

DULY ENTERED FOR TAXATION

Subject to final acceptance for transfer

13 day of Dec, 2006

Robin Mills Auditor of Hamilton County

Saxony

Parcel # _____

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Jennifer J Hayden
HAMILTON County Recorder IN
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Filing Fee: \$125.00

ONE THIRTY ONE PLACE DECLARATION of Condominium Property

This is the Declaration of One Thirty One Place Condominiums made on or as of the 11th day of December, 2006, pursuant to the provisions of the Indiana Horizontal Property Law, (I.C. 32-25-1-1, *et seq.* (the "Act").

STATEMENT OF PURPOSE:

A. One Thirty One Townhome Partners, LLC ("Declarant") is the owner in fee simple of all of the real property described in Exhibit "A" attached hereto and the improvements thereon and appurtenances thereto (the "Property").

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

C. The Property is subject to the Master Declaration recorded in the Office of the Recorder of Hamilton County, Indiana, as Instrument No. 200200058301 ("Master Declaration") and the Residential Neighborhood Declaration of Easements, Covenants and Restrictions recorded in the Office of the Recorder of Hamilton County, Indiana, as Instrument No. 200300095503 (the "Residential Declaration").

DECLARATION:

Declarant hereby establishes the Property as all of that property in Hamilton County, Indiana, described on Exhibit "A" attached hereto, submits the Property to this Declaration and hereby declares that such property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth in this Declaration, which shall run with the land and be binding upon all parties having any right, title

or interest in it, and which shall inure to the benefit of every owner of the Property or any portion of it, and to the benefit of Declarant.

ARTICLE I: Definitions

1.1 **Act.** "Act" shall mean the Horizontal Property Law of the State of Indiana, Indiana Code §32-25-1-1, *et seq.*

1.2 **Articles.** "Articles" are the Articles of Incorporation of the Association.

1.3 **Association.** "Association" means the non-profit corporation named "One Thirty One Condominium Association, Inc." created by the filing of the Articles and is also one and the same as the Association created for the Condominium pursuant to the provisions of the Act.

1.4 **Board.** "Board" and "Board of Directors" mean those persons who, as a group, serve as the Board of Directors of the Association and are also one and the same as the Board of Directors of the Condominium established for the Condominium pursuant to the provisions of the Act.

1.5 **Building.** "Building" means any structure containing Units, as constructed from time to time.

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

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

1.8 **Common Expenses.** "Common Expenses" means the proposed or actual expenses affecting the Property, including reserves, if any, lawfully assessed by the Board, including, without limitation, the items described in Section 14(A)(1).

1.9 **Condominium.** "Condominium" means the Condominium regime for the Property created under and pursuant to the provisions of the Act.

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

1.11 **Declarant.** "Declarant" means One Thirty One Townhome Partners, LLC, and its successors and assigns, provided the rights specifically reserved to Declarant under the Condominium Organizational Documents shall accrue to such successors and assigns as are designated in writing by Declarant as successors and assigns of such rights.

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

1.13 **Director(s).** "Director" and "Directors" means that Person or those persons serving in the capacity of a member of the Board of Directors of the Association, as defined in the Act.

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

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

1.16 **Master Declaration.** "Master Declaration" is used as defined in preamble C above.

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

1.18 **Residential Association.** "Residential Association" shall mean and refer to the Saxony Residential Neighborhood Association, Inc., an Indiana nonprofit corporation, its successors and assigns, organized pursuant to the Residential Declaration.

1.19 **Residential Declaration.** "Residential Declaration" is used as defined in preamble C above.

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

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

Declaration
Areas and
above

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1.22 **Plans.** "Plans" means the floor plans and other information of the Units as filed in the Office of the Recorder of Hamilton County, Indiana in Horizontal Property Plan File, Book _____, Pages _____ through _____, which Plans are incorporated herein by this reference, as the same may be lawfully amended from time to time. Plat IN 2006073637
Plat IN 2006073636

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

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

ARTICLE II: | Name

2.1 **Name.** The name by which the Condominium shall be known is "One Thirty One Place Condominium."

ARTICLE III: | Use and Restrictions

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

3.2 **Restrictions.** The Property shall be subject to the following restrictions:

(A) **Unit Uses.** Use of all Units shall be subject to the restrictions and requirements set forth in Article XI of the Residential Declaration.

(B) **Common Areas Uses.** The Common Areas (except the Limited Common Areas) shall be used in common by Unit Owners and Occupants and their agents, servants, customers, invitees and licensees, in accordance with the purpose for which they are intended, and as may be required for the purpose of access, ingress to, egress from, use, occupancy and enjoyment of Units, provided, however, that unless expressly

provided otherwise herein, no Common Areas shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Unit Owners and Occupants, subject to such rules and regulations as may from time to time be promulgated by the Board.

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

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

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

(F) **Structural Integrity and Fire Hazards.** Nothing shall be done in any Unit or in, on or to the Common Areas, which may impair the structural integrity of any improvement or causes a fire hazard. Charcoal grills are prohibited on all decks.

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

right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

(H) **Animals.** Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Areas. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Unit, subject to any additional limitations made by the Residential Association, provided that: (i) no animals shall be permitted in any portion of the Common Areas except on a leash (not longer than six feet in length) maintained by a responsible Person, (ii) the permitting of animals on the Common Areas shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, the right to place limitations on the size, number and type of such pets and in the absence of such regulations each Unit shall be limited to two pets; and the right to levy fines and enforcement charges against persons who do not clean up after their pet(s) and (iii) the right of an Occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Condominium or other Units or Occupants.

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

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

(K) **Decorating.** Each Unit Owner, at his own expense, shall furnish and be responsible for all decorating within his own Unit and Limited Common Areas serving his Unit, as may be required from time to time, including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lighting

and other furnishings and decorating. Each Unit Owner, at his own expense, shall also furnish and be responsible for an exterior light for each Unit, in such location as the Board shall approve, which light shall include a photocell causing such light to be illuminated from dusk to dawn. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, doors, floor and ceilings, and such Unit Owner shall maintain said interior surfaces in good condition at his sole expense. Decorating of the Common Areas (other than interior surfaces within the Units as above provided and other than interior surfaces of Limited Common Areas), and expressly including without limitation, the exterior surfaces of all outside doors (including garage doors) to each of the Buildings shall be furnished by the Association as part of the Common Expenses. The interiors and exteriors of all windows forming part of the perimeter wall of a Unit shall be cleaned and washed at the expense of the Unit Owner of that Unit.

(L) **Flooring.** Each Unit Owner shall maintain a floor covering upon floor areas within his Unit, including stair cases, so as to provide an insulation from sound transmission in accordance with standards set forth by the Board.

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

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

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

(P) **Exterior Use.** All landscaping, plantings and flowers outside of the Unit are part of the Common Areas maintained by the Association. The driveways and garage approaches serving a single Unit shall be considered a Limited Common Area for such Unit and may be used by the Unit Owner for guests and the unloading and cleaning of vehicles, and at all other times the Occupant's motor vehicle shall be kept within the garage or in Common Areas designated for additional parking.

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ARTICLE IV: Improvement Descriptions

4.1 **Buildings.** The residential Buildings of the Condominium contain up to Forty-Two (42) Units, and the principal material of which these Buildings are constructed are wood frame, fiber cement (or equivalent) siding, brick veneer and shingle roofs. Each Building is three stories, including the garage/basement. The Buildings are tentatively located as shown on the Plans, and the Buildings and Plans are subject to amendment by Declarant.

ARTICLE V: Units

5.1 **Unit Designations.** Each of the Units is designated on the Plans by a number and a letter, the first digit indicates the Building number and the letter indicates the Unit within a Building. Information concerning the Units, with a listing of proper Unit designations, is shown on Exhibit "B" attached hereto. Addresses are assigned by the local municipality.

5.2 Composition of Units.

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

(1) the decorated surfaces, including paint, lacquer, varnish, wallpaper, tile and other finishing material applied to floors, ceilings, and interior surfaces of the perimeter walls and carpets, paneling and other finishing material attached to the interior surfaces of the perimeter walls;

Two (42) frame, fiber stories, in Plans, and

(2) all windows, screens and doors, including storm doors and windows, if any, and including the frames, sashes and jambs and the space occupied thereby, and the hardware therefor;

(3) all fixtures and appliances installed for the exclusive use of that Unit, commencing at the point of disconnection from the structural body of the Building and from utility pipes, lines or systems serving the entire Building or more than one Unit thereof, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal Units, refrigerators, stoves and hoods, televisions antennas and cables, furnaces, hot water heaters, and air-conditioning Units, and components thereof, if any (even if located outside of the bounds of the Unit), serving only that Unit;

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Two (42) frame, fiber stories, in Plans, and

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

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

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

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

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

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

ARTICLE VI: Common Areas and Limited Common Areas

6.1 **Common Areas - Description.** All of the Property, including all of the land and all improvements thereon and appurtenances thereto, items listed in Indiana Code §32-25-2-4, the private streets, roadways and parking areas, private irrigation systems, private water distribution system, private storm water system and private sanitary sewer line spurs, except (i) those portions labeled or described herein or in the Plans as a part of a Unit and (ii) those roads, streets, water distribution system, sanitary sewer system and storm water system to the extent they are dedicated to public entities, are Common Areas.

6.2 **Limited Common Areas - Description.** Those portions of the Common Areas that are labeled or designated "LCA" or "Limited Common Areas" on the Plans, are Limited Common Areas. In the case of each Unit, the Limited Common Areas appurtenant to that Unit consist of decks on the main level of a Unit, driveway and front door stoop, if any. All such Limited Common Area is reserved for the exclusive use of the owners and Occupants of the Unit(s) designated to be served by the same, but are maintained by the Association except as otherwise privileged in Section 8.2.

6.3 **Undivided Interest.** The initial undivided interest in the Common Areas of each Unit is based upon the percentage each Unit is of the total Units as described on Exhibit "B".

The Common Areas shall be owned by the Unit Owners as tenants in common, and ownership thereof shall remain undivided. No Unit Owner may waive or release any rights in the Common Areas. Further, the undivided interest in the Common Areas of a Unit shall not be separated from the Unit to which it appertains. Any attempted conveyance, encumbrance, judicial sale or other transfer of a Unit Owner's fee interest in Common Areas will be void unless the Unit to which such interest is allocated is also transferred.

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

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

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

ARTICLE VII: Association

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

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

separated from ownership of any Unit, and transfer of a Unit shall automatically transfer membership to the transferee.

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

7.4 **Board of Directors.** The Board initially shall be those three (3) persons named as the initial Directors pursuant to the provisions of the Articles, or such other Person or persons as may from time to time be substituted by Declarant. The Board shall serve in accordance with the provisions of the By-Laws. The fiscal year of the Association shall be determined by the Board, and may be changed from time to time as the Board deems advisable. Notwithstanding the foregoing, Declarant shall have the right to any time to waive its right to select one or more Directors or to vote in an election of Directors.

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

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

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

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7.7 **Membership in Master Association.** Every Person or entity who is or becomes a record owner of a fee or undivided fee simple interest in a Unit shall be a Member of the Residential Association pursuant to the provisions of the Residential Declaration.

ARTICLE VIII: Maintenance and Repair

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

8.2 **Individual Responsibility.** Each Unit Owner shall repair and maintain the Unit or Units, and all components thereof, owned by that Unit Owner; and shall provide routine maintenance and cleaning and snow removal with respect to the driveways (unless responsibility is undertaken by the Association through the Board), and sidewalks, appurtenant to that Owner's Unit. Without limiting the generality of the foregoing, the repair and maintenance responsibility shall include repair and maintenance of all windows, screens and doors, including the frames, sashes, jambs, hardware and caulking therefor; and repair and maintenance of the interior of the garages facilities, patios, porches, and any improvements therein, including but not limited to outside lights and fences, if any. The Board shall have the right and authority at its discretion to assess the costs for the repair, maintenance or replacement of Limited Common Areas, in whole or in part to the Unit or Units within the Building where so located or assigned or to require the Unit Owners to pay for, or cause the repair, maintenance and replacement to be performed by the Unit Owners. In the event a Unit Owner shall fail to make any such repair or perform such maintenance, or in the event the need for maintenance or repair of any part of the Common Areas or Limited Common Areas is caused by the negligent or intentional act of any Unit Owner or Occupant or its agent, invitee, licensee or pet, or is as a result of the failure of any Unit Owner or his, her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, and the cost of repair is not covered by insurance, the cost of such maintenance and repair shall constitute a special individual Unit assessment, as hereinafter defined, on the Unit Owner by such Unit Owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

ARTICLE IX: Utility Services

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

ARTICLE X: Insurance

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

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

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

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

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

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

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

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

The cost of this insurance and all insurance described in this Article X (excluding Section 10.6) shall be a Common Expense, payable by the Association; however, if there is a cost of insurance which is applicable to some but not all of the Units, the Board, in its discretion, may charge an additional assessment to each Unit Owner the amount of the additional insurance premium charged.

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

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

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

10.5 **Insurance Representative; Power of Attorney.** Notwithstanding any of the foregoing provisions of this Article, or any requirement relating to property or liability insurance herein, there may be named, under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into an insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Unit Owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or such designated representative or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all

documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for Unit Owners and their first mortgage holders, as their interests may appear. This power is for the benefit of each and every Unit Owner, and their respective first mortgage holders, and the Association, and the Condominium, runs with the land, and is coupled with an interest.

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

10.7 **Sufficient Insurance.** In the event the improvements forming a part of the Common Areas or any portion thereof shall suffer damage or destruction from any cause of peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Board in payment thereof; provided, however, that in the event of complete destruction of all of the Buildings such as causes the termination of the Condominium pursuant to Section 11.1, the Condominium shall be terminated, in which event such repair, restoration or reconstruction shall not be undertaken.

10.8 **Insufficient Insurance.** In the event the improvements forming a part of the Common Areas or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless there is complete destruction of all Buildings such as causes the termination of the Condominium pursuant to Section 11.1, below, the Association shall make repairs, restoration or reconstruction of the Common Areas so damaged or destroyed at the expense (to the extent not covered by insurance) of all Unit Owners in proportion to their respective undivided interests in the Common Areas. Should any Unit Owner refuse or fail after reasonable notice to pay that Unit owner's share for

such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Unit of such Unit Owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

ARTICLE XI: Casualty

11.1 **Complete Destruction.** In the event of the complete destruction of all of the Buildings containing Condominium Units as determined by a vote of Unit Owners holding two-thirds (2/3) of the voting power held by all Unit Owners the Buildings shall not be reconstructed, and the insurance proceeds, if any, shall be divided among the Unit Owners and their respective mortgages in the percentage by which each Unit Owner owns an undivided interest in the Common Areas and facilities, and the property shall be considered as removed from the Condominium under section 32-25-18-16 of the Indiana Code, unless, by a vote of two-thirds (2/3) of the voting power held by all Unit Owners, a decision is made to rebuild the Building, in which case the insurance proceeds shall be applied and any excess of construction costs over insurance proceeds shall be contributed as provided herein for capital contributions.

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

11.3 **Failure to Reconstruct.** If it is determined under Section 11.1 by the Unit Owners to not rebuild after such casualty or disaster has occurred, then in that event:

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

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

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

(D) The Property shall be subject to an action for partition at the suit of any Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Unit Owners in a percentage equal to the percentage of undivided interest owned by each Unit Owner in the Property, after first paying out of the respective shares of the Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Unit Owner.

ARTICLE XII: | Condemnation

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

12.2 **Use of Proceeds.** The award of proceeds of settlement in any such proceedings, after reduction by the cost, if any, incurred in obtaining the same, shall be applied first to the cost of restoring or replacing all damaged improvements on the remaining Property in accordance with the Plans, or in accordance with any new Plans and specifications therefor approved by Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Unit Owners, and the Eligible Holders of the First Mortgage Liens on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Holders of the First Mortgage Liens appertain. If the award of proceeds is insufficient for such purpose, the excess cost shall be paid by the Association and, to the extent funds of the Association are insufficient therefor, in the judgment of the Board, such excess cost shall be a part of Common Expense and assessed among the Units in the same manner as special assessments for capital improvements are assessed. Except as hereinafter provided, the balance of any such award or proceeds of settlement, if there is an excess, shall be allocated and distributed to the Unit Owners, and their first mortgages, as their interests may appear, in proportion to the relative undivided interests of the Units in the Common Areas. Notwithstanding the foregoing, in the event that as a result of any such taking, and consequent restoration or replacement, any Unit could not reasonably be restored to condition comparable to that which existed prior to the taking, or could not be replaced, prior to the allocation and disbursement of any sum to any other Unit Owner or his, her or its mortgagee, there shall be allocated and disbursed from such award or proceeds, to each Unit Owner whose Unit cannot be so restored or replaced, and his, her or its respective first mortgagee, as their interests may appear, such amount as is equal to the then fair market value of the Unit that cannot be so restored or replaced. Thereupon, such Unit or Units, and the owners thereof, shall be immediately and automatically divested of any interest in the Condominium, the Property, and the Association, including, without limiting the generality of the foregoing,

divestment of an undivided interest, vote, membership in the Association, and future liability for Common Expenses. All such rights and interests shall be reallocated among all other Units and Unit Owners in the same relative proportions as those rights and interests were prior to such taking. To illustrate, upon a Unit being divested from the Condominium, (a) the voting right of that Unit will be equally allocated among all other Units, since each Unit prior thereto had an equal vote, and (b) the undivided interest of that Unit will be reallocated among all other Units in the proportions of their relative undivided interests prior to such taking.

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

ARTICLE XIII: Easements

13.1 **Easements of Enjoyment; Limitations.** Every Unit Owner shall have a right and easement of enjoyment in, over and upon the Common Areas and a right of access to and from his, her or its Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Areas, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof, or to that Unit's Limited Common Areas. Any Unit Owner may delegate that Unit owner's right to enjoyment to the Common Areas and to ingress and egress to Occupants.

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

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

constructed on or within one foot horizontal distance of any sanitary sewer manhole or cleanout casting.

13.4 **Easement for Support.** Every portion of a Building or utility line or any improvement on any portion of the Property contributing to the support of another Building, utility line or improvement on another portion of the 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 Property.

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

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

13.7 **Easements Reserved to Declarant.** Non-exclusive easements are hereby reserved to the Declarant, their contractors, subcontractors, agents, successors and assigns, over and upon the Common Areas (a) for access for and for the purpose of completing improvements for which provision is made in this Declaration, provided that such right of access shall be to the extent, but only to the extent, that access thereto is not otherwise reasonably available, (b) for the periods for warranties hereunder, for purposes of making repairs required pursuant to those warranties or pursuant to contracts of sale made with Unit purchasers, and (c) to maintain one or more Units for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for the Declarant and its agents, employees, successors and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient or incidental to the completion, improvement and sale of Units or the developing of Units and Common Areas and Additional Property (as hereafter defined), including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model dwellings. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units

as model residences and to use any Units as an office for the sale of Units and for related activities and to use any Unit as a construction office.

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

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

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

13.9 General. The easements and grants provided herein shall in no way affect any other recorded grant or easement. The Association or Declarant may delegate any of its rights hereunder to its affiliates and contractors.

ARTICLE XIV: Assessments

14.1 Types of Assessments. Each Unit Owner by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association: (1) annual operating assessments, (2) special assessments for capital improvements, (3) special individual Unit assessments, (4) working capital assessments, (5) the assessments under the Residential and Master Declaration and (6) such assessments as are required or permitted to be paid under this Declaration, all of such assessments to be established and collected as hereinafter provided or as provided in this Declaration. Each Unit Owner as instructed by the Association and Residential Association shall either pay the Assessments under the Residential Declaration directly to the Residential Association or shall pay them to the Association in which case, the Association shall timely pay such Assessments under the Residential Declaration to the Residential Association.

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

14.3 Elements- Apportionment: Due Dates.

(A) Annual Operating Assessments.

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

- (a) the estimated next fiscal year's cost of the maintenance, repair, and other services to be provided by the Association;
- (b) the estimated next fiscal year's costs for insurance and bond premiums to be provided and paid for by the Association;
- (c) the estimated next fiscal year's costs for utility services not separately metered;
- (d) an amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacements and usual and ordinary repair expenses, and for the funding of insurance deductibles in the event of casualty loss;
- (e) a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas and facilities, which funds shall be used for the purpose and not for usual and ordinary repair

expenses of the Common Areas and facilities. This fund for capital expenditures and replacement and repair of Common Areas and facilities shall be maintained in a separate interest bearing account with a bank or savings and loan association;

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

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

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

(3) The annual operating assessment shall be payable in advance, in equal monthly or quarterly installments as determined by the Board. The due dates of any such installments shall be established by the Board, and, unless otherwise provided, the Association shall collect on or before the first day of each month from those who own the Unit an equal monthly pro-rata share of the annual operating assessment for that Unit.

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

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

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

(B) Special Assessments for Capital Improvements.

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

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

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

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

(E) Capital Contributions. Each Unit Owner shall pay to the Association at the closing of the purchase of that Unit a capital contribution of Five Hundred and No/100 Dollars (\$500.00) per each Unit for reserves to construct, reconstruct, replace or repair capital improvements on the Common Areas. The capital contribution shall be collected at the closing of each Unit, including the closings of sales of Units occurring

after the additional sale by Declarant, and such amounts paid shall not be considered as advanced payment of special assessments.

14.4 **Effective Date of Assessments.** Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, on the date approved by the Board (with respect to assessments described in Section 14.3), and upon the date that any installment of such assessment becomes delinquent (with respect to late charges and interest), and/or the date costs are incurred by the Association (with respect to costs of collection). Written notice of the amount of the assessments established pursuant to Section 14.3 shall be sent by the Board to the Unit Owner subject thereto prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Written notice mailed or delivered to a Unit owner's Unit shall constitute notice to that Unit Owner, unless the Unit Owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit Owner. Failure of the Board to deliver such notice in accordance with the foregoing shall not invalidate the assessment, nor constitute a defense by any party to the collection of the assessment or enforcement of the lien therefor. Notwithstanding anything to the contrary contained herein, Declarant shall be excused from paying any of the assessments described in this Article XIV for any Units owned by Declarant and offered for the first time for sale for a period of time that begins on the day this Declaration is recorded and terminates on the first day of the twenty-fourth calendar month following the month in which the closing of the sale of the first Unit of the Building added in each amendment to the Declaration occurs.

14.5 **Effect of Nonpayment of Assessment; Remedies of the Association.**

(A) If any assessment or any installment of any assessment is not paid when due, the Board, at its option, without demand or notice, may (i) declare the entire unpaid balance of the assessment immediately due and payable, (ii) charge interest on the entire unpaid balance at the rate of interest of eighteen percent (18%) per annum, or at such rate as the Board may from time to time determine, and (iii) charge a reasonable, uniform late fee, as determined from time to time by the Board, as well as the cost of collection, including, without limitation, reasonable attorneys' fees to the extent not prohibited by Indiana law. The interest, late fees, and costs of collection shall be considered to be part of the "Assessment" for all purposes herein.

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

(C) At any time after an installment of an assessment levied pursuant hereto remains unpaid after the same has become due and payable, a certificate of lien for all or any part of the unpaid balance of that assessment, and interest and costs, (including attorneys' fees), may be filed with the Recorder of Hamilton County, Indiana, pursuant to authorization given by the Board. The certificate shall contain a description of the Unit against which the lien exists, the name or names of the record owner or owners thereof,

and the then current amount of the unpaid portion of the assessment. The failure to include current interest, fees, and costs of collection, in such certificate shall not invalidate the Association's right to collect such interest, fees, and costs of collection accruing before or after the filing of such certificate.

(D) Any Unit Owner who believes that an assessment chargeable to his, her or its Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the Hamilton County, Indiana, courts for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Unit, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.

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

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

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

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

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

ARTICLE XV: Notice to Mortgagees

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

- (1) any proposed addition or amendment of the Condominium Organizational Documents effecting a change or addition in provisions establishing, providing for, governing or regulating (a) voting, (b) assessments, assessment liens or subordination of such liens, (c) reserves for maintenance, repair and replacement of Property, (d) insurance or fidelity bonds, (e) rights to use of the Common Areas, (f) responsibility for maintenance and repair, (g) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium, (h) the boundaries or composition of any Unit, (i) the interests in the Common or Limited Common Areas, (j) the convertibility of Units into Common Areas or of Common Areas into Units, (k) the leasing of any Unit or part thereof, (l) the imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit, (m) the management of the Condominium, (n) the restoration or repair of the Condominium, or (o) any provisions which are for the express benefit of the holder, insurer or guarantor of any first mortgage on a Unit.
- (2) any proposed termination of the Condominium as a Condominium regime;
- (3) any condemnation, eminent domain proceeding, or casualty loss which may affect a material portion of the Property or any Unit on which there is a first mortgage held, insured or guaranteed by such Eligible Holder of the First Mortgage Lien;
- (4) any decision by the Association not to restore or repair any portion of the Property (after damage or destruction or partial condemnation), or not to restore or repair such property in a manner specified by the Condominium Organizational Documents;
- (5) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, (the Secretary of the Association shall furnish each Unit Owner and each Eligible Holder of the First Mortgage Lien whose interest may be affected, prompt notice of the obtaining, change or termination of any insurance policy.);
- (6) any decision by the Association to reconstruct the Condominium Buildings where all Buildings containing Units have been destroyed;
- (7) any decision by the Association to construct significant new capital improvements to replacing existing improvements;
- (8) times and places of Unit Owners' meetings;

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

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

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

ARTICLE XVI: | Amendments

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

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

(1) the boundaries of any Unit;

(2) the undivided interest in the Common Areas appertaining to a Unit or the liability for Common Expenses appertaining thereto except as permitted by the expansion provisions in this Declaration;

(3) the number of votes in the Association appertaining to any Unit except as permitted by the expansion provisions in this Declaration;

(4) to terminate the Condominium or remove any interest from the Property; or

(5) the fundamental purposes to which any Unit or the Common Areas are restricted.

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

(C) Any Eligible Holders of the First Mortgage Liens who obtain title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage

will not be liable for such Unit's unpaid dues or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee.

(D) In any event, and notwithstanding any provision to the contrary, Declarant reserves the right and power, and each Unit Owner by acceptance of a deed to a Unit is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable (except by Declarant), without the consent, approval or signature of each Unit Owner, to (i) amend the Condominium Organizational Documents, to the extent necessary to conform to the requirements of the Indiana Department of Environmental Management, the Indiana Utility Regulatory Commission, The Mortgage Corporation, Federal National Mortgages Association, Governmental National Mortgages Association, Federal Home Loan Mortgage Corporation, Mortgage Guaranty Insurance Corporation, Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other similar agency or organization, (ii) induce any such agencies or entities to make, purchase, sell, insurance or guarantee first mortgages covering Unit ownership, (iii) correct typographical errors, surveyor errors in descriptions or otherwise or obvious factual errors the correction of which would not impair the interest of any Unit Owner or mortgagee, (iv) bring this Declaration into compliance with the Act, (v) amend Exhibits "A" and "B" for each expansion, (vi) bring this Declaration into compliance with any governmental requests or requirements, (vii) comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, (viii) to subject additional property to these restrictions, (ix) clarify, further define or limit any easement, or otherwise exercise any rights reserved herein, (x) change the name of the property made subject to this Declaration, (xi) clarify, eliminate conflicts between, or change the substance of one or more covenants, conditions, terms or provisions hereof; provided that any such change (A) does not materially increase the obligation(s) of any Unit Owner under any covenant, condition, term or provision without such Unit Owner's consent or (B) is necessary to comply with a bona fide governmental requirement, including applicable laws, ordinances, regulations or orders of any municipality or court having jurisdiction, and further provided that if there is a Unit Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and consent to the reservation of, the power of Declarant to vote in favor of, make, execute and record any of the foregoing amendments. The rights of Declarant under this Section shall terminate at such time as Declarant no longer holds or controls title to a Unit and the right of Declarant to add the Additional Property has expired.

An Eligible Holder of the First Mortgage Lien on a Unit who receives a written request to approve additions or amendments who does not deliver or post to the request party a negative response within in thirty (30) days after it receives such written notice (provided that notice was delivered by certified or registered mail, return receipt requested), shall be deemed to have

approved such request. The rights of Declarant shall terminate at such time as Declarant no longer holds or controls title to a Unit and the right to expand the Condominium has expired.

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

16.3 **Declarant's Rights.** In any event, Declarant reserves the right and power, and each Unit Owner by acceptance of a deed to a Unit is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable (except by Declarant), without the consent, approval or signature of each Unit Owner, to (i) amend the Declaration and all attachments, to the extent necessary to confirm to the requirements of the Indiana Department of Environmental Management, the Indiana Utility Regulatory Commission, The Mortgage Corporation, Federal National Mortgages Association, Governmental National Mortgages Association, Federal Home Loan Mortgage Corporation, Mortgage Guaranty Insurance Corporation, Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other similar agency or organization, (ii) induce any such agencies or entities to make, purchase, sell, insurance or guarantee first mortgages covering Unit ownership, (iii) correct typographical errors, surveyor errors in descriptions or otherwise, or obvious factual errors or omissions, the correction of which would not impair the interest of any Unit Owner or mortgagee, (iv) bring this Declaration into compliance with the Act, (v) amend any Exhibits, (vi) bring this Declaration into compliance with any governmental requests or requirements, (vii) comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, (viii) to subject additional property to these restrictions, (ix) clarify, further define or limit any easement, or otherwise exercise any rights reserved hereunder, (x) exercise any Declarant rights or development rights, (xi) change the name of the property made subject to this Declaration; or (xii) clarify, eliminate conflicts between, or change the substance of one or more covenants, conditions, terms or provisions hereof; provided that any such change (A) does not materially increase the obligation(s) of any Unit Owner under any covenant, condition, term or provision without such Unit Owner's consent or (B) is necessary to comply with a bona fide governmental requirement, including applicable laws, ordinances, regulations or orders of any municipality or court having jurisdiction, and further provided that if there is an Unit Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and consent to the reservation of, the power of Declarant to vote

in favor of, make, execute and record any of the foregoing amendments. The rights of Declarant under this Section shall terminate at such time as Declarant no longer holds or controls title to a Unit and the right of Declarant to add the Additional Property has expired.

ARTICLE XVII: Expansions

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

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

17.3 Maximum Expansion Time. Declarant's option to expand the Property shall expire and terminate at the end of ten years from the date this Declaration is filed for record, unless Declarant, by written notice to the Association, elects to waive that option effective at a time prior to the expiration of that ten-year period. Further, Declarant shall not add any further sections if more than five years have elapsed since the most recent prior section was added to the Property.

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

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

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

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

17.8 **Maximum Number of Additional Units.** The maximum total number of Units that may be created on the Additional Property and added to the Property is twenty-nine (29), provided that the foregoing shall neither limit nor restrict nor be so construed as to limit or restrict the number of dwelling Units that may be constructed on all or any portion of the Additional Property that is not added to the Property. Subject to the foregoing total maximum of Units that may be added to the Property there is no limit as to the maximum number of Units per acre that may be created on any portion of the Additional Property added to the Property.

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

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

17.11 **Improvements other than Structures.** With respect to improvements other than structures on any Additional Property added to the Property, there is no requirement that any such improvements must be made and there are no restrictions or limitations upon what, if any, such non-structural improvements shall be made; except that any such non-structural improvements shall not be incompatible with other improvements then on the Property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The number of the Added Units shall be added to the number of the Existing Units.

(3) The percentage of each Unit's undivided ownership interest, as amended and adjusted by such amended Declaration, in the entire Common Areas, consisting of the Existing Common Areas, plus the Added Common Areas, to be allocated among all the Units, consisting of the Existing Units plus the Added Units, shall be computed by taking one hundred divided by the number of all Units.

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

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

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

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

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

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

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

ARTICLE XVIII: | General Provisions

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

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

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18.3 **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 Act, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no wise affect any other provisions of this Declaration, which provisions shall remain in full force and effect.

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

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

18.6 **Notices.** Notices provided for in the Act, Declaration or By-Laws shall be in writing and shall be addressed to the Association or Board, as the case may be, at 8499 Fishers Center Drive, Fishers, Indiana 46038, or to the Unit Owner at the address of his Unit, or at such other address as hereinafter provided. The Association or Board may designate a different address or addressees for notices to them, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notices to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

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

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

EXHIBIT "A"

[Description of Property]

Lot Numbered 4-A, 4-B, 4-C, 4-D, 4-E, 4-F, 5-A, 5-B, 5-C, 5-D and 5-E in Saxony Townhomes, Block 1, Phase 1, in Fall Creek Township, Hamilton County, Indiana, as per plat thereof, recorded in Plat Cabinet 3, Slide 744 as Instrument Number 2005-68276 in the Office of the Recorder of Hamilton County, Indiana.

Together with Common Area "A", streets, and easements as shown on the Plat.

EXHIBIT "B"

[Percentage of Interest Table for Condominium Units]

UNIT NUMBER	PERCENTAGE OF INTEREST
4A	9.09%
4B	9.09%
4C	9.09%
4D	9.09%
4E	9.09%
4F	9.09%
5A	9.09%
5B	9.09%
5C	9.09%
5D	9.09%
5E	9.09%

EXHIBIT "C"

[By-Laws]

BYLAWS
OF
ONE THIRTY ONE CONDOMINIUM ASSOCIATION, INC.

ARTICLE I

Identification

Section 1. Name. The name of the Corporation is One Thirty One Condominium Association, Inc., a nonprofit corporation organized and existing under the laws of the State of Indiana, (hereinafter referred to as the "Corporation").

Section 2. Principal Office and Resident Agent. The principal office of the Corporation shall be located at 8499 Fishers Center Drive, Fishers, Indiana 46038, and the name and post office address of its registered agent is Jeff Keck, 8499 Fishers Center Drive, Fishers, Indiana 46038.

Section 3. Fiscal Year. The fiscal year of the Corporation shall begin at the beginning of the first day of January and end at the close of the last day of December of each year.

ARTICLE II

Definitions

Capitalized terms used but not otherwise defined herein shall have the meanings assigned thereto in the Declaration.

"Act" means Indiana Code 23-17-1 et seq.

"Affiliates" means any entity which controls, is controlled by or is under common control with Declarant.

"Declarant" means One Thirty One Townhome Partners, LLC, or its assigns or designees.

"Declaration" means the most recently recorded One Thirty One Place Declaration of Condominium Property established by Declarant and applicable to all or part of the Real Estate as the same may be supplemented or amended from time to time.

"Development Period" means the period from the date of formation of the Corporation through the date of sale by Declarant of the last Unit in the Real Estate.

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"Real Estate" shall mean and refer to the property located in Hamilton County, Indiana, and contained within the legal description marked **Exhibit A**, attached hereto and by this reference incorporated herein comprising the Neighborhood as defined in the Declaration.

"Unit Owners" means those persons or entities from time to time owning a Unit.

"Voting Percentage" means the percentage calculated by taking one hundred divided by the number of all Units.

ARTICLE III

Corporation Purposes and Powers

Section 1. The Corporation has been organized for the following purposes:

(a) To provide, as an association, for the acquisition, construction, expansion, management, maintenance and care of association property.

(b) So long as the same are not contrary to any limitation or restriction imposed by the Act, the Declaration, or any other provisions of these Articles of Incorporation,

(i) to exercise all of the rights, privileges, powers and authority, and to perform all of the duties and obligations, of the "Association" provided for the Declaration;

(ii) to fix, levy, collect and enforce payment by any lawful means of all charges and assessments pursuant to the terms of the Declaration and the Act; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Corporation including, but not limited to, all licenses, taxes or governmental charges levied or imposed against the property of the Corporation;

(iii) to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer or otherwise dispose of real or personal property in connection with the affairs of the Corporation;

(iv) to borrow money and pledge, mortgage, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(v) to transact any and all lawful business for which corporations may be incorporated under the Act;

(vi) to have, possess, exercise and enjoy all of the rights, privileges and powers granted to corporations by the Act, as now existing or hereafter amended, and by the common law.

(c) Notwithstanding the foregoing, the Corporation is and shall at all times be a not-for-profit corporation, and its activities shall be conducted for the foregoing purposes in such a manner that no part of its activities shall result in pecuniary remuneration to its members as such (except for reasonable compensation to members for services actually rendered) and except for principal interest and other amounts payable to members or their Affiliates in respect of loans made to the Corporation or rent and other amounts due under leases and no part of its net earnings shall inure to the benefit of any private member (other than by acquiring, constructing, leasing or providing management, maintenance and care of "association property" and other than by rebate of excess membership dues, fees, charges and assessments).

Section 2. Annexation of Additional Properties; Additions to Membership. The Corporation may, at any time, annex additional properties to the Real Estate and so add to its membership as provided in the Declaration.

Section 3. Mergers and Consolidations. To the extent permitted by law, the Corporation may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of over one-half of all members. Written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 4. Mortgages. The Corporation shall have power to mortgage its property for the purpose of making improvements thereon.

Section 5. Loans. The Corporation shall have the power to borrow money including borrowing from one or more members.

**ARTICLE IV
Members**

Section 1. Members. Every person or entity who is a record owner of a fee interest in a Unit shall be a member of the Corporation, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a member until such time as such person realizes upon its security. The rights of membership are subject to the payment of annual and special assessments levied by the Corporation, the obligation of which fees and assessments are imposed against each owner of and becomes a lien upon the property against which such fees and assessments are made as provided by the Declaration.

Section 2. Revocation of Membership. The membership rights of any person, except Declarant, whose interest in the Real Estate is subject to assessments under Article IV, Section 1 hereof, may be suspended by action of the Directors during the period when the assessments remain unpaid or the Unit Owner is not in compliance with the rules and regulations adopted by the Corporation; but, upon payment of such assessments and compliance with such rules and regulations, the Unit Owner's rights and privileges shall be automatically restored.

Section 3. Termination of Membership. A member of the Corporation shall remain a member until the member's ownership in a Unit ceases, and such membership shall terminate when such person ceases to be a Unit Owner. Membership shall be appurtenant to the Units and cannot be separated from nor assigned, hypothecated, or transferred in any manner except as an appurtenance to a Unit and as otherwise provided in the eligibility provisions of Article IV, Section 1 hereof.

Section 4. Voting Rights. Each member shall have a number of votes equal to the product of (i) the member's Voting Percentage as an Unit Owner, times (ii) one hundred (100). When more than one (1) person constitutes the Unit Owner of a particular Unit, all such persons shall be members of the Corporation, but all of such persons shall have a single Voting Percentage for such Unit, by a representative selected among themselves and designated to the Corporation in writing, but in no event shall more than the applicable vote be cast with respect to any such Unit. Any Unit Owner which is an entity shall also designate a representative in writing to the Corporation who shall have authority to vote and act for the Unit Owner. The Corporation shall be entitled to rely on the authority of any representative designated to the Corporation. The foregoing voting rights shall not apply to the election of the Board of Directors prior to the expiration of the Development Period, which election and appointment of the Board of Directors shall be governed by Article V, Section 1 hereof.

Section 5. Voting at Meetings. At all corporate meetings of members, each member may vote in person or by proxy.

Section 6. Proxies. All proxies shall be in writing and filed with the Secretary. No proxy shall extend beyond a period of eleven (11) months, and every proxy shall automatically cease upon sale by the member of the member's interest in a Unit.

Section 7. Member Action. If a quorum exists and in the case of a vote on adjournment if less than a quorum exists, action on a matter is approved if the votes cast favoring the action exceed the votes cast opposing the action unless the Act, the Declaration, the Articles of Incorporation or these Bylaws requires a greater number of affirmative votes, including any requirement that a matter be approved or disapproved by a majority of all members.

Section 8. Annual Meetings. The first annual meeting of the members shall be held on the first Wednesday in May, and annually on said date thereafter unless said date falls upon a legal holiday, in which instance the meeting shall be held the next day following, or on such date and at such time as may be determined by the President, Declarant or Board of Directors and specified in the notice or waivers of such notice.

Section 9. Special Meetings. Special meetings of the members for any purpose may be called at any time by the President, the Vice President, the Secretary or Treasurer, or by Declarant or any two (2) or more members of the Board of Directors or upon written request of the members who have a right to vote one-fourth (1/4) of the votes of the membership.

Section 10. Notice of Meetings. Notice of annual and special meetings shall be given in writing to the members by the Secretary. Notice may be given to the member either personally,

or by sending a copy of the notice through the mail, postage thereon fully prepaid, to the address appearing on the books of the Corporation. Each member shall register the member's address or any change of address with the Secretary, and notices of meetings shall be mailed to the member at such address. Notice of any meeting, regular or special, shall be given or sent at least six (6) days in advance of the meeting and shall set forth in general the nature of the business to be transacted.

Section 11. Voting Lists. The Secretary of the Corporation shall at all times keep a complete and accurate list of the members of the Corporation entitled to vote by the Articles of Incorporation or Bylaws. Such list shall be on file in the principal office of the Corporation and subject to inspection by any member for any proper purpose at any reasonable time upon reasonable notice.

Section 12. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, of over one-half of the votes of the membership shall constitute a quorum for any action governed by these Bylaws, or for any other action which may properly come before the members of this Corporation, unless the Act, the Declaration, the Articles of Incorporation or these Bylaws requires a greater number of affirmative votes, including any requirement that a matter be approved or disapproved by a majority of all members.

Section 13. Action by Written Consent. Any action required or permitted to be taken at any meeting of the members may be taken without a meeting if, prior to such action, a written consent thereto, setting forth the action so taken, is delivered to all members and signed by eighty percent (80%) of the voting interest of the members entitled to vote with respect to the subject matter thereof, and such written consent is filed with the minutes of the proceedings of the members.

Section 14. Meeting by Telephone or Similar Communications Equipment. If the Corporation has no more than ten (10) members, members may participate in and hold a meeting by means of a conference telephone or similar communication equipment by which all persons participating in the meeting can communicate with each other. Participation by these means constitutes presence in person at the meeting.

Section 15. Approval by Written Ballot. An action that may be taken at an annual, regular or special meeting of members may be taken without a meeting if the Corporation delivers a written ballot to every member entitled to vote on the matter. The written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing an action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The solicitation for votes by written ballot must indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals necessary to approve each matter other than the election of directors and specify the time by which a ballot must be received by the Corporation to be counted. Except as otherwise provided in the Act, the Corporation's Articles of Incorporation or these Bylaws, a written ballot may not be revoked.

Section 16. Certificates. The Corporation shall have no certificates of membership.

ARTICLE V

Board of Directors

Section 1. Number and Term. The affairs of the Corporation shall be managed by a board which shall initially consist of at least three (3) persons who shall be appointed from time to time by the Declarant until the end of the Development Period. The Board shall determine from time to time the number of directors, which shall be no fewer than three (3) or more than nine (9).

After the Development Period, the number of directors shall be divided into three equal or near equal groups who shall be elected by the members by majority vote to serve staggered terms of three (3) years, or until their successors shall be duly elected and qualified or until their death, resignation or removal as provided in these Bylaws. In order to initiate the staggering of terms, the members of the Corporation shall designate members of the Board of Directors sitting as of the date of the first annual meeting following the end of the Development Period and such other directors as shall be elected at such annual meeting into three groups; the first group of Directors shall serve a term of only one (1) year; the second group of Directors shall serve a term of only two (2) years; and the third group of Directors shall serve a term of three (3) years, in each instance commencing with the next annual meeting of the Members. After serving the initial term specified in this Article, each Director or his or her successor shall be elected to serve a term of three (3) years. Any Director meeting the requirements of this Article V may be re-elected for any number of terms.

Section 2. Vacancies. Vacancies in the Board of Directors shall be filled by the remaining directors, any such appointed director shall hold office until his or her successor is elected by the members, who may make such election at the next annual meeting of the members or at any special meeting duly called for that purpose. The foregoing shall not apply to a vacancy caused by the increase in the number of directors, the removal of a director by the members as hereinafter provided or vacancies existing when there are not sufficient remaining Board members to constitute a quorum, in which cases such vacancies shall be filled by the vote of the members; provided, however, any vacancy in a Board of Director position required to be appointed by the Declarant hereunder, shall be filled by Declarant.

Section 3. Powers. The Board of Directors shall have the power:

- (a) To call special meetings of the members whenever it deems necessary and it shall call a meeting at any time upon written request of one-fourth (1/4) of the voting members.
- (b) To appoint and remove, at pleasure, all officers, agents, management agents and employees of the Corporation, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any member, officer or director of the Corporation in any capacity whatsoever.

(c) To provide for the maintenance, repair and replacement of those parts of the Real Estate stated in the Declaration to be maintained by the Corporation.

(d) To budget, establish, levy and assess, and collect the assessments or charges referred to in Article IV, Section 1 hereof.

(e) To adopt and publish rules and regulations governing the use of the Common Areas, including parking areas.

(f) To administer the affairs of the Corporation and exercise for the Corporation all powers, duties and authority vested in or delegated to this Corporation.

(g) In the event that any member of the Board of Directors of this Corporation shall be absent from three (3) consecutive regular meetings of the Board of Directors, the Board may by action taken at the meeting during which said third absence occurs, declare the office of said absent director to be vacant.

(h) To cause the Corporation to sell all or substantially all of its assets and dissolve.

Section 4. Duties. It shall be the duty of the Board of Directors:

(a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting when such is requested in writing by one-fourth (1/4) of the voting membership.

(b) To supervise all officers, agents and employees of this Corporation, and to see that their duties are properly performed.

(c) To provide for the administration and management of the Common Areas and the collection of dues and assessments and disbursement of expenses.

(1) To fix the amount of the fees and assessment against each Unit for each applicable period at least fifteen (15) days in advance of such date or period, and, at the same time;

(2) To prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Corporation and shall be open to inspection by any member, and, at the same time;

(3) To send written notice of each assessment to every Unit Owner subject thereto.

(d) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether any assessment has been paid. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid.

Section 5. Annual Meetings. The Board of Directors shall meet annually, without notice, concurrently with or immediately following, the annual meeting of the members of the Corporation.

Section 6. Regular Meetings. A regular meeting of the Board of Directors shall be held on the first Tuesday of each of the following months: April, July, October and January, provided that the Board of Directors may, by resolution, change the day and hour of holding such regular meeting.

Section 7. Notice of Regular Meetings. Notice of such regular meeting is hereby dispensed with. If the day for the regular meeting shall be upon a holiday, the meeting shall be held at the same hour on the first day following which is not a holiday, and no notice thereof need be given.

Section 8. Special Meetings. Special meetings of the Board of Directors shall be held when called by any officer of the Corporation or by any two (2) directors after not less than three (3) days notice to each director.

Section 9. Waiver of Notice. Any director may waive notice of any meeting in writing. Attendance by a director at any meeting shall constitute a waiver of notice of such meeting.

Section 10. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if, prior to such action, a written consent, setting forth the action so taken, is signed by all of the members of the Board of Directors entitled to vote with respect to the subject matter thereof, and such written consent is filed with the minutes of the proceedings of the Board of Directors. Such consent shall have the same effect as a unanimous vote of the Board of Directors.

Section 11. Meeting by Telephone or Similar Communications Equipment. Directors may participate in and hold a meeting by means of a conference telephone or similar communication equipment by which all persons participating in the meeting can communicate with each other. Participation by these means constitutes presence in person at the meeting.

Section 12. Quorum. The transaction of any business at any meeting of the Board of Directors, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting. The majority of the Board of Directors shall constitute a quorum thereof.

Section 13. Resignation. Any Director may resign at any time by delivering written notice to the Board of Directors, the President, or the Secretary of the Corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

date. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 14. Removal. Except for directors selected by the Declarant, any director may be removed from office, with or without cause, by at least a majority vote of all members, at any duly called meeting of members. A special corporation meeting to remove a director or directors from office may be called by members representing 10% of the membership giving notice of the meeting. The notice shall state the purpose of the meeting and shall be given to all members in writing at least one week prior to the corporation meeting.

Section 15. Business to be Transacted. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or any waiver of notice of such meeting. Any and all business of any nature or character whatsoever may be transacted and action may be taken thereon at any meeting, regular or special, of the Board of Directors.

Section 16. Committees. The Board of Directors may from time to time, by resolution adopted by a majority of the actual number of Directors elected and qualified, designate and constitute an Executive Committee of three (3) or more Directors of the Corporation to manage and control the affairs of the Corporation between the meetings of the Directors and such other committees of three (3) or more Directors, as the Board of Directors shall deem desirable for the furtherance of the purposes of the Corporation, which committees shall have the powers and authority and shall perform the duties specified in the resolutions provided all of the voting members thereof are Directors. The President shall appoint the Chairman of each committee. The designation of the committees and the delegation of authority thereto shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law. Any committee whose voting members include persons who are not Directors of the Corporation shall have no authority to act on behalf of the Board of Directors and shall only be empowered to make recommendations to the Board of Directors.

date. **Section 17. Compensation.** Directors shall not be compensated for services rendered as directors, however they shall be entitled to reimbursement of reasonable expenses actually incurred in the performance of services to the Corporation rendered in furtherance of the purposes of the Corporation. A Director may also serve the Corporation in any other capacity and shall be entitled to receive such compensation for services actually rendered to the Corporation in any capacity other than as a Director, as may be provided from time to time by resolution of the Board not inconsistent with these Bylaws. Notwithstanding the foregoing, no compensation shall be paid to any individual which would be prohibited by the Internal Revenue Code of 1986, as amended.

purpose. **Section 18. Loans or Guaranties.** The Corporation shall not lend money to or guarantee the obligation of a Director of the Corporation.

specific. **Section 19. Non-Liability of Directors.** The Directors shall not be liable to the members 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.

or bad faith. 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 on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 20. 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 is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by the Director 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 willful misconduct or recklessness in the performance of the Director's duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement or of judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the members that such Director was not guilty of willful misconduct against the best interest of the Corporation or bad faith. 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 misconduct in the performance of the Director's 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 (if any) 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 misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors. The foregoing indemnification is in addition to, not in lieu of, indemnification as may be provided under the Act or other law.

Section 21. Insurance. The Board of Directors may, but is not required, to provide directors' and officers' insurance and surety bonds and may require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful, abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense to any act.

Section 22. Advisory Committee. The Board of Directors may appoint an Advisory Committee, the majority of which shall be Unit Owners in the Neighborhood. The Advisory Committee shall be available to consult with the Board of Directors on property matters, including maintenance and construction, Design Code, assessments and expenses, and other matters assigned to the Advisory Committee by the Board of Directors.

ARTICLE VI

Officers

Section 1. Number of Officers. The officers shall be a President, a Vice President, a Secretary, an Assistant Secretary and a Treasurer. The office of Vice President and Treasurer may be held by one person. The President and the Vice President shall be members of the Board of Directors:

Section 2. Election and Term. The officers shall be chosen annually by majority vote of the directors. All officers shall hold office during the pleasure of the Board of Directors.

Section 3. President. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board of Directors are carried out and sign all notes, checks, leases, mortgages, deeds and all other written instruments.

Section 4. Vice President. The Vice President shall perform all the duties of the President in the President's absence.

Section 5. Secretary/Assistant Secretary. The Secretary shall be ex-officio secretary of the Board of Directors, shall record the votes and keep the minutes of all proceedings in a book to be kept for the purpose. The Secretary shall sign all certificates of membership. The Secretary shall keep the records of the Corporation. The Secretary shall record in a book kept for that purpose the names of all members of the Corporation, together with their addresses as registered by such members. The Assistant Secretary shall perform the duties of the Secretary in the Secretary's absence.

Section 6. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Corporation and shall disburse such funds as directed by resolution of the Board of Directors; provided, however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The President or Treasurer shall sign all checks and notes of the Corporation.

Section 7. Vacancies. Whenever any vacancies shall occur in any office by death, resignation, increase in the number of officers of the Corporation, or otherwise, the same shall be filled by the Board of Directors, and the officer so elected or appointed shall hold office until his or her successor is elected or appointed and qualified, or until death, resignation or removal.

ARTICLE VII

Books and Papers

Section 1. The books, records and papers of the Corporation shall at all times, during reasonable business hours and upon reasonable notice, be subject to the inspection by any member subject to the requirements of Indiana Code §23-17-27-1, *et seq.*

ARTICLE VIII

Amendments

Section 1. These Bylaws may be amended, at a regular or special meeting of the members, by a vote of two-thirds (2/3) of a quorum of members present in person or by proxy, provided, however, that until the end of the Development Period the Declarant acting alone may amend these By-Laws in a manner not inconsistent with the Declaration; and provided further that any matter stated herein to be or which is in fact governed by the Declaration may not be amended except as provided in such Declaration.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

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EXHIBIT "D"

[Description of Additional Land]

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LAND DESCRIPTION
SAXONY TOWNHOMES

Part of the Northeast Quarter of Section 26, Township 18 North, Range 5 East, Hamilton County, Indiana, described as follows:

Commencing at the Southeast corner of said Northeast Quarter; thence South 89 degrees 18 minutes 20 seconds West along the south line of said Northeast Quarter a distance of 94.04 feet to the west right-of-way line of Ohio Road as described in Instrument #99-14661 in the Office of the Recorder in Hamilton County the next 2 courses being along said right-of-way line; point also being on a non-tangent curve to the right having a radius of 16,466.54 feet, the radius point of which bears North 88 degrees 44 minutes 32 seconds East; (1) thence Northerly along said curve an arc distance of 518.58 feet to a point which bears North 89 degrees 27 minutes 12 seconds West from said radius point; (2) thence North 03 degrees 51 minutes 11 seconds West a distance of 56.96 feet to the southeast corner of Saxony Right-of-way plat as recorded in Instrument #200400064440, Plat Cabinet 3, Slide 485 in the Office of the Recorder in Hamilton County, Indiana; the next 3 courses being along the south lines of said right-of-way;

(1) North 39 degrees 48 minutes 18 seconds West a distance of 65.09 feet; (2) South 89 degrees 59 minutes 37 seconds West a distance of 198.51 feet to a tangent curve to the left having a radius of 25.00 feet the radius point of which bears South 00 degrees 00 minutes 23 seconds East; (3) southwesterly and southerly along said curve an arc distance of 39.27 feet to a point which bears South 89 degrees 59 minutes 36 seconds West from said radius point and to the Point of Beginning; the next 4 courses continuing along said south line;

(1) South 89 degrees 59 minutes 37 seconds West a distance of 50.00 feet to a point on a non tangent curve having a radius of 25.00 feet, the radius point of which bears South 89 degrees 59 minutes 38 seconds West; (2) northwesterly along said curve an arc distance of 39.27 feet to a point which bears North 00 degrees 00 minutes 23 seconds West from said radius point;

(3) South 89 degrees 59 minutes 37 seconds West a distance of 640.11 feet to a point on a non-tangent curve having a radius of 25.00 feet, the radius point of which bears South 00 degrees 00 minutes 35 seconds East; (4) southwesterly along said curve an arc distance of 39.27 feet to a point which bears South 89 degrees 59 minutes 42 seconds West from said radius point (said point also being on the eastern line of Saxony, Section 1B as recorded in Instrument #200300114654 in said Recorder's Office); thence South 00 degrees 00 minutes 23 seconds East along said eastern line a distance of 157.00 feet; thence North 89 degrees 59 minutes 37 seconds East along the northern line of said Saxony, Section 1B and northern line of Saxony Phase 3 as recorded in Instrument #200500050731 in said Recorder's Office a distance of 335.77 feet; thence North 87 degrees 08 minutes 39 seconds East along the north line of said Saxony Phase 3 a distance of 37.84 feet to a point on a non tangent curve having a radius of 125.50 feet, the radius point of which bears South 05 degrees 41

minutes 23 seconds East; thence northeasterly along said curve and north line of Saxony Phase 3 an arc distance of 12.44 feet to a point which bears North 00 degrees 00 minutes 23 seconds West from said radius point; thence North 89 degrees 59 minutes 37 seconds East along said north line of Saxony Phase 3 a distance of 354.07 feet; thence North 00 degrees 00 minutes 23 seconds West a distance of 154.50 feet to the **Point of Beginning**, containing 3.036 acres, more or less.

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One Thirty One Place Condominiums

FIRST AMENDMENT AND SUPPLEMENTAL
DULY ENTERED FOR TAXATION DECLARATION
Subject to final acceptance for transfer
7th day of April, 2009 to
Dawn Coorndale Auditor of Hamilton County the Declaration of
Parcel # _____ Condominium Property

This is the First Amendment and Supplemental Declaration to the Declaration of One
Thirty One Place Condominiums ("Amendment") made on or as of the 17th day of
December, 2008, pursuant to the provisions of the Indiana Horizontal Property Law,
I.C. 32-25-1-1, et seq. (the "Act").

STATEMENT OF PURPOSE:

A. One Thirty One Townhome Partners, LLC ("Declarant") is the developer and
declarant of the One Thirty One Place Condominiums, as such real property is more particularly
described in the Declaration of Condominium Property recorded on December 13, 2006, as
Instrument No. 2006-073638, in the Office of the Recorder of Hamilton County, Indiana with all
subsequent modifications, amendments, conditions, and replacements (collectively, the
"Declaration") and the improvements thereon and appurtenances thereto (the "Property").

B. The Property consists of a site of individually owned Units (the "Existing Units"),
and commonly owned areas and facilities (the "Existing Common Areas").

C. The Declarant desires to increase the size of the One Thirty One Place
Condominiums by adding to it the real property described in Exhibit "A" attached hereto (the
"Additional Property"), and to these ends to submit the Additional Property to Condominium
ownership under the provisions of the Act.

D. The Declarant desires to modify the percentages of undivided interest in the
Existing Common Areas appurtenant to and owned by the individual owners of the Existing

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Units by amending and replacing Exhibit "B" attached and incorporated in the Declaration with the Exhibit "B" attached hereto.

DECLARATION:

Declarant hereby establishes the Additional Property as all of that property in Hamilton County, Indiana, described on Exhibit "A" attached hereto, submits the Additional Property to this Amendment and the Declaration and hereby declares that such property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth in the Declaration, which shall run with the land and be binding upon all parties having any right, title or interest in it, and which shall inure to the benefit of every owner of the Additional Property or any portion of it, and to the benefit of Declarant.

ARTICLE I: | Definitions

All defined terms shall have the same meaning ascribed to them in the Declaration, except as otherwise set forth in this Amendment.

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

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

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

Common Areas. "Common Areas" means all of the "Existing Common Areas," as the same are referred to as "Common Areas" in the Declaration, along with the "Added Common Areas."

Plans. "Plans" means the floor plans and other information of the Added Units as filed in the Office of the Recorder of Hamilton County, Indiana in Horizontal Property Plan File, Book 19782, Pages 019-782 through _____, which Plans are incorporated herein by this reference, as the same may be lawfully amended from time to time.

Unit(s). "Unit" and "Units" means all of the "Existing Units," as the same are referred to as the "Units" in the Declaration, along with the portion or portions of the Property described as "Added Units" in this Amendment.

ARTICLE II: | Name

2.1 **Name.** The name by which the Condominium shall be known is as set forth in the Declaration.

ARTICLE III: | Use and Restrictions

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

3.2 **Restrictions.** The Additional Property shall be subject to the restrictions set forth in the Declaration.

ARTICLE IV: | Improvement Descriptions

Buildings. The Buildings are tentatively located as shown on the Plans, and the Buildings and Plans are subject to amendment by Declarant.

ARTICLE V: | Units

5.1 **Unit Designations.** Each of the Added Units is designated on the Plans by a number, the first digit indicates the Building number and the letter indicates the Added Unit within a Building. Information concerning the Added Units, with a listing of proper Added Unit designations, is shown on Exhibit "B" attached hereto. Addresses are assigned by the local municipality. Further details and restrictions regarding the Units are as set forth in the Declaration.

ARTICLE VI: Common Areas and Limited Common Areas

6.1 Common Areas - Description. All of the Additional Property, including all of the land and all improvements thereon and appurtenances thereto, items listed in Indiana Code §32-25-2-4, the private streets and roadways, surface parking, community buildings, private irrigation systems, storm retention systems, private water distribution system, private storm water system and private sanitary sewer line spurs, except (i) those portions labeled or described herein or in the Plans as a part of an Added Unit and (ii) those roads, streets, water distribution system, sanitary sewer system and storm water system to the extent they are dedicated to public entities, are Added Common Areas.

6.2 Limited Common Areas - Description. Those portions of the Added Common Areas that are labeled or designated "LCA" or "Limited Common Areas" on the Plans, are Limited Common Areas. In the case of each Added Unit, the Limited Common Areas appurtenant to that Added Unit consist of decks on the main level of the Unit, driveway and front door stoop, if any. All such Limited Common Area is reserved for the exclusive use of the owners and Occupants of the Added Unit(s) designated to be served by the same, but are maintained by the Association except as otherwise provided in the Declaration.

6.3 Undivided Interest. The undivided interests of Units in the Common Areas shall be as described in the Declaration and as shown on attached Exhibit "B", the attached Exhibit "B" being an amendment to and replacement of the Exhibit "B" attached to and incorporated in the Declaration.

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

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

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ARTICLE VII: | General Provisions

7.3 **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 Act, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no wise affect any other provisions of this Declaration, which provisions shall remain in full force and effect.

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

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

One Unit
Hamilton

EXHIBIT "A"

[Description of Additional Property]

Lots 6A, 6B, 6C, 6D, 6E and 6F in Saxony Townhomes, Phase 2, as per plat thereof recorded September 19, 2007 in Plat Cabinet 4, Slide 364, in the Office of the Recorder of Hamilton County.

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EXHIBIT "B"

[Percentage of Interest Table for Condominium Units]

Original Units

Unit Number	Percentage Of Interest
4A	5.88%
4B	5.88%
4C	5.88%
4D	5.88%
4E	5.88%
4F	5.88%
5A	5.88%
5B	5.88%
5C	5.88%
5D	5.88%
5E	5.88%

**Additional Units
(1st Supplement)**

Percentage Of Interest

6A	5.88%
6B	5.88%
6C	5.88%
6D	5.88%
6E	5.88%
6F	5.88%

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One Thirty One Place Condominiums

REVIEWED BY HAMILTON
COUNTY AUDITORS OFFICE
23 day of ~~November~~, 2009

SECOND AMENDMENT to the Declaration of Condominium Property

This is the Second Amendment to the Declaration of One Thirty One Place Condominiums ("Amendment") made on or as of the 23rd day of November, 2009, pursuant to the provisions of the Indiana Horizontal Property Law, I.C. 32-25-1-1, *et seq.* (the "Act").

STATEMENT OF PURPOSE:

- A. One Thirty One Townhome Partners, LLC ("Declarant") is the developer and declarant of the One Thirty One Place Condominiums; as such real property is more particularly described in the Declaration of Condominium Property recorded on December 13, 2006, as Instrument No. 2006-073638, in the Office of the Recorder of Hamilton County, Indiana with all subsequent modifications, amendments, conditions, and replacements (collectively, the "Declaration") and the improvements thereon and appurtenances thereto (the "Property").
- B. The Property consists of a site of individually owned Units (the "Existing Units"), and commonly owned areas and facilities (the "Existing Common Areas").
- C. The Declarant has already adopted the First Amendment and Supplemental Declaration recorded on April 7, 2009, as Instrument No. 2009-019783 in the Office of the Recorder of Hamilton County, Indiana, to increase the size of the One Thirty One Place Condominiums and modify the percentages of undivided interest in the Existing Common Areas appurtenant to and owned by the individual owners of the Existing Units.
- D. The Declarant desires to amend the Declaration to comply with the Department of

This
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pursuant to
"Act").

The
Condominium
purchase
Act

Mortgage Lien (based upon one vote for each mortgage owned) have given their prior written approval (except in some cases a greater majority or unanimous approval may be needed as provided herein or in the Act), the Association shall not be entitled to (a) take any action, or (b) make any change, which materially affects the operation of the Association, including the following:

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

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Condominium
purchase
Act

The
Condominium
purchase
Act

Housing and Urban Development ("HUD") regulations set forth in Appendix 24, Directive No. 4265.1, in order to obtain Federal Housing Administration approval for the One Thirty One Place Condominiums.

E. All defined terms shall have the same meaning ascribed to them in the Declaration, except as otherwise set forth in this Amendment.

AMENDMENT:

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

1. A First Amendment to the By-laws of One Thirty One Condominium Association, Inc. is also required for compliance with HUD regulations, hereto attached as Exhibit "A."
2. Add a new subsection 10.1(H) as follows:

 "(H) shall contain an "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement," as required by the Federal National Mortgage Association, but only to the extent available and commonly required by prudent institutional mortgage investors in the area in which the Property is located."
3. Section 11.1 is superseded and replaced in its entirety as follows:

 "11.1 **Complete Destruction.** In the event of the complete destruction of all of the Buildings containing Condominium Units as determined by a vote of Unit Owners holding two-thirds (2/3) of the voting power held by all Unit Owners and the approval of the Eligible Holders of First Mortgage Liens on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by such Eligible Holders First Mortgage Liens are allocated, the Buildings shall not be reconstructed, and the insurance proceeds, if any, shall be divided among the Unit Owners and their respective mortgages in the percentage by which each Unit Owner owns an undivided interest in the Common Areas and facilities, and the property shall be considered as removed from the Condominium under section 32-25-18-16 of the Indiana Code."
4. Section 11.2 is superseded and replaced in its entirety as follows:

11.2 **Reconstruction.** In case of fire or any other casualty or disaster, other than complete destruction of all Buildings containing the Condominium Units as provided above, the improvements shall be promptly reconstructed and the insurance proceeds applied to reconstruct the improvements substantially in accordance with the Declaration and the original plans and specifications; or in accordance with any new Plans and specifications therefore approved by Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Unit Owners and by the Eligible Holders of First Mortgages Liens on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Holders of the First Mortgage Liens appertain."

5. Add a new subsection 15.1(11) as follows:

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

6. Add new subsections 16.1(B) and (D). Therefore, Section 16.1 is superseded and replaced in its entirety as follows:

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

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

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

(B) Unless at least sixty-seven percent (67%) of the Unit Owners have voted in favor, and at least fifty-one percent (51%) of Eligible Holders of the First

share of the ownership of each Unit in the Common Areas, except as provided in the expansion provisions;

(16) Dimensions of any Unit by partition or subdivision;

(17) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas;

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

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

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

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

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

(F) In any event, and notwithstanding any provision to the contrary, Declarant reserves the right and power, and each Unit Owner by acceptance of a deed to a Unit is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable (except by Declarant), without the consent, approval or signature of each Unit Owner, to (i) amend the Condominium Organizational Documents, to the extent necessary to conform to the requirements of the Indiana Department of Environmental Management, the Indiana Utility Regulatory Commission, The Mortgage Corporation, Federal National Mortgages Association, Governmental National Mortgages Association, Federal Home Loan Mortgage Corporation, Mortgage Guaranty Insurance Corporation, Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other similar agency or organization, (ii) induce any such agencies or entities to make, purchase, sell, insurance or guarantee first mortgages covering Unit ownership, (iii) correct typographical errors, surveyor errors in descriptions or otherwise or obvious

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factual errors the correction of which would not impair the interest of any Unit Owner or mortgagee, (iv) bring this Declaration into compliance with the Act, (v) amend Exhibits "A" and "B" for each expansion, (vi) bring this Declaration into compliance with any governmental requests or requirements, (vii) comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, (viii) to subject additional property to these restrictions, (ix) clarify, further define or limit any easement, or otherwise exercise any rights reserved herein, (x) change the name of the property made subject to this Declaration, (xi) clarify, eliminate conflicts between, or change the substance of one or more covenants, conditions, terms or provisions hereof; provided that any such change (A) does not materially increase the obligation(s) of any Unit Owner under any covenant, condition, term or provision without such Unit Owner's consent or (B) is necessary to comply with a bona fide governmental requirement, including applicable laws, ordinances, regulations or orders of any municipality or court having jurisdiction, and further provided that if there is a Unit Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and consent to the reservation of, the power of Declarant to vote in favor of, make, execute and record any of the foregoing amendments. The rights of Declarant under this Section shall terminate at such time as Declarant no longer holds or controls title to a Unit and the right of Declarant to add the Additional Property has expired.

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

7. Add a third sentence to Section 17.2 as follows:

"Declarant agrees not to expand the Property without the prior written consent of the Federal National Mortgage Association, Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Association or other similar agency or organization, of each of them that holds, insures or guarantees any mortgage on the Property at the time the Additional Property is to be added, which consent will not be withheld if the provisions of this Article XVII are complied with and the Declaration applying to the Additional Property otherwise meets all the requirements of such agency."

8. Replace the first sentence of Section 17.3 as follows:

"Declarant's option to expand the Property shall expire and terminate at the end of seven years from the date this Declaration is filed for record, unless Declarant, by written notice to the Association, elects to waive that option effective at a time prior to the expiration of that seven-year period."

9. This Second Amendment shall not change, modify, amend or revise the terms, conditions and provisions of the Declaration, the terms and provisions of which are incorporated herein by reference, except as expressly provided herein.

10. This Second Amendment is authorized by and made pursuant to Section 16.1(D)(i) of the Declaration.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 23rd day of NOVEMBER, 2009.

ONE THIRTY ONE TOWNHOME PARTNERS, LLC

By: **EXECUTIVE HOMES MARKETING & MANAGEMENT, INC., Manager**

By: [Signature]
Jeffrey P. Keck, President

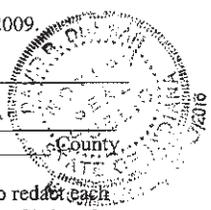
STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Jeffrey P. Keck, the President of Executive Homes Marketing & Management, Inc., Manager of One Thirty One Townhome Partners, LLC, who acknowledged the execution of the foregoing Declaration for and on behalf of said company. Witness my hand and Notarial Seal this 23rd day of NOVEMBER, 2009.

My Commission expires:

05/27/2016

Notary Public
Printed: David R. Dunbar
Resident of Hamilton County



I affirm, under the penalties for perjury, that I have taken reasonable care to read each Social Security Number in the current document, unless otherwise required by law: Christopher D. Long, Esq.
of Novena

This Instrument prepared by Christopher D. Long
KRIEG DEVAULT LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
(317) 636-4341

KD 2391702_3.DOC

To: _____
Title: _____
Social Sec# _____
D. Long
of _____

KD 239

To: _____
Title: _____
Social Sec# _____
D. Long
of _____

EXHIBIT "A"

FIRST AMENDMENT TO BY-LAWS OF ONE THIRTY ONE CONDOMINIUM ASSOCIATION, INC.

The undersigned, One Thirty One Townhome Partners, LLC ("Declarant"), hereby makes this First Amendment to the By-laws as of this 23rd day of November, 2009:

RECITALS

A. One Thirty One Townhome Partners, LLC ("Declarant") is the developer and declarant of the One Thirty One Place Condominiums; as such real property is more particularly described in the Declaration of Condominium Property recorded on December 13, 2006, as Instrument No. 2006-073638, in the Office of the Recorder of Hamilton County, Indiana with all subsequent modifications, amendments, conditions, and replacements (collectively, the "Declaration") and the improvements thereon and appurtenances thereto (the "Property").

B. The Development Period has not ended, therefore Declarant acting alone has authority under Article VIII, Section 2 to amend the By-laws to be consistent with the Declaration.

C. The Declarant has determined it is in the best interests of One Thirty One Condominium Association, Inc. to amend the By-laws to comply with the Department of Housing and Urban Development regulations set forth in Appendix 24, Directive No. 4265.1, in order to obtain Federal Housing Administration approval for the One Thirty One Place Condominiums.

AMENDMENT

NOW, THEREFORE, Declarant hereby amends the By-Laws as follows:

1. Supersede and replace the definition of "Development Period" in Article II to read as follows:

"Development Period" means the period not later than the earlier of 120 days after the date by which seventy-five percent (75%) of the Units have been conveyed to Unit Owners or seven (7) years after the first conveyance to a Unit Purchaser."

2. Add a last sentence to Article VII Section 1 to read as follows:

"Further, the Association, within a reasonable time, shall produce audited financial statements of the Association upon the reasonable, appropriate written request of a Unit Owner or Eligible Holder of the First Mortgage Lien."

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This amendment is authorized by and made pursuant to Article VIII of the By-laws.

Declar n, Inc. ent Regui 2 A

