

EARTHSTONE CONDOMINIUM ASSOCIATION, INC.

DECLARATION OF CONDOMINIUM

Affecting the land and all improvements thereon known as EARTHSTONE, a condominium, lying and being in the County of Porter and State of Indiana and described as follows:

Said Legal Description being attached hereto, made a part hereof and marked as Exhibit "A".

RECITALS, INTENT AND PURPOSES

WHEREAS, KINGSRIDGE INVESTMENT INC., an Indiana Corporation, hereinafter referred to as the Developer, as owner in fee simple of the property, has plans to construct thereon a multi-family dwelling containing, among other things, four apartments, car ports, and other appurtenances and facilities, all as hereinafter described, and

WHEREAS, by this Declaration, it is intended that the above described real estate, hereinafter referred to as the "Property" in accordance with the provisions contained, shall nevertheless be subject to the benefits and burdens of a condominium and subject to the "Horizontal Property Act" of the State of Indiana, being Acts of 1963, Ch. 39, Section 1, as Amended; and

WHEREAS, THE developer is the owner in fee simple of the Property, and is the equitable owner of the following described real estate:

A parcel of land in the Southeast Quarter (SE ¼) of Section 13, Township 35 North, Range 6 West bounded and described as follows: Commencing at a point in the North Line of said Southeast Quarter (SE ¼) which is 544.0 feet West of the Northeast Corner Of said Southeast Quarter; thence West along said North line 123.0 feet; thence South Parallel to the East line of said of said Southeast Quarter 1310.0 feet; thence East Parallel to said North line 20.0 feet; thence North parallel to said East line 439.1 feet; Thence East parallel to said North line 206.0 feet; thence North parallel to said East Line 720.90 feet; thence West parallel to said North line 103.0 feet; thence North Parallel to said East line 150.0 feet to the Point of Commencement. Containing 4.37 acres And subject to all legal highways and easements.

AND, it is the intention of the Developer to construct upon said real estate, in the future, multi-family dwellings and to cause said real estate as the same is developed by the construction thereon of multi-family dwellings to be annexed into the regime and subject to the terms, provisions and conditions contained in this Declaration of Condominium; and

WHEREAS, a condominium is a method of ownership which, when applied to a multi-family dwelling, provides a separate title to each residential unit, which title shall consist of an apartment and an undivided interest in and to all of the property that remains other than apartments; and

WHEREAS, notwithstanding such separation of title, however, the owners, by placing the condominium plan into effect, will own with others common area property, including, without intending to limit the same to such elements thereof as the corridors, garage, parking lots, landscaped areas and related facilities used and controlled in a manner consistent both with the needs and desires of the residents and the community in which the property is located; and

WHEREAS, it is desirable, therefore, that this Declaration provide the basic requirements for such needs and provide for proper use of the Property, and that within these basic requirements, the Association hereinafter referred to, and its Board of Directors shall have the right and duty to effect the purposes of the Condominium. NOW THEREFORE,

DECLARATION

Developer hereby declares on behalf of itself, its successors, grantees and assigns to its grantees and their respective heirs, successors and assigns as well as to any and all persons having, acquiring or seeking to have or acquire any interest of any nature whatsoever in and to any part of the Property, as follows:

The Property from and after the date of the recording of this Declaration in the Office of the Recorder of Porter County, Indiana, shall be and continue subject to each and all of the terms hereof until this Declaration is terminated, amended, or abandoned in accordance with the provisions herein elsewhere contained.

1. DEFINITIONS.

As used herein or elsewhere in the Condominium Documents, unless otherwise provided, or unless the context requires otherwise, the following terms shall be defined as in this article provided.

- A. Apartment: an enclosed space consisting of one or more rooms occupying all or a part of a floor or floors in a building of one or more floors or stories and designed for residential use and separately described and designated on the floor plans filed in the Office of the Recorder of Porter County, Indiana
- B. Apartment Owner or Co-owner: must be a person or corporation who owns an apartment within the building in fee simple and an undivided interest in fee simple estate of the common and limited common areas and facilities in the percentage specified in the establishment of this Declaration.
- C. Assessment: that portion of the cost of maintaining, repairing, and managing the Property which is to be paid by each co-owner, which respective portions, except as herein specifically otherwise provided, are set forth in Exhibit "A", annexed hereto and made a part hereof, or in the Articles of Incorporation and the By-Laws of the Association.
- D. Association: the "Earthstone, Inc." and its successors, a corporation not for profit, organized under the laws of the State of Indiana, and copies of the Articles of Incorporation and of the By-Laws of said corporation are annexed hereto and made a part hereof as Exhibits "B" and "C" respectively..
- E. Building: the entire structure to be located on the Property which will be built substantially in accordance with the plans filed with the Recorder of Porter County, Indiana, and containing two (2) or more apartments.
- F. Common Areas and Facilities: means and includes:
 - 1. The land on which the building is located;
 - 2. The foundation, columns, girders, beams, supports, walls and roofs;
 - 3. The yards, guest parking areas, streets, entry walls, security stations, common lights, warning devices and walks;
 - 4. Facilities and installations providing electricity, sanitary and storm sewers, water and communication lines;
 - 5. All other parts of the property necessary and convenient to its existence, maintenance and safety, or normally in common use.

- G. Common Expenses: the actual and estimated cost of:
1. Maintenance, management, operation, repair and replacement of the common Areas and facilities and limited common areas and facilities and those parts of the apartments as to which, pursuant to other provisions hereof, it is the responsibility of the Association to maintain, repair and replace;
 2. Management and administration of the Association, including without Limiting the same, to compensation paid by the Association to a managing Agent, accountants, attorneys, and other employees, if any;
 3. All sums lawfully assessed against the apartment owners by the Association;
 4. Expenses agreed upon as common expenses by the Association;
 5. Any other items held by or in accordance with other provisions of this Declaration, the Condominium Documents, or required by statute.

H. Common Profit: the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

H. Condominium Documents: this Declaration and the Exhibits annexed hereto as the same from time to time may be amended. Said Exhibits are as follows:

Exhibit "A" Legal description of property effected by this Declaration and "Floor Plan"; Site plan with typical floor plan including two story townhouse and flat apartment plan and the shares of interest attributed to the respective apartments, prepared by _____ and filed for record in the office of the Recorder of Porter County, Indiana on the _____ day of _____, 19 ____ -
As instrument Number: _____

Exhibit "B" - "Articles of Incorporation" of Earthstone Inc.

Exhibit "C" - "By-Laws" of Earthstone, Inc.

Exhibit "D" - Rules and regulations of said Association

Exhibit "E" - Deed Form

Exhibit "F" - Agreement as to Taxes

Exhibit "G" - Consent to Amendment of Declaration

J. DECLARATION: that this instrument by which the property is submitted to the provisions of the "Horizontal Property Act" of the State of Indiana and as such Declaration from time to time may be lawfully amended and supplemented by and including recitals, intents and purposes.

K. DEVELOPER: KINGSRIDGE INVESTMENT, INC., its assigns and successors.

L. LIMITED COMMON AREAS AND FACILITIES: means and includes those common areas and facilities designated in the Declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments, and shall include the following:

1. The carport designated on the plans of each building, the parking areas designated on the plans for each building, and patios, balconies and attached outside facilities, attached to a particular building.

- M. **MAJORITY**: The apartment owner or co-owners with a 51% or more of the votes in accordance with the percentages assigned in the Declarations to the apartments for voting purposes.
- N. **PLANS AND SPECIFICATIONS**: The plans and specifications referred to in Article 1, as Exhibit "A" hereof.
- O. **PERSON**: A natural person or corporation, capable of holding title to real property.
- P. **PROPERTY**: means and includes the land, building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto.
- Q. **SHARE**: The percentages attributed to each apartment as set forth in Exhibit "A".

II. **USE OF COMMON AND LIMITED COMMON AREAS AND FACILITIES**:

The common and limited common areas and facilities shall be used in accordance with and subject to the following provisions:

- A. **Covenant against Partition**. In order to effectuate the intent hereof and to preserve the condominium and the condominium method of ownership, the Property shall remain undivided and no person, irrespective of the nature of his interest in the Property, shall bring any action or proceeding for partition or division of the Property or any part thereof until the termination of the Declaration in accordance with provisions herein elsewhere contained or until the building is no longer tenable, whichever first occurs.
- B. **Rules and Regulations Promulgated by Association**. No person shall use the common areas or facilities or any part thereof in any manner contrary to or not in accordance with such rules and regulations pertaining thereto as from time to time may be promulgated by the Association. Without in any manner intending to limit the generality of the foregoing, the Association shall have the right but not the obligation, to promulgate rules and regulations limiting the use of the common areas and facilities to members of the Association and their respective families, guests, invitees and servants.
- C. **Repair of Common and Limited Common Areas and Facilities**. Maintenance, repair and management and operation of the common and limited common areas and facilities shall be the responsibility of Association, but nothing herein contained, however, shall be construed so as to preclude the Association from delegating to persons, firms or corporations of its choice, such duties as may be imposed upon the Association by the terms of this sub-article 2 (3) and as are approved by the Board of Directors of the Association.
- D. **Collection of Expenses**. Expenses incurred or to be incurred for the maintenance, repair, Management and operation of the common and limited common areas and facilities shall be collected from apartment owners as assessed, in accordance with provisions contained elsewhere herein.
- E. **Use of Common and Limited Common Areas and Facilities**. Subject to the rules and regulations from time to time pertaining thereto, all apartment owners may use the common areas and facilities in such manner as will not restrict, interfere with or impede the use thereof by other apartment owners. All apartment owners having an interest in the common areas and facilities may use such areas and facilities in such

manner as will not restrict, interfere with or impede the use thereof by other apartment owners having an interest therein.

- F. Alterations and Improvements. The Association shall have the right to make or to cause to be made such alterations and improvements to the common and limited common areas and facilities as may be deemed necessary, provided the making of such alterations and improvements are first approved by the Board of Directors of the Association, and if required by law or contract, the approval of the first mortgagees of individual units shall be obtained. In the event apartment owners or co-owners request that alterations or improvements be made, the cost of making such alterations or improvements shall be assessed as common expenses, unless in the judgment of not less than eighty percent (80%) of the Board of Directors, such alterations and improvements are exclusively or substantially for the benefit of the apartment owner or owners requesting the same, in which case such requesting owners or co-owners shall be assessed therefore in such proportions as they approve jointly and failing such agreement, in such proportions as may be determined by the Board of Directors of the Association.
- G. Shares of Apartment Owners: The shares of the apartment owners in the common and limited common areas and facilities shall be as stated in Exhibit A annexed hereto and may be altered only by amendment hereof executed in form for recording by all of the apartment owners and first mortgages of such owners. No such alteration shall affect the lien of prior recorded mortgages unless written consent of the holder of such mortgage is obtained and recorded.
- H. Interest in Common Areas and Facilities: The share of an apartment owner in the common and limited common areas and facilities is appurtenant to the apartment owned by him, and inseparable from apartment ownership.

III. MAINTENANCE AND REPAIR OF APARTMENTS

1. By the Association - The Association, at its expense, shall be responsible for the maintenance, repair and replacement of:
- (a) all portions of the Apartment which contribute to the support of the building, excluding, however, plaster on interior walls and ceilings, and floor surfaces, and including, without intending to limit the same to, outside walls of the building, including glass, structural slabs, walls of the building, walls of the limited common areas and facilities and that part of the wall between apartment excepting plaster and floor surfaces, and load-bearing walls;
 - (b) All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and communication services which may be contained in the apartment, but excluding there from appliances, plumbing fixtures, water tanks, heating and air conditioning units, including condenser, and including ducts and lines, and T.V. antennae, signal cable and receptacles.
 - (c) All of the electrical system up to but not including the circuit breaker panel of each apartment; and the owner shall be responsible for the electrical system from and including said panel;
 - (d) All incidental damage caused to an apartment by such work as may be done or caused to be done by the Association in accordance herewith.

2. By the Apartment Owner - The responsibility of the apartment owner shall be as follows:
 - (a) To maintain, repair and replace at his expense, all portions of the apartment except the portions of each to be maintained, repaired and replaced by the Association; provided that the Owner shall secure the prior written approval of the Association as to the person, firm or corporations selected by the Owner to perform the maintenance, repair or replacement on behalf of the Owner.
 - (b) To perform his responsibilities in such manner so as not unreasonably to disturb other persons residing within the building.
 - (c) Not to paint or otherwise decorate or change the appearance of any portion of the building not within the walls of the apartment, unless the written consent of the Association is obtained.
 - (d) To promptly report to the Association or its agent any defect or need for repairs, the responsibility for the remedying of which is with the Association.
 - (e) Not to make any alterations in the portions of the apartment or the building which are to be maintained by the Association or to remove any portion thereof or make any additions or alterations there to or to do anything which would or might jeopardize or impair the safety, soundness or soundproofing of the building without first obtaining the written consent of the Board of Directors of the Association and if required by law or contract, the first mortgagee of the individual unit, nor shall any apartment owner impair any easement without first obtaining the written consents of the Association and of the apartment owner or owners for whose benefit such easement exists.
3. Limitation as to Damages - Nothing herein contained, however, shall be construed so as to impose a contractual liability upon the Association for maintenance, repair and replacement, but the Association's liability shall be limited to damages resulting from negligence.

IV. APARTMENTS SHALL BE CONSTITUTED AS FOLLOWS:

1. Real Property - Each apartment, together with the space within it as shown on the plans attached hereto as Exhibit "A" and together with all appurtenances thereto, shall, for all purposes, constitute a separate parcel of real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, independently of all other parts of the property, subject only to the provisions of this Declaration.
2. Boundaries - Each apartment shall be bounded as to both horizontal and vertical boundaries as shown on the plans attached as Exhibit "A", subject to such encroachments as are contained in the building whether the same exist now or are created by construction, settlement or movement of the building, or

permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows:

(a) **Horizontal Boundaries:**

- (i) the face surface of the ceiling above and abutting the apartment;
- (ii) the top of the concrete slab, which will be in the crawl space or basement abutting the apartment.

(b) **Vertical Boundaries:**

- (i) the face surfaces of the vertical boundary wall of each apartment.

3. **Appurtenances.** – Each apartment shall include and the same shall pass with each apartment as an inseparable appurtenance thereto, whether or not separately described, conveyed or encumbered, all of the rights, title and interest of an apartment owner in the property, which shall include but not be limited to:

- (a) **Common and Limited Common Areas and Facilities;** an undivided share of the common and limited common areas and facilities, such undivided share to be in that portion set forth in Exhibit "A"
- (b) **The heating and air conditioning unit including ducts and lines,** which units will be located outside the building on common ground
- (c) **Easements for the benefit of the apartment;**
- (d) **Association membership and funds and assets held by the Association for the benefit of the apartment owner;**
- (e) **All such appurtenances, however, shall be and continue to be subject to the easements for the benefit of other apartments;**
- (f) **In addition to and not in derogation of the ownership of the space described on the plans attached hereto as Exhibit "A", an exclusive easement for the use of the space not owned by the apartment owner and which is occupied by the apartment, which easement shall exist until the earlier of such time as this Declaration is terminated in accordance with provisions herein elsewhere contained, or the building is no longer tenantable;**
- (g) **The following easements from each apartment owner to each other apartment owner and to the Association;**
 - (i) **Ingress and Egress - Easements through the common areas and facilities for ingress and egress for all persons making use of such common areas and facilities in accordance with the terms of the Condominium Documents.**
 - (ii) **Maintenance, Repair and Replacement - Easements through the apartments and common areas and facilities for maintenance, repair and replacement of the apartments and common areas and facilities. Use of**

these easements, however, for access to the apartments shall be limited to reasonable hours, except that access may be had at any time in case of emergency.

- (iii) **Structural Support** - Every portion of an apartment which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of the common and limited common areas and facilities;
- (iv) **Utilities** - Easements through the apartments and common areas and facilities for all facilities for the furnishing of utility and communication services within the building, which facilities shall include, but not be limited to, conduits, ducts, plumbing and wiring; provided, however, that the easements for such facilities through an apartment shall be only substantially in accordance with the plans and specifications of the building;
- (v) **Emergency Easements of Ingress and Egress** - easements over all patios and balconies whenever reasonably required for emergency ingress and egress. Apartment owners shall install or allow to be installed locks, security devices or other things which will or might impair such easements only in accordance with the rules and regulations as may be promulgated by the Association.

V. **USE RESTRICTIONS.**

In order to provide for a congenial occupation of the building and to provide for the protection of the values of the apartments, the use of the property shall be restricted to and be in accordance with the following provisions:

1. **Use of Apartments.** The apartment shall be used for single-family residences only.
2. **Use of Common and Limited Common Areas and Facilities.** The common areas and facilities shall be used for furnishing of services and facilities for which the same are reasonably intended for the enjoyment of the apartments.
3. **Approval by Association.** No apartment shall be occupied by any person not approved in advance by the Board of Directors of the Association. The Association shall signify in writing such approval or disapproval within thirty (30) days after the same is requested in writing, provided that simultaneously with such request, there is submitted to the Association the name of the person in question, its residence address, and such other information as the Association might reasonably request. Any such approval once given may not thereafter be withdrawn. Failure of the Board of Directors to disapprove within such period conclusively shall be deemed to constitute approval. The provisions in this paragraph shall not be applicable to any mortgages or purchaser or lessee from such mortgages as recited in Article XVIII.
4. **Nuisances.** No nuisances shall be allowed upon the property nor shall any use or practice be allowed which interferes with the peaceful possession and proper use of the property by its residents.

5. **Lawful Use.** No immoral, improper, offensive or unlawful use shall be made of the property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The respective responsibilities of apartment owner and the Association of complying with the requirements or repair of the property shall be the same as hereinabove provided for the maintenance and repair of that portion of the property subject to such requirements.
6. **Interpretation.** In interpreting deeds, mortgages, and the plans the existing physical boundaries of the unit or of a unit reconstructed in substantially accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed, mortgage or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or in the deed and those of the building.
7. **Regulations.** Regulations concerning use of the property may be promulgated by the Association as hereinabove set forth; provided however, that copies of such regulations and furnished to each apartment owner prior to the time that the same become effective. The initial regulations, which shall be deemed effective until amended by the Association, are attached hereto and made a part hereof as Exhibit "D", mortgages, as elsewhere recited.

VI. **CONVEYANCES.**

The sale, leasing, and mortgaging of apartments shall be subject to the following provisions until this Declaration is terminated in accordance with the provisions herein elsewhere contained, or until the building is no longer tenantable, whichever first occurs:

1. **Sale or Lease.** No apartment owner may dispose of an apartment or any interest therein by sale or by lease without approval of the Board of Directors of the Association, except as elsewhere provided herein, which approval of the Association shall be obtained in the manner hereinafter provided.
 - a. **Notice to Association.** An apartment owner intending to make a sale or a lease of his apartment or any interest therein shall give notice to the Association of such intention, together with the name and address of the intended purchaser or lessee, such other information as the Association reasonably may require and the terms of the proposed transaction. The giving of such notice shall constitute a warranty and representation by any purchaser or lessee produced by the Association as hereinafter provided, that the apartment owner believes the proposal to be bona fide in all respects.
 - b. **Election of Association.** Within thirty (30) days after receipt of such notice, the Board of Directors of the Association shall either approve the transaction or furnish a purchaser or lessee approved by the Association (and give notice thereof to the person desiring to sell or lease his apartment) who will accept the transaction upon terms as favorable to the seller as the terms stated in the notice, except that a purchaser or lessee furnished by the Association may have not less than thirty (30) days subsequent to the date of approval within which to close the transaction. The approval of the Board of Directors of the Association shall be in recordable form, signed, and delivered to the purchaser or lessee. The failure of the Association to act within such 30-day period shall be deemed to constitute approval, following which the Association nevertheless shall prepare and deliver written approval in recordable form, as aforesaid. The apartment owner giving such notice shall be bound to

consummate the transactions with such purchaser or lessee as may be approved and furnished by the Association.

2. Mortgage. No apartment owner may mortgage his apartment or any interest therein without the approval of the Association except to a bank, life insurance company or federal savings and loan association. The approval of any other mortgagee may be upon conditions determined by the Board of Directors of the Association.

VII. ADMINISTRATION.

The administration of the property, including but not limited to the acts required of the Association, shall be governed by the following provisions:

1. Organization of Association. The Association shall be incorporated under the name of Earthstone, Inc. as a corporation not for profit under the laws of the State of Indiana under Articles of Incorporation of which a copy is attached as Exhibit "B".
2. By-Laws of Association. The By-Laws of the Association shall be in the form attached as Exhibit "C" until such are amended in the manner therein provided.
3. Powers of Association. The duties and powers of the Association shall be those set forth in this Declaration, the Articles of Incorporation, and the By-Laws, together with those reasonably implied to effect the purposes of the Association and this Declaration; provided, however, that if there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the By-Laws, the terms and provisions of this Declaration shall prevail and the Apartment Owners covenant to vote in favor of such amendments in the Articles of Incorporation and/or By-Laws as will remove such conflicts or inconsistencies. The powers and duties of the Association shall be exercised in the manner provided by the Articles of Incorporation and the By-Laws and any duties or rights of the Association which are granted by or to be exercised in accordance with this except that wherever this Declaration requires the act or approval of the Board of Directors of the Association, such act or approval must be that of the Board done or given in accordance with the By-Laws.
4. Notices. Notices or demands, for any purpose, shall be given by the Association to apartment owners and by apartment owners to the Association and other apartment owners in the manner provided for notices to members of the Association by the By-Laws of the Association.
5. Title to Funds. All funds and the titles of all properties acquired by the Association and the proceeds thereof after deduction there from the costs incurred by the Association in acquiring the same shall be held for the benefit of the apartment owners for the purposes therein stated.
6. Use of Income. All income received by the Association from the rental or licensing of any part of the common areas and facilities (as well as such income anticipated) shall be used for the purpose of reducing prospective common expenses prior to establishing the annual assessment for common expenses.

VIII. INSURANCE.

The insurance which shall be carried upon the property shall be governed by the following provisions:

1. Authority to Purchase. Except builder risk and other required insurance furnished by developer during construction; all insurance policies upon the property (except as hereinafter allowed) shall be purchased by the Association for the benefit of the apartment owners and their respective mortgagees as their interests may appear and shall provide for the issuance of certificates of insurance mortgage endorsements to the holders or first mortgages on the apartments or any of them and, if insurance companies agree, shall provide that the insurer waives its rights of subrogation as to any claims against apartment owners, the Association and their respective servants, agents, and guests. Such policies and endorsements shall be deposited with the Insurance Trustee, (as hereinafter defined) who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof.
2. Apartment Owners. Each apartment owner may obtain insurance, at his own expense, affording coverage upon his personal property and for his personal liability and as may be required by law; but all such insurance shall contain the same waiver of subrogation as that referred to in Article VIII 1. Hereof (if the same is available) and must be obtained from an insurance company from which the Association obtains coverage against the same risk, liability or peril, if the Association has such coverage.
3. Coverage.
 - (a) Casualty. The building and all other insurable improvements upon the land and all personal property as may be owned By the Association shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined annually by the insurance company affording such coverage. Each coverage shall afford protection against:
 - (i) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement:
 - (ii) Such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the building, including but not limited to, vandalism, malicious mischief, windstorm, and water damage;
 - (b) Public liability and property damage in such amounts and in such forms as shall be required by the Association, including but not limiting the same to water damage, legal liability, hired automobiles, non-owned automobile and off-premises employee coverage;
 - (c) Workmen's' Compensation policy to meet the requirements of law;
 - (d) All liability insurance shall contain cross-liability endorsements to cover liabilities of the apartment owner as a group to an apartment owner.
4. Premiums. Premiums upon insurance policies purchase by the Association shall be paid by the Association and charged as common expenses.

5. **Beneficiary of Policies.** All insurance policies purchased by the Association shall be for the benefit of the Association and the apartment owners and their mortgagees as their respective interests may appear and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Northern Indiana Bank & Trust Company of Valparaiso, Indiana, as Trustee, or to any other bank in Indiana with trust powers as may be approved by the Association. Such Trustee or any other bank acting as such is herein referred to as the Insurance Trustee. The Insurance Trustee shall be liable neither for payment premiums nor for the renewal of the policies, nor for the sufficiency of coverage, nor for the form or contents of the policies, nor for the failure to collect any insurance proceeds. 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 here, and for the benefit of the Association, the apartment owners and their respective mortgagees, in the following shares, but such shares need not be set forth upon the records of the Insurance Trustee:

(a) **Common Areas and Facilities.** Proceeds on account of damage to common areas and facilities—that undivided share for each apartment owner and his mortgagee, if any, which is set forth in Exhibit "A".

(b) **Apartments.** Proceeds on account of apartments shall be held in the following undivided shares:

(i) partial destruction when the building is to be restored—for the owners of damaged apartments in proportion to the cost of repairing the damage suffered by each damaged apartment. Upon the request of the Insurance Trustee, the Association shall certify to the Insurance Trustee the appropriate portions as aforesaid, and each apartment owner shall be bound by and the Insurance Trustee may rely upon such certification.

(ii) Total destruction of the building or where the building is not to be restored—for all apartment owners, the share of each being that share set forth in Exhibit "A"

(c) **Mortgages.** In the event a mortgagee endorsement has been issued to an apartment, the share of the apartment owner shall be held in trust for the mortgagee and the apartment owner as their respective interest may appear.

6. **DISTRIBUTION OF PROCEEDS.** Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners after first paying or making provision for the payment of the expense of the Insurance Trustee in the following manner:

(a) **Reconstruction or repair.** If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, all remittances of apartment owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of an apartment and may be enforced by him.

- (b) **Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners, remittances to apartment owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of an apartment and may be enforced by him.
- (c) **Certificate.** In making distribution to apartment owners and their mortgagees, the Insurance Trustees may rely upon certificate from the Association as to the names of the apartment owners and their respective shares of the distribution. Upon the request of the Insurance Trustees, the Association forthwith shall deliver such certificate.

IX. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE.

A. If any part of the common area and facilities shall be damaged by casualty, the determination of whether or not to reconstruct or repair the same shall be made as follows:

1. **Partial.** Partial destruction, which shall be deemed to mean destruction which does not render two-thirds or more of the apartment untenable –shall be reconstructed or repaired unless at a meeting of the members of the Association which shall be called prior to commencement of such reconstruction or repair.....
2. **Total.** Total destruction of one building, which shall be deemed to mean destruction which does render two-thirds or more of the apartments untenable in one building shall be reconstructed or repaired unless at a meeting which shall be called within ninety (90) days after the occurrence of the casualty, or, if by such date, the insurance loss has been finally adjusted, then within thirty (30) days thereafter, apartment owners who in the aggregate, own fifty-one percent (51%) of shares in the Condominium regime vote against such reconstruction or repair, there shall be no reconstruction or repair.
3. **Reconstruction.** Any such reconstruction or repair shall be substantially in accordance with the plans and specifications.
4. **Continuation of Encroachments.** Encroachments upon or in favor of apartments which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of proceeding or action by the apartment owner upon whose property such encroachments exist, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the building stands.
5. **Certificate.** The Insurance Trustee may rely upon a certification of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association upon request of the Insurance Trustee, shall deliver such certificate as soon as practical.

B. **Responsibility.** If the damage is only to those parts of one apartment for which the responsibility of maintenance and repair is that of the apartment owner, and then the apartment shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

1. **Estimate of Costs.** Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such Bonds as the Board of Directors desires.
2. **Assessments.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fee and premiums, if any) assessments shall be made against the apartment owners who own the damaged property in sufficient amounts to provide funds to pay the estimated costs. If at any time during construction and repair, or upon completion of reconstruction and repair, the funds for payment of the costs thereof are insufficient, assessments shall be made against the apartment owner's funds for the payment of such costs.
3. **Construction Funds.** The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustees and funds collected by the Association from assessment against Apartment Owners, shall be disbursed in payment of such cost in the following manner:
 - a. **Association.** If the amount of estimated costs of reconstruction and repairs exceeds Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trust by the Association from collections of assessments against apartment owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:
 - (i) **Apartment Owner.** The portion of insurance proceeds representing damage for which the responsibility or reconstruction and repair lies with the apartment owner: "to such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction or repair in such amounts and at such times as the apartment owner may direct, or if there is a mortgages endorsement, then to such payees as the apartment owner and the first mortgages jointly direct. Nothing contained herein, however, shall be construed so as to limit or modify the responsibility of the apartment owner to make such reconstruction or repair.
 - (ii) **Association—lesser damage.** If the amount of the estimated costs of reconstruction and repair is less than the total of the annual assessments for common expenses made during the year in which the casualty occurred, then the construction funds shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

- (iii) Association—Major damage. If the amount of the estimated costs of reconstruction and repair of the building or other improvement done is more than the total of the annual assessments for common expenses made during the year in which the casualty occurred, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in Indiana and employed by the Association to supervise the work.
 - (iv) Surplus. It shall be presumed that the first moneys disbursed in payment of costs of reconstruction and repair shall be from Insurance proceeds; and if there is a balance in a construction fund after payment of the costs of the reconstruction and repair for which the fund is established, such balance shall be distributed jointly to the apartment owners and their mortgagee who are the beneficial owners of the fund.
 - (v) When the damage is to both common areas and facilities and apartments, the insurance proceeds shall be applied first to the costs of repairing the common areas and facilities and the balance to the apartments in the shares above stated.
4. Insurance Adjustments. Each apartment owner shall be deemed to have delegated to the Board of Directors this right to adjust with insurance companies all losses under policies purchased by the Association except in any case where the damage is restricted to one apartment, subject to the rights of mortgagee of such apartment owners.

X. TAXES AND SPECIAL ASSESSMENTS.

1. Assessments of Taxes. Taxes, assessments, and other charges of the State of Indian, or any political subdivision or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual apartment and shall be paid by each owner.
2. Payment by Association. During the period of time the taxes and special assessments and other charges upon the property owners as foresaid, the taxes, assessments, and other charges not separately assessed to apartment owners shall be included in the Budget of the
accordance with the percentage of ownership specified herein.

XI. ASSESSMENTS.

Assessments against the apartment owners shall be made or approved by the Board of Directors of Association and paid by the apartment owners to the Association in accordance with the following provisions:

1. **Share of Expenses.** Common Expenses—Each apartment owner shall be liable for his share of the common expenses, and any common surplus shall be owned by each apartment owner in like share.
2. **Assessments other than Common Expenses.** Any assessment the authority to levy which is granted to the Association or its Board of Directors by the Condominium Documents, shall be paid by the apartment owner to the Association in the proportions set forth in the provision of the Condominium Documents authorizing the assessment.
3. **Accounts.** All sums collected by the Association from assessments may be co-mingled in a single fund but they shall be held for the apartment owners in the respective shares in which they are paid and shall be credited to accounts from which shall be paid the expenses for which the respective assessments are made. Such accounts shall be as follows:
 - (a) Common expense account—to which shall be credited collections of assessments for all common expenses as well as payments received for defray costs of the use of common areas and facilities;
 - (b) Alteration and Improvement Account—to which shall be credited all sums collected for alteration and improvement assessments;
 - (c) Reconstruction and Repair Account—to which shall be credited all sums collected for reconstruction and repair assessments;
 - (d) Emergency Account—to which shall be credited all sums collected for emergencies.
4. **Assessment for Common Expenses.** Assessments for common expenses shall be made for the calendar year annually in advance on or before the second Monday in December of the year preceding for which the assessments are made and at such other and additional times as in the judgment of the Board of Directors additional common expenses assessments are required for the proper management, maintenance and operation of the common area and facilities. Such annual assessments shall be due and payable in monthly installments with the first of such payments due on the second day of January in the succeeding year. The total of the assessment shall be in the amount of the estimated common expenses for the year including a reasonable allowance for contingencies and reserves less the amounts of unneeded common expenses account balances and less the estimated payments to the Association for defraying the costs of the use of common areas and facilities. If an annual assessment is not made as required, a payment in the amount required by the last prior assessment shall be due upon each assessment payment date until changed by a new assessment. Assessments for common expenses shall be prorated in the event the apartment is initially occupied during a year in which assessment for common expenses are made.
5. **Other Assessments.** Other assessments shall be made in accordance with the provisions of the Condominium Documents and if the time of payment is not set forth in the Condominium Documents, the same shall be determined by the Board of Directors of the Association.

6. **Assessments for Emergencies.** Assessments for common expenses or emergencies which cannot be paid from the common expense account shall be made only by the Board of Directors of the Association.

7. **Assessments for Liens.** All liens of any nature including taxes and special assessments levied by governmental authority which are a lien upon more than one apartment or upon any portion of the common areas and facilities, shall be paid by the Association as a common expense and shall be assessed against the apartments in accordance with the shares of the apartments concerned or charged to the common expense account, whichever in the judgment of the Board of Directors appropriate.

8. **Assessment Roll.** The assessments against all apartment owners shall be set forth upon a roll of the apartments which shall be available in the Office of the Association for inspection at all times by apartment owners or their duly authorized representatives. Such roll shall indicate for such apartment the name and address of the owner or owner's assessment for all purposes and the amounts of all assessments paid and unpaid. An owner's assessment account shall limit the liability of any person for which made other than the apartment owner. The Association shall issue such certificates to such persons as an apartment owner may request in writing.

9. **Liability for Assessments.** The owner of an apartment and his grantees shall jointly and severally liable for all unpaid associations due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefore. Such liability may not be avoided by a waiver of the use or enjoyment of any common area and facilities or by abandonment of the apartment for which the assessments are made. A purchaser of an apartment at a judicial foreclosure sale or a first mortgagee who accepts a deed in lieu of foreclosure shall be liable only for the assessments coming due after acquisition of title and for that portion of due assessments prorated to the period after the date title is acquired. Such a purchaser as foresaid shall be entitled to the benefit of all prepaid assessments paid beyond the date such purchaser acquired title.

10. **Lien for Assessments.** The unpaid portion of an assessment which is due shall be secured by an assessment which is due shall be secured by a lien upon
 - (a) The apartment and all assessments thereto and shall constitute a lien from the time of assessment of such common expenses prior to all other liens except only
 - (i) as liens on the apartment in favor of any assessing unit and special district; and
 - (ii) all sums unpaid on a first mortgage of record.
 - (b) The Board of Directors shall perfect such lien by filling notice of the same within sixty (60) days from the date such assessment was due and may foreclose this lien under the laws of the State of Indiana governing mechanics and material man's liens. In such foreclosure, the delinquent owner may be required to pay a reasonable rental for the apartment and the Association in such foreclosure shall be entitled to the appointment of a receiver to collect such delinquent assessment. The Association may in addition to such foreclosure action, file suit to recover a money judgment for unpaid common expenses and such action shall not constitute a waiver of the lien securing such unpaid assessment.
 - (c) If the Board of Directors determines to file foreclosure to collect such unpaid assessments, The Board of Directors acting on behalf of the Association shall

have the power to bid in the apartment at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

11. Application of Payments.

- (a) **Interest; Application of Payments.** Assessments and installments thereof paid on or before eight (8) days after the date when due shall not bear interest but all sums not paid on or before twenty (20) days after the date when due shall bear interest at the rate of eight percent (8) per annum from the date when due until paid. All payments upon account shall be applied first to interest and then to the assessment payment first due. All interest collected shall be credited to the common expense account.
- (b) **Suit and Collection Costs.** The Board of Directors of the Association at its option may enforce collection of delinquent assessments by action at law or by foreclosure of the liens securing the assessments or by any other competent proceeding and the delinquent owner shall be assessed interest at the rate of eight per cent (8) per annum and all costs, including collection fees, reasonable attorney's fees, and the costs of suit or proceedings.

XII. COMPLIANCE AND DEFAULT.

Each apartment owner shall be governed by and shall comply with the terms of the Condominium Documents and Regulations accepted pursuant thereto and said Documents and Regulations as they may be amended from time to time. A default shall entitle the Association or other apartment owners to the following relief:

1. **Legal Proceeding.** Failure to comply with any of the terms of the Condominium Documents and Regulations adopted pursuant thereto, shall be ground for relief which may include, without intending to limit the same, to an action to recover sums due for damages, injunctive relief, foreclosure or lien or any combination thereof and which relief may be sought by the Association or if appropriate, by an aggrieved apartment owner.
2. **Liability of Owner.** All apartment owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by act, neglect or carelessness or by that of any member of his family or his or their guests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of any apartment or its appurtenances. Nothing herein contained, however shall be construed so as to modify any waiver by insurance companies or rights of subrogation.
3. **Costs and Attorneys' Fees.** In any proceeding arising because of an alleged default by an apartment owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.
4. **No Waiver of Rights.** The failure of Association or of an apartment owner to enforce any right, provision, covenants or condition which may be granted the Condominium Documents shall not constitute a waiver of the right of the Association or apartment owner to enforce such right, provision, covenant or condition in the future.
5. **No Election of Remedies.** All rights, remedies and privileges granted to the Association or any apartment owner pursuant to any terms, provisions, covenants or conditions of

the Condominium Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such party by this condominium Documents or at law or in equity.

6. **Rights of the City of Valparaiso.** In addition to the rights of the Association and of an apartment owner, the City of Valparaiso, Porter County, Indiana may enforce by equitable action the provisions of this Declaration and the terms and conditions of the Indiana Horizontal Property Act of 1963 amended.

XIII AMENDMENT.

Except for alterations in the shares which cannot be done except with the consent of all apartment owners whose shares are being affected, their mortgages; The Condominium Documents may be amended in the following manner:

1. **Declaration.** Amendments to the Declaration shall be proposed and adopted as follows:
 - (a) **Notice.** Notice of the subject matter of the proposed amendment in reasonably detailed form shall be included in the Notice of any meeting at which a proposed amendment is considered.
 - (b) **Resolution.** A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the apartment owners meeting as members of the Association and after being proposed and approved by either of such bodies must be approved by others. Directors and apartment owners not present at the meeting considering such amendment may express their approval in writing or by proxy. Such approvals must be by not less than seventy-five (75%) of the Directors and seventy-five percent (75%) of the apartment owners and their mortgagees.
 - (c) **Recording.** A copy of each amendment shall be certified by at least two (2) officers of the Association as having been duly adopted and shall be effective when recorded in the Office of the Recorder of Porter County, Indiana. Copies of the same shall be sent to each apartment owner and his mortgages in the manner elsewhere provided for the giving of notices but the same shall not constitute a condition precedent to the effectiveness of such amendment.
2. **Association; The Articles of Incorporation and the By-Laws** of the Association shall be amended in the manner provided by such documents.

XIV. TERMINATION.

The condominium shall be terminated, if at all in the following manner:

1. **By Agreement.** The termination of the Condominium may be effected by the agreement of all apartment owners and first mortgagees and all lien holders affecting any of the apartments, which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyances of land. The termination shall become effective when such agreement has been recorded in the offices of the Recorder or Porter County, Indiana.
2. **Destruction.** If it is determined in the manner elsewhere provided that the property shall not be reconstructed after casualty, the Condominium Plan of Ownership concerning that

piece of property upon which said building lies shall be terminated and the Condominium Documents as to their piece of property revoked. The determination not to reconstruct after casualty shall be evidenced by a certification of the Association certifying as to the facts effecting the termination, which certificate shall become effective upon being recorded in the office of the Recorder of Porter County, Indiana.

3. Shares of Apartment Owners after Termination. After termination of the Condominium the apartment owners shall own the property as tenants in common in undivided shares and the holders of mortgages and liens against the apartment or apartments formerly owned by such apartment owners shall have mortgages and liens upon the respective undivided shares of the apartment owners. Such undivided shares of the apartment owners shall be set for the in Exhibit "A". All funds held by the Association and insurance proceeds, if any shall be and continue to be held jointly for the apartment owners and their first mortgagees in proportion of the amount of the assessments paid by each apartment owner. The costs incurred by the Association in connection with a termination shall be a common expense.
4. Sale after Termination. Following termination, the property may be partitioned and sold upon the application any apartment owner. If the Association following a termination, by not less than a three-fourth vote of the owners, determines to accept an offer for the sale of the property, each apartment owner shall be bound to execute such deeds and other documents reasonably required to affect such sale at such times and in such forms as the Board of Directors directs. In such event, any action for partition or other division of the property shall be held in the abeyance pending such sale, and upon the consummation, thereof shall be discontinued by all parties thereto.
5. Agents of Owners. The members of the Board of Directors acting collectively as agents for all apartment owners shall continue to have such powers as in this Article are granted, not withstanding the fact that the Association itself may be dissolved upon a termination.

XV. CONVENANTS RUNNING WITH THE LAND.

All provisions of the Condominium Documents shall be construed to be covenants running with the land and with every part thereof and interest therein including but limited to every apartment and the appurtenances thereto; and every apartment owner and claimant of the property or any part thereof or interest and his heirs, executors, administrators, successors, and assigned shall be bound by all of the provisions of the Condominium Documents.

XVI. LIENS.

1. Protection of Property. All liens against an apartment other than for permitted mortgages, taxes or special assessments will be satisfied or otherwise removed within thirty (30) days from the date the lien attaches. All taxes and special assessments upon an apartment shall be paid before becoming delinquent.
2. Notice of Lien. An apartment owner shall give notice to the Association of every lien upon his apartment other than for permitted mortgages, taxes and special assessments with five (5) days after the attaching of the lien.
3. Notice of Suit. Apartment owners shall give notice to the Association of every suit or other proceeding which will or may affect the title to his apartment or any other part of the property, such notice to be given within five (5) days after the apartment owner receives notice thereof.

4. Effect. Failure to comply with this Article concerning liens will not affect the validity of any judicial sale.
5. Register of Mortgages. The Association shall maintain a register of permitted mortgages.

XVII. JUDICIAL SALES.

1. Judicial Sales. No judicial sale of any apartment nor any interest therein shall be valid unless the sale is to a purchaser approved by the Board of Directors of the Association, which approval shall be in recordable form and shall be delivered to the purchaser and recorded in the office of the Recorder of Porter County, Indiana.
2. Unauthorized transactions. Any sale, mortgage or lease which is not authorized pursuant to the terms of this Declaration or for which authorization has not been obtained pursuant to the terms of this Declaration, shall be void unless subsequently approved by the Board of Directors of the Association.
3. Foreclosure. In the event proceedings are instituted to foreclose any mortgage on any apartment, the Association on behalf of one or more apartment owners, shall have this right to redeem from the mortgage for the amount due thereon or to purchase such apartment at the foreclosure sale for the amount set forth to be due by the mortgages in the foreclosure proceedings, and should the mortgagor fail to redeem from such mortgage, and in case of such redemption by the Association, the Association thus redeeming shall take and have absolute fee simple title to the property redeemed, free from claim or right of any grantee, his heirs or assigns or such mortgagor, and every person claiming by, through or under such mortgagor. Nothing herein contained shall preclude a mortgage institution, banker, savings and loan association, insurance company or any other recognized lending institution from owning a mortgage on any apartment, and such lending institution shall have an unrestricted, absolute right to accept title to the apartment in settlement and satisfaction of said mortgage or to foreclose the mortgage in accordance with the terms thereof and the laws of the State of Indiana and to bid upon said apartment at the foreclosure sale, provided said lending institution owning said mortgage shall give to the Association, its successors or assigns, written notice by certified mail of the said default mailed at least thirty (30) days prior to the institution of foreclosure proceedings during which thirty (30) days the Association shall have the right to cure such default by payment to such mortgages of all sums due upon such default and following such payment, such mortgages shall be required to waive such default, and if such default is not cured as aforesaid, and should the Association or any member thereof individually or collectively fail to purchase such mortgage, together with any costs incident thereto, from such mortgages, or fail to redeem such mortgage, then and in that event the mortgages taking title on such foreclosure sale or taxing title in lieu of foreclosure sale, may acquire such apartment and occupy the same and let, relet, sell and resell the same without complying with the restrictions limiting the occupation of said to persons approved by the Association. If the Association or any members as aforesaid, redeems such mortgage or cures such default, it shall be a lien against the apartment for all sums expended in connection therewith, and shall have the same rights to collect such sums as in the case of past-due assessment.

XVIII. PROVISIONS PERTAINING TO DEVELOPER.

For so long as the Developer continues to own any of the apartments, or until such time as the sites set forth in page one (1) of this Declaration are developed by the construction, of apartment building subject to this Declaration, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve Developer from any obligations of

any apartment owner to pay assessments as to each apartment owned by it, in accordance with the Condominium Documents.

1. Control of Developer. For so long as the Developer owns any of the apartments, or until such time as the sites set forth in page one (1) of this Declaration are developed by the construction of apartment buildings, a majority of the Board of Directors of the Association shall be elected by the vote of the Developer and such members as may be elected by the Developer need not be residents or owners, or apartments.
2. Absence of Warranty. The Developer specifically disclaim any intent to have made any warranty or representation in connection with the property or the Condominium Documents except as specifically set forth therein and no person shall rely upon any warranty or representation not so specifically made therein. The estimates of common expenses are deemed accurate, but no warranty or guaranty in made nor intended, nor may one be relied upon.

IX. INVALID OR UNENFORCEABLE PROVISIONS.

If any term, covenant, provision, phase or other element of the Condominium Documents is held to be invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to effect alter, modify or impair in any manner whatsoever any other term, provision, covenant or element of the Condominium Documents.

XX. APARTMENT DEEDS.

Any transfer of an apartment shall include all appurtenances thereto whether or not specifically described.

XXI. AMENDMENTS AGREED TO BY OWNERS.

In order to assure a uniform and harmonious use of the real estate adjoining the property subject to this Declaration, all owners and mortgagees of apartments recognize and agree that the Developer intends to construct additional buildings in the future on such adjoining property and that the sites upon which such buildings are erected will be subject to the terms, provisions, covenants, and agreements set forth in this Declaration by amendments describing such building sites. By the execution of a purchasing agreement or the acceptance of a deed as to an apartment, and mortgagees as irrevocable consent and agree to the amendment of this Declaration so as to include such properties to be developed in the future. For informational purposes and clarification the legal descriptions of the sites proposed for future development are set forth on page one (1) of this Declaration. The failure of an owner or mortgagee to consent and execute required document shall be deemed a default, subject to the provisions of Article XII.

XXII. CAPTIONS.

Captions used in the Condominium Documents are inserted solely as a matter of convenience and shall be relied upon or used in constructing the effect or meaning of any of the text of the Condominium Documents.

XXIII. GENDER, SINGULAR, PLURAL.

Whenever the context so permits, the use of the plural shall include the singular, the plural and any gender shall deemed to include all gender.

XXIV. SERVABILITY.

If any provision of this Declaration, or any section, sentence clause, phrase, or word, or the application thereof in any circumstances be judicially held in conflict with the laws of the State of Indiana, then the said laws shall be deemed controlling and the validity of the remainder of this Declaration and the application of any such provision, section, sentence, clause, phrase, or words in other circumstances shall not be affected thereby.