORDED IN DEED RECORD F, PAGE 95, AS FOUND IN THE OFFICE OF THE HAMILTON COUNTY RECORDER; THENCE SOUTH 89 DEGREES 54 MINUTES 26 SECONDS WEST 49.48 FEET TO A RE-ROD FOUND LYING ON THE NORTH LINE OF LOT 8 IN BLOCK 2 IN SAID ORIGINAL PLAT OF CICEROTOWN; THENCE SOUTH 00 DEGREES 16 MINUTES 24 SECONDS WEST 172.94 FEET PARALLEL TO THE WEST LINE OF SAID LOT 1 OF SAID BLOCK 3 TO A P.K. NAIL FOUND, BEING THE PLACE OF BEGINNING; THENCE NORTH 89 DEGREES 56 MINUTES 06 SECONDS EAST 24.75 FEET TO A P.K. NAIL SET WITH I.D. WASHER STAMPED "R.L.S. 040123" (HEREAFTER REFERRED TO A NAIL SET); THENCE SOUTH 00 DEGREES 15 MINUTES 05 SECONDS WEST 106.76 FEET TO THE CENTERLINE OF MAIN STREET AS PLATTED IN COLE'S AND JONES ADDITION TO CICEROTOWN AS FOUND OF RECORD IN DEED RECORD F, PAGE 7; THENCE NORTH 89 DEGREES 53 MINUTES 20 SECONDS WEST 24.75 FEET TO THE WEST

RIGHT OF WAY LINE OF SAID MAIN STREET AS PLATTED IN COLE'S AND JONES ADDITION TO CICEROTOWN; THENCE SOUTH 00 DEGREES 14 MINUTES 25 SECONDS WEST 29.56 FEET ALONG SAID RIGHT OF WAY LINE TO A POINT ON THE NORTHEASTERLY LINE OF THE WATERFRONT INN HORIZONTAL PROPERTY REGIME PER PLANS RECORDED IN PLAT BOOK 7, PAGES 69-71, IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA; (THE FOLLOWING THREE COURSES ARE ALONG SAID HORIZONTAL PROPERTY REGIME NORTHEASTERLY BOUNDARY LINE); (1) THENCE NORTH 44 DEGREES 47 MINUTES 05 SECONDS WEST 134.13 FEET; (2) THENCE SOUTH 89 DEGREES 58 MINUTES 03 SECONDS WEST 35.18 FEET; (3) THENCE NORTH 19 DEGREES 47 MINUTES 05 SECONDS WEST 32.94 FEET TO A P.K. NAIL FOUND ON THE SOUTH LINE CONVEYED TO THE CAPITAL QUARTER'S HOLDINGS, LLC BY DEED RECORDED AUGUST 11, 1998, AS INSTRUMENT 9809844640 IN AFORESAID RECORDER'S OFFICE; (THE FOLLOWING THREE COURSES BEING ALONG SAID SOUTH BOUNDARY LINE); THENCE NORTH 89 DEGREES 58 MINUTES 03 SECONDS EAST 125.37 FEET TO A P.K. NAIL FOUND; (2) THENCE NORTH 00 DEGREES 12 MINUTES 55 SECONDS EAST 10.00 FEET TO A P.K. NAIL FOUND; (3) THENCE SOUTH 89 DEGREES 58 MINUTES 56 SECONDS EAST 16.00 FEET TO THE PLACE OF BEGINNING, CONTAINING 0.265 ACRES, MORE OR LESS.

ALSO:

PART OF BLOCK 2, IN THE ORIGINAL PLAT OF CICERO TOWN AND BEING A PART OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 19 NORTH, RANGE 4 EAST IN HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT A RE-ROD WITH I.D. CAP STAMPED "MILLER SURVEYING S0083" FOUND MARKING THE NORTHWEST CORNER OF LOT #1 OF BLOCK 3 IN THE ORIGINAL PLAT OF CICEROTOWN AS RECORDED IN DEED RECORD F, PAGE 95, AS FOUND IN THE OFFICE OF THE HAMILTON COUNTY RECORDER; THENCE SOUTH 89 DEGREES 54 MINUTES 26 SECONDS WEST, 49.48 FEET TO A RE-ROD FOUND LYING ON THE NORTH LINE OF LOT 8 IN BLOCK 2 IN SAID ORIGINAL PLAT OF CICEROTOWN, BEING THE PLACE OF BEGINNING; THENCE SOUTH 00 DEGREES 16 MINUTES 24 SECONDS WEST 172.94 FEET PARALLEL TO THE WEST LINE OF SAID LOT 1 OF SAID BLOCK 3 TO A P.K. NAIL FOUND; THENCE NORTH 89 DEGREES 58 MINUTES 56 SECONDS WEST 16.00 FEET TO A P.K. NAIL FOUND; THENCE SOUTH 00 DEGREES 12 MINUTES 55 SECONDS WEST 10.00 FEET TO A P.K. NAIL FOUND; THENCE SOUTH 89 DEGREES 58 MINUTES 03 SECONDS WEST 125.37 FEET TO A P.K. NAIL FOUND; THENCE NORTH 19 DEGREES 47 MINUTES 05 SECONDS WEST 43.47 FEET TO A P.K. NAIL FOUND; THENCE SOUTH 70 DEGREES 12 MINUTES 55 SECONDS WEST 99.49 FEET TO THE TOP WEST EDGE OF THE STEEL SEAWALL, SAID POINT BEING REFERENCED BY A RE-ROD WITH I.D. CAP STAMPED "ASHTON RLS S0149 LAND CORNER" FOUND NORTH 70 DEGREES 15 MINUTES 54 SECONDS EAST 0.87 FEET; THENCE NORTH 12 DEGREES 09 MINUTES 48 SECONDS WEST 77.85 FEET TO THE SOUTHEAST CORNER OF AN EXISTING 0.2 ACRE TRACT DEEDED TO

THE TOWN OF CICERO AS FOUND OF RECORD IN DEED BOOK #308, PAGE 116;  
THENCE NORTH 00 DEGREES 14 MINUTES 54 SECONDS WEST 87.96 FEET ALONG  
THE EAST LINE OF SAID DEED BOOK #308, PAGE 116 TO RE-ROD STAMPED  
"ASHTON RLS S0149 LAND CORNER" FOUND MARKING THE NORTHEAST CORNER  
OF SAID DEED BOOK; THENCE NORTH 00 DEGREES 03 MINUTES 44 SECONDS EAST  
11.64 FEET TO A RE-ROD FOUND; THENCE NORTH 89 DEGREES 59 MINUTES 01  
SECOND EAST 267.33 FEET TO THE PLACE OF BEGINNING.



CHICAGO TITLE

**CODE OF BY-LAWS**  
**OF THE**  
**WATERFRONT CONDOMINIUM AT MORSE LAKE OWNERS ASSOCIATION, INC.**

**ARTICLE I**

**Identification and Applicability**

**Section 1.01. Identification and Adoption.** These By-Laws are adopted simultaneously with the execution of a certain Declaration creating the Waterfront Condominium at Morse Lake (hereinafter usually called the "Condominium") to which these By-Laws are attached and made a part. The operation and management of the Condominium shall be by the Waterfront Condominium at Morse Lake Owners Association, Inc., (the "Association"), for which these By-Laws are adopted, subject to Declarant's rights of management as set forth in the Declaration and herein.

The Declaration and Articles of Incorporation are incorporated herein by reference, and all of the covenants, rights, restrictions, and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these By-Laws. The provisions of these By-Laws shall apply to the Property and the administration and conduct of the affairs of the Association.

**Section 1.02. Individual Application.** All of the Unit Owners, future owners, mortgagees, tenants, future tenants, or their guests and invitees, or any other person that may use or occupy a Unit or any part of the Condominium Property, shall be subject to the terms, and conditions set forth in the Declaration, these By-Laws and the Act, and to any Rules and Regulations adopted by the Association.

**ARTICLE II**

**Meetings of Association**

**Section 2.01. Purpose of Meetings.** After the Board of Managers is formed, at least annually and at such other times as may be necessary, a meeting ("Annual Meeting") of the Unit Owners shall be held for the purpose of electing the Board of Managers, approving the Annual Budget, and for such other purposes as may be required by the Declaration, these By-Laws or the Act.

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

**Section 2.03. Special Meetings.** A Special Meeting of the Unit Owners may be called by the President, by resolution of the Board of Managers, or upon a written petition of not less than twenty percent (20%) of the Unit Owners. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purposes for which the meeting is to be called and such purposes shall be stated in the notice thereof which is sent to the Unit Owners. No

business shall be transacted at a Special Meeting except as stated in the notice of the meeting, unless all the Unit Owners are present.

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

**Section 2.05. Voting.**

(a) **Number of Votes.** To facilitate the orderly conduct of the meeting, each Unit Owner who is a Class A Member shall be entitled to cast one vote on each matter coming before the meeting since the Percentage Interest of each Unit Owner will always be equal. So long as the Declarant is a Class B Member he shall have the right to cast five (5) votes for each Unit he owns.

(b) **Multiple Owner.** Where the Owner of a Unit constitutes more than one person, or is a partnership, there shall be only one voting representative entitled to cast the entire Percentage Vote allocable to that Unit.

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

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

(e) **Quorum.** Except where otherwise expressly provided in the Declaration, these By-Laws or the Act, a majority of the Unit Owners shall constitute a quorum at all meetings.

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

(1) **Reading of Minutes.** The Secretary shall read the minutes of the last Annual Meeting and the minutes of any Special Meeting held subsequent thereto, but such reading may be waived upon motion.

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

(3) **Budget.** The proposed Annual Budget for the current fiscal year shall be presented to the Unit Owners for approval or amendment. If the Unit Owners do not approve

the Annual Assessments for the current fiscal year at the time they approve the Annual Budget. The Board of Managers shall set the Annual Assessments for the year at such amount as to raise the funds required to comply with the Annual Budget, including reserve requirements.

(4) Election of Board of Managers. Nominations for the Board of Managers may be made by any Unit Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Association at least three (3) days prior to the date of the Annual Meeting. Voting for the Board of Managers will be by paper ballot unless a majority of the Unit Owners present waive voting by paper ballot and approve another form of voting. The ballot shall contain the name of each person nominated to serve as a Board member. Each Unit Owner may cast one vote for as many nominees as are to be elected. No Unit Owner may cast more than one vote for any nominee. Those persons receiving the highest number of votes shall be elected.

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

(6) Adjournment.

### ARTICLE III Board of Managers

Section 3.01. Number and Eligibility. After the Board has been formed, the affairs of the Association and of the Condominium shall be governed and managed by the Board of Managers (herein collectively called the "Board" or "Managers" and individually called "Manager"). The Board of Managers, who shall perform all duties and serve as a Board of Directors, shall be composed of five (5) persons. No person shall be eligible to serve as a Manager unless he is a Unit Owner or unless he is appointed by the Declarant. Also, any Unit Owner who is thirty (30) days or more in arrears in his Annual or Special Assessments, will not be eligible to serve or continue to serve as Manager.

Section 3.02. Initial Board of Managers. The initial Board of Managers shall be as provided in the Articles of Incorporation of the Association, all of whom shall be appointed by Declarant. Notwithstanding any other provisions in the By-Laws, or the Declaration, the initial Board of Managers shall hold office until the first Annual Meeting of the Unit Owners which shall be held on the first Monday on or after February 1 each year. So long as the Declarant or an affiliate of the Declarant is managing the Condominium pursuant to the powers reserved to the Declarant in Section 5.2 of the Declaration, the Declarant may postpone the Annual Meeting of the Unit Owners until it has turned over the management of the Condominium to the Association.

Section 3.03. Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Unit Owner, or an officer or trustee, shall be eligible to serve on the Board of Managers,

except that no Unit Owner other than the Declarant may be represented on the Board of Managers by more than one person at a time.

**Section 3.04. Term of Office and Vacancy.** The Board of Managers shall be elected at each Annual Meeting of the Association. At the first such meeting the Board shall be divided into three groups, one group shall be elected for one (1) year, one group for two (2) years and one for three (3) years. At each subsequent Annual Meeting persons equal to the number of each group whose terms expire shall be elected for a three (3) year period. At the first Annual Meeting two Managers shall be elected for two years, two Managers for three years and one Manager for one year. Thereafter all Managers shall be elected to serve for the unexpired term of the Manager whom he or she has replaced, or for three years where the term of a Manager expires due to completion of his or her term of office.

Any vacancy or vacancies occurring in the Board of Managers shall be filled by a vote of a majority of the remaining Managers or by vote of the Unit Owners if a Manager is removed in accordance with Section 3.05 of this Article III.

**Section 3.05. Removal of Manager.** A Manager or Managers, except the initial Managers, may be removed with or without cause by vote of the Unit Owners at a meeting duly called and constituted. In such case, a successor Manager shall be elected at the same meeting from eligible Unit Owners at such meeting. A Manager so elected shall serve until the next Annual Meeting of the Unit Owners or until his successor is duly elected and qualified. An initial Manager may be removed and replaced at the discretion of the Declarant.

**Section 3.06. Duties of the Board of Managers.** The Board of Managers shall provide for the management, administration and operation of the Condominium, the maintenance, repair, upkeep and replacement of the Common Areas and Limited Common Areas, and the collection and disbursement of the Common Expenses. These duties include, but are not limited to:

- (a) management, maintenance, repair and replacements of the common areas;
- (b) procuring of utilities used in connection with the Condominium, removal of garbage and waste, and snow removal from the Common Areas;
- (c) landscaping, painting, decorating, and furnishing of the Common Areas;
- (d) surfacing, paving and maintaining streets, parking areas, and sidewalks;
- (e) assessment and collection from the Owners of their pro rata share of the Common Expenses;
- (f) preparation of Annual Budget;
- (g) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner as soon as possible after the end of each fiscal year;



(h) keeping a current, accurate and detailed record of receipts and expenditures affecting the Condominium Property, specifying and itemizing the Common Expenses. All records and vouchers shall be available for examination by an Owner upon reasonable notice during normal business hours;

(i) to procure fire and extended coverage insurance covering the Buildings and the Condominium Property to the full replacement value thereof and to procure public liability and property damage insurance and Workmen's Compensation Insurance, if necessary, for the benefit of the Unit Owners and the Association; and

(j) reconciliation of Common Expenses will be done at the end of each fiscal year and if additional funds are needed the Board of Managers may assess the Unit Owners.

**Section 3.07. Powers of the Board of Managers.** The Board of Managers shall have all powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

(a) to employ a managing agent or a real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties;

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

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

(d) to include the costs of all of the above and foregoing as a Common Expense;

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

(f) to determine rules and procedures for hiring and firing of personnel necessary for the maintenance, repair and replacement of Common Areas and for approving the payment of vouchers, invoices and the like;

(g) to adopt, revise, amend and alter from time to time reasonable Rules and Regulations with respect to use, occupancy, operation, and enjoyment of the Condominium Property;

(h) to own, convey, encumber, lease and otherwise deal with the Condominium Property and property of and for the Association; and

(i) to grant easements, rights of way, and other rights over the Common Areas;  
and

(j) to do such other acts and things as are in the best interest of a majority of Unit Owners and which are not contrary to law, or to the Declaration or By-Laws.

**Section 3.08. Limitation on Board Action.** The authority of the Board of Managers to enter into contracts shall be limited to contracts involving a total expenditure of less than \$5,000.00 without obtaining the prior approval of the Unit Owners at a meeting thereof, except in the following cases:

(a) contracts for replacing or restoring portions of the Common Areas or Limited Common Areas damaged or destroyed by fire or other casualty unless all the buildings are totally destroyed;

(b) proposed contracts and proposed expenditures expressly set forth as provided for in the Annual Budget as approved by the Unit Owners at the Annual Meeting, which shall include, but not be limited to, the compensation of the Managing Agent, ongoing contracts of all kinds, maintenance contracts, contracts for improvements which have been approved by the Association, and contributions to reserve accounts; and

(c) Items within the Budget need not be approved separately. The Board may also reallocate items in the Budget, if the total Budget will not be increased.

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

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

Special meetings of the Board of Managers may be called by the President or any three members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary who shall either personally, or by mail, and at least three (3) days prior to the date of such special meeting, give notice to the Board members unless all Board members shall waive such notice or such time requirement. The notice of the meeting shall contain a statement of the purpose or purposes for which the meeting is called. Any regular or special meeting shall be held at such place and at such time within Hamilton County, Indiana, as shall be designated in the notice.

**Section 3.11. Waiver of Notice.** Any Manager may, in writing, waive notice of a meeting and such waiver shall be deemed equivalent to the receipt of such notice. The presence of any Manager

at a meeting shall, as to such Manager, constitute a waiver of notice of the time, place and purpose thereof. If all Managers are present at the meeting of the Board, or if those not present shall waive notice of the meeting or shall consent to the actions taken at the meeting, notice shall not be required and any business may be transacted at such meeting.

Section 3.12. Quorum. At all meetings of the Board a majority of the Managers shall constitute a quorum for the transaction of business and the votes of the majority of the Managers present at a meeting at which a quorum is present shall be the decision of the Board.

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

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

Section 3.15. Bond. The Board of Managers and officers shall be covered by the fidelity bond required of the Association. Such bond shall, if obtainable, provide coverage, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty. Such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bond shall be a Common Expense.

Section 3.16. Books and Records. The Board of Managers shall itself, or through the Manager, make available to Unit Owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, By-Laws, other rules concerning the Condominium, and the books, records and financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

#### ARTICLE IV

##### Officers

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

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

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

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

Section 4.05. The Secretary. The Secretary need not be elected from among the Managers nor a Unit Owner. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meeting, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 4.06. The Treasurer. The Board shall elect a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incident to the office of the Treasurer. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into the possession of the Association. He shall immediately deposit all funds of the Association coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name of the Association. The Treasurer need not be either a Unit Owner or a Manager.

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

ARTICLE V  
Accounting, Budgets and Assessments

Section 5.01. Annual Accounting. Annually, as soon as practicable after the close of each fiscal year, the Board shall cause to be prepared and furnished to each Unit Owner an audited financial statement prepared by an independent public accountant, who shall be a certified public accountant. Such statement shall show all receipts and expenses received, incurred and paid during the preceding calendar year. The Association shall also furnish such financial statement for the preceding fiscal year free of charge to any holder, insurer or guarantor of a first mortgage that is secured by a Unit who shall so request in writing.

Section 5.02. Proposed Budget. After the management of the Condominium has been turned over to the Association, annually, on or before the date of the Annual Meeting of the Association, the Board of Managers shall cause to be prepared a proposed Annual Budget for the ensuing or current fiscal year estimating the total amount of the Common Expenses for such fiscal year. The Board of Managers shall furnish a copy of such proposed Annual Budget to each Unit Owner prior to or at the Annual Meeting. The Annual Budget shall be submitted to the Unit Owners at the Annual Meeting of the Association for adoption, and, if so adopted, shall be the basis for the Annual Assessment for the following fiscal year. At the Annual Meeting of the Unit Owners, the Budget may be approved in whole or in part or may be amended in whole or in part, by a majority of the

Percentage Vote of those persons voting in person or by proxy; provided, however, that if the Annual Meeting of the Unit Owners is adjourned before an Annual Budget is approved at such meeting, then the Board of Managers may adopt a tentative Annual Budget for such year until an Annual Budget is approved by the Unit Owners.

**Section 5.03. Annual and Special Assessments.** Common Expenses shall be assessed to the Unit Owners, except as otherwise provided with respect to the Declarant in Section 4.5 of the Declaration, either as an Annual Assessment, or as a Special Assessment, proportionately in accordance with their respective Percentage Interest in the Common Areas, all as set forth below:

(a) An Annual Assessment shall be made for each Fiscal Year of the after the Association takes control of the Condominium, for all anticipated ongoing operating expenses of the Condominium, including reserves. The Annual Assessment shall be paid in twelve (12) equal monthly installments which shall be due and payable in advance on the first day of each calendar month. The amount of the aggregate Annual Assessments shall be equal to the total amount of expenses provided for in the Annual Budget, including reserve items.

(b) Special Assessments may be made for any unusual and/or extraordinary items, including capital expenditures, and for any unanticipated items, or if the Annual Assessments turn out to be insufficient. Special Assessments shall be payable in such amounts and at such times as may be provided in the resolution or other formal proposal setting forth the terms of such Special Assessments.

(c) A Special Assessment may also be made against certain Units having the use of Limited Common Areas, or for other purposes where certain Unit Owners receive services or privileges, which are not then generally available to all Unit Owners equally, as a charge for the use, maintenance and/or upkeep of such Limited Common Areas, or for such services or privileges, or for any other charges or expenses attributable to such Limited Common Areas, services, privileges or which result from actions of a Unit Owner which may cause extra expense to the Association. A Unit Owner's agreement to pay Special Assessments may be imposed by the Declarant and/or by the Board of Managers as a condition to approving the use or improvement of Limited Common Areas, or as a condition to the rendition or grant of services or privileges.

(d) The Annual Assessment and any Special Assessments, together with interest, late charges, costs and reasonable attorney's fees, shall be a continuing lien on the property upon which each such assessment is made as each installment thereof becomes payable. Each Assessment, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the persons who were the Owners of the Unit at any time when the Assessment was payable.

**Section 5.04. Fiscal Year.** The Fiscal Year of the Association shall initially commence on January 1 and end on December 31 of the following year, but the Board of Managers may change such Fiscal Year. If the Fiscal Year is changed the Board of Managers shall cause the Annual Assessment for the prior fiscal year to be assessed for any short Fiscal Year, or it may submit an interim or modified Budget and Annual Assessment for such period to the Unit Owners.

**Section 5.05. Limitation on Assessments.** Until real estate taxes are separately assessed to the Units, the Association may collect from the owner of each Unit the real estate tax which is allocable to his or her Unit. So long as the Declarant owns any Unit in the Condominium but not longer than two (2) years from the date of the conveyance of the first Unit in the Condominium, there shall not be any increases in the Annual Assessment nor shall there be any Special Assessments, without Declarant's prior approval. For the purposes of this Section any Unit re-acquired by the Declarant after it has been sold shall be deemed not to be owned by the Declarant.

**Section 5.06. Vote for Special Assessments.** No Special Assessment, except Special Assessments imposed under Section 5.03(c) above, shall be adopted unless voted for by sixty-seven percent (67%) of the members of the Association who are voting in person or by proxy at a meeting called for this purpose. However, Special Assessments required because of an insufficiency of insurance and Special Use Assessments shall not be subject to any vote by the Unit Owners.

**Section 5.07. Notice of Meetings for Assessments.** Written notice of any meeting called for the purpose of approving the Annual Budget and Annual Assessment or a Special Assessment, shall be given or sent to all members and such notice shall state that the Annual Budget and/or a Special Assessment will be considered at such meeting.

**Section 5.08. Commencement of Assessments.** The Annual Assessments provided for herein shall be made for each Fiscal Year of the Association, and the first monthly payment of each Annual Assessment shall be due on the first day of the first month of each Fiscal Year. If the Annual Assessment has not been set by the first day of the Fiscal Year, then the payments due on the Annual Assessment shall be based upon any Tentative Assessment set by the Board of Managers, and if none is set then the assessments shall be based on the prior year's assessment until the Annual Budget and the Annual Assessment for such Fiscal Year is approved. The first monthly payment of the Annual Assessment payable after the Annual Budget is approved shall be adjusted to compensate for any prior payments which were too high or too low. The Annual Assessment for the Fiscal Year in which occurs the conveyance of the first Unit in the Condominium to a Unit Owner shall be the sum provided in Section 5.05 above. No Unit shall be liable for payments of the Annual Assessment until after the Unit is substantially completed and is ready for occupancy, and after one Unit has been conveyed by the Declarant to a Unit Owner. A Unit Owner shall pay a prorated monthly assessment for the balance of the month in which a conveyance of a Unit by the Declarant occurs.

**Section 5.09. Delinquent Assessment.** Any payment of an Assessment which is not paid within fourteen days shall automatically be subject to a late charge of \$25.00, and if the payment is not paid within thirty (30) days after the date due shall bear interest from the date when due, at the rate of fifteen percent (15%) per annum, or such other interest rate as the Board of Managers may set from time to time. The Board of Managers shall have the right to change the amount of the late charge and the time period before such charge is imposed. The Association may bring an action at law against the Unit Owner personally obligated to pay the same; it may foreclose its lien against the Owner's Unit; or it may assert both rights and/or any other remedy available to it in law or in equity.

**Section 5.10. Lien of Assessments.** All sums assessed by the Association, but unpaid, for the share of the Common Expenses chargeable to a Unit including Special Assessments and Special

Use Assessments, and any fines duly imposed by the Association, together with attorney's fees and the costs of collection thereof, shall constitute a lien on such Unit prior to all other liens, except only:

- (a) Tax liens on the Unit in favor of any assessing unit or special district; and
- (b) All sums unpaid on a first mortgage of record.

The sale or transfer of any Unit by foreclosure or by deed in lieu of foreclosure, shall extinguish the Assessment lien for payments which became due prior to such sale or transfer, but shall not extinguish the liability of the Unit Owner for such assessments. The lien for sums assessed may be foreclosed by a suit by the Association or the Managing Agent on its behalf in like manner as a mortgagee of such property. In any such foreclosure the Unit Owner shall be required to pay a reasonable rental for the use and occupancy of the Unit. No such sale or transfer shall relieve the Unit or any successor owner of the Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 5.11. Liability of Grantee. In a voluntary conveyance of a Unit other than a deed in lieu of foreclosure, the grantee as successor Owner of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association prior to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Upon the request of any Unit Owner, purchaser or grantee thereof, or Mortgagee, the secretary or other authorized officer of the Association or the Managing Agent shall provide within seven (7) days of the request, a statement of the amount of current and delinquent assessments by the Association, including fines and charges, against a particular Unit. The Association may require the Unit Owner to confirm that the person requesting the statement is a Mortgagee or purchaser or grantee of the Unit Owner. Once having been furnished with such a statement, such person shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth, plus costs of collection of such sums, if applicable.

Section 5.12. Failure of Owner to Pay Assessments. Each Unit Owner shall be personally liable for the payment of all Annual and Special Assessments. Where the Unit Owner constitutes more than one person, the liability of such persons shall be joint and several. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Annual or Special Assessments without foreclosing or waiving the lien securing the same, or it may bring a joint action to recover money damages and to foreclose its lien on the Unit.

ARTICLE VI      ®  
Right to Enter, Rules and Regulations

Section 6.01. Right of Entry. Each Unit Owner shall grant the right of entry to the Managing Agent or any other person authorized by the Board in case of any emergency originating in or threatening his or her Unit or the Building in which it is located, whether the Unit Owner is present at the time or not. Any Unit Owner shall permit other authorized persons, or their representatives where so required, to enter his or her Unit for the purpose of inspection or performing installations, alterations, repairs and improvements to any Common Areas or Limited Common Areas. The Association shall attempt to see that requests for entry are made in advance and that such entry is at



a time convenient to the Owner. In case of emergencies, such right of entry shall be immediate and without notice.

Section 6.02. Right of Board to Adopt Rules and Regulations. The Board may promulgate such Rules and Regulations regarding the operation of the Condominium Property, including but not limited to, the use of the Common Areas and Limited Common Areas and to provide reasonable restrictions on the use of the several Units, as the Board may deem necessary from time to time. The Board shall cause copies of such Rules and Regulations to be delivered or mailed promptly to all Unit Owners.

#### ARTICLE VII

##### Lease

7.01. Lease of Unit. Units, parking spaces and boat dock spaces may not be leased to third parties.

#### ARTICLE VIII

##### Amendment to By-Laws

Section 8.01. These By-Laws may be amended by a vote of not less than sixty-seven percent (67%) of the Percentage Vote of the Unit Owners voting in person or by proxy at a duly constituted meeting called for such purpose, or at an Annual Meeting. The Declarant without any vote of Unit Owners may amend these By-Laws for any purposes for which it is authorized to amend the Declaration under Section 5.4 thereof without a vote of the Unit Owners.

#### ARTICLE IX

##### Mortgages

Section 9.01. Notice to Association. Any Unit Owner who places a first mortgage lien upon his Unit may notify the Secretary of the Association or the Managing Agent and provide the name and address of the Mortgagee or the Mortgagee may do so. A record of such Mortgagee and the name and address shall be maintained by the Secretary or the Managing Agent and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration or these By-Laws shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided, or as to which the Association is later notified in writing. Unless notification of any such mortgage and the name and address of Mortgagee and the Units on which it holds a mortgage are furnished to the Secretary or the Managing Agent, either by the Owner or the Mortgagee, no notice to the Mortgagee as may otherwise be required by the Declaration or these By-Laws shall be required and such Mortgagee shall not be entitled to vote on any matter to which it otherwise would be entitled by virtue of the Declaration or By-Laws or any proxy granted to such Mortgagee in connection with the mortgage. Mortgagees of whom the Association has been notified shall be entitled to notice of any of the following, to-wit:

- (a) any condemnation or casualty loss that affects either a material portion of the Condominium or the Units securing the mortgage;
- (b) any 60 day delinquency in the payment of assessments or charges owed by the Owner of the unit on which it holds a mortgage;

(c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

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

ARTICLE X  
Definitions

Section 10.01. All terms used herein shall have the same meaning as defined in the Declaration. A "Manager" as used herein is any member of the Board of Managers, and the term "Board" refers to the Board of Managers. The term "Annual Budget" shall mean the Budget adopted, or in context proposed for adoption, pursuant to Article V of these By-Laws. The masculine pronoun shall be construed to include and/or mean the feminine and neuter gender as the case may be and the singular shall where applicable include the plural. The term "Member" means a Unit Owner in his capacity as a member of the Association, and sometimes the term Unit Owner is used to describe such person in his capacity as a member of the Association.

Adopted this 31<sup>st</sup> day of May, 2006.

WATERFRONT CONDOMINIUMS AT MORSE LAKE  
OWNERS ASSOCIATION, INC.

By

David M. Casckett

President



CHICAGO TITLE

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public, in and for said County and State, personally appeared Dan M. Crockett, President, who acknowledged the execution of the foregoing Code of By-Laws.

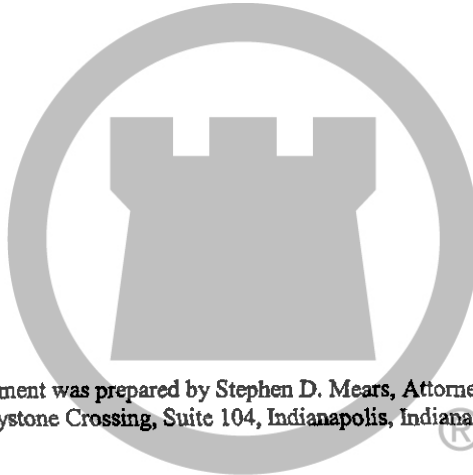
WITNESS MY HAND and Notarial Seal this 31<sup>st</sup> day of May, 2006.

My Commission Expires: 8-10-2009

Teresa T. Becker  
Notary Public

County of Residence: Hamilton

Teresa T. Becker  
Printed Name



This instrument was prepared by Stephen D. Mears, Attorney at Law  
8395 Keystone Crossing, Suite 104, Indianapolis, Indiana 46240

CHICAGO TITLE