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**DECLARATION AND BYLAWS  
CREATING AND ESTABLISHING A PLAN FOR  
CONDOMINIUM OWNERSHIP**

**UNDER THE INDIANA CONDOMINIUM ACT (Ind. Code § 32-25-1, et. seq.)**

**FOR**

**THE COURTYARDS OF ZIONSVILLE CONDOMINIUM**

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**CERTIFICATE OF AUDITOR**

\_\_\_\_\_, 2017

Receipt is hereby acknowledged of a copy of the Declaration, Bylaws, and Drawings of the above-named Condominium.

\_\_\_\_\_  
Boone County, Indiana Auditor

This instrument prepared by Matthew M. Price, Bingham Greenebaum Doll LLP, 10 West Market Street, Suite 2700, Indianapolis, Indiana 46204, (317) 635-8900.

**DECLARATION**

This is the Declaration of The COZ Condominium Owners Association made on or as of the 11<sup>th</sup> day of January, 2017, pursuant to the provisions.

**Recitals**

A. The Courtyards of Zionsville, LLC, an Indiana limited liability company, "Declarant", is the owner in fee simple of all of the real property hereinafter described as being submitted hereby to the provisions of the Condominium Act and the improvements thereon and appurtenances thereto.

B. Declarant desires to create of this property a site of individually owned units, and commonly owned areas and facilities, and to these ends to submit this property to condominium ownership under the Condominium Act.

**Definitions**

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

1. "Additional Property" means the land, and improvements thereon, that may, at a subsequent time, be added to the Condominium Property and become a part of the Condominium.

2. "Articles" and "Articles of Incorporation" mean the articles of incorporation, filed with the Secretary of State of Indiana, incorporating The COZ Condominium Owners Association as a nonprofit corporation under the provisions.

3. "Assessments" means all charges, of whatever nature, levied by the Association against a Unit and its Unit Owners, and includes:

- (a) "Operating Assessments;"
- (b) "Special Assessments for Capital Improvements;" and
- (c) "Special Individual Unit Assessments," each of which is hereinafter defined in this Declaration.

4. "Association" and "The COZ Condominium Owners Association" mean the nonprofit corporation created by the filing of the Articles of Incorporation and is also one and the same as the association created for the Condominium under and pursuant to the provisions of the Condominium Act.

5. "Board" and "Board of Directors" mean those persons who, as a group, serve as the board of directors of the Association.

6. "Bylaws" means, the bylaws of the Association, created under and pursuant to the provisions of the Condominium Act for the Condominium, and which also serve as the code of regulations of the Association. A true copy of the Bylaws is attached to this Declaration as "Exhibit D" and made a part hereof.

7. "Common Elements" means all of the Condominium Property, except those portions described in this Declaration as constituting a Unit or Units.

8. "Condominium" and "The COZ Condominium Owners Association" mean the condominium regime for the Condominium Property created under and pursuant to the provisions of the Condominium Act. This term shall encompass the term "Condominium Property" when the context so requires (e.g., where the context refers to The COZ Condominium Owners Association development as a neighborhood).

9. "Condominium Act" means Indiana Code 32-25-1, *et seq.*

10. "Condominium Instruments" means this Declaration, the Bylaws, the Drawings, any contracts pertaining to the management of the Condominium Property, the condominium development disclosure statement provided for by the Condominium Act, and, as provided therein, "any other documents, contracts, or instruments establishing ownership of or exerting control over a condominium property or unit."

11. "Condominium Organizational Documents" means the Articles of Incorporation, the Bylaws, the Drawings, this Declaration, and amendments thereto.

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

13. "Declarant" means The Courtyards of Zionsville, LLC, and its successors and assigns, provided the rights specifically reserved to Declarant under the Condominium Organizational Documents shall accrue only to such successors and assigns as are designated in writing by Declarant, or any successor Declarant, as successors and assigns of such rights.

14. "Declaration" means this instrument, by which the Condominium Property is hereby submitted to the provisions of the Condominium Act.

15. "Director" and "Directors" mean that person or those persons serving, at the time pertinent, as a Director or Directors of the Association.

16. "Drawings" means the drawings for the Condominium, and are the Drawings required pursuant to the provisions of the Condominium Act. A Drawing of The COZ Condominium Owners Association, together with floor plans and options for each model offered within the Condominium, has accompanied the filing of this Declaration for record, and separate Drawings of each Unit will be filed as an amendment of, and supplement to, this Declaration as each such Unit is completed and prior to the initial conveyance of such Unit.

17. "Eligible Mortgagees" means the holders of valid first mortgages on Units who have given written notice to the Association stating their names, addresses and Units subject to their mortgages.

18. "Limited Common Elements" means those Common Elements serving exclusively one Unit or more than one but less than all Units, the enjoyment, benefit or use of which are reserved to the lawful Occupants of that Unit or Units either in this Declaration, or by the Board.

19. "Occupant" means a person lawfully residing in a Unit, regardless of whether or not that Person is a Unit owner.

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

21. "Unit" and "Units" mean that portion or portions of the Condominium Property described as a unit or units in this Declaration and designated by Unit designation on the Drawings, and is that portion of the Condominium constituting a "unit" or "units" of the Condominium under the provisions of the Condominium Act.

22. "Unit Owner" and "Unit Owners" mean that Person or those Persons owning a fee simple interest in a Unit or Units, each of whom is also a "member" of the Association, as defined in Section 32-25-2-11 of the Condominium Act.

**The Plan**

NOW, THEREFORE, Declarant hereby makes and establishes the following plan for condominium ownership of the property described in this Declaration and/or exhibits hereto as the Condominium Property under and pursuant to the provisions of the Condominium Act:

**ARTICLE I**

**THE LAND**

Legal descriptions of the land constituting a part of the Condominium Property, located in the Town of Zionsville, Boone County, Indiana, and consisting of 18.91 acres, more or less, are attached to this Declaration and marked "Exhibit A" and made part of this Declaration by this reference.

**ARTICLE II**

**NAME**

The name by which the Condominium shall be known is "The COZ Condominium Owners Association."

### ARTICLE III

#### PURPOSES; RESTRICTIONS

Section 1. Purposes. This Declaration is being made to establish separate individual parcels from the Condominium Property to which fee simple interests may be conveyed; to create restrictions, covenants and easements providing for, promoting, and preserving the values of Units and the Common Elements and the well-being of Unit Owners and Occupants; and to establish a Unit Owners' association to administer the Condominium and the Condominium Property, to administer and enforce the covenants, easements, charges and restrictions set forth in this Declaration, and to raise funds through Assessments to accomplish these purposes.

Section 2. Restrictions. The Condominium and the Condominium Property shall be benefited by and subject to the following restrictions:

(a) Animals. Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Elements. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Unit, provided that: (i) the maintaining of animals shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, the right to place limitations on the size, number and type of such pets, and the right to levy enforcement charges against Persons who do not clean up after their pets; and (ii) the right of an Occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Condominium or other Units or Occupants. In addition, any animal prohibited by any federal, state, or local law, regulation, or ordinance, is specifically prohibited.

(b) Architectural Control. Except for improvements constructed by Declarant or its designee during the initial construction, or as specifically permitted hereby, no building, fence, wall, sign or other structure or improvement shall be commenced, erected or maintained upon the Condominium Property, or any part thereof, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board or its designated representative or representatives, in its or their sole and unfettered discretion. Nothing visible to the exterior shall be permitted to be hung, placed, displayed or maintained in Limited Common Elements unless approved, in writing, by the Board or its designated representative or representatives, in its or their sole and unfettered discretion, or unless the same is authorized by existing rule or regulation adopted by the Board. Notwithstanding any repair or maintenance provision contained herein to the contrary, the Board may require, as a condition to approval, that the responsibility for repairing and maintaining the addition or improvement shall be the responsibility of the requesting Unit Owner and all future owners of that Unit.

(c) Common Element Uses. The Common Elements (except the Limited Common Elements) shall be used in common by Unit Owners and Occupants and their agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of Units. Unless expressly provided otherwise herein, no Common Element shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Unit Owners and Occupants. The Common Elements shall be subject to the provisions of the Condominium Organizational Documents and to such rules and regulations as may from time to time be duly promulgated by the Board.

(d) Construction in Easements. No structure, planting or other material shall be placed or permitted to remain within the easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

(e) Conveyances. Each Unit shall be conveyed or transferred (voluntarily or involuntarily) as a separately designated and legally described freehold estate subject to the terms, conditions and provisions of the Condominium Organizational Documents. The undivided interest of a Unit in the Common Elements shall be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage or other instrument of conveyance or encumbrance. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an interest in the Common Elements will be void unless the Unit to which that interest is allocated is also transferred to the same transferee. In any instrument of conveyance, or instrument creating an encumbrance, or in any other document legally describing a Unit, it shall be sufficient to lawfully describe a Unit and its interest in the Common Elements by referring to the Unit designation of the Unit and the appropriate recording references of the initial page of this Declaration and the Drawings. The right of a Unit Owner to sell, transfer or otherwise convey that Unit Owner's Unit is not subject to any right of first refusal, and any Unit Owner may transfer that Unit Owner's Unit free of any such limitation. To enable the Association to maintain accurate records of the names and addresses of Unit Owners, each Unit Owner agrees to notify the Association, in writing, within five (5) days after an interest in that Unit Owner's Unit has been transferred to another Person. In addition, each Unit Owner agrees to provide to a purchaser of that Unit Owner's Unit a copy of the Condominium Organizational Documents and all effective rules and regulations.

(f) Discrimination/Handicapped Accommodation. No action shall at any time be taken by the Association or its Board which in any manner would discriminate against any Unit Owner in favor of another. In addition, notwithstanding any provision hereof, or any rule or regulation, the Board shall make reasonable accommodation if necessary to afford a handicapped Person equal opportunity to use and enjoy the Condominium

Property, provided, that any such accommodation shall be at the Unit Owner's expense and further that nothing contained herein shall be construed to mean or imply that any such accommodation shall be at the cost of the Association.

(g) Limited Common Element Uses. Those portions of the Common Elements described herein and/or shown on the Drawings as Limited Common Elements shall be used and possessed exclusively by the Unit Owners and Occupants or the Unit or Units served by the same, as specified in this Declaration, and shall be used only for the purposes intended and subject to the other provisions of Condominium Organizational Documents and such rules and regulations as may from time to time be duly promulgated by the Board.

(h) Offensive Activities. No noxious or offensive activity or abusive or harassing behavior, or any form of intimidation or aggression, either verbal or physical, shall be engaged in or carried on in any Unit, or upon the Common Elements or Limited Common Elements, nor shall any be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Occupant, or which might intimidate or interfere with the activities of any Occupant or representative of the Association or its managing agent, or their licensees or invitees.

(i) Reallocations. Except as otherwise provided by the Declaration or Indiana law, boundaries between Units and/or appurtenant Limited Common Elements shall not be adjusted nor undivided interests in Units reallocated (except in the event of an expansion of the Condominium), nor rights to use Limited Common Elements reallocated, without the express prior written consent of the Board, which it may exercise in its sole and unfettered discretion.

(j) Renting and Leasing. No Unit or part thereof shall be rented or used for transient or hotel purposes, which is defined as: (i) rental under which Occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only. No lease may be of less than an entire Unit. No Unit may be rented for any period of less than thirty (30) days and the lease shall not have an initial term of less than six (6) months. Any lease agreement shall be in writing, shall provide that the lease shall be subject in all respects to the provisions of the Condominium Organizational Documents, and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of the Condominium Organizational Documents and lawful rules and regulations shall be a default under the lease. The Association shall not have the right to initiate or prosecute eviction proceedings to evict a tenant of a Unit, either in its own name, as agent of the Association, or in the name of the Unit Owner. Prior to the commencement of the term of a lease the Unit Owner shall notify the Board, in writing, the name or names of the tenant or tenants, and all Occupants, and the time during which the lease term shall be in effect. Except as otherwise specifically provided herein, there are no limitations on the number of Units that may be rented or leased or the number of Units that may be owned by any Unit Owner.

(k) Replacements. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable structure type, size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.

(l) Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically herein mentioned, the Board may, from time to time, adopt and enforce such further reasonable rules and regulations as it deems necessary or desirable to promote harmony, to serve the best interests of the Unit Owners, as a whole, and the Association, and to protect and preserve the nature of the Condominium and the Condominium Property. A copy of all rules and regulations shall be furnished by the Board to the Unit Owners prior to the time when the same shall become effective.

(m) Signs; Commercial Devices. No sign, insignia, display, device, or form of external evidence of commercial advertising or use, of any kind, shall be displayed to the public view on the Condominium Property or on anything on the Condominium Property, except: (i) on the Common Elements, signs regarding and regulating the use of the Common Elements, provided they are approved by the Board; (ii) on the interior side of the window of a Unit, one professionally prepared sign not in excess of nine (9) square feet in size, advertising the Unit for sale or rent; and (iii) on the Common Elements and model Units, signs advertising the sale and/or rental of Units by Declarant during the period of its sale and rental of Units shall be permitted, provided, if these limitations on use of signs, or any part thereof, are determined to be unlawful, only the signs described in subitem (i), above, shall be permitted after Declarant's period of sales and rental of Units.

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

(o) Unit Uses. Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto, provided, however, that no Unit may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. Notwithstanding the foregoing: (i) an Occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit), making professional telephone calls or corresponding, in or from a Unit, is engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions; (ii) it shall be permissible for Declarant to maintain, during the period of its sale or rental of Units, one or more Units, whether hereby made a part of the Condominium, or added hereafter, as sales and rental models and offices, and for storage and maintenance purposes; and (iii) one or more of such Units or a portion thereof may be maintained for the use of the Association in fulfilling its responsibilities.

(p) Vehicles. Excepting Declarant's construction and sales activities, commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trucks weighing in excess of three-fourths of a ton, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages, and no vehicle may be parked on any street within The COZ Condominium Owners Association Property. Stored vehicles and vehicles which are either obviously inoperable or do not have operating licenses shall not be permitted on the Condominium Property except within enclosed garages. For purposes hereof, a vehicle shall be considered "stored" if it is put up on blocks or covered with tarpaulin for seven (7) consecutive days without the prior written approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Condominium Property during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Elements. Any vehicles parked in violation hereof or parking rules promulgated by the Board may be towed. The driveway parking spaces may not be used unless the attached garage parking space is already being used for vehicle parking. The use of the attached garage for storage of anything which interferes with the storage of vehicles is prohibited.

Further, the Board may promulgate rules and regulations restricting or prohibiting the parking of automobiles, vans, buses, inoperable vehicles, trucks, trailers, boats and recreational vehicles on the Common Elements, including the Limited Common Elements, or parts thereof, and may enforce such regulations or restrictions by levying enforcement charges, having such vehicles towed away, or taking such other lawful actions as the Board, in its sole discretion, deems appropriate. Exception: commercial trucks and moving vans that are performing service or repair work on a Unit Owner's unit may park in front of the Unit Owner's garage, but must not block access of other Unit Owners to their units or garages, and may only park for the limited time necessary to complete the repair, maintenance or loading/unloading tasks.

(q) Visible Areas. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except interior inoffensive drapes, curtains, or louvered blinds) or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof, and no awning, canopy, shutter or television or citizens' band or other radio antenna or transmitter, or any other device or ornament, shall be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio, porch or balcony, visible to the exterior, unless authorized by the Board or required by applicable law to be permitted, but, in such case, subject to such lawful rules and regulations as the Board may adopt from time to time.

(r) Landscaping. Owners are responsible for the care, maintenance and replacement (if desired) of all plant materials within the Unit's fenced patio or courtyard (*i.e.*, within the Limited Common Elements) and they will not be the responsibility of the Association unless an exception is granted.

(s) Decorations.

(i) Commercial, political or offensive items may never be displayed in Limited Common Elements or Common Elements. Nothing may be hung or displayed from inside the windows except one (1) professionally prepared "For Sale" signs or security system decals, which shall be limited in size. Exception: Owners may display a well-maintained or a commercially prepared, security system sign in Limited Common Elements adjacent to the Owner's Unit. Owners may display a professional, well-maintained real estate open house sign adjacent to their Unit for not more than 48 hours prior to their open house. Any open house signs must be removed immediately following the event conclusion.

(ii) Decorative items may not exceed 4' in either height or width.

(iii) Holiday decorations may be displayed for the period beginning one week prior and ending two weeks after the holiday. Decorations must not damage buildings, gutters, fences or siding. Exceptions: (1) Christmas decorations may be displayed on or after Thanksgiving and must be removed two weeks after the holiday has concluded, weather permitting.

(iv) The American Flag may be displayed as long as normal flag protocol is followed (example: damaged or weathered flags must be replaced), and the flag may not exceed 4' x 6'.

(v) Due to the noise, wind chimes may not be used outside any Unit at any time.

(t) Unit Exteriors.

(i) Unit Owners may, at their own expense, install or have installed a screen and/or storm doors as long as the doors have received the Board's written approval prior to installation and contains only screen and/or glass materials. A Unit Owner shall only install the exact screen, and/or storm doors for which the Board granted approval (*i.e.*, the same manufacturer, model and color). Bars or decorative scrollwork are not permitted on screen or storm doors. If installed, the Owner (and all subsequent Owners) accepts the responsibility for its maintenance, repair and replacement if necessary.

(ii) Owners may, at their own expense, install or have installed, sun awnings using only colors preapproved by the Board. Colors must match exterior wall, trim, shutter or front door color. If installed, the Owner (and all subsequent owners) accepts all the responsibility of its maintenance, repair and replacement if necessary, and all awnings must be equipped with a wind sensor device upon installation.

(iii) No satellite dishes, antennas, or other similar devices shall be installed without the Board's prior, written approval. No satellite dishes, antennas, or other similar devices shall be installed on any Unit's roof. Satellite dishes, antennas, or other similar devices must be installed close to the Owner's Unit and be placed as inconspicuously as reasonably possible. The Owner (and all subsequent owners) accepts the responsibility of any damage to the device/equipment, as well as the device/equipment maintenance, repair and replacement if necessary.

(u) Window Coverings. All window coverings, whether draperies, blinds (vertical or horizontal) or valances must be white, off-white, light beige or light gray on the exterior side.

(v) Pets. The Owner of a Unit may house no more than two (2) domesticated animals (dogs or cats). All pets, when outdoors, must be maintained on a leash. While outside, pets must be supervised by a responsible individual. All pet litter must be cleaned up immediately by the pet's Owner. Owners may be assessed fees by the Board of Directors for violation of these policies in an amount and manner determined by the Board as with any other authorized sanctions for violations under the Bylaws, to include permanent removal of the pet(s) from The COZ Condominium Owners Association at the discretion of the Board of Directors of the Association.

(w) Trash Collection and Recycling. Trash and Recycling containers may not be set out on the street for collection prior to 5:00 PM the day before collection, and the containers must be put away in or adjacent to the Unit Owner's garage by 9:00 PM the day of collection. When not set out for collection, the containers must be kept inside the Owner's garage. Only approved containers, or securely tied plastic bags shall be set outside for collection. Unit Owners are responsible for clean-up of trash spillage from their containers.

(x) Solicitation and Garage Sales. Commercial solicitation is not permitted within The COZ Condominium Owners Association at any time. Garage sales and tag sales are specifically prohibited, unless approved by the Association Board as a planned community activity.

(y) Utilities. Unit Owners are responsible for maintaining and paying for the gas, electric, cable television, telephone, water and sewer services for their Unit, and for calling each utility to initiate service for their Unit on the date of possession of their Unit.

(z) Sale of Condominium Unit; Notification. Any Unit Owner who sells his or her condominium Unit is responsible for notifying the Association of ownership changes at the time a closing date for the sale of the Unit is established. Prior to closing, Unit Owners must pay all Association fees and assessments and provide the new Unit Owner with a current copy of the Declaration, Bylaws and any community policies and guidelines.

(aa) Swimming Pool and Pool Area. The swimming pool is for the exclusive use of Unit Owners and their guests between the hours established by the Board. Any person who cannot be identified as a Unit Owner, or who is not accompanied by a Unit Owner, will be asked to leave the pool area. The general pool area rules of use will be reviewed regularly by the Board, published to Unit Owners and posted in the pool area in advance of the swim season. All state rules and regulations governing public and semi-public swimming pools posted in the pool area must be complied with by all persons using the pool and pool area. Unit Owners and guests who fail to comply with pool rules and regulations will be restricted from the use of the pool and pool area. ALL PERSONS USING THE POOL AND POOL AREA DO SO AT THEIR OWN RISK AND RESPONSIBILITY. THERE IS NO LIFEGUARD ON DUTY AT ANY TIME.

(bb) Clubhouse. The Community Center (Clubhouse) is for the private use of Unit Owners. The Clubhouse great room and grill area can be reserved by Unit Owners only for non-profit parties or meetings. The process and rules to reserve use of the Community Center will be reviewed and approved by the Board and published to all Unit Owners. Additional copies will be available at the facility or through the Board Secretary.

#### ARTICLE IV

##### IMPROVEMENT DESCRIPTIONS

Section 1. Residential Buildings. There are fifty-nine (59) residential buildings containing a single dwelling unit each initially a part of the Condominium. The residential buildings added hereby are of traditional architectural style, ranch type (although some dwelling units have a bonus suite on a partial second floor), with an attached two-car garage, a private exterior entrance, a fenced-in patio area with a concrete or paver patio and an exterior parking area immediately in front of the dwelling unit's attached garage. Some dwelling units have a screened or enclosed porch and some dwelling units have basements. Each of the buildings added hereby are of wood frame construction, on a concrete foundation, with an exterior of composite wood siding, Hardi plank, brick and/or cultured stone, aluminum fascia, and an asphalt shingle roof. The principal materials of which the buildings are constructed are wood, glass, concrete, cultured stone, brick, asphalt shingle, and drywall. The residential buildings are located as shown on the Drawings.

Section 2. Other. Also on and a part of the Condominium are portions of private driveways, and green and landscaped areas.

#### ARTICLE V

##### UNITS

Section 1. Unit Designation. Each of the dwelling units, each of which is called "a Unit," is legally designated by the building in which that Unit is situated, and the street address for that Unit. The number constitutes the Unit's unit designation. The location and designation of each Unit is also shown on the sketch plot plan attached hereto as "Exhibit B" and made part hereof by this reference.

## Section 2. Composition of Units.

(a) Unit Composition. Each Unit constitutes a single freehold estate and consists, among other things, of the space in the building designated by that Unit's designation on the Drawings that is bounded by the undecorated interior surfaces of the perimeter walls, the unfinished surface of the floor at the lowest level, and the unfinished interior surface of the ceiling of the highest floor, all projected, if necessary by reason of structural divisions such as interior walls and partitions, to constitute complete enclosures of space, and all improvements within that space. Without limiting the generality of the foregoing, or, as appropriate, in addition, each Unit shall include:

(i) the decorated surfaces, including paint, lacquer, varnish, wall covering, tile and other finishing material applied to floors, ceilings, and interior and perimeter walls, carpeting, if any, and the drywall, paneling and other finishing floor, ceiling and wall material;

(ii) the finished walls, ceilings and floors themselves, including, but not limited to, drywall plaster and paneling, but not the building's supporting elements, such as but not limited to rafters and joists above the ceiling at the Unit's highest level, the sub-flooring below the finished floors themselves at the lowest level of the Unit, and the structural walls or structural components thereof to which the finished walls, floors and ceilings such as, but not limited to, plaster, drywall, and paneling, are affixed (all of the foregoing supporting elements constitute appurtenant Limited Common Elements);

(iii) all windows, sun tunnels and skylights, if any, and screens and doors, including storm doors and windows, if any, and the frames, sashes and jambs, and the hardware therefor;

(iv) all fixtures and appliances installed for the exclusive use of that Unit, commencing at the point of disconnection from the structural body of the building and from utility pipes, lines or systems serving the Unit, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal units, refrigerators, stoves and hoods, television antennas and cables, furnaces, hot water heaters, heat pumps, air conditioning units (even though located outside the bounds of a Unit), fire pits and water features (even though located outside the bounds of a Unit) and components of the foregoing, if any;

(v) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, sump pumps, ejector pumps, conduits and apparatus, wherever located, which serve only that Unit;

(vi) all control knobs, switches, thermostats and electrical outlets and connections affixed to or projecting from the walls, floors and ceilings which service only the Unit or the fixtures located therein;

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

(viii) fireplace stacks and chimneys, as well as the portion of fireplaces, if any, actually within the interior of a Unit and the vents and dampers therefor accessible from the Unit's interior;

(ix) the space in the attached garage;

(x) the space in the basement, if any; and

(xi) the attic space or storage space above the living area of a Unit, and the crawl space below a Unit, if any, to which the Unit has direct and exclusive access;

excluding therefrom, however, any supporting element of the building contained in interior walls, floors and ceilings, whether or not located within the bounds of that Unit (which supporting elements constitute appurtenant Limited Common Elements).

(b) Unit Types, Sizes, Locations and Components. The location, type, composition, dimensions and approximate interior area of each type of Unit that is or may be part of the Condominium are also (or will be) shown on the Drawings.

## ARTICLE VI

### COMMON AND LIMITED COMMON ELEMENTS

Section 1. Common Elements - Description. All of the Condominium Property, including all of the land and all improvements thereon and appurtenances thereto, except those portions labeled or described herein or on the Drawings as a part of a Unit, are Common Elements.

Section 2. Limited Common Elements - Description. Those portions of the Common Elements that are labeled or designated "Limited Common Elements" on the Drawings or as so described herein are Limited Common Elements. In the case of each Unit these Limited Common Elements consist of a driveway area in front of the Unit's garage, a contiguous patio/yard area and the improvements in that area (except items that are defined as being part of a Unit and utility lines that serve another Unit) and, in some instances, a front porch or stoop. Each such Limited Common Element is reserved for the exclusive use of the Unit Owners and Occupants of the Unit or Units it is designed or designated to serve.

Section 3. Par Values: Undivided Interests. The undivided interest in the Common Elements of each Unit is shown on the attached "Exhibit C", and, in each case, is based on each Unit having an equal par value of one (1.00) and thus, results in each Unit having an equal undivided Interest. The Common Elements shall be owned by the Unit Owners as tenants in common, and ownership thereof shall remain undivided. No Unit Owner may waive or release any

rights in the Common Elements. Further, the undivided interest in the Common Elements of a Unit shall not be separated from the Unit to which it appertains.

**ARTICLE VII**

**ASSOCIATION**

Section 1. Establishment of Association. The Association has been formed to be and to serve as the Unit Owners' association of the Condominium. Declarant is initially the sole member of the Association.

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

Section 3. Voting Rights. Voting rights of members are as set forth in the Bylaws.

Section 4. Board of Directors. The number and composition, and the authority, rights and responsibilities, of the Board of Directors shall be as provided in the Bylaws, provided that no member of the Board need be a Unit Owner, but shall meet the qualifications set forth in the Bylaws.

Section 5. Security. The Association may, from time to time, provide measures of security on or with respect to the Condominium Property and/or its Unit Owners, Occupants, invitees and licensees. However, the Association is not and shall not be deemed to be a provider of security, shall have no duty to provide any security on the Condominium Property or with respect to its Unit Owners, Occupants, invitees or licensees, and shall not be held liable for any loss, cost, or damage arising by failure of the Association to provide security or the effectiveness of security measures it undertakes, if any. The obligation to provide security lies solely with each Unit Owner and Occupant individually.

Section 6. Other Associations. There is no requirement that the Association or that any Unit Owners be members of a not-for-profit organization that provides facilities or recreation, education or social services to owners of property other than the Condominium Property.

**ARTICLE VIII**

**AGENT FOR SERVICE**

The name of the Person to receive service of process for the Association, the Association's "Registered Agent," and that Person's residence or place of business, which is in the State of Indiana, is:

Matthew M. Price  
Bingham Greenebaum Doll LLP  
10 West Market Street, Suite 2700  
Indianapolis, Indiana 46204

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

## ARTICLE IX

### MAINTENANCE AND REPAIR

#### Section 1. Association Responsibility.

(a) Common Elements. The Association, to the extent and at such times as the Board, in its exercise of business judgment, determines to allocate funds therefor, shall maintain, repair and replace all improvements constituting a part of the Common Elements (exclusive of Limited Common Elements), including, but not limited to, the entryway features, the private drives and alleys, general landscaping outside of Limited Common Elements, and easements for public utility lines and apparatus serving more than one Unit, including but not limited to the electric, water, sanitary sewer and storm sewer infrastructure serving more than one Unit or the Condominium as a whole. The Association shall maintain an adequate reserve fund for the periodic maintenance, repair and replacement of these improvements.

(b) Limited Common Elements. Except as hereinafter provided and as provided in Section 3 of this Article IX, the Association shall have no obligation to maintain, repair or replace, or bear the cost of maintaining, repairing or replacing Limited Common Elements or components thereof other than those Limited Common Elements comprised of driveways and parking areas, porches outside of the enclosed courtyard areas and the fencing around the courtyard areas which driveways, parking areas, porches and fencing shall be maintained by the Association. Each Unit Owner shall repair and maintain all improvements which are a part of the Unit Owner's appurtenant Limited Common Elements that are located within the enclosed courtyard area including, without limitation, patios and porch surfaces and pay the cost thereof.

Section 2. Individual Responsibility. Each Unit Owner shall repair and maintain the Unit or Units, and all components thereof, owned by that Unit Owner, those portions of the Limited Common Elements appurtenant to that Unit Owner's Unit that are located within the enclosed courtyard area and specifically including any patio or porch surface located within that area and the components thereof (but excluding the fencing around the courtyard), and improvements made by Unit Owners hereafter. Without limiting the generality of the foregoing, this repair and maintenance responsibility of a Unit Owner shall include repair, maintenance and replacement of all windows, screens and doors, including the frames, sashes and jambs, and the hardware therefor. In addition, each Unit Owner shall be responsible for the repair and maintenance of the individual

gas, electric and water service lines and connections, as well as sanitary sewer laterals and connections serving that Owner's Unit, as well as the repair and maintenance of supporting elements as described in Section 2(a)(ii) of Article V hereof.

Section 3. Other. In the event a Unit Owner fails to make a repair or perform maintenance required of that Unit Owner, or in the event the need for maintenance or repair of any part of any Unit or part of any of the Common Elements or Limited Common Elements is caused by the negligent or intentional act of any Unit Owner or Occupant, or is as a result of the failure of any Unit Owner or that Unit Owner's predecessors in title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, the Association may perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the cost thereof shall constitute a Special Individual Unit Assessment, on the Unit owned by that Unit Owner and on that Unit Owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board, in its sole discretion. The Board may adopt and enforce reasonable rules and regulations as it deems necessary or desirable to further delineate and/or specify the respective obligations for maintenance of Units and/or Common Areas to serve the best interests of the Unit Owners, as a whole, and the Association.

## ARTICLE X

### UTILITY SERVICES

Each Unit Owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to that Unit, to reimburse the Association for that Unit Owner's Unit's share of any utility cost that the Board, or its designee, reasonably determines is attributable to use by that Unit Owner's Unit.

## ARTICLE XI

### INSURANCE; LOSSES

Section 1. Special Broad Form Casualty Insurance. Subject to the provisions relating to insurance deductibles set forth in Article IX of this Declaration, the Board shall have the authority to and shall obtain insurance for all buildings, structures, fixtures and equipment, and common personal property and supplies now or at any time hereafter constituting a part of the Common Elements, the Limited Common Elements, or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against under "special form" policies, or, if not available, or not available at competitive rates, a policy that includes the "broad form" covered causes of loss, in amounts at all times sufficient to prevent the Unit Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations., footings, excavations, and other items normally excluded from coverage). This insurance shall also:

(a) provide for coverage of interior walls, windows and doors and the frames, sashes, jambs and hardware therefor, even though these improvements may be parts of Units;

(b) provide coverage for built-in or installed improvements, fixtures and equipment that are part of a Unit;

(c) have (i) an agreed amount and inflation guard endorsement, when that can be obtained, (ii) building ordinance or law endorsement, if any building, zoning, or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, providing for contingent liability from the operation of building laws, demolition costs, and increased costs of construction; and, (iii) when applicable, a steam boiler and machinery coverage endorsement, which provides that the insurer's minimum liability per accident at least equals the lesser of two million dollars or the insurable value of the building or buildings housing the boiler or machinery (or a separate stand-alone boiler and machinery coverage policy);

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

(e) be written in the name of the Association for the use and benefit of the Unit Owners, or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Unit Owners;

(f) contain or have attached the standard mortgagee clause commonly accepted by institutional first mortgage holders, insurers, and guarantors, which (i) must provide that the carrier shall notify the named insured and each first mortgagee named in the mortgage clause at least ten days in advance of the effective date of any reduction in, cancellation of, or substantial change in the policy, and (ii) must be endorsed to provide that any loss shall be paid to the Association (or its insurance trustee), as a trustee for each Unit Owner and each such Unit Owner's mortgagee, and, unless otherwise prohibited by a nationally recognized institutional first mortgage holder, insurer, or guarantor, to the holders of first mortgages on Units;

(g) have a deductible amount no greater than the lesser of ten thousand dollars or one percent of the policy face amount;

(h) be paid for by the Association, as a common expense;

(i) contain a waiver of the transfer of recovery rights by the carrier against the Association, its officers and Directors, and all Unit Owners;

(j) provide that the insurance shall not be prejudiced by any acts or omissions of individual Unit Owners who are not under the control of the Association; and

(k) be primary, even if a Unit Owner has other insurance that covers the same loss.

Section 2. Liability Insurance. The Association shall obtain and maintain, at the Association's cost and as a common expense, a policy of commercial/general liability insurance covering all of the Common Elements, public ways and any other areas under the Association's supervision, and Units, if any, owned by the Association, even if leased to others, insuring the Association, the Directors, and the Unit Owners and Occupants, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (b) one million dollars arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association, the Board, Unit Owners or Occupants, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Elements, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Each such policy must provide that it may not be canceled or substantially modified, by any party, without at least ten days' prior written notice to the Association and to each holder of a first mortgage on a Unit.

Section 3. Fidelity Coverage. From and after such time as Declarant no longer controls the Association, the Board shall obtain, or cause to be obtained, and maintain, a fidelity bond or policy providing coverage for the Association against dishonest acts on the part of Directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association. The fidelity bond or policy shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of (a) an amount equal to the Association's reserve funds plus three (3) months' Assessments on all Units, and (b) the maximum amount that will be in the custody of the Association or its managing agent at any time while the bond or policy is in force. In connection with such coverage, an appropriate endorsement to the bond or policy to cover any persons who serve without compensation shall be added if the bond or policy would not otherwise cover volunteers. The bond or policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association, and any insurance trustee, and any servicer on behalf of any holder, guarantor or insurer of any mortgage on a Unit who requires such rights. Any management agent who handles funds of the Association shall maintain a fidelity bond or policy providing coverage of no less than that required of the Association, which bond or policy names the Association as an additional obligee.

Section 4. Hazard Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Indiana which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's *Insurance Reports-International Edition*, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBB"

qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's *Insurer Solvency Review*, or a "8813" or better claims-paying ability rating in Standard and Poor's *International Confidential Rating Service*. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

Section 5. Flood Insurance. In the event that any part of the improvements on the Condominium Property are located in a "Special Flood Hazard Area" which is designated as A, AE, AH, AO, AR, A1-30, A-99, V, VE, VI-30, or VO on a Flood Insurance Rate Map, the Association shall obtain and maintain a "master" or "blanket" policy of flood insurance. The flood insurance policy shall cover the Common Element buildings and any other common property, but generally need not cover individual Units. The premiums shall be paid as a common expense. The amount of coverage, if required, should be at least equal to the lesser of (a) one hundred percent (100%) of the insurable value of each insured building (including all Common Elements and property) or (b) the maximum coverage available under the applicable National Flood Insurance Program. The maximum deductible amount for policies covering the Common Elements shall be the lesser of (a) \$5,000 or (b) one percent (1%) of the policy's face amount.

Section 6. Other Association Insurance. In addition, the Board may purchase and maintain, at the Association's cost and as a common expense, contractual liability insurance, Directors' and officers' liability insurance, and such other insurance as the Board may determine.

Section 7. Insurance Representative; Power of Attorney. There may be named under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Unit Owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for Unit Owners and their first mortgage holders, as their interests may appear. This power is for the benefit of each and every Unit Owner, and their respective first mortgage holders, and the Association, and the Condominium, runs with the land, and is coupled with an interest.

Section 8. Unit Owners' Insurance. Any Unit Owner or Occupant may carry such insurance in addition to that provided by the Association pursuant hereto as that Unit Owner or Occupant may determine, subject to the provisions hereof, and provided that no Unit Owner or Occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Association. In the event any Unit Owner or Occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Unit Owner who acquired or whose Occupant acquired such other insurance, who shall be liable to the Association to the extent of any

diminution and or loss of proceeds. Without limiting the foregoing, a Unit Owner or Occupant may obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and losses to improvements owned by the Unit Owner or Occupant, provided that if the Association obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Unit Owner with respect to improvements within the Unit shall be limited to the type and nature of coverage commonly referred to as "tenants' improvements and betterments." All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and Directors, and all other Unit Owners and Occupants.

Section 9. Sufficient Insurance. In the event the improvements forming a part of the Common Elements or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be used in payment therefor; provided, however, that in the event that within sixty (60) days after such damage or destruction the Unit Owners and Eligible Mortgagees, if they are entitled to do so pursuant to the provisions of this Declaration, shall elect to terminate the Condominium, then such repair, restoration or reconstruction shall not be undertaken.

Section 10. Insufficient Insurance. In the event the improvements forming a part of the Common Elements or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the Unit Owners and Eligible Mortgagees, if they are entitled to do so pursuant to the provisions of this Declaration, shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction, the Association shall make repairs, restoration or reconstruction of the Common Elements so damaged or destroyed at the expense (to the extent not covered by insurance) of all Unit Owners in proportion to their respective undivided interests in the Common Elements. Should any Unit Owner refuse or fail after reasonable notice to pay that Unit Owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Unit of such Unit Owner and that Assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of Assessments.

Section 11. Lender Requirements. Notwithstanding the foregoing provisions of this Article, the Association shall at all times maintain hazard insurance, liability insurance, and fidelity insurance coverage conforming with the requirements then governing the making of a first mortgage loan, or the purchase, guaranty, or insurance of first mortgages, by national institutional lenders, guarantors or insurers of first mortgage loans on condominium units.

**ARTICLE XII****DAMAGE RESTORATION: TERMINATION**

**Section 1. Restoration of Substantial Damage or Destruction.** In the event of substantial damage to or destruction of all Units in a residential building, or the taking of one or more Units in any condemnation or eminent domain proceedings, the Association shall promptly restore or replace the same, unless an election is made not to do so, as hereinafter provided.

**Section 2. Election Not to Restore; Termination.** The Association may, with the consent of Unit Owners entitled to exercise not less than eighty percent (80%) of the voting power of Unit Owners, and the consent of Eligible Mortgagees whose mortgages represent seventy-five percent (75%) or more of Units subject to mortgages held by Eligible Mortgagees, both given within sixty (60) days after damage or destruction, determine not to repair or restore the damage or destruction, and to terminate the Condominium. In any such an event, all of the Condominium Property shall be sold as upon partition. In the event of such an election not to repair or restore substantial damage or destruction or reconstruct such Unit or Units, the net proceeds of insurance paid by reason of such damage or destruction, or the net amount of any award or proceeds of settlement arising from such proceedings, together with the proceeds received from the sale as upon partition, or in the case of an election otherwise to terminate the Condominium, the net proceeds from the partition sale, shall be distributed among the Unit Owners, and the holders of their respective first mortgage liens, (as their interests may appear), in the proportions of their undivided interests in the Common Elements.

**ARTICLE XIII****CONDEMNATION**

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

**Section 2. Use of Proceeds.** The award or proceeds of settlement in any actual or threatened condemnation or eminent domain proceedings, after reduction by the costs, if any,

incurred in obtaining the same, shall be applied first to the cost of restoring or replacing all damaged or taken improvements on the remaining Condominium Property in accordance with the Drawings, or in accordance with any new plans and specifications therefor approved by Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Unit Owners, and the consent of Eligible Mortgagees hereinafter provided.

**Section 3. Insufficient Proceeds.** If the award or proceeds are insufficient for such purpose, the excess cost shall be paid by the Association and, to the extent funds of the Association are insufficient therefor, in the judgment of the Board, such excess cost shall be a common expense and assessed among the Units in the same manner as Special Assessments for Capital improvements are assessed. Except as hereinafter provided, the balance of any such award or proceeds of settlement, if there is an excess, shall be allocated and disbursed to the Unit Owners, and their first mortgagees, as their interests may appear, in proportion to the relative undivided interests of the Units in the Common Elements.

**Section 4. Non-Restorable Unit.** Notwithstanding the foregoing, in the event that as a result of any such taking, and consequent restoration or replacement, any Unit could not reasonably be restored to a condition comparable to that which existed prior to the taking, or could not be replaced, prior to the allocation and disbursement of any sum to any other Unit Owner or that Unit Owner's mortgagee, there shall be allocated and disbursed from such award or proceeds, to each Unit Owner whose Unit cannot be so restored or replaced, and that Unit Owner's respective first mortgagee, as their interests may appear, such amount as is equal to the then fair market value of the Unit that cannot be so restored or replaced. Thereupon, such Unit or Units, and the Unit Owners thereof, shall be immediately and automatically divested of any interest in the Condominium, the Condominium Property, and the Association, including, without limiting the generality of the foregoing, divestment of an undivided interest, vote, membership in the Association, and liability for common expenses. All such rights and interests shall be reallocated among all other Units and Unit Owners in the same relative proportions as those rights and interests were prior to such taking. To illustrate, upon a Unit being divested from the Condominium, (a) the voting right of that Unit will be equally allocated among all other Units, and their owners, since the Unit Owners of each Unit prior thereto had an equal vote, and (b) the undivided interest of that Unit will be reallocated among all other Units in the proportions of their relative undivided interests prior to such taking.

**Section 5. Power of Attorney.** Each Unit Owner, by acceptance of a deed to a Unit, appoints the Association, or its designated representative, as that Unit Owner's attorney-in-fact to represent that Unit Owner, settle losses, receive and utilize the award or proceeds of settlement, and do all things necessary or desirable for such attorney-in-fact to exercise the rights and fulfill the responsibilities of the Association set forth in this Article with respect to condemnation or eminent domain proceedings. This power is for the benefit of each and every Unit Owner, each holder of a first mortgage on a Unit, the Association, and the real estate to which it is applicable, runs with land, is coupled with an interest, and is irrevocable.

**ARTICLE XIV****GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS**

**Section 1. Easements of Enjoyment: Limitations.** Every Unit Owner shall have a right and easement of enjoyment in, over and upon the Common Elements and an unrestricted right of access to and from that Unit Owner's Unit, and an easement for utilities serving that Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Elements and the Limited Common Elements, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof, or to that Unit's parking facilities. Each Unit Owner shall be deemed to have delegated that Unit Owner's right of enjoyment to the Common Elements and to ingress and egress to the Occupants of that Unit Owner's Unit.

**Section 2. Easements for Encroachments.** Each Unit and the Common Elements and Limited Common Elements shall be subject to and benefited by easements for encroachments on or by any other Unit and upon the Common Elements and Limited Common Elements created or arising by reason of overhangs; or by reason of deviations in construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements; or by reason of errors on the Drawings. Valid easements for these encroachments and for the maintenance of same, as long as the physical boundaries of the Units after the construction, reconstruction, repairs, etc. will be in substantial accord with the description of those boundaries that appears herein or on the Drawings, shall and do exist so long as the encroachments remain.

**Section 3. Easements Reserved to Declarant.** Non-exclusive easements are hereby reserved to Declarant, its successors and assigns, over and upon the Common Elements and Limited Common Elements as follows:

(a) for a four (4) year period of time from the date of the closing by Declarant of the first sale of a Unit to a bona fide purchaser, to access to and for the purpose of completing improvements for which provision is made in this Declaration, provided that such right of access shall be to the extent, but only to the extent, that access thereto is not otherwise reasonably available;

(b) for the periods provided for warranties hereunder or by law, for purposes of making repairs required pursuant to those warranties or pursuant to contracts of sale made with Unit purchasers;

(c) for the initial sales and rental period, to maintain and utilize one or more Units and appurtenances thereto, and/or a portion or portions of the Common Elements, for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs.

In addition, a non-exclusive perpetual and permanent easement is hereby reserved to Declarant, its successors and assigns, for their benefit and for the benefit of future owners and occupants of the area into which the Condominium may be expanded (the "Additional Property"),

hereinafter described, for pedestrian and vehicular access over roadways and walkways now or hereafter within the Condominium Property, for ingress and egress to and from all or any portion of the Additional Property and a public street, and to extend the same onto the Additional Property. Additionally, Declarant, for itself and its successors and assigns, hereby reserves an easement in, over, under, upon, and across the Common Elements to reach, and the right to extend and tie into, utility lines and improvements in the Common Elements, as permitted by public authority and the utility company involved, and to extend such utility lines and improvements into and/or upon the Additional Property to service the same. These easements and rights shall continue in effect whether or not all of the Additional Property, or any part thereof, is added to the Condominium.

The rights and easements reserved pursuant to the provisions of this Section shall be exercised and utilized, as the case may be, in a reasonable manner, and in such way as not to unreasonably interfere with the operation of the Association and the rights of owners and Occupants of Units.

Section 4. Easements for Proper Operations. Easements to the Association shall exist upon, over and under all of the Condominium Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of, all utilities, including, but not limited to water, sewer, gas, telephone, electricity, security systems, master television antennas and cable television, and the road system and all walkways, and for all other purposes necessary for the proper operation of the Condominium Property. By these easements it shall be expressly permissible for the Association to grant to the appropriate public authorities and/or the providing companies and contractors permission to construct and maintain the necessary appurtenances and improvements on, above, across and under the Condominium Property, so long as such appurtenances and improvements do not unreasonably interfere with the use and enjoyment of the Condominium Property. Should any public authority or other company furnishing a service request a specific easement, permit, or license, the Board shall have the right to grant such easement, permit, or license without conflicting with the terms hereof. In addition, in the event the Board determines that the grant of easement rights to others is in the best interests of the Association, the Association shall have the right to grant the same, provided that use of the same would not, in the sole judgment of the Board, unreasonably interfere with the use and enjoyment of the Condominium Property by Unit Owners and Occupants.

Section 5. Easement for Support. Every portion of a building or utility line or any improvement on any portion of the Condominium Property contributing to the support of another building, utility line or improvement on another portion of the Condominium Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements and other portions of the Condominium Property.

Section 6. Easement for Services. Non-exclusive easements are hereby granted to all police, firemen, ambulance operators, mailmen, delivery men, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Elements in the performance of their duties, subject to such reasonable rules and regulations as the Board may establish from time to time.

**Section 7. Entry for Repair, Maintenance and Restoration.** The Association shall have a right of entry and access to, over, upon and through all of the Condominium Property, including each Unit and the Limited Common Elements, to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any items, things or areas of or in the Condominium Property. In the event of an emergency, the Association's right of entry to a Unit and its appurtenant Limited Common Elements may be exercised without notice; otherwise, the Association shall give the Unit Owners or Occupants of a Unit no less than twenty-four (24) hours advance notice prior to entering a Unit or its appurtenant Limited Common Elements.

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

**Section 9. Access Easement.** [RESERVED]

**Section 10. General.** Unless specifically limited herein otherwise, the foregoing easements shall run with the land and pass with the title to the benefited properties, shall be appurtenant to the properties benefited thereby, shall be enforceable by the owners of the properties benefited thereby, and shall be perpetual. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or constitute an intention not to reserve said rights or easements, but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

## ARTICLE XV

### **ASSESSMENTS AND ASSESSMENT LIENS; RESERVE FUNDS**

**Section 1. Types of Assessments.** Declarant for each Unit within the Condominium hereby covenants and agrees, and each Unit Owner by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association: (a) Operating Assessments, (b) Special Assessments for Capital Improvements, and (c) Special Individual Unit Assessments, all of such Assessments to be established and collected as hereinafter provided.

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

Section 3. Elements-Apportionment: Due Dates.(a) Operating Assessments.

(i) Prior to the time any Unit Owner is to be charged Assessments by the Association, the Board shall establish for the remainder of the Association's fiscal year, and prior to the beginning of each fiscal year of the Association thereafter, the Board shall estimate for the next fiscal year, and, in each case, prorate among all Units and their Unit Owners on the basis of the undivided interest of each Unit in the Common Elements, common expenses of the Association, consisting of the following:

a. that period's estimated cost of the maintenance, repair, and other services to be provided by the Association;

b. that period's estimated costs for insurance premiums to be provided and paid for by the Association;

c. that period's estimated costs for utility services not separately metered or charged to Unit Owners;

d. the estimated amount desired to be collected to maintain a working capital reserve fund, to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;

e. an amount deemed adequate by the Board in its sole and unfettered discretion, and without vote of Unit Owners, to establish or augment an existing reserve for the cost of unexpected repairs and replacements of capital improvements and for the repair and replacement of major improvements for which cash reserves over a period of time in excess of one year ought to be maintained; and

f. that period's estimated costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded.

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

(iii) The Operating Assessment shall be payable in advance, in equal monthly installments, provided that nothing contained herein shall prohibit any Unit Owner from prepaying Assessments in annual, semiannual, or quarterly increments. The due dates of any such installments shall be established by the Board, or, if it fails to do so, an equal monthly pro rata share of the Operating Assessment for a Unit shall be due the first day of each month.

(iv) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Units and their owners on the same basis as heretofore set forth, provided, that if common expenses are incurred by the Association prior to the time the Association commences to levy Assessments against Units, Declarant shall pay the same (subject to its right, if any, to reimbursement from Unit purchasers contained in individual contracts for the sale of a Unit or Units or, if not, from the Association).

(v) If Operating Assessments collected are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, or as reductions in future Assessments, as determined by the Board, in its sole discretion, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Unit Owners, and each Unit Owner by virtue of acceptance of a deed to a Unit consents to the same and grants to the Board an irrevocable power of attorney and proxy to approve and authorize the retention of any excess as reserves or reductions, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable.

(b) Special Assessments for Capital Improvements.

(i) In addition to Operating Assessments, the Board may levy, at any time, Special Assessments for Capital Improvements to construct, reconstruct or replace capital improvements on the Common Elements to the extent that reserves therefor are insufficient, provided that new capital improvements not replacing existing improvements (except new capital improvements required to comply with applicable law or governmental regulation, or to correct any deficiency or defect creating a safety or health hazard to Occupants) shall not be constructed nor funds assessed therefor, if the cost thereof in any fiscal year would exceed an amount equal to five percent (5%) or more of that fiscal year's budget, without the prior consent of Unit Owners exercising not less than seventy- five percent (75%) of the voting power of Unit Owners and the consent of Eligible Mortgagees hereinafter provided.

(ii) Each Special Assessment for Capital Improvements shall be prorated among all Units and their owners in proportion to the respective undivided interests of the Units in the Common Elements, and shall become due and payable

on such date or dates as the Board determines following written notice to the Unit Owners.

(c) Special Individual Unit Assessments. Subject to the applicable provisions of the Bylaws regarding procedures with respect thereto, the Board may levy Special Individual Unit Assessments against an individual Unit, or Units, and the Unit Owner or Unit Owners thereof, to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of making repairs the responsibility of a Unit Owner, the cost to reimburse the Association for that Unit Owner's Unit's share of any utility cost that the Board, or its designee, reasonably determines is attributable to that Unit Owner's Unit, the portion of the cost of casualty and/or liability insurance provided by the Association that the Board determines is attributable to a particular use of a Unit or course of conduct by a Unit Owner or Occupant of that Unit Owner's Unit, returned check charges, and a Unit Owner's interest, late charges, collection costs, and enforcement, and arbitration charges properly chargeable to a Unit and its Unit Owners pursuant hereto). Each Special Individual Unit Assessment shall become due and payable on such date as the Board determines, and gives written notice to the Unit Owners subject thereto.

Section 4. Effective Date of Assessment. Any Assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Unit Owner subject thereto at least ten (10) days prior to the due date thereof, or if to be paid in installments, the due date of the first installment thereof. Written notice mailed or delivered to a Unit Owner's or Unit Owners' Unit shall constitute notice to that or those Unit Owners, unless the Unit Owner or Unit Owners have delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit Owner or those Unit Owners.

Section 5. Effect of Nonpayment of Assessment: Remedies of the Association.

(a) If any Assessment or installment or portion of any installment of an Assessment is not paid within at least ten (10) days after the same is due, the entire unpaid balance of the Assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.

(b) If any Assessment or installment or portion of any installment of an Assessment is not paid within at least ten (10) days after the same is due, the Board, at its option, and without demand or notice, may (i) charge interest on the entire unpaid balance (including the accelerated portion thereof) at such rate as the Board, from time to time, establishes by rule; or if the Board fails to establish a rate by rule, at the rate of eight percent (8%) per annum, (ii) charge a reasonable, uniform, late fee, as established from time to time by the Board, by rule, and (iii) charge the cost of collection, including attorney fees and other out-of-pocket expenses.

(c) Operating and both types of Special Assessments, together with interest, late fees, and costs, including attorney fees, shall be a charge in favor of the Association upon the Unit against which each such Assessment is made.

(d) Payments made by a Unit Owner for Assessments shall be applied in the following priority: (i) to interest accrued on the delinquent Assessment(s), or installments or portions of installments thereof; (ii) to administrative late fees charged with respect to the delinquency; (iii) to reimburse the Association for enforcement charges and collection costs, including, but not limited to, attorney fees and paralegal fees incurred by the Association in connection with the delinquency; and (iv) to the delinquent Assessment, or installment or portion thereof.

(e) At any time after any Assessment or any installment of an Assessment, or any portion of any installment of an Assessment levied pursuant hereto remains unpaid for ten (10) or more days after the same has become due and payable, a certificate of lien for the unpaid balance of that Assessment, including all future installments thereof, interest, late fees, collection costs and expenses, including attorney fees, and court costs and filing fees ("collection costs"), may be filed with the Boone County Recorder, pursuant to authorization given by the Board. The certificate shall contain a description or other sufficient legal identification of the Unit against which the lien exists, the name or names of the record Unit Owner or Unit Owners thereof, and the amount of the unpaid portion of the Assessments and charges, and shall be signed by the president or other designated representative of the Association.

(f) The lien provided for herein shall become effective from the time a certificate of lien or renewal certificate was duly filed therefor, and shall continue for a period of five (5) years unless sooner released or satisfied in the same manner provided by law in the State of Indiana for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.

(g) Any Unit Owner who believes that an Assessment chargeable to that Unit Owner's Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the Courts of Boone County for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the Assessment has been improperly charged to that Unit and its Unit Owners, the Court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien:

(h) Each such Assessment together with collection costs, shall also be the joint and several personal obligation of the Unit Owners who owned the Unit at the time when the Assessment fell due. The obligation for delinquent Assessments, interest, late charges and costs shall not be the personal obligation of that or those Unit Owner's or Unit Owners' successors in title unless expressly assumed by the successors, or required by applicable law, provided, however, that the right of the Association to a lien against that Unit, or to foreclose any lien thereon for these delinquent Assessments, interest, late charges and

costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby, except as provided in Section 6 of this Article.

(i) The Association, as authorized by the Board, may file a lien or liens to secure payment of Assessments and/or collection costs, bring or join in an action at law against the Unit Owner or Unit Owners personally obligated to pay the same, and/or an action to foreclose a lien, or any one or more of these. In any foreclosure action, the Unit Owner or Unit Owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action. The Association in any foreclosure action involving a Unit or Units shall be entitled to become a purchaser at the foreclosure sale. In any action, interest and costs of such action (including attorneys' fees) shall be added to the amount of any such Assessment, to the extent permitted by Indiana law.

(j) No claim of the Association for Assessments and charges, whether in a collection action, foreclosure action, or otherwise, shall be subject to setoffs, off sets, counterclaims, or cross claim, including, without limiting the generality of the foregoing, claims that the Association has failed to provide the Unit Owner with any service, goods, work, or materials, or failed in any other duty.

(k) No Unit Owner or Owners may waive or otherwise escape liability for the Assessments provided for in this Declaration by non-use of the Common Elements, or any part thereof, or by abandonment of that Unit Owner's or those Unit Owners' Unit.

(l) Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Units and their undivided interests in the Condominium Property, and to continue to provide utility and security service, and, accordingly, Assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

Section 6. Subordination of the Lien to First Mortgages. The lien of the Assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of Assessments and charges against the mortgaged Unit which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor Unit Owner. The foregoing will not relieve any successor Unit Owner from the obligation for Assessments accruing thereafter. Notwithstanding the foregoing, rental payments a receiver collects during the pendency of a foreclosure action shall first be applied to the payment of the portion of common expenses chargeable to the Unit and its owners during the foreclosure action.

Section 7. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the Assessments on a specified

Unit have been paid. This certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 8. Nonapplication to Declarant. Notwithstanding the provisions of this Article XV or any other provisions of this Declaration requiring the payment of any Assessment, Declarant and any entity related to Declarant shall not be required to pay any Assessments for any unoccupied Unit offered for the first time for sale until the first day of the twenty-fourth calendar month following the month in which the closing of the first sale of the first Unit occurs. However, if expenses incurred by Declarant exceed the amount assessed against the Unit Owners (on the basis of the undivided interest of each Unit in the Common Elements), Declarant shall pay the amount by which the expenses incurred by Declarant exceed the Assessments.

## ARTICLE XVI

[RESERVED]

## ARTICLE XVII

### NOTICES TO AND VOTING RIGHTS OF LENDING INSTITUTIONS

Section 1. Notices. Any Eligible Mortgagee, upon written request to the Association (which request states the name and address of such Eligible Mortgagee and the Unit Designation), shall be entitled to timely written notice by the Association of:

(a) any proposed addition to, change in, or amendment of the Condominium Organizational Documents of a material nature, including any addition to, change in, or amendment of any provision establishing, providing for, governing, or regulating: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or priority of such liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements (including the Limited Common Elements), or rights to their use; (vi) redefinition of boundaries of any Unit; (vii) convertibility of Units into Common Elements or vice versa; (viii) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium; (ix) hazard or fidelity insurance requirements; (x) imposition of any restrictions on the leasing of Units, (xi) imposition of any restrictions on a Unit Owner's right to sell or transfer that Unit Owner's Unit; (xii) if the Condominium consists of fifty (50) or more Units, a decision by the Association to establish self-management if professional management had been required previously by the Condominium Instruments or by an Eligible Mortgagee; (xiii) restoration or repair of the Condominium Property after damage or partial condemnation in a manner other than specified in the Condominium Instruments; (xiv) termination of the legal status of the Condominium after substantial destruction or condemnation occurs; or (xv) expressly benefiting mortgage holders, insurers, or guarantors. No addition to, change in, or amendment of the Condominium Organizational Documents shall be considered material if it is for the purpose of correcting technical errors, or for clarification only.

(b) any proposed decision or action that: (i) terminates professional management and establishes self-management when professional management has been required previously by an Eligible Mortgagee; (ii) causes restoration or repair of the Condominium Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Organizational Documents; (iii) substantial damage or destruction will not be restored; (iv) the Condominium Property be renewed or rehabilitated; (v) significant new capital improvements not replacing existing improvements be constructed; or (vi) would, without addition to, change in, or amendment of the Condominium Organizational Documents, make any change with respect to the items described in subparagraph (a) of Section 1 of this Article XVII.

(c) (i) any condemnation or casualty loss that affects either a material portion of the Condominium Property or the Unit securing its mortgage; (ii) any delinquency for sixty (60) days in the payment of Assessments or charges owed by the Owner of any Unit on which it holds the mortgage; (iii) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and (iv) any proposed action that requires the consent of a specified percentage of Eligible Mortgagees. A holder, insurer or guarantor of a first mortgage lien on a Unit which has sent a written request to the Association stating both its name and address and the Unit Designation or address of the Unit on which it holds, insures or guarantees the mortgage shall be entitled to timely written notices of the events described in this subsection (c).

Section 2. Voting Rights. No action with respect to which Eligible Mortgagees are entitled to notice, as provided in subparagraphs (a) or (b) of Section 1 of this Article XVII, may be taken without the consent of Eligible Mortgagees of Units to which not less than fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Mortgagees appertain, provided, further, that no action to terminate the Condominium or that would have that effect other than by reason of substantial destruction or condemnation of the Condominium Property, shall be taken without the consent of Eligible Mortgagees of Units to which not less than seventy-five percent (75%) of the votes of Units subject to mortgages held by Eligible Mortgagees appertain.

## ARTICLE XVIII

### AMENDMENTS

Section 1. Power to Amend. Except as otherwise specifically provided herein, additions to, changes in, or amendment of this Declaration (or the other Condominium Organizational Documents) or the taking of any of the actions which require the consent of Eligible Mortgagees representing Units exercising not less than a majority of the voting power of Units subject to mortgages held by Eligible Mortgagees, as provided elsewhere herein, shall, in addition to such consents of Eligible Mortgagees, require the consent of Unit Owners exercising not less than seventy-five percent (75%) of the voting power of Unit Owners. The foregoing notwithstanding:

(a) except as otherwise provided herein in the case of the expansion of the Condominium, the consent of all Unit Owners, including Declarant, so long as it owns a

Unit or has the right to expand the Condominium, in addition to the consent of Eligible Mortgagees described above, shall be required for any amendment effecting a change in:

- (i) the boundaries of any Unit;
- (ii) the undivided interest in the Common Elements appertaining to a Unit or the liability for common expenses appertaining thereto;
- (iii) the number of votes in the Association appertaining to any Unit;
- (iv) the fundamental purposes to which any Unit or the Common Elements are restricted; or
- (v) the provisions and requirements of this Article XVIII;

or to impose restrictions, limitations or prohibitions against or inhibiting the rental of any Unit or Units;

(b) the consent of Unit Owners exercising not less than eighty percent (80%) of the voting power of Unit Owners and the consent of Eligible Mortgagees on Units whose owners, are entitled to exercise seventy-five percent (75%) or more of the voting power of the owners of Units subject to mortgages held by Eligible Mortgagees shall be required to terminate the Condominium;

(c) in any event, each Unit Owner by acceptance of a deed to a Unit is deemed to and does give and grant a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable:

(i) to Declarant, for so long as Declarant owns any Unit, to amend the Condominium Organizational Documents, to the extent necessary to (A) reflect the intent of the Condominium Organizational Documents, or (B) conform to the requirements then governing the making of a mortgage loan or the purchase, guaranty, or insurance of mortgages by an institutional lender or an institutional guarantor or insurer of a mortgage on a Unit, provided that the appropriate percentage (as described elsewhere herein) of Eligible Mortgagees is obtained (if required), or (C) correct typographical or factual or obvious errors or omissions the correction of which would not impair the interest of any Unit Owner, mortgagee, insurer, or guarantor, provided, further, that if there is a Unit Owner other than Declarant, the Declaration shall not be amended to increase the scope or the period of control of Declarant; and

(ii) to the Board, without a vote of Unit Owners, to amend the Declaration in any manner necessary for any of the following purposes:

- a. to meet the requirements of institutional mortgagees, guarantors and insurers of first mortgage loans, or the requirements of insurance underwriters;
- b. to bring the Declaration into compliance with requirements of the Condominium Act;
- c. to correct clerical or typographical errors in this Declaration or an exhibit or amendment hereto; and
- d. to designate a successor to the person named to receive service of process for the Association, provided, the naming of a successor need not be by amendment hereto if the change of statutory agent is appropriately filed with the Indiana Secretary of State;

but for no other purpose.

An Eligible Mortgagee of a Unit who receives a written request to approve changes, additions, or amendments sent by certified or registered mail, return receipt requested, and who does not deliver or post to the requesting party a negative response within thirty (30) days after receipt of the same, shall be deemed to have approved such request

Section 2. Method to Amend. An amendment to this Declaration (or the Drawings or the Bylaws), adopted with the consents of Unit Owners and Eligible Mortgagees hereinbefore required, or by the Board, shall be executed with the same formalities as to execution as this Declaration by two (2) officers of the Association and shall contain their certification that such amendment was duly adopted in accordance with the foregoing provisions. Any amendment adopted by Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to the Declaration shall be duly executed by it with the same formalities as to execution as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in Declarant or any duly empowered successor Declarant by the Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Boone County Auditor and Recorder.

**ARTICLE XIX**

**GENERAL PROVISIONS**

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

Section 2. Actions. In addition to any other remedies provided in this Declaration, Declarant, (only with respect to those rights directly benefiting Declarant), the Association, and each Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, but not the duty, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Unit Owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Unit Owner shall have rights of action against each other for failure to comply with the provisions of the Condominium Organizational Documents, rules and regulations, and applicable law, and with respect to decisions made pursuant to authority granted thereunder, provided, the Association shall have the right to assess reasonable charges against a Unit Owner who fails to comply with the same, including the right to assess charges for the costs of enforcement, and provided, further, that neither the Association nor its Directors, officers, or other representatives, shall be liable to any Unit Owner or Occupant, or their invitees, for damage to any Unit or any part thereof, or any personal property of such Unit Owner, Occupant or invitee, or for injury to such person, unless the damage or injury was proximately caused by the gross negligence or the intentional tortious act of the Association or such Director, officer or other representative. In addition to all other remedies available by law, the Association may use summary abatement or similar means to enforce any provisions hereof or restrictions against the Unit or its use, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished by summary means.

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

Section 4. Successor Owner. A successor owner of Condominium Property or any part thereof, or of Additional Property added to the Condominium Property, who is not an affiliate of Declarant and who is a bona fide purchaser of the property for value, or a purchaser who acquires the property at a sheriff's sale or by deed in lieu of foreclosure, shall not be liable in damages for harm caused by an action or omission of Declarant or a breach of an obligation by Declarant.

Section 5. Limited Warranties. Declarant provides to each purchaser of a Unit from Declarant certain limited warranties which are described in a development statement provided to each of those purchasers at or prior to the time the purchaser enters into a contract to purchase a Unit from Declarant. In addition, the time limit for commencing the prosecution of claims of negligence, breach of contract and/or the failure to construct improvements in a workmanlike manner shall be one (1) year commencing on the date the deed for the Unit was recorded. The Declarant hereby assigns to the Association all warranties received by the Declarant with regard to the Common Elements. In addition, all warranties received by the Declarant with regard to the



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. *Matthew M. Price, Esq.*

This instrument prepared by Matthew M. Price, Esq., Bingham Greenebaum Doll LLP, 2700 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204, (317) 635-8900.

17347256.8

**EXHIBIT A**

**DECLARATION OF CONDOMINIUM**

**THE COZ CONDOMINIUM OWNERS ASSOCIATION**

**Legal Description**

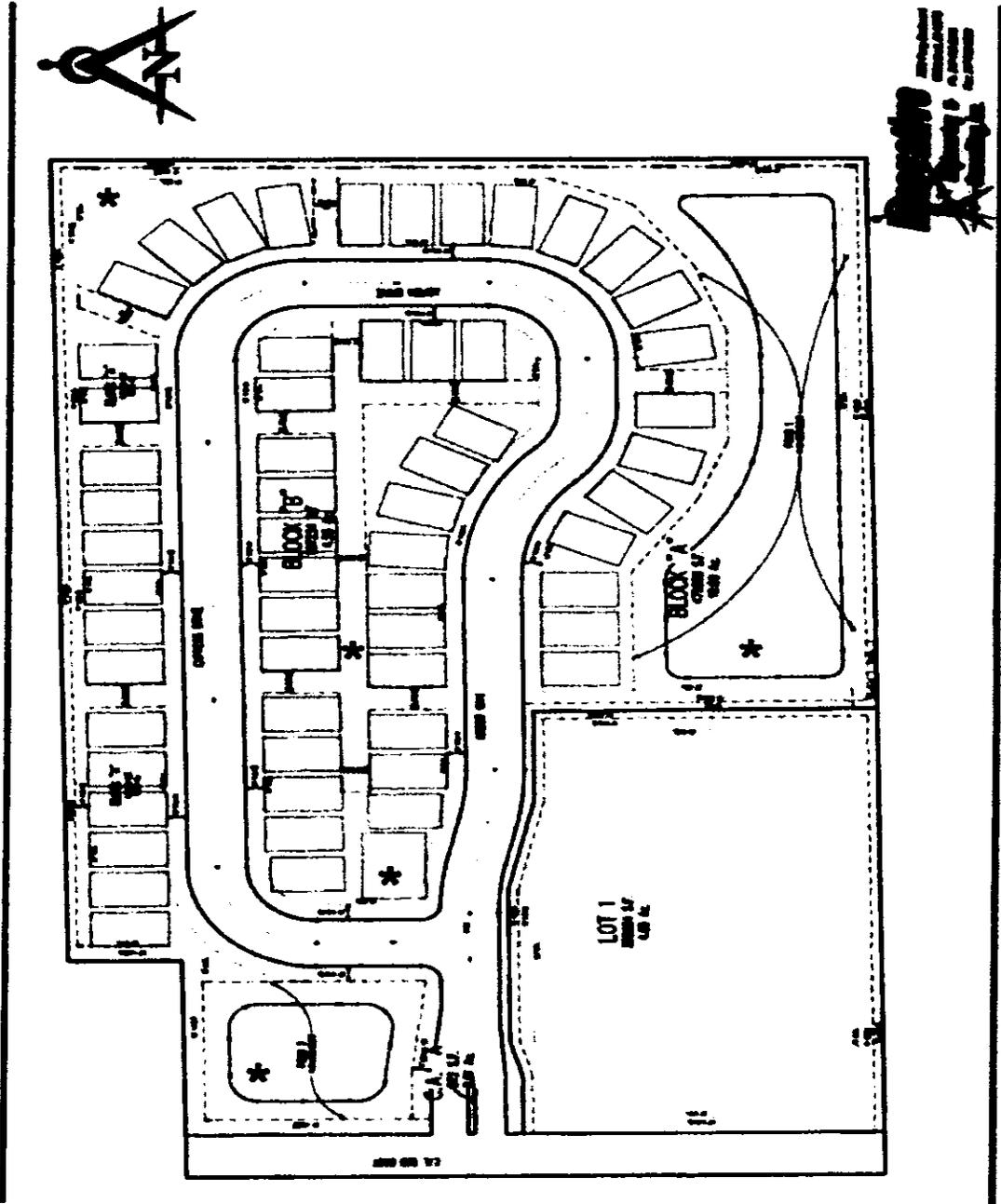
Block "A" and Block "B" of The Courtyards of Zionsville recorded in the Office of the Boone County Recorder on August 12, 2016 at Book 24, Pages 51-53, as Instrument No. 201600007776.

**EXHIBIT B**

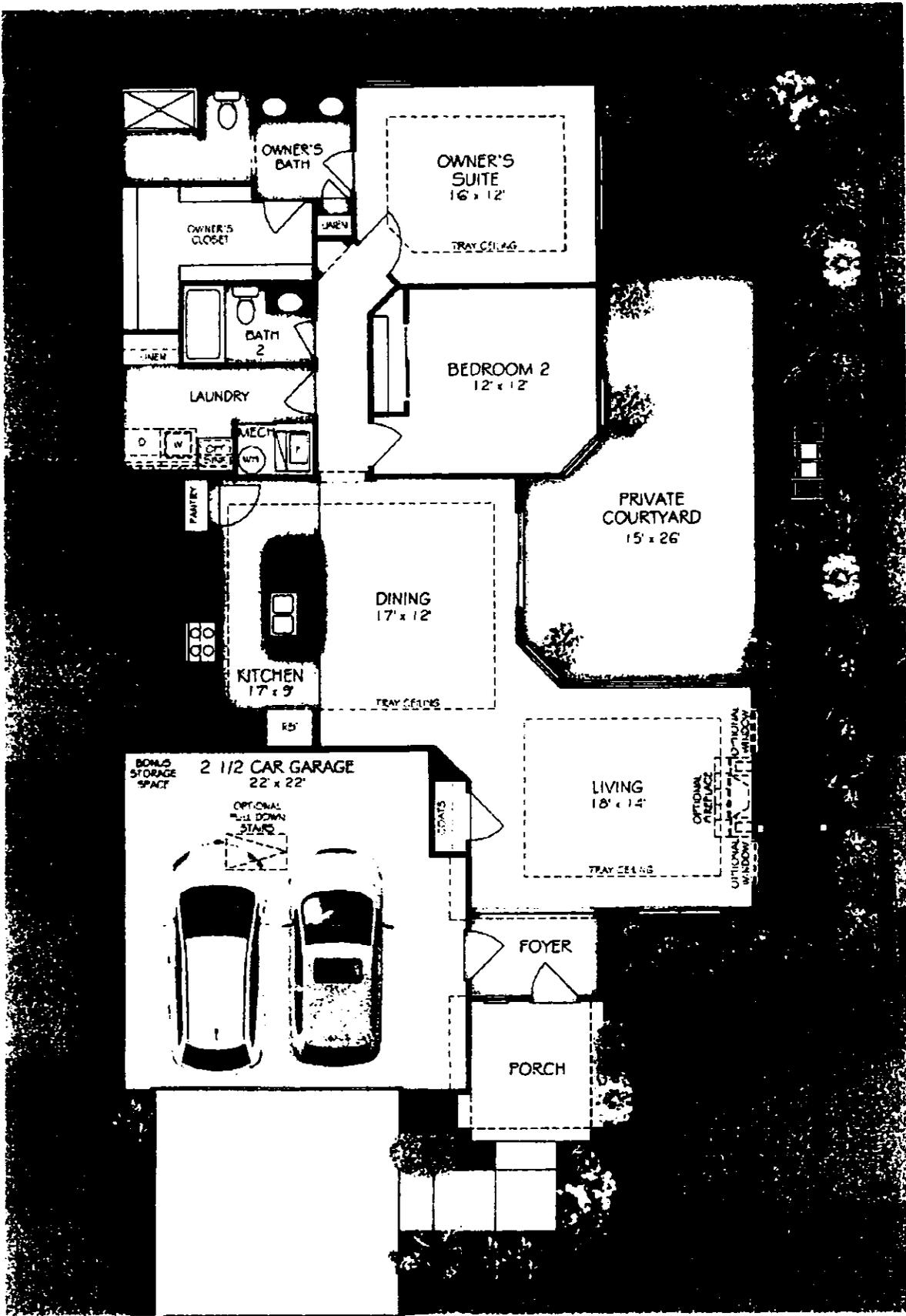
**DECLARATION OF CONDOMINIUM**

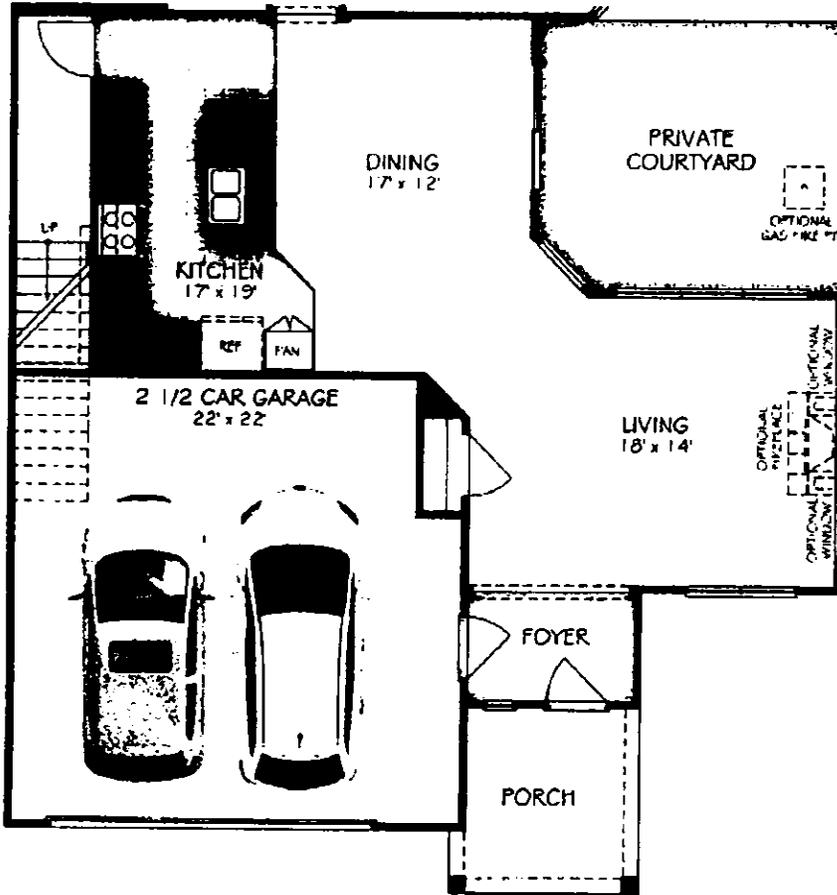
**THE COZ CONDOMINIUM OWNERS ASSOCIATION**

**Plot Plat, Entire Tract and Sample Floor Plans**

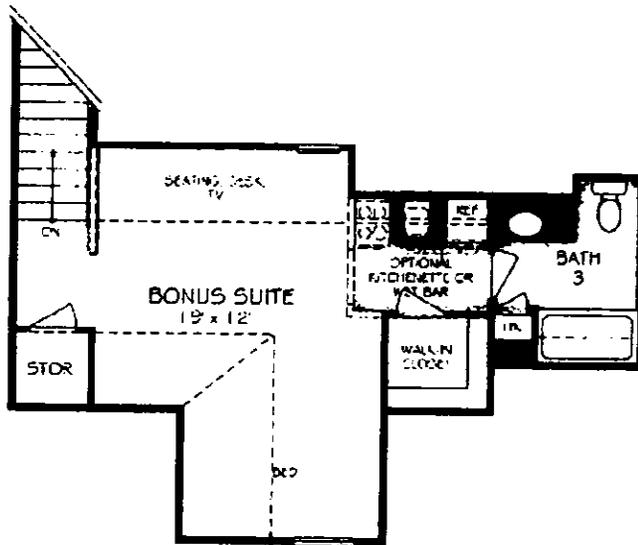


\* Common Elements include open space, clubhouse and pool, as well as detention and retention ponds.  
 \*\* Limited Common Elements include courtyards, porches and the like as depicted on the Drawings specific to a particular Unit.

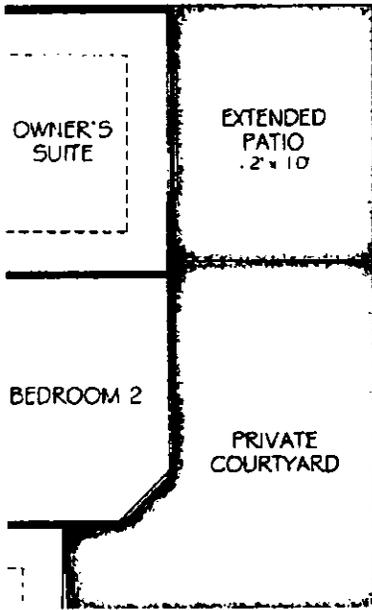




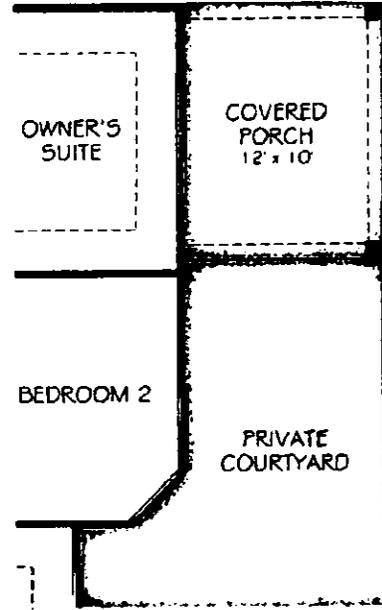
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OPTIONAL BONUS SUITE



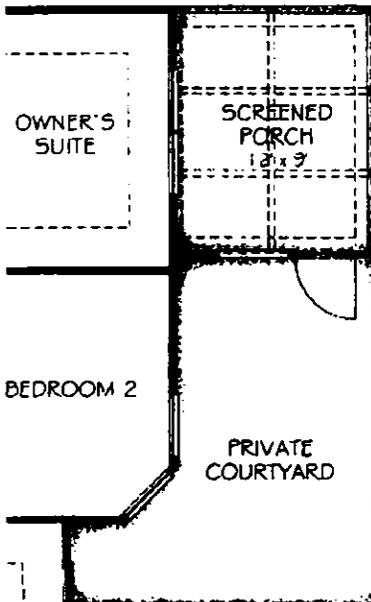
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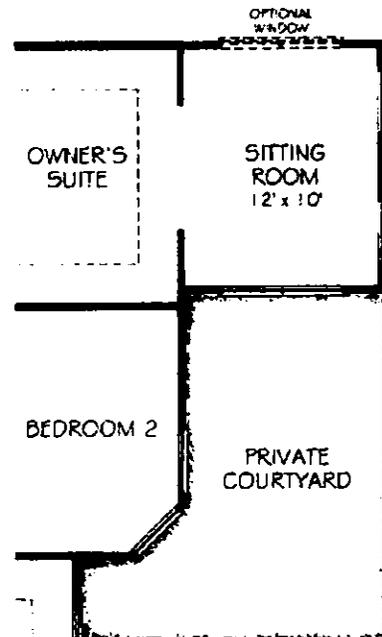
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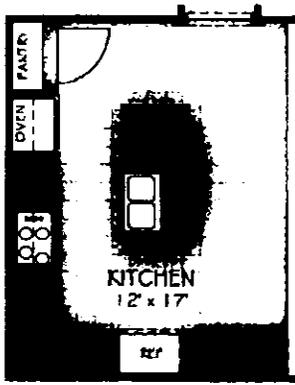
OPTIONAL COVERED PORCH



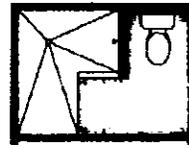
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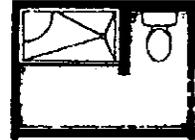
OPTIONAL OWNER'S SUITE SITTING ROOM



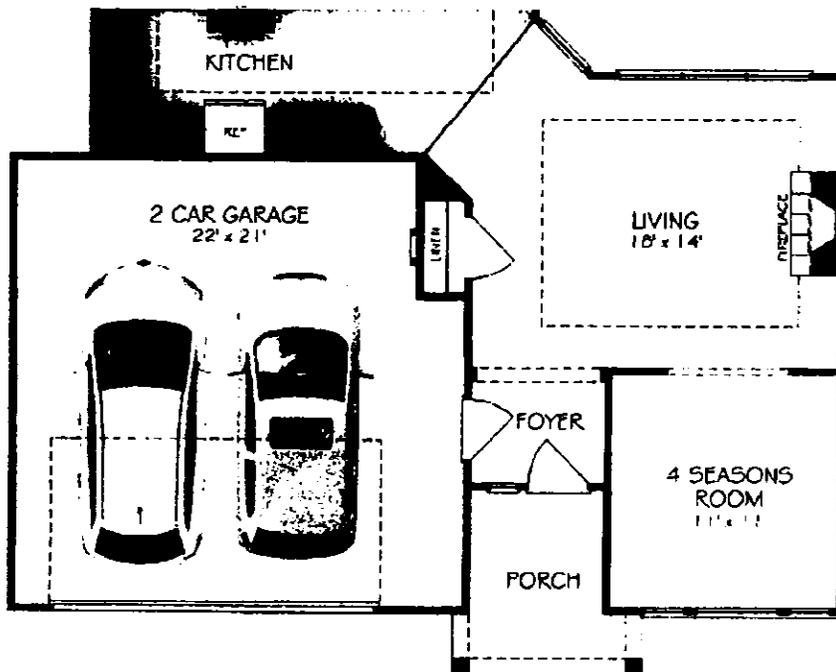
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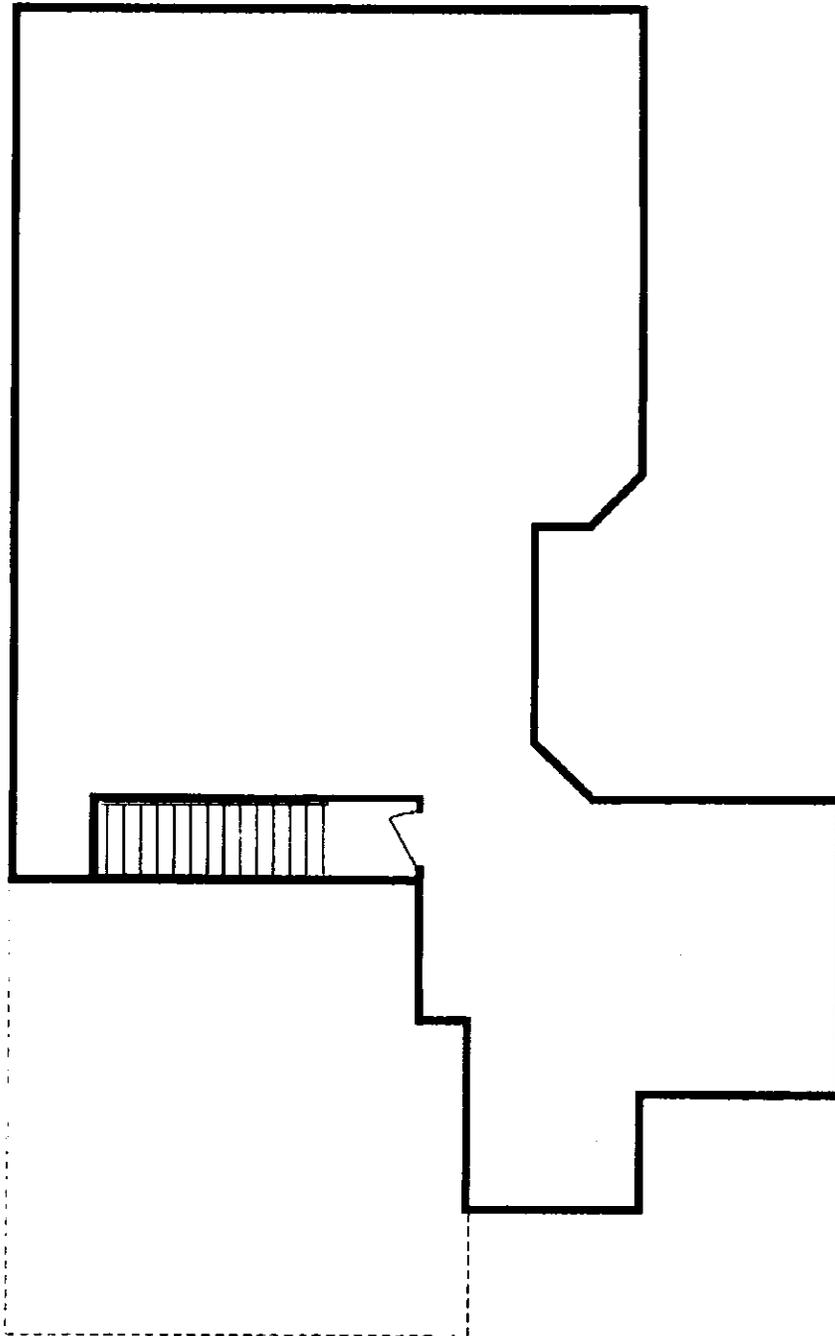
OPTIONAL OWNER'S BATH  
WALK-IN SHOWER



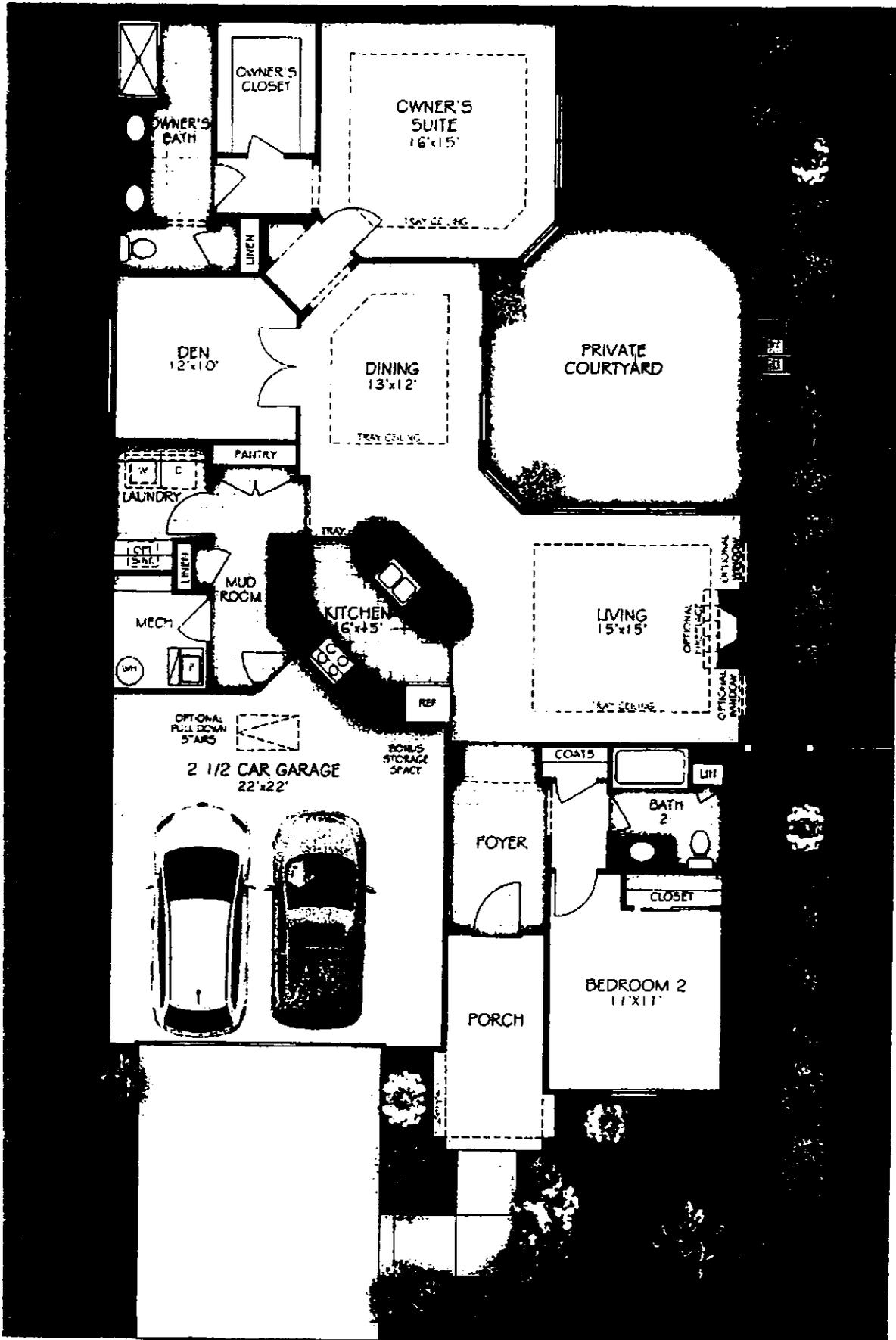
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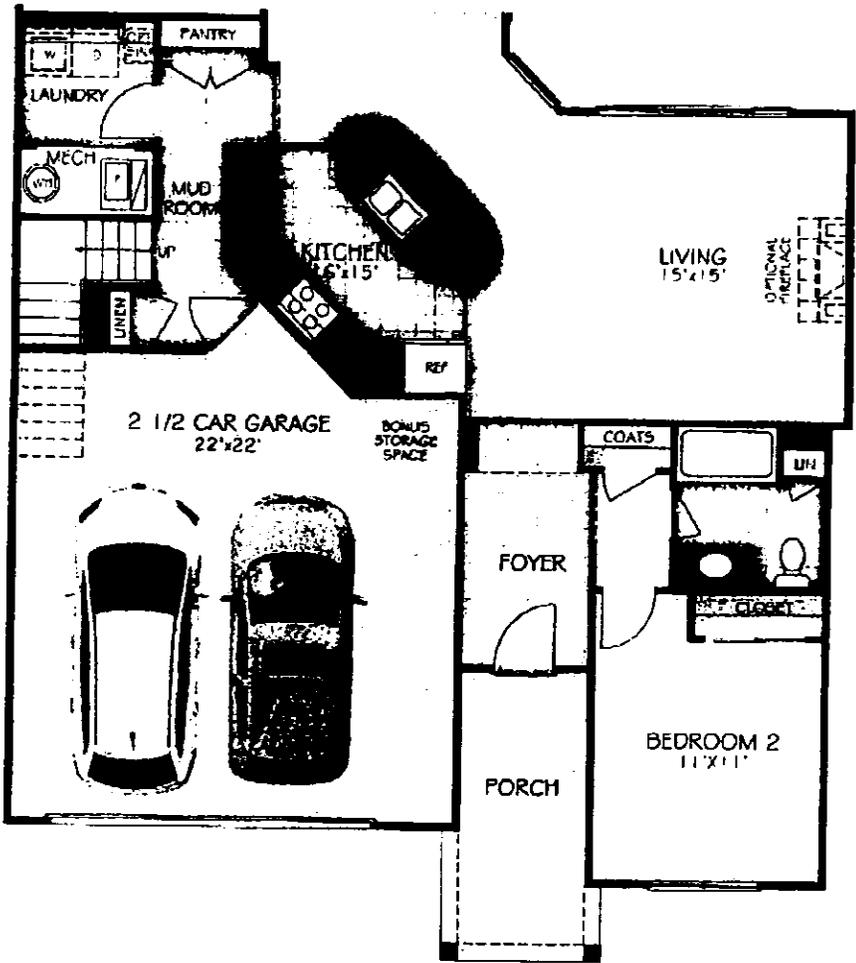


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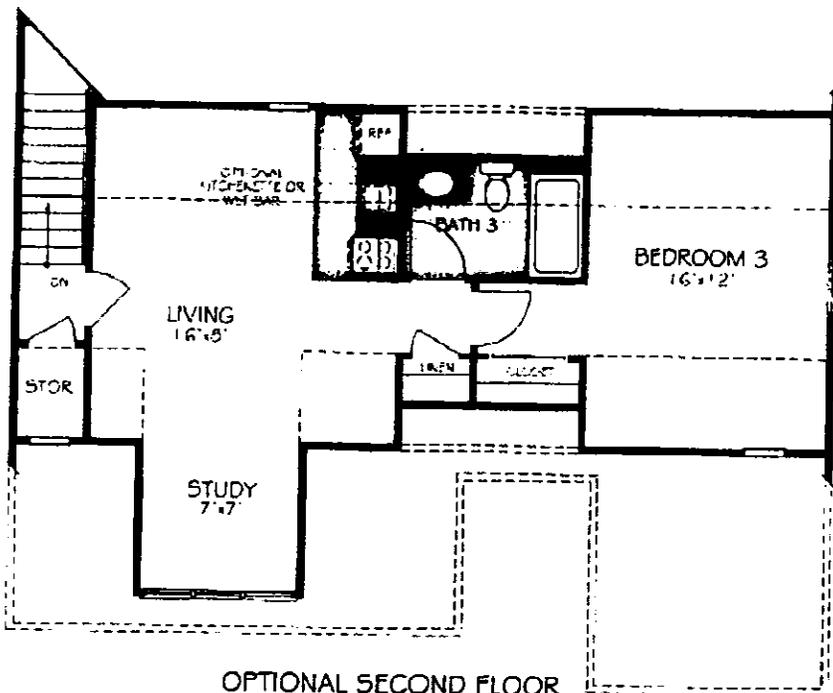


CONSULT WITH YOUR LOCAL NEW  
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THAT ARE OFFERED

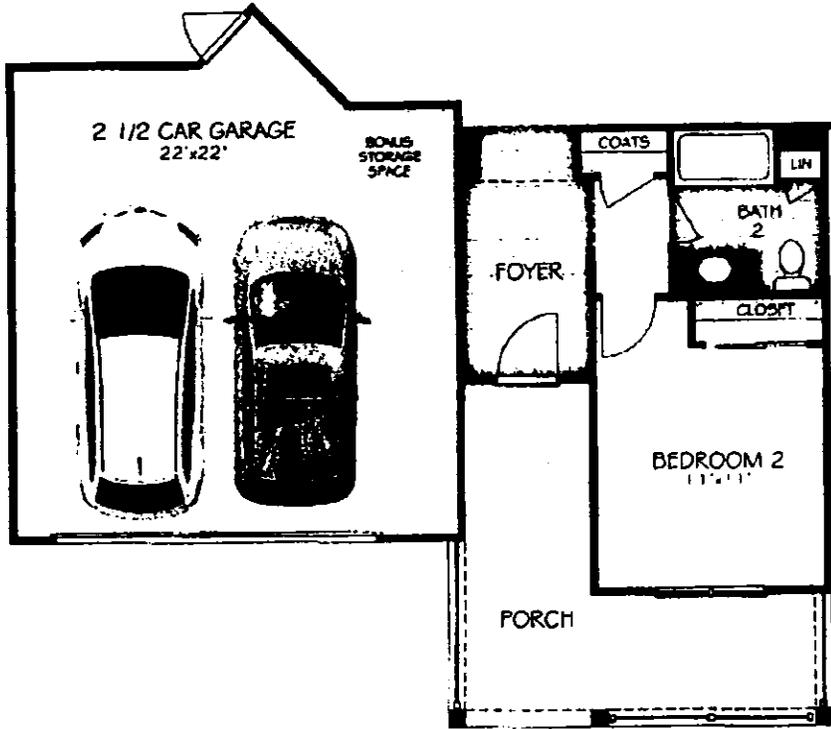




FIRST FLOOR PLAN  
W/ OPTIONAL BONUS SUITE



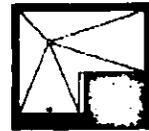
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OPTIONAL EXTENDED PORCH



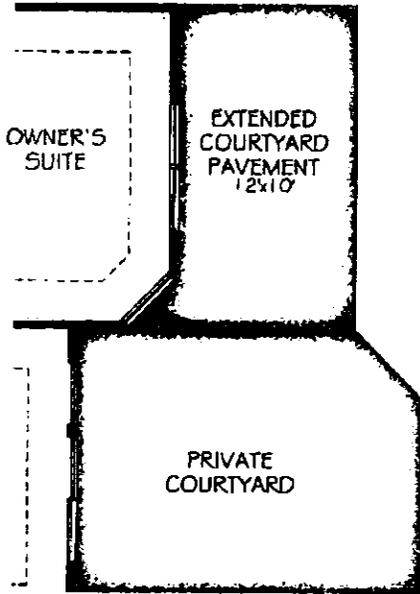
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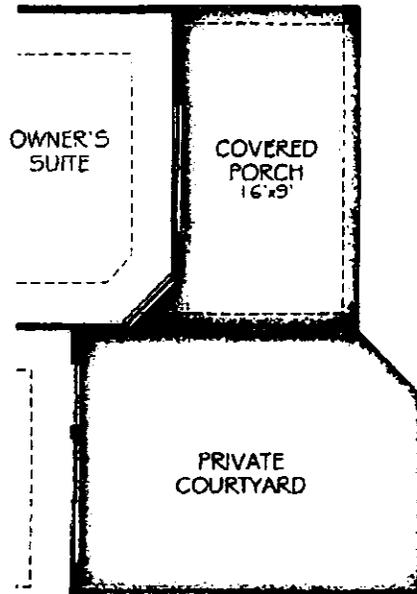
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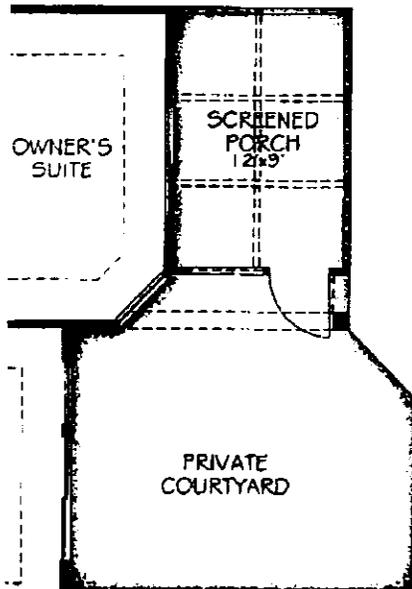
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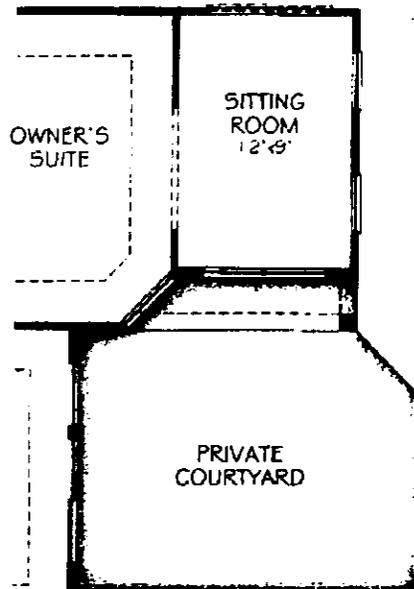
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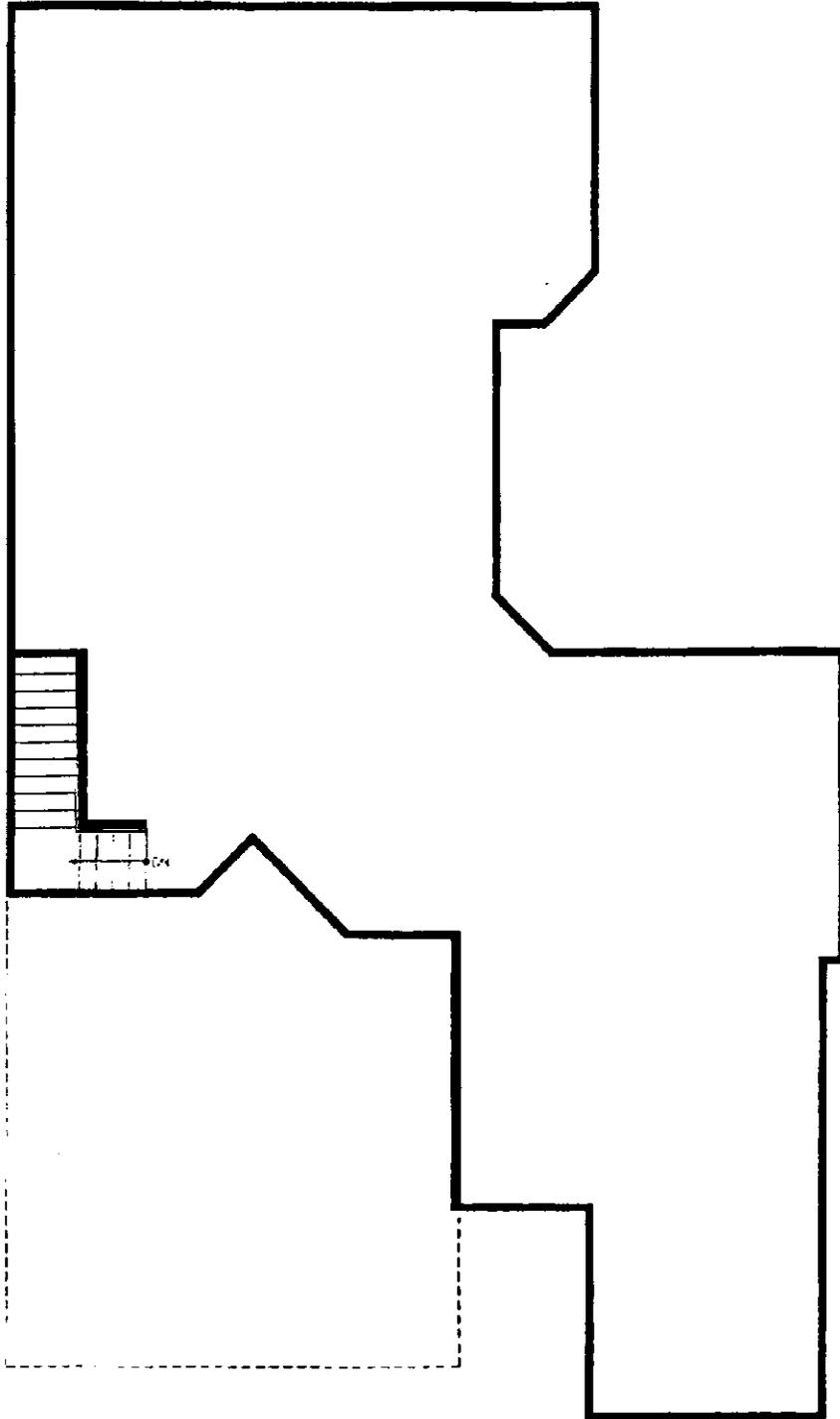
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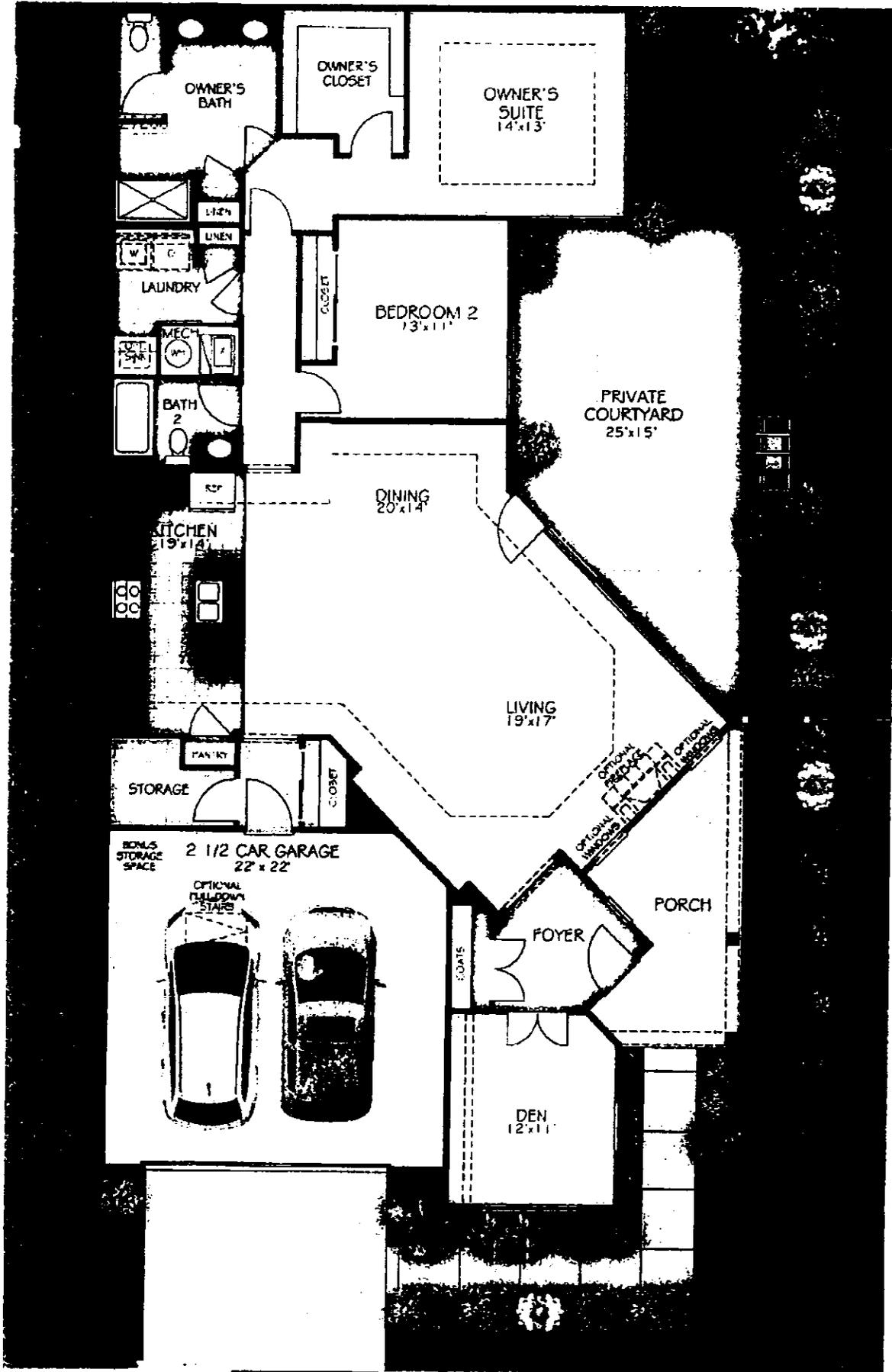
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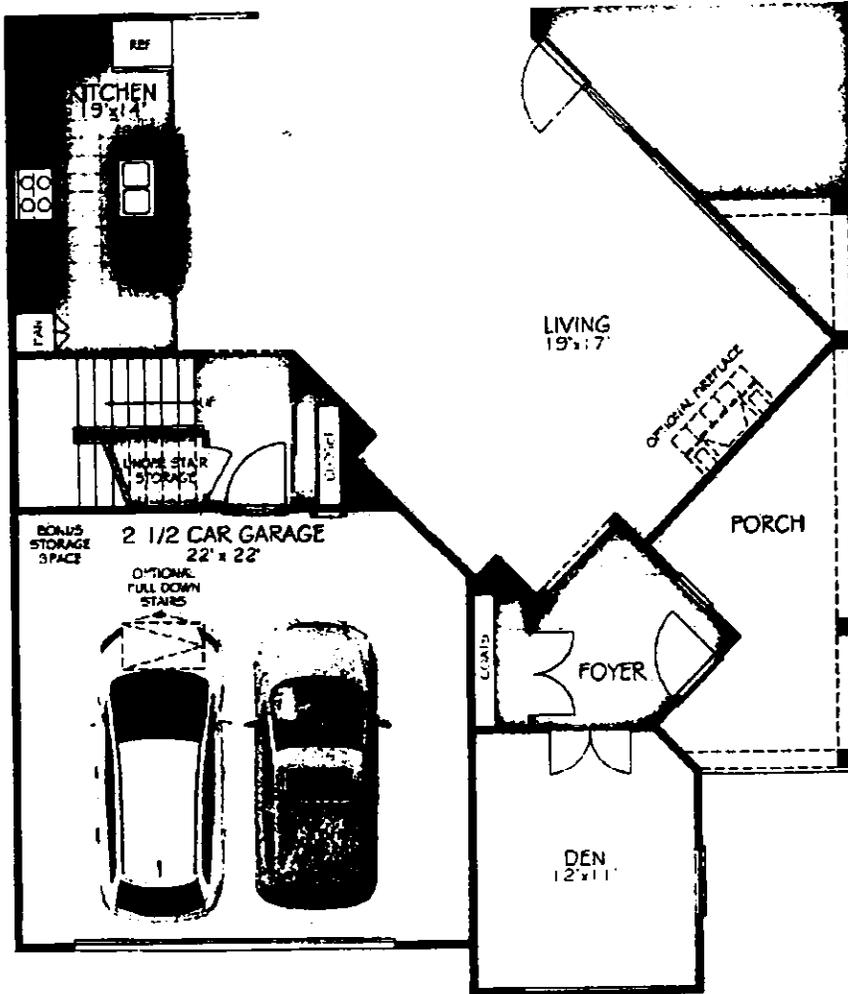


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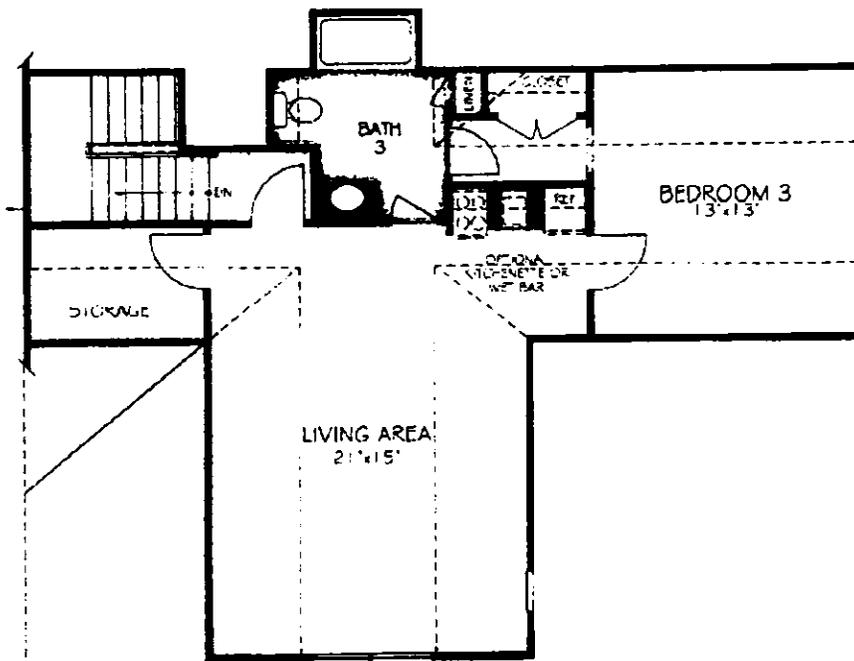


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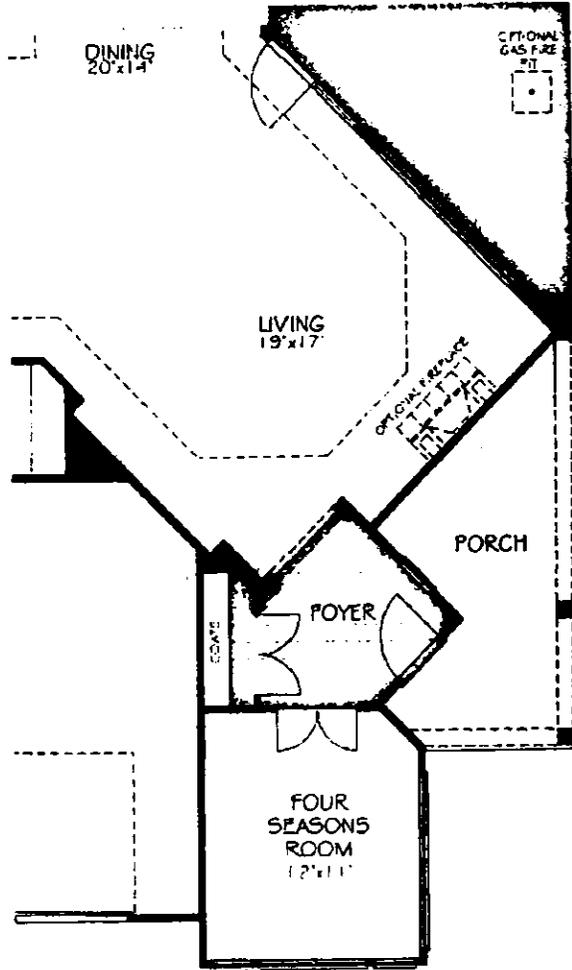




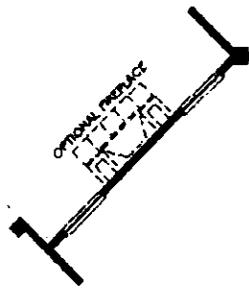
FIRST FLOOR PLAN W/  
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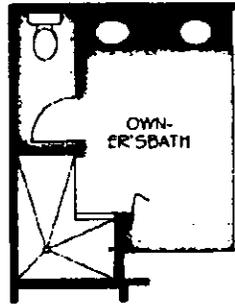
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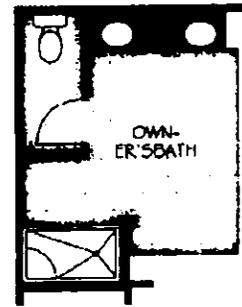
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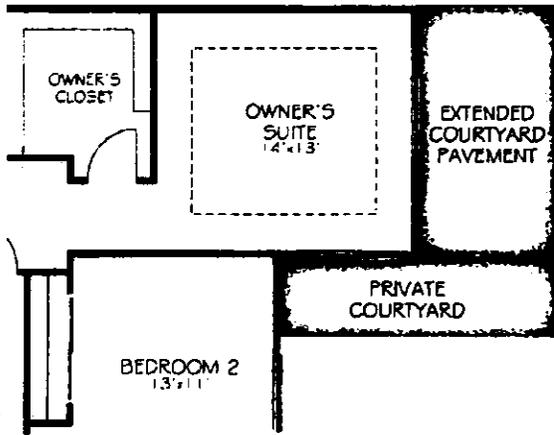
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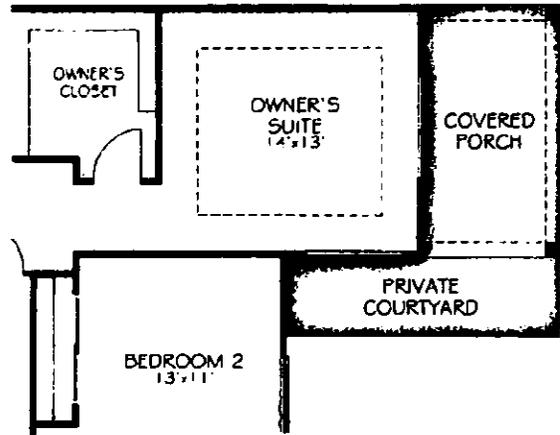
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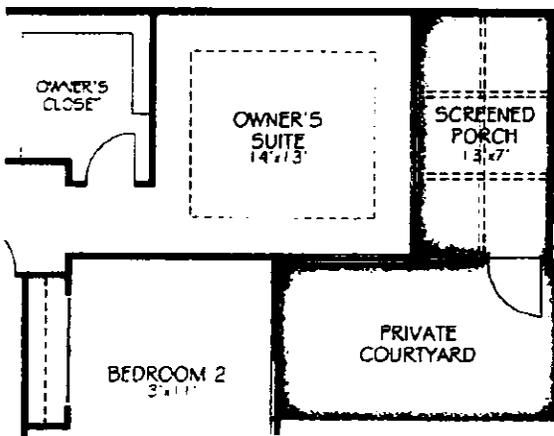
OPTIONAL OWNER'S SHOWER WITH BUILT-IN SEAT



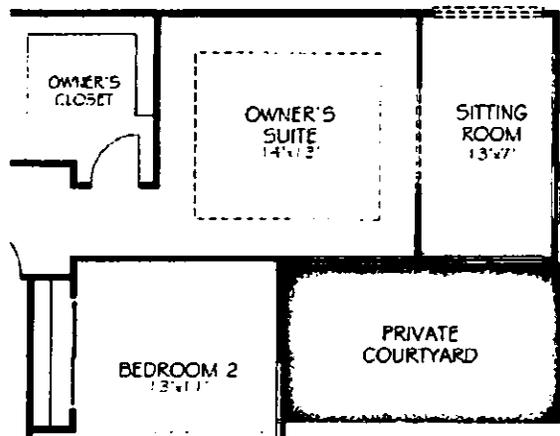
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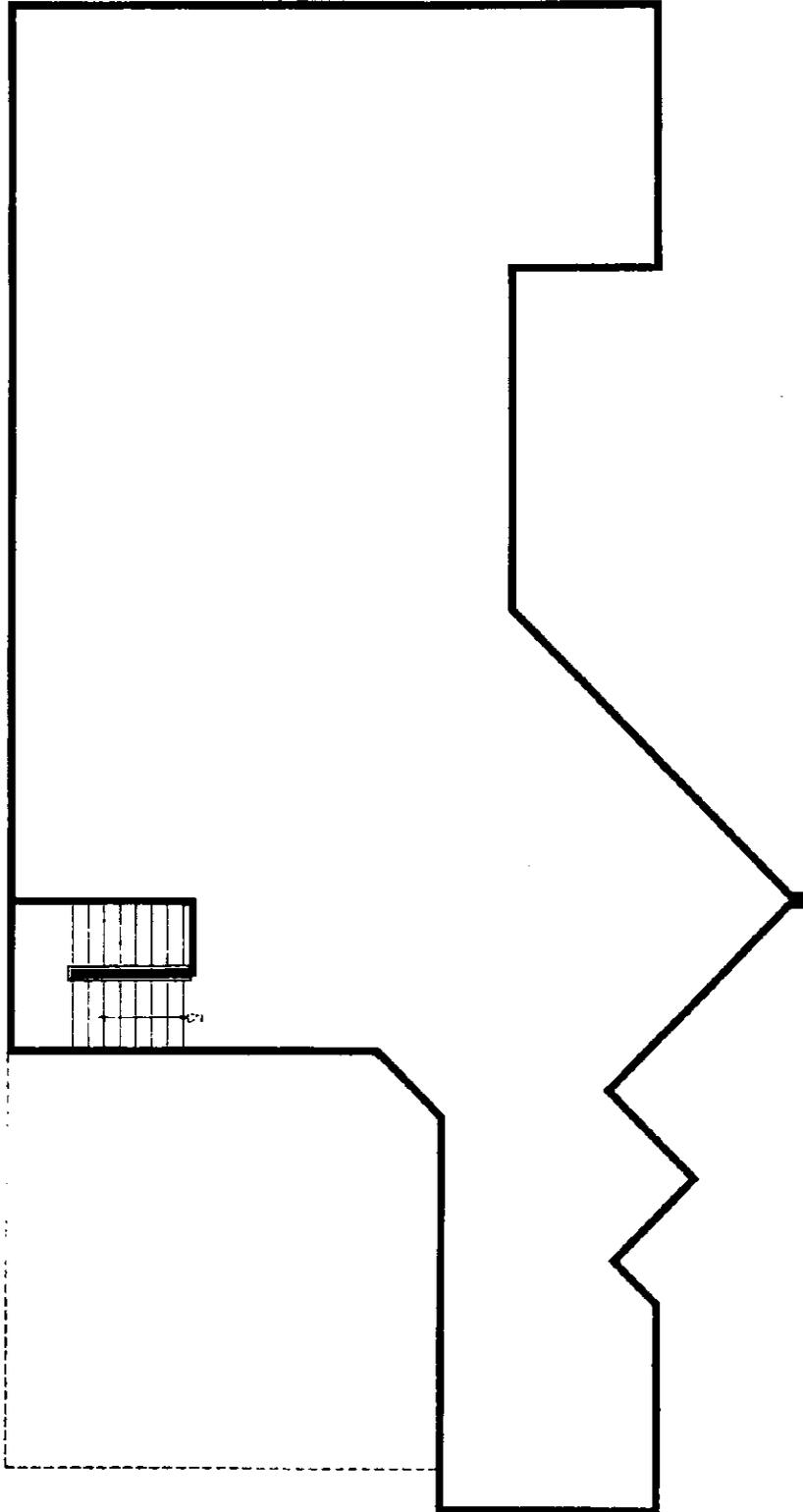
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OPTIONAL SCREENED PORCH



OPTIONAL OWNER'S SUITE SITTING ROOM



CONSULT WITH YOUR LOCAL NEW HOMES  
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**EXHIBIT C**

**DECLARATION OF CONDOMINIUM**

**THE COZ CONDOMINIUM OWNERS ASSOCIATION**

**Unit Information**

<b><u>Unit Designation</u></b>	<b><u>Unit Address</u></b>	<b><u>Par Value</u></b>	<b><u>Undivided Interest</u></b>
1		1.0	1.694%
2		1.0	1.694%
3		1.0	1.694%
4		1.0	1.694%
5		1.0	1.694%
6		1.0	1.694%
7		1.0	1.694%
8		1.0	1.694%
9		1.0	1.694%
10		1.0	1.694%
11		1.0	1.694%
12		1.0	1.694%
13		1.0	1.694%
14		1.0	1.694%
15		1.0	1.694%
16		1.0	1.694%
17		1.0	1.694%
18		1.0	1.694%
19		1.0	1.694%
20		1.0	1.694%
21		1.0	1.694%
22		1.0	1.694%
23		1.0	1.694%
24		1.0	1.694%
25		1.0	1.694%
26		1.0	1.694%
27		1.0	1.694%
28		1.0	1.694%
29		1.0	1.694%
30		1.0	1.694%
31		1.0	1.694%
32		1.0	1.694%
33		1.0	1.694%
34		1.0	1.694%

<u>Unit Designation</u>	<u>Unit Address</u>	<u>Par Value</u>	<u>Undivided Interest</u>
35		1.0	1.694%
36		1.0	1.694%
37		1.0	1.694%
38		1.0	1.694%
39		1.0	1.694%
40		1.0	1.694%
41		1.0	1.694%
42		1.0	1.694%
43		1.0	1.694%
44		1.0	1.694%
45		1.0	1.694%
46		1.0	1.694%
47		1.0	1.694%
48		1.0	1.694%
49		1.0	1.694%
50		1.0	1.694%
51		1.0	1.694%
52		1.0	1.694%
53		1.0	1.694%
54		1.0	1.694%
55		1.0	1.694%
56		1.0	1.694%
57		1.0	1.694%
58		1.0	1.694%
59		1.0	1.694%
		<b>TOTAL</b>	<b>100%</b>

**EXHIBIT D**

**DECLARATION OF CONDOMINIUM**

**THE COZ CONDOMINIUM OWNERS ASSOCIATION**

**Bylaws**

(See attached.)

**CODE OF BYLAWS  
OF  
THE COZ CONDOMINIUM OWNERS ASSOCIATION, INC.**

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**CODE OF BYLAWS  
OF  
THE COZ CONDOMINIUM OWNERS ASSOCIATION, INC.**

**ARTICLE I**

**Identification and Applicability**

**Section 1.01. Identification and Adoption.** These Bylaws are adopted simultaneously with the execution of a certain declaration filed in the office of the Boone County Recorder (“Declaration”) creating The Courtyards of Zionsville Condominium (hereinafter sometimes referred to as “The Courtyards”) to which these Bylaws are attached and made a part thereof. The Declaration is incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these Bylaws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these Bylaws and reference is specifically made to the Definitions section of the Declaration containing definitions of terms. The provisions of these Bylaws shall apply to the Condominium Property and the administration and conduct of the affairs of the Corporation. These Bylaws shall also constitute the Bylaws of the Corporation.

**Section 1.02. Name, Principal Office and Registered Agent.** The name of the Corporation is The COZ Condominium Owners Association, Inc. (hereinafter referred to as the “Corporation”). The post office address of the principal office of the Corporation is P.O. Box 579, Zionsville, Indiana 46077; the name of its Registered Agent in charge of such office is Matthew M. Price. The location of the principal office of the Corporation, or the designation of its Registered Agent, or both, may be changed at any time or from time to time when authorized by the Board of Directors by filing with the Secretary of State, on or before the date any such

change is to take effect or as soon as possible after the death of its Registered Agent or other unforeseen termination of its agent, a Notice of Change of Registered Agent and/or Registered Office.

**Section 1.03. Membership and Individual Application.** Each of the Owners of a Unit (each an "Owner" and together, the "Owners") shall be deemed to be a member of the Corporation. All of the Owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy a Unit or any part of the Condominium Property, shall be subject to the restrictions, terms and conditions set forth in the Declaration, these Bylaws and the Condominium Act, and to any rules and regulations adopted by the Board of Directors as herein provided.

## **ARTICLE II** **Meetings of Members of the Corporation**

**Section 2.01. Purpose of Meetings.** At least annually, and at such other times as may be necessary, a meeting of the Owners shall be held for the purpose of electing the Board of Directors (subject to the provisions of Section 3.02 hereof).

**Section 2.02. Annual Meetings.** The annual meeting of the Owners of the Corporation shall be held at a time and place as determined by the Board of Directors in Boone County, Indiana. At the annual meeting the Owners shall (subject to the provisions of Section 3.02 hereof) elect the Board of Directors of the Corporation in accordance with the provisions of these Bylaws, receive and review the annual budget, for such other purposes as may be necessary or required by the Declaration, these Bylaws or the Condominium Act, and transact such other business as may properly come before the meeting.

**Section 2.03. Special Meetings.** A special meeting of the Owners of the Corporation may be called by resolution of the Board of Directors or upon a written petition of Owners who

own not less than a majority of the Units. The resolution or petition shall be presented to the President or Secretary of the Corporation and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

**Section 2.04. Notice of Meetings.** 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 Corporation to each Owner entitled to vote thereat not less than ten (10) days prior to the date of such meeting. The notice shall be mailed or delivered to the Owners at the addresses of their respective Units. A copy of each the written notice shall also be delivered or mailed simultaneously by the Secretary of the Corporation to each Eligible Mortgagee (a) who requests in writing that such notices be delivered to it, and (b) who has furnished the Corporation with its name and address in accordance with Section 8.01 of these Bylaws. Such Eligible Mortgagee may designate a representative to attend the meeting. Attendance at any meeting in person, by agent or by proxy shall constitute a waiver of notice of such meeting.

**Section 2.05. Voting and Conduct of Meetings.**

(a) **Number of Votes.** On each matter coming before the meeting as to which an Owner is entitled to vote, such Owner shall be entitled to cast one (1) vote for each Unit owned by such Owner.

(b) **Multiple Owners.** Where the Owner of a Unit constitutes or consists of more than one person, or is a partnership, there shall be only one (1) voting representative entitled to all of the votes allocable to that Unit. At the time of acquisition of title to a Unit by multiple Owners or a partnership, those persons constituting such Owner or the

partners shall file with the Secretary of the Corporation an irrevocable proxy appointing one of such persons or partners as the voting representative for their Unit, which shall remain in effect until all of the parties constituting the multiple Owner or the partners in such partnership designate another voting representative in writing, or such appointed representative relinquishes such appointment in writing, becomes mentally incompetent, dies or such appointment is otherwise rescinded by order of a court of competent jurisdiction or the Owner no longer owns such Unit. In the event no proxy is filed, the first-named person on the deed shall have the sole right to vote with respect to such Unit. Such appointed voting representative may grant a proxy to another to vote in his, her or its place at a particular meeting or meetings pursuant to paragraph (d) of this Section 2.05, which shall not constitute a permanent relinquishment of his, her or its right to act as voting representative for the Unit.

(c) **Voting by Corporation or Trust.** Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust and the agent or other representative of the corporation duly empowered by the board of directors of such corporation may cast the vote to which the corporation is entitled. The secretary of the corporation or a trustee of the trust so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary of the Corporation stating who is authorized to vote on behalf of said corporation or trust.

(d) **Proxy.** An Owner may vote either in person or by his, her or its duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his, her or its attorney-in-fact in writing, delivered to an officer or the

Managing Agent (as defined in Section 3.06) of the Corporation prior to the commencement of the meeting.

(e) **Quorum.** Except where otherwise expressly provided in the Declaration, these Bylaws, the Condominium Act or the Indiana Nonprofit Corporation Act of 1991 (hereinafter referred to as the "Statute"), the Owners representing twenty percent (20%) of the Units shall constitute a quorum at all meetings. The term 20% of Owners or 20% of Units, as used in these Bylaws, shall mean the Owners entitled to cast at least twenty percent (20%) of the votes in accordance with the applicable percentage set forth in the Declaration, as such may be amended from time to time.

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

(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, unless such reading is waived by a majority of the Owners present.

(2) **Treasurer's Report.** The Treasurer shall report to the Owners concerning the financial condition of the Corporation and answer relevant questions of the Owners concerning the expenses of the Corporation, Assessments and financial report or budget for the prior year and the proposed budget for the current year.

(3) **Budget.** The budget for the current fiscal year shall be presented to the Owners.

(4) **Election of Board of Directors.** Nominations for the Board of Directors may be made by any Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Corporation at least seven (7) days prior to the date of the annual meeting. Voting for the Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Owner may cast the total number of votes to which he, she or it is entitled for as many nominees as are to be elected; however, he, she or it shall not be entitled to cumulate his votes. Those persons receiving the highest number of votes shall be elected to the Board of Directors. Each voting Owner shall sign his, her or its ballot. The foregoing provisions are subject to the provisions of Section 3.02 hereof.

(5) **Other Business.** Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Corporation at least seven (7) days prior to the date of the meeting; provided, however, that this requirement may be waived at the meeting if agreed by a majority of the Owners present.

(6) **Adjournment.**

(g) **Conduct of Special Meeting.** The President of the Corporation shall act as Chairman of any special meetings of the Corporation if he or she is present. The Chairman shall call the meeting to order at the duly designated time and the only business

to be considered at such meeting shall be in consideration of the matters for which such meeting was called, as set forth in the notice of such special meeting.

**ARTICLE III**  
**Board of Directors**

**Section 3.01. Management.** The affairs of the Corporation and The Courtyards shall be governed and managed by the Board of Directors (herein collectively called "Board" or "Directors" and individually called "Director"). The initial Board of Directors shall be composed of no fewer than two (2) persons. After the Applicable Date, the Board of Directors shall be composed of three (3) persons. No person shall be eligible to serve as a Director unless he or she is, or is deemed in accordance with the Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 3.02 hereof.

**Section 3.02. Initial Board of Directors.** The initial Board of Directors shall be Larry Neer and Terry Neer (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, these Bylaws or the Declaration or the Condominium Act or elsewhere (a) the Initial Board shall hold office until the date upon which Declarant has sold its forty-fifth (45<sup>th</sup>) Unit in The Courtyards of Zionsville Condominium, unless sooner stated by Declarant in writing ("Applicable Date"), and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed to be a member of the Initial Board. Each Owner, by acceptance of a deed to a Unit, or by acquisition of any interest in a Unit by any type of juridic acts, inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until

the Applicable Date determined as provided above, to exercise all of said Owner's right to vote and to vote as Declarant determines on all matters as to which members are entitled to vote under the Declaration, these Bylaws, the Condominium Act, or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same.

**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 Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Unit may be represented on the Board of Directors by more than one person at a time.

**Section 3.04. Term of Office and Vacancy.** Subject to the provisions of Section 3.02 hereof, one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided in Section 3.02 hereof. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one (1) member of the Board of Directors shall be elected for a three (3) year term, one (1) member for a two (2) year term, and one (1) member for a one (1) year term so that the terms of at least one-third (1/3) of the Directors shall expire annually. There shall be separate nominations for the office of each Director to be elected at the first meeting after the Applicable Date. Each Director elected shall hold office throughout the term of his or her election and until his or her successor is elected and qualified. Subject to the provisions of Section 3.02 hereof as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining

Directors or by vote of the Owners if a Director is removed in accordance with Section 3.05 of this Article III. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his or her successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

**Section 3.05. Removal of Directors.** A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the Owners at a special meeting of the Owners duly called and constituted for such purpose. In such case, his or her successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his or her successor is duly elected and qualified.

**Section 3.06. Duties of the Board of Directors.** The Board of Directors shall provide for the administration of The Courtyards, the maintenance, upkeep and replacement of the Common Elements and Limited Common Elements (unless the same are otherwise the responsibility or duty of Owners of Units), the establishment of an annual budget and the collection and disbursement of the Assessments and expenses included in the Assessments. After the Applicable Date, the Board shall, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) repair, protection and replacement of the Common Elements and Limited Common Elements, unless the same are otherwise the responsibility or duty of an Owner;

(b) procuring of utilities used in connection with The Courtyards, removal of garbage and waste, and snow removal from the Common Elements and Limited Common Elements, as applicable;

(c) landscaping, painting, decorating, furnishing, maintenance and upkeep of the Common Elements;

(d) surfacing, paving and maintaining private streets, parking areas and sidewalks to the extent the same are part of the Common Elements or Limited Common Elements;

(e) assessment and collection from the Owners of the Owner's share of the Assessments;

(f) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner with the notice of annual meeting is mailed or delivered;

(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 with the proposed annual budget for the current year;

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

(i) The maintenance, repair, upkeep and replacement of the Common Elements (except as is otherwise the obligation of an Owner), including but not limited to, the maintenance, repair, upkeep and replacement of the following (if located in the Common Elements):

(1) Signage;

- (2) Flowers, plant material, grass and other landscaping;
- (3) Irrigation system, if any;
- (4) Yard lighting, if any;
- (5) Mailboxes;
- (6) Clubhouse and pool;
- (7) Retainage ponds, aqua swirls and the like; and
- (8) Entry features.

\* Streets and sidewalks are dedicated, public ways and are maintained by the Town of Zionsville (at present, by and through its interlocal agreement with Boone County, Indiana).

(j) Taking such action or performing such tasks as are, in the Board's discretion, beneficial to the Owners.

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

(a) to employ a Managing Agent to assist the Board in performing its duties, including keeping a record and minutes of all meetings; provided, however, except as otherwise provided in the Declaration, any management agreement shall be terminable by the Corporation for cause upon thirty (30) days written notice and otherwise upon ninety (90) days written notice, and any such agreement may not exceed one (1) year, and shall be renewable by agreement of the parties for successive one (1) year periods.

(b) to purchase, lease or otherwise obtain for the benefit of the Owners or for the Corporation such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

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

(d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Elements and, where applicable, the Limited Common Elements and as otherwise necessary for the Board of Directors to perform its duties;

(e) to include the costs of all of the above and foregoing as expenses included in the Assessments and to pay all of such costs therefrom;

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

(g) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Condominium Property and the Common Elements (in addition to those set forth in the Declaration) as the Board of Directors, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board of Directors shall be promptly delivered or mailed to all Owners, and further provided that such rules and regulations are not in conflict with any terms and provisions of the Declaration or of any rules and regulations adopted by the Corporation; and

(h) to adopt an annual budget for each fiscal year for the purpose of estimating the total amount of expenses and Assessments for such fiscal year.

**Section 3.08. Limitation on Board Action.** After the Applicable Date, the Board of Directors may enter into contracts limited to a total expenditure of less than Five Thousand Dollars (\$5,000.00) with notice to (but not approval of) the Owners, without the Board amending the budget, except that such amendment and notice shall not be necessary for:

- (a) contracts for replacing or restoring portions of the Common Elements or Limited Common Elements damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
- (b) contracts and expenditures included in the annual budget; and
- (c) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

**Section 3.09. Compensation.** No Director shall receive any compensation for his or her services as such except to such extent as may be expressly authorized by a majority of the Owners. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be an expense included in the Operating Assessments.

**Section 3.10. Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. The Secretary shall give notice of regular meetings of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meeting.

Special meetings of the Board of Directors may be called by the President or any two (2) members of the Board of Directors. 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. The notice

of the meeting shall contain a statement of the purpose for which the meeting is called. Special meetings shall be held at such place and at such time within Boone County, Indiana, or any of the contiguous counties, as shall be designated in the notice.

**Section 3.11. Waiver of Notice.** Before any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting or his or her subsequent consent to the actions taken thereat, shall, constitute a waiver of notice of the time, place and purpose thereof. If all Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

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

**Section 3.13. Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board of Directors on behalf of The Courtyards or the Corporation, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or Bylaws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of The Courtyards or the Corporation and that in all matters the Board of Directors is acting for and on behalf of the Owners as their agent. The

liability of any Owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the Directors shall be limited to such percentage of the total liability or obligation thereunder as is equal to his or her Units owned. Every contract made by the Board of Directors or the Managing Agent on behalf of The Courtyards shall provide that the Board of Directors and the Managing Agent, as the case may be, are acting as agent for the Owners and shall have no personal liability thereunder, except in their capacity as Owners (if applicable) and then only to the extent of their Units owned.

**Section 3.14. Additional Indemnity of Directors.** The Corporation shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he or she is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily 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 Director is liable for gross negligence or willful misconduct in the performance of his or her duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, unless it is determined by a majority of the Owners that such Director was guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his or her duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent of The Courtyards or any officer or employee thereof, or any

accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 3.15. Bond.** The Board of Directors shall require the Managing Agent, Treasurer, employees, officers and agents handling or responsible for funds of or administered on behalf of the Corporation to have surety bonds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, willful misapplication and other acts of fraud or dishonesty in an amount not less than the estimated maximum amount of funds, including reserve funds, in the custody of the Corporation or the Managing Agent, as the case may be, at any given time, but in no event less than a sum equal to three (3) months aggregate Operating Assessments on all Units, plus reserve funds. Such bonds shall also specifically include protection for any insurance proceeds received for any reason by the Board.

The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of employees or similar terms or expressions. The expense of any such bonds, except those maintained by the Managing Agent, shall be a common expense included in the Operating Assessments. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Corporation and to all Eligible Mortgagees.

**ARTICLE IV**  
**Officers**

**Section 4.01. Officers of the Corporation.** The principal officers of the Corporation shall be the President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. 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 Corporation shall be elected by the Board of Directors at its annual meeting. Upon an affirmative vote of a majority of all members of the Board of Directors, any officer may be removed either with or without cause and his or her successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose. An officer shall serve at the pleasure of the Board of Directors until the next annual meeting of the Board of Directors or until his or her successor is elected and has qualified.

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

**Section 4.04. The Vice President.** The Vice President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice President shall also perform such other duties as these Bylaws may prescribe or as shall, from time to time, be imposed upon him or her by the Board of Directors or by the President.

**Section 4.05. The Secretary.** The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Corporation and of the Board and shall keep or cause to be kept a minute book for the Corporation which shall contain true and complete record of the proceedings of such meetings, the Articles, Bylaws, and all amendments thereto; and shall perform all other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Corporation or the Board are duly given, mailed or delivered, in accordance with the provisions of these Bylaws.

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

**Section 4.07. Assistant Officers.** The Board of Directors may, from time to time, designate and elect from among the Owners an Assistant Secretary and an Assistant Treasurer who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these Bylaws or the Board of Directors may prescribe.

**ARTICLE V**  
**Assessments**

**Section 5.01. Annual Accounting.** Annually, within ninety (90) days after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

**Section 5.02. Proposed Annual Budget.** The Board of Directors shall adopt an annual budget prior to the end of the then current fiscal year for the next fiscal year estimating the total amount of the expenses for the next fiscal year. Such budget may not increase by more than twenty percent (20%) of the previous annual budget without the approval of a majority of the the Owners. A copy of the proposed annual budget shall be furnished to each Owner at or prior to December 1 of each year. The proposed annual budget presented to the Owners at the annual meeting of the Corporation shall be the basis for the Operating Assessments (as defined in the Declaration) during the next fiscal year. The annual budget, the Operating Assessments and all sums assessed by the Corporation shall be prepared by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Operating Assessments shall, in addition, be established to include the establishment and maintenance of an adequate replacement reserve fund for capital expenditures and replacement and repair of the Common

Elements. The replacement reserve fund shall be used for the foregoing purposes and not for usual and ordinary repair expenses of the Common Elements. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Elements shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Boone County, Indiana, selected from time to time by the Board of Directors. The failure or delay of the Board of Directors to prepare an annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Assessments as herein provided, whenever determined.

**Section 5.03. Operating Assessments.** The annual budget adopted by the Board shall contain an assessment against each Unit that is based on the estimated cash requirement for the common expenses in the current fiscal year. Immediately following the adoption of the annual budget, each Owner shall be given written notice of the assessment against the Owner's Unit (the "Operating Assessment"). The aggregate amount of the Operating Assessments shall be equal to the total amount of expenses included in the final annual budget, including reserve funds and the total Operating Assessment. The Operating Assessment against each Unit shall be paid in advance in equal monthly installments, commencing on the first day of the first month of each fiscal year and monthly thereafter through the last month of such fiscal year. Payment of the monthly installments of the Operating Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay monthly assessments quarterly, semi-annually or annually, in advance. The Operating Assessment for the current fiscal year shall become a lien on each Unit as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such

Operating Assessment may not have been made by that date. Monthly installments of Operating Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

The fact that an Owner has paid the Owner's Operating Assessment for the current fiscal year in whole or in part based upon a previous budget and thereafter, before the annual budget and Operating Assessment are finally determined and approved, sells, conveys or transfers the Owner's Unit or any interest therein, shall not relieve or release Owner or the Owner's successor as owner of the Unit from payment of the Operating Assessment for such Unit as finally determined, and Owner and the Owner's successor as owner of such Unit shall be jointly and severally liable for the Operating Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 8.02 hereof prior to the final determination and adoption of the annual budget and Operating Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Operating Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determination.

**Section 5.04. Special Assessments.** The Board of Directors shall have the full right, power and authority without approval of the Owners to make special assessments for expenses of an unusual or extraordinary nature or not otherwise anticipated which, upon resolution of the Board, shall become a lien on each Unit, prorated in accordance with the Declaration ("Special Assessments for Capital Improvements"), unless otherwise provided in these Bylaws, the Declaration or the Condominium Act. Without limiting the generality of the foregoing

provisions, Special Assessments for Capital Improvements may be made by the Board of Directors from time to time to pay for capital expenditures, to pay for operating deficits, and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in the Declaration. The Board of Directors shall have the full right, power and authority without approval of the Owners to make Special Individual Unit Assessments (as defined in the Declaration).

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

(a) No Owner may exempt himself or herself from paying Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Elements and, in the proper case, of the Limited Common Elements, of the Condominium Property, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit belonging to the Owner. Each Owner shall be personally liable for the payment of all Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Assessments when due, the lien for such Assessment on the Owner's Unit may be filed and foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make payments of any Assessments, within ten (10) days after any such Assessments are due (with such due dates being set forth in Sections 5.03 and 5.04 herein), the Board, in its discretion may (i) impose a late charge of up to twenty-five percent (25%) of the amount past due, (ii) accelerate the entire balance of the budgeted and unpaid Assessments, and any and all fines, charges and late fees, applicable to the current full calendar year and all previous calendar years to the

Owners and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary, and (iii) eliminate such Owner's voting rights. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Assessment without foreclosing or waiving the lien securing the same. In any action to recover an Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorneys' fees, from the Owner of the respective Unit.

(b) Notwithstanding anything contained in this Section or elsewhere in the Declaration and these Bylaws, the lien for any Assessment shall be subordinate to the lien of any Eligible Mortgagee and any sale or transfer of a Unit to an Eligible Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Assessment as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Assessments, the lien for

which has been divested as aforesaid, shall be deemed to be a common expense, collectible from all Owners (including the party acquiring the subject Unit from which it arose), as provided in the Condominium Act.

**Section 5.06. Regular Assessments Prior to Applicable Date.** The purpose of this section is to provide for the maintenance and upkeep of The Courtyards and for the payment of the common expenses during the period prior to the Applicable Date. Accordingly, and notwithstanding any other provision contained in the Declaration, these Bylaws, the Condominium Act or otherwise, prior to the Applicable Date the annual budget and all Assessments shall be established solely by the Initial Board.

Payment of the Operating Assessments prior to the Applicable Date with respect to each Unit that has been subjected to the Declaration (including those owned by Declarant) shall commence on the date of the conveyance of the first Unit to a new Owner. In addition, at the initial closing on the sale of each Unit, the purchaser or new Owner is required to pay a sum equal to the full Operating Assessment applicable to such Unit for two (2) months as his or her initial contribution to the working capital of the Corporation. Such amounts shall be used by the Corporation for common expenses. This amount is not an advance payment of Operating Assessments and will not be held in any trust or reserve account. Additionally, at each closing, the purchaser of a Unit shall pay his or her pro rata share of the Operating Assessment due in the month of closing. Thereafter, payment of the Operating Assessment shall be made on the first day of each calendar month.

Ten percent (10%) of the Operating Assessment paid prior to the Applicable Date shall be designated as a reserve fund for maintenance, repairs or replacement of Common Elements that must be repaired and replaced on a periodic basis.

That portion of the Operating Assessment collected by the Declarant prior to the Applicable Date applicable to the replacement reserve shall be held by the Initial Board and, if required, applied to the replacement of the Condominium Property. To the extent that such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

It is understood that Declarant shall be obligated to pay that portion of the Operating Assessment applicable to an unoccupied Unit for those Units which Declarant owns and which are in those portions of The Courtyards which from time to time have been submitted by Declarant to the Declaration.

**Section 5.07. Maintenance and Repairs.** Every Owner shall promptly perform all maintenance and repair within the Owner's own Unit which, if neglected, would affect the value of the Condominium Property. In addition, each Owner shall furnish, and shall be responsible at the Owner's own expense for, the maintenance, repairs and replacements of the Owner's Unit and Limited Common Elements as applicable, and all equipment serving the same, include, but are not necessarily limited to, water lines, gas lines, plumbing and electric lines which service the Owner's Unit and are located within exterior walls of the Owner's Unit, including any lines in the area from below the floor to above the roof if they are within an extension of the exterior walls of the Unit; all partitions and interior walls, ceilings and floors; appliances, to include garbage disposals, dishwashers, stoves, ranges and refrigerators, telephones, air conditioning and heating equipment (whether located wholly or partially inside or outside the Unit), doors, screens and windows (including exterior and interior of all glass and screen surfaces), lamps, and interior grouting and/or caulking and all other accessories appurtenant to the Unit or belonging to the

Owner thereof. In addition, each Owner is responsible for the maintenance, repair and upkeep of the Owner's garage door.

If, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of the Owner's family or of a guest, tenant or other occupant or visitor of the Owner, or of an Owner's pet or automobile, damage shall be caused to the Common Elements or to a Unit or Limited Common Element owned by or reserved for the use of others, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a common expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board of Directors, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. The cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Unit is subject if not paid by such Owner upon demand by the Corporation. Maintenance, repairs and replacements to the Common Elements or the Units or Limited Common Elements shall be subject to the rules and regulations adopted from time to time by the Board.

To the extent that equipment, facilities and fixtures within any Unit shall be connected to similar equipment, facilities or fixtures affecting or serving other Units or any Common Elements or Limited Common Elements, then the use thereof by the owner of such Unit shall be subject to the rules and regulations adopted from time to time by the Board. The authorized representatives of the Corporation or Board of Directors or the Managing Agent for the Corporation, shall be entitled to reasonable access to any Unit as may be required in connection with maintenance, repairs or replacements of or to the Common Elements or Limited Common Elements or any parts thereof, or any equipment, facilities or fixtures affecting or serving other Units or any Common Elements or Limited Common Elements.

**ARTICLE VI**  
**Restrictions, Entry and Rules and Regulations**

**Section 6.01. Restrictions on Use.** The following restrictions on the use and enjoyment of the Units, Common Elements, Limited Common Elements and the Condominium Property shall be applicable to The Courtyards and are in addition to those set forth in the Declaration:

(a) **Personal Property.** All personal property, such as lawn chairs, bicycles, tables, etc. must be kept inside the patio or porch area or the garage. Personal property maintained within the patio area may not be visible above the patio fence, with the exception of patio table umbrellas. Nothing may be hung or displayed, nor may signs, awnings, canopies, shutters, antennae or satellite dishes or any other device or ornament be affixed to or placed upon the exterior walls, doors, fences or roof without prior approval by the Board of Directors.

(b) **Decorative Items.**

(i) **Decorations.** Until such time as the Board of Directors has been elected and minimum guidelines for decorative items are established, display of any of the following is not allowed: wreaths (door or wall); bird feeders or bird baths (tree-hanging or freestanding); flower/plant pots; garden hose hangers; ground/landscape lights or stepping stones; wall plaques; windsocks/wind chimes/decorative flags.

(ii) **Holiday Decorations.** Christmas lights and decorations are permitted to be placed in the Limited Common Elements and/or on Unit exteriors provided the decorations do not damage Limited Common Elements, Units, gutters or siding. They may not be displayed before Thanksgiving Day, and must be removed by no later than January 7th of the following year. Other holiday decorations are permitted under the same guidelines

and may not be displayed more than one week before or one week after the holiday.

(iii) The American Flag. The American flag may be flown or displayed at anytime following normal flag protocol.

(c) Flowers/Landscape Plants.

(i) Flowers. Flowers may be planted inside the patio fence or directly outside the patio fence or screened porch in the existing mulched area. Flowers are not permitted around any tree. Only annuals which will not exceed the height of the patio fence shall be used. Maintenance of the flowers is the responsibility of the Owner and dead annuals are to be removed at the end of the season. Annuals which are not maintained during the growing season will be removed by the grounds crew and the costs of the removal will be billed to the resident.

(ii) Landscape Plants. An Owner may plant new shrubs or landscape plants outside the patio area with prior approval by the Board of Directors. Variance request forms are available from the Board of Directors. Additional landscape plants to be considered must be a species already in use in the community and which, at maturity, will not exceed the height of the patio fence. Any new planting beds will be limited in size by the Board of Directors. New beds must be mulched with matching hardwood. New plants will become the property of the Corporation, who will provide future mulching, pruning and fertilization. However, should the plants die, the Owner is responsible for replacement.

(d) Prohibited Items. The following items will be strictly prohibited in any Common Elements: any type of yard sign, statue, statuette, yard or lawn ornament, artificial flowers, ornamental rocks or stones, cypress mulch, swing sets, mounted hose reels, laundry poles or clotheslines, or other such items. Laundry may not be hung over any patio fence (swim suits, towels, rugs, etc., included).

(e) Exterior Alterations. No alterations, additions, fences, walls, patios, decks, etc., may be made to the exterior surface of the Units, nor may any trees or shrubs be planted, transplanted or removed without prior written approval of the Board. Patio gates may be installed at the resident's expense using only the approved design and specifications. Copies of the design and specifications are available from the Board of Directors. Storm doors may be added at the resident's expense using only the approved design and color. Specific information about approved storm doors may be obtained from the Board of Directors.

(f) Windows and Window Coverings. All window coverings, whether draperies, blinds (vertical or horizontal) or valances must be white, off-white, light beige or light gray on the exterior side.

(g) Signs. Nothing may be hung or displayed from inside the windows except professionally prepared "For Sale" and "For Rent" signs or security system decals, which shall be limited in size and number. No real estate signs are permitted in any Common Elements.

(h) Animals. No more than two (2) domestic dogs or cats, not bred or maintained for commercial purposes, may be kept in a Unit. All animals, when outdoors, shall be maintained on a leash not more than eight (8) feet in length. They shall be supervised by a responsible individual at all times. Such individuals shall be responsible for the immediate clean-up of all pet litter. No pet shall be tethered outside in the lawn or Common Elements; nor shall any pet be

tied to any patio fence. Pet owners may be fined for violation of these policies; of \$10.00 for the first offense, and \$25.00 for each additional offense. If pets become a nuisance, they may be ejected at the discretion of the Board of Directors.

(i) Parking/Vehicles. No boats, trailers, motor homes, trucks (larger than a ¾ ton pickup), travel trailers, or any vehicle with commercial advertising may be parked on any street or driveway of the Condominium Property overnight. Vehicles used for recreation (van conversions/RVs) not garageable, may be parked in the Limited Common Elements (in front of garage) for forty-eight (48) hours to allow for loading and unloading. Such vehicles must not exceed twenty (20) feet in length and must not block access of other residents. Commercial moving vans, when conducting contract business, and commercial trucks when in the area to perform service or repair work are an authorized exception. Parking by Owners or guests must be: (i) within the garage, (ii) in the Limited Common Elements in front of the Owner's garage door, (iii) in the parking spaces at the Clubhouse area, or (iv) on the side drive in such a manner so as not to block any other residents access to the garage or street. No vehicle may be parked in the clubhouse parking areas for more than forty-eight (48) consecutive hours. Vehicles parked there for more than forty-eight (48) hours are subject to being towed.

Inoperable vehicles (with flat tires, expired license tags, etc.), or vehicles which cannot be identified as belonging to a resident, which are parked in any Common Elements or Limited Common Elements for more than forty-eight (48) consecutive hours may be towed off the Condominium Property at the vehicle owner's expense. No repair work is permitted on vehicles in Limited Common Elements or Common Elements except for short-term emergency repairs (flat tire, battery charge, etc.).

No vehicle shall be parked in any manner which blocks any street or driveway, or the ingress/egress to any garage other than the Owners. The speed limit within the community is 14 mph. Reckless operation, excessive speed, and parking or driving on the lawn areas is prohibited.

(j) Swimming Pool. The swimming pool is for the exclusive use of Owners and their guests. Any person who cannot be identified as an Owner, or who is not accompanied by an Owner, will be asked to leave the pool area. The pool rules are:

- (i) All persons using the pool and pool facilities do so at their own risk and sole responsibility. There is no lifeguard.
- (ii) All children under the age of 18 must be accompanied by an adult Owner age 18 or older.
- (iii) Guests are limited to three (3) per household, and must be accompanied by a resident at all times. Guests will be asked to leave if the resident is not present. Pool passes may be required.
- (iv) The following are prohibited in the pool area: Animals or pets; glass or other breakable items; running, diving or disruptive behavior; excessive noise, splashing or radios without headphones; private pool parties; all rafts and body floats; and electrical devices.
- (v) Swimming is permitted only in garments sold as swim wear. Infants must also wear a swim suit. No diapers are permitted in the pool.
- (vi) Lounge chairs or tables may not be reserved and must be repositioned in the order intended (orderly fashion), after use.

(vii) The pool will be open daily during swimming season hours set by the Board of Directors.

(viii) Wet swim wear is not permitted in the Clubhouse lounge area.

(ix) The gas grill may only be operated by adult Owners and must be cleaned after use.

(k) Community Center (Clubhouse). The Community Center is for the private use of Owners. It is available for rental only to Owners for non-profit parties or meetings. The following policy applies to Community Center rentals:

(i) A \$100.00 refundable deposit is required. Reservations are granted on a first request basis.

(ii) Children and teenage parties are prohibited.

(iii) The Owner with the reservation will only have exclusive use of the party room. Guests may not use the pool or exercise equipment and the pool may not be reserved for any party. No party items will be furnished by the Corporation.

(iv) Damages to the community center or equipment and any follow-up cleaning done by the Association will be deducted from the deposit. If the deposit is an insufficient amount, the renting resident will be billed for the difference.

(l) Trash Collection. Trash containers may not be set out prior to 5:00 p.m. the day preceding collection and the containers must be picked up and put away by 9:00 p.m. the day of collection. Only trash containers with lids, or securely tied plastic bags are permitted for trash disposal. All trash for collection must be set out at the main street, next to the Owner's

driveway. Trash containers, when not set out for collection, must be kept inside the garage.

Owners are responsible for clean-up of trash spillage from the containers.

(m) Solicitation and Garage Sales. Commercial solicitation is not permitted on the Condominium Property. Garage sales and tag sales are specifically prohibited, unless approved by the Corporation as a planned community activity.

(n) Utilities. Owners are responsible for maintaining and paying of their own gas, electric, cable television, telephone, water and sewer, trash and for calling to initiate service on the date of possession.

(o) Condominium Sales. Any Owner who sells his or her condominium is responsible for: making certain the Corporation is aware of ownership changes at the time a closing date is established; making certain all fees and assessments are current; and making certain new owners receive the Declaration, Bylaws and Community Policies & Guidelines.

(p) Amendments. These policies and guidelines may be subject to change from time to time at the discretion, and by a majority vote of the Board of Directors.

**Section 6.02. Compliance with Covenants, Conditions and Restrictions.** Every Owner, mortgagee, lessee or other occupant of a Unit shall comply strictly with the covenants, conditions and restrictions set forth in the Declaration, with the Bylaws and with the rules and regulations in relation to the use and operation of the Condominium Property. A violation committed by any persons residing in, occupying or visiting a Unit at the behest or with the implied or express permission of the Owner or any other occupant of the Unit, or committed by any agent, employee, business invitee, or contractor of the Owner or of any person occupying a Unit, shall be attributed to that Unit and the Owner thereof. Failure to comply with any of said covenants, conditions and/or restrictions shall be grounds for withdrawal by the Board of

Directors of privileges with respect to the use of any of the Common Elements by any defaulting Owner and by his tenants, invitees, guests and all members of his family and/or his tenant's family. The Board of Directors may also prohibit any Owner from entering into any new lease of the Owner's Unit with anyone so long as the Owner is in default in the performance of any of the Owner's obligations under the Declaration, Bylaws, or rules and regulations. An action seeking a declaratory judgment, the recovery of sums due for damages, or injunctive relief, or any or all of them may be maintained by the Board of Directors or by an interested party who has obtained the prior written consent of the Board of Directors against any Owner, or any person entitled to occupy a Unit who refuses to comply or threatens to refuse to comply with any provisions of this Declaration, the Bylaws, the rules and regulations, or any other document establishing ownership or control over any part of the Tract. One or more Owners may bring a class action on behalf of all Owners.

After giving not less than ten (10) days prior written notice to an Owner who has not complied, and after giving the Owner the opportunity to be heard by the Board of Directors, the Board of Directors shall have the right to impose a fine for the second violation attributable to an Owner in a calendar year against that Owner and the Unit in which such Owner holds an ownership interest. For a third violation attributable to the same Owner in the same calendar year (whether or not this third violation involves the same term or provision of the above-described condominium instruments as the first or second violations), the Board of Directors, after giving the Owner notice and opportunity to be heard, may levy an additional fine against that Owner and the Unit in which such Owner holds an ownership interest. For the fourth and every subsequent such violation of said condominium instruments by the same Owner in the same calendar year (whether these violations involve the same provisions as the previous

violations), the Board of Directors, after giving the Owner notice and opportunity to be heard, may levy a fine against that Owner and the Unit in which such Owner holds an ownership interest in double the amount of the fine for the immediately preceding violation in that calendar year.

All fines described above, any fines imposed by the Board of Directors and any and all expenses incurred by the Corporation in enforcing any of the terms and provisions of the condominium instruments, including reasonable attorney's fees and costs, may be levied as a Special Individual Unit Assessment against the Owner in question and the Owner's Unit.

Any action brought by the Corporation hereunder may be brought in its own name, in the name of its Board of Directors or in the name of the Managing Agent. In any case of flagrant or repeated violation by an Owner, he may be required by the Board of Directors may require the Owner to give sufficient surety or sureties for the Owner's future compliance with the covenants, conditions and restrictions contained in this Declaration and with the Bylaws and rules and regulations.

**Section 6.03. Right of Entry.** All Owners and occupants of a Unit shall be deemed to have granted the right of entry thereto to the Declarant, the Managing Agent or any other person authorized by the Board in case of any emergency originating in or threatening the Owner's Unit or the Condominium Property, whether the Owner is present at the time or not. Any Owner shall permit other persons, or their representatives when so required, to enter the Owner's Unit for the purpose of performing installations, alterations or repairs to the mechanical or electrical services, or to make structural repairs provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of emergencies, such right of entry shall be immediate.

**Section 6.04. Right of Board to Adopt Rules and Regulations.** The Board of Directors may promulgate and adopt such additional rules and regulations regarding the operating of the Property, including but not limited to the use of the Common Elements and Limited Common Elements, as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board of Directors, and the Board of Directors shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Owners. Such rules may further restrict the provisions contained in these Bylaws.

**ARTICLE VII**  
**Amendment to Bylaws**

**Section 7.01.** Subject to any contrary, overriding or superseding provisions set forth herein or in the Declaration, these Bylaws may be amended in the same manner, and subject to the same limitations and requirements, as amendments to the Declaration, as set forth in Article XVIII of the Declaration. Amendments to these Bylaws shall be considered as amendments of the Declaration and shall be recorded in the office of the Recorder of Boone County, Indiana, as required by the Declaration and the Condominium Act. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration or these Bylaws prior to the Applicable Date without the consent and approval of Declarant.

**ARTICLE VIII**  
**Mortgages**

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

The Corporation shall, upon request of an Eligible Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Eligible Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under the Declaration or these Bylaws which is not cured within thirty (30) days. Any Eligible Mortgagee shall have the right to inspect the books and records of the Corporation during normal business hours.

A guarantor or insurer of an Eligible Mortgage may, upon written request to the Corporation giving the Corporation its name and address, receive from the Corporation any

notice that would be given to an Eligible Mortgagee also be given to the applicable insurer or guarantor.

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

**ARTICLE IX**  
**Miscellaneous**

**Section 9.01. Fiscal Year.** The fiscal year of the Corporation shall be the calendar year.

**Section 9.02. Membership Certificates.** Each Owner shall receive a certificate from the Corporation, signed by the President or Vice-President, and Secretary or Assistant Secretary, stating that the Owner is a member of the Corporation. Such certificates shall be non-transferable and a member's certificate shall become void and of no force and effect upon sale by Unit. Membership certificates shall be in a form and style determined by the Board of Directors.

**Section 9.03. Personal Interests.** No member of the Corporation shall have or receive any earnings from the Corporation as a result of being an officer or director of the Corporation except a member may receive principal and interest on moneys loaned or advanced to the Corporation as provided in the Statute.

**Section 9.04. Contracts, Checks, Notes, Etc.** All contracts and agreements entered into by the Corporation and all checks, drafts and bills of exchange and orders for the payment of money shall, in the conduct of the ordinary course of business of the Corporation, unless otherwise directed by the Board of Directors, or unless otherwise required by law, be signed by the President, the Treasurer, or an authorized representative of the Managing Agent. Any one of the documents heretofore mentioned in this section for use outside the ordinary course of business of the Corporation or any notes or bonds of the Corporation shall be executed by and require the signature of the President and Secretary.

**Section 9.05. Contracts, Checks, Notes, Etc.** Upon the written request from any entity that has an interest or prospective interest in any Unit, the Corporation shall prepare and furnish to such entity within a reasonable time a financial statement of the Corporation for the immediately preceding fiscal year.