

MARTHA A. WOMACKS
MARION COUNTY RECORDER

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SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

DECLARATION OF HORIZONTAL PROPERTY REGIME
AND OF
EASEMENTS, RESTRICTIONS, COVENANTS,
AND
BY-LAWS
FOR
ADA BUILDING CONDOMINIUMS, INC.,
A NOT-FOR-PROFIT CORPORATION

THIS DECLARATION is made and entered into by **EMPIRE DEVELOPMENT, L. L. C., An Indiana Limited Liability Company** (hereinafter referred to as the "Declarant"):

W I T N E S S E T H:

WHEREAS, the Declarant holds legal title to the following described parcel of real estate situated in Marion County, Indiana (hereinafter called the "Parcel"):

Part of Lots 18 and 19 in S. A. Fletcher, Jr's Subdivision of Lot 500 in Fletcher, Stone, Witt, Taylor and Hoyt's Subdivision of Out Lots 94 and 95 in the City of Indianapolis, the plat of which is recorded in Plat Book 3, Page 104, in the Office of the Recorder of Marion County, Indiana, more particularly described as follows, to-wit:

Beginning at the Northwest corner of said Lot 19, running thence East upon and along the North line of said Lots 19 and 18, 60 feet to a point, thence South and parallel with the West line of said Lot 18, 94 feet to a point; thence west and parallel with the South line of said Lot 18 and 19, 30 feet to a point in said Lot 19; thence South and parallel with

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the West line of said Lot 19, 32 feet to a point in the South line of said Lot 19, thence West upon and along the South line of said Lot 19, 22 feet to a point, thence Northwesterly upon and along the Southwesterly line of said Lot 19, to a point in the West line of said Lot 19, thence North upon and along the West line of said Lot 19, 118 feet to the place of beginning.

Also, a part of Lots 18 and 19 in said subdivision, beginning at a point on the South line of Lot 18, 20 feet West of the Southeast corner thereof, in said subdivision, thence continuing West along the South line of said Lots 18 and 19, 30 feet to a point; thence North parallel to the West line of said Lot 19, 32 feet to a point; thence East parallel to the South line of said Lots 18 and 19, 30 feet to a point; thence South parallel to the West line of said Lot 19, 32 feet to the point of beginning.

WHEREAS, the Declarant desires and intends by this Declaration to submit the Property, as hereinafter defined, to the provisions of the Horizontal Property Act of the State of Indiana, as amended from time to time (hereinafter called the "Act") and is, further, desirous of establishing for its own benefit and for that of all future owners or occupants of the Property, and each part thereof, certain easements and rights in, over, and upon the Property and certain mutually beneficial restrictions and obligations with respect to the use and maintenance thereof, and

WHEREAS, the Declarant desires and intends that the several owners, mortgagees, occupants, and other persons acquiring any interest in the Property shall at all times enjoy the benefits of, and shall at all times hold their interests subject to the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and to protect the cooperative aspect of ownership and to facilitate the proper administration of such Property and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property,

NOW, THEREFORE, the Declarant, as the legal title holder of the Parcel, and for the purposes above set forth, **DECLARES AS FOLLOWS:**

ARTICLE I

Definitions

For the purpose of brevity and clarity, certain words and terms used in this **Declaration** are defined as follows:

1.01 Declaration. This instrument by which the **Property** is submitted to the provisions of the **Act**, including such amendments, if any, to this instrument as may from time to time be adopted pursuant to the terms hereof.

1.02 Parcel. The entire tract of real estate above described which is hereby submitted to the provisions of the **Act**.

1.03 Buildings. The structures located on the **Parcel** forming a part of the **Property** and containing the **Units**, as shown by the **Plans**, as hereinafter defined.

1.04 Property. All of the land, property, and space comprising the **Parcel**, all improvements and structures erected, constructed, or contained therein or thereon, including the **Buildings** and all easements, rights, and appurtenances belonging thereto, and all furniture, furnishings, fixtures, and equipment intended for the mutual use, benefit, or enjoyment of the **Unit Owners**, submitted to the provisions of the **Act**.

1.05 Unit. A part of the **Property** within the **Building**, including one or more rooms, occupying a part or parts thereof, designed and intended for any type of independent use, and more specifically described hereafter in **Article II**.

1.06 Common Areas. All portions of the **Property**, except the **Units**, and including the **Limited Common Areas** unless otherwise expressly specified herein. The **Common Areas** include, without limitation, the land, foundations, walls, hallways, stairways, entrances and exits, **Parking Area**, storage areas, roof, pipes, ducts, flues, shafts, electrical wiring and conduits (except pipes, ducts, flues, shafts, electrical wiring and conduits situated entirely within a **Unit** and serving only such **Unit**), central heating and ventilating systems servicing the **Common Areas** (but excluding those individual heating, cooling and ventilating systems or equipment situated entirely within a **Unit** and serving only such **Unit**), public utility lines, structural parts of the **Buildings**, outside walks and driveways, landscaping, and all other portions of the **Property** except for the individual **Units**. Structural columns located within the boundaries of a **Unit** shall be part of the **Common Areas**. Any references to "**Common Areas**" appearing on the **Plat** (except references to **Limited Common Areas**) shall be deemed solely for purposes of general information and shall not be limiting in any way, nor shall any such reference define the **Common Areas** in any way.

1.07 Limited Common Areas. A portion of the **Common Areas** so designated in this **Declaration** or on the **Plans** as being reserved for the use of a certain **Unit** or **Units** to the exclusion of other **Units**. Any portion of the **Common Areas** which by the terms of this **Declaration** or **Plans** or by its nature or location is clearly intended to serve exclusively a certain **Unit** or **Units** (but less than all of the **Units**) or the owner or owners thereof shall be deemed a **Limited Common Area**.

1.08 Unit Ownership. A part of the **Property** consisting of one **Unit**, the **Exclusive Parking Use** to a **Covered Parking Space**, as applicable, and the undivided interest in the **Common Areas** appurtenant thereto.

1.09 Parking Area. The part of the **Common Areas** provided for parking automobiles.

1.10 Parking Space. A part of the **Property** within the **Parking Area** intended for the parking of a single motor vehicle.

1.11 Person. A natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

1.12 Unit Owner. The person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a **Unit Ownership**.

1.13 Occupant. Person or persons, other than a **Unit Owner**, in possession of a **Unit**.

1.14 By-Laws. The provisions for the administration of the **Property**, including, but not limited to, assessment, maintenance, use, occupancy, sale, leasing, and alienation, all as hereafter set forth, or as the same may be from time to time duly amended, the same to have full force and effect whether applied to or by the **Declarant**, the **Board**, or the **Association**, as hereinafter defined. **Articles V, VI, and VII**, hereof, shall constitute the **By-Laws** of the **Association**.

1.15 Association. The **Ada Building Condominiums, Inc.**, an **Indiana** not-for-profit corporation.

1.16 Majority of the Unit Owners. Those **Unit Owners**, without regard to their number, who own more than **fifty percent (50%)** in the aggregate of the entire undivided ownership interest in the **Common Areas**. Any specified percentage of the **Unit Owners** shall mean those **Unit Owners** who, in the aggregate, own such specified percentage of the entire undivided ownership interest in the **Common Areas**.

1.17 Board. The parties determined pursuant to **Article V** hereof and who are vested with the authority and responsibility of administering the **Property**.

1.18 Common Expenses. The proposed or actual expenses affecting the Property, including reserves, if any, lawfully assessed by the Board.

1.19 Plans. The floor plans of the Buildings and Units prepared by Empire Development, L. L. C., An Indiana Limited Liability Company, which are incorporated herein by reference.

1.20 Individual Garage Space. A Parking Space located inside a specific building and designated as a Limited Common area pursuant to Section 4.04 hereof.

ARTICLE II

Units and Building

2.01 Description and Ownership.

- (a) All Units are delineated on the Plans and listed on Exhibit A and shall have lawful access to a public way.
- (b) Each Unit consists of the space enclosed and bounded by the horizontal and vertical planes set forth in the delineation thereof on the Plans as well as any pipes, ducts, flues, shafts, electrical wiring and conduits, and individual heating, cooling, and ventilation systems or equipment situated entirely within a Unit and serving only such Unit. The legal description of each Unit shall consist of the identifying number or symbol of such Unit as shown on the Plans. Every deed, lease, mortgage, or other instrument may legally describe a Unit by its identifying number or symbol as shown on Exhibit A, and every such description shall be deemed good and sufficient for all purposes.
- (c) No Unit Owner shall, by deed, plat, court decree, or otherwise, combine or subdivide, or in any other manner cause his Unit to be separated into any tract or parcels different from the whole Unit as shown on the Plans.

2.02 Certain Structures Not Constituting Part of a Unit.

Except as a tenant in common with all other Unit Owners, no Unit Owner shall own any structural components of the Buildings, including structural columns or pipes, wires, conduits, ducts, flues, shafts, or public utility lines running through his Unit and forming a part of any system serving more than his Unit, or any components of communication systems, if any, located in his Unit, whether or not any such items shall be located in the floors, ceilings, or perimeter or interior walls of the Unit.

2.03 Real Estate Taxes. It is understood that real estate

taxes are to be separately taxed to each Unit Owner for his Unit and his corresponding percentage of ownership in the Common Areas as provided in the Act, provided, however, until such time as separate real estate tax bills are issued with respect to each Unit, the real estate taxes imposed on the Property shall be included in the Common Expenses assessed pursuant to this Declaration.

2.04 Description of Buildings.

There are one (1) building containing four (4) Units and one (1) building containing four (4) Individual Garage Spaces as depicted on the Plans. The buildings are identified and referred to in the Plans.

ARTICLE III

Common Areas

3.01 Ownership of Common Areas.

Each Unit Owner shall be entitled to the percentage of ownership in the Common Areas allocated to the respective Unit owned by such Unit Owner, as set forth in Exhibit A attached hereto. The percentages of ownership interests set forth in Exhibit A have been computed and determined in accordance with the Act and shall remain constant and shall not be changed, except as specifically permitted under the Act or the Declaration, without unanimous written consent of all Unit Owners and all mortgagees having bona fide liens of record against any of the Unit Ownerships. Said ownership interest in the Common Areas shall be an undivided interest, and the Common Areas shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership. The ownership of each Unit shall not be conveyed separate from the percentage of ownership in the Common Areas corresponding to said Unit. The undivided percentage of ownership in the Common Areas corresponding to any Unit shall be deemed conveyed or encumbered with that Unit even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit.

3.02 Description of Limited Common Areas.

That portion of the Common Areas which are designated as Limited Common Areas shall include, but not be limited to, the following: (a) garden areas exclusively serving a single Unit, (b) Covered Parking Spaces, (c) perimeter doors and windows exclusively serving a single Unit, (d) interior surface of perimeter walls, ceilings, and floors which

define the boundary planes of a Unit, (e) stairways situated wholly within a Unit, and (f) any system, or component part thereof, which serves a Unit exclusively to the extent that such system, or component part is located outside the boundaries of a Unit.

ARTICLE IV

Provisions as to Units and Common Areas

4.01 Submission of Property to the Act. The Property is hereby submitted to the provisions of the Horizontal Property Law of the State of Indiana.

4.02 No Severance of Ownership. No Unit Owner shall execute any deed, mortgage, lease, or other instrument affecting title to his Unit Ownership without including therein both his interest in the Unit and his corresponding percentage of ownership in the Common Areas, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease, or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

4.03 Easements.

(a) Encroachments. In the event that (i) by reason of the construction, reconstruction, settlement, or shifting of the Buildings, any part of the Common Areas encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Areas or any other Unit, or (ii) by reason of the design or construction of any Unit it shall be necessary or advantageous to a Unit Owner to use or occupy any portion of the Common Areas for any reasonable use appurtenant to said Unit which will not unreasonably interfere with the use or enjoyment of the Common Areas by other Unit Owners, or, if by reason of the design or construction of utility and ventilation systems, any pipes, ducts, flues, shafts, or conduits serving more than one Unit encroach or shall hereafter encroach upon any part of any Unit, then in any such case, valid easements for the maintenance of such encroachment

and for such use of the **Common Areas** are hereby established and shall exist for the benefit of such **Unit**, or the **Common Areas**, as the case may be, so long as all or any part of the **Buildings** shall remain standing, provided, that in no event shall a valid easement for any encroachment or use of the **Common Areas** be created in favor of any **Unit Owner** if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the **Property** by the other **Unit Owners** or has been created by the **Unit Owner** or his agent through intentional, willful, or negligent conduct.

- (b) **Easements for Utilities and Additional Purposes.** A 1 1 suppliers of utilities serving the **Property** are hereby granted the right to install, lay, construct, operate, maintain, renew, repair, or replace, conduits, cables, pipes, and wires, and other equipment into, over, under, along, and on any portion of the **Common Areas** for the purpose of providing the **Property** with utility services, together with the reasonable right of ingress from the **Property** for said purposes, provided, however, that the location of any such easements shall be subject to the approval of the **Board**. The **Declarant, Board, or Association** may hereafter grant other or additional easements for utility purposes and for other purposes including such easements as the **Developer** may from time to time request upon the **Common Areas** for the benefit of the **Property**, over, under, along, and on any portion of said **Common Areas**, and each **Unit Owner** hereby grants the **Declarant, Board, or Association** an irrevocable power of attorney to execute, acknowledge, and record for and in the name of such **Unit Owner**, such instruments as may be necessary to effectuate the foregoing. **Easements** are also hereby declared and granted

to install, lay, operate, maintain, repair, and replace any pipes, wires, ducts, flues, shafts, conduits, public utility lines, components of the communications systems, if any, or structural components which may run through the walls of a Unit, whether or not such walls lie in whole or in part within the Unit boundaries.

- (c) **Easements to Run with Land.** All easements and rights described herein are easements appurtenant running with the land, and, as long as the Property is subject to the provisions of this Declaration, shall remain in full force and effect and shall inure to the benefit of and be binding upon the undersigned, its successors and assigns, and any Unit Owner, purchaser, mortgagee, and other person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance or in any mortgage or trust deed or other evidence of obligation to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and to reserve such easements and rights to respective grantees, mortgagees, and trustees of such Unit Ownerships as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

4.04 Parking Areas. The Parking Area is a part of the Common Areas and includes all Parking Spaces and all entrances, exits, fixtures, equipment, and associated facilities. The Declarant, the Board, or the Association may allocate Parking Spaces on such basis as the Declarant, the Board, or Association deems appropriate and may prescribe such rules and regulations with respect to the Parking Area as it may deem fit. Notwithstanding anything to the contrary herein contained, a portion of the Parking Area has been divided into Covered Parking Spaces and delineated on the Plans. The legal description of each Covered Parking Space shall consist of the identifying symbol of such Parking Space as shown on the Plans. Wherever reference is made to any Covered Parking Space in a legal instrument or otherwise, a Covered Parking Space may be

legally described by its identifying symbol as shown on the **Plans**, and every such description shall be deemed good and sufficient for all purposes. **Unit Owners** will have the right to purchase, as a **Limited Common Area**, the exclusive use to a **Covered Parking Space**, which shall include, as a right and benefit appurtenant thereto, a grant of use for parking purposes of that certain **Covered Parking Space** purchased by said **Unit Owner** and set forth on his **Deed**. Each deed, lease, mortgage, or other instrument affecting a **Unit Ownership** shall be deemed and taken to include the said **Exclusive Parking Use** to the said **Covered Parking Space** even though not expressly mentioned or described therein. Owners may lease between themselves the **Exclusive Parking Use** to a **Covered Parking Space** appurtenant to their own **Unit Ownership**. No person not having an interest in a **Unit Ownership** shall have any interest in and to a **Covered Parking Space** for any purpose unless permission in writing is given by the **Board**. The term of any lease of the **Exclusive Parking Use** to any specific **Covered Parking Space** shall not exceed two (2) years. All **Covered Parking Spaces** and access thereto shall be subject to such reasonable rules and regulations as may be established by the **Board**, as hereinafter provided, including the requirement that such exclusive use encompass the obligation to pay monthly, as determined by the **Board**, for the cost of maintaining and repairing, in addition to other services, that portion of the **Common Areas** subject thereto, as an expense of a **Unit Owner** rather than a **Common Expense**. The **Declarant** hereby expressly reserves to itself the right to make the initial sale of each and every **Covered Parking Space** and to sell and grant the **Exclusive Parking Use** with respect to each **Covered Parking Space**. Any funds paid to the **Declarant** for any **Exclusive Parking Use** shall be the sole property of the **Declarant**, and neither the **Association** nor any **Owner** shall have any right or claim to such funds.

4.05 Use of the Common Areas.

- (a) **General.** Each **Unit Owner** shall have the right to use the **Common Areas** (except the **Limited Common Areas** and portions of the **Property** subject to leases made by or assigned to the **Board**) in common with all other **Unit Owners** as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of the respective **Unit** owned by such **Unit Owner**. Such right to use the **Common Areas** shall extend to not only each **Unit Owner** but also to his agents, servants, tenants, family members, invitees, and licensees. However, each **Unit Owner** shall have the right to the exclusive use and possession of the **Limited Common Areas**, if any, serving such **Unit** alone or serving

such Unit together with adjoining Units. Such rights to use the Common Areas, the Limited Common Areas, including the Parking Area, shall be subject to and governed by the provision of the Act, Declaration, By-Laws, and rules and regulations of the Association. In addition, the Association shall have the authority to lease, grant concessions, or grant easements with respect to parts of the Common Areas, subject to the provisions of the Declaration and By-Laws. All income derived by the Association from leases, concessions, or other sources, shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions, or regulations as the Board may adopt or prescribe.

- (b) **Guest Privileges.** The aforementioned rights shall extend to the Unit Owner and the members of the immediate family and authorized guests and other authorized Occupants and visitors of the Unit Owner, subject to reasonable rules and regulations with respect thereto. The use of the Common Areas and the rights of the Unit Owners with respect thereto shall be subject to and governed by the provisions of the Act, this Declaration, the By-Laws, and rules and regulations of the Board as may be imposed from time to time.
- (c) **Disclaimer of Bailee Liability.** Notwithstanding anything to the contrary contained in this Declaration, neither the Board, the Association, any Unit Owner, nor the Developer shall be considered a bailee of any personal property stored in the Common Areas (including vehicles parked in the Parking Area), whether or not exclusive possession of any particular areas shall be given to any Unit Owner for storage purposes, and shall not be responsible for the security of such personal property

or for any loss or damage thereto,
whether or not due to negligence.

4.06 Maintenance, Repairs, and Replacements.

- (a) **By the Board.** The Board or Association, at its expense, shall be responsible for the maintenance, repair, and replacement of those portions, if any, of each Unit which contribute to the support of the Buildings, excluding, however, interior wall, ceiling, and floor surfaces. In addition, the Board or Association shall maintain, repair, and replace all pipes, wires, conduits, ducts, flues, shafts, and other facilities for the furnishing of utility services which may be located within the Unit boundaries and forming part of any system servicing more than one Unit, as specified in Section 2.02 hereof, exclusive of any portions of the foregoing which may be located at or beyond the wall outlets or which may be the responsibility of an individual Unit Owner under subparagraph (b), below, or any other provision of this Declaration. The Association shall also be responsible for the mowing of grass in that portion of the Common Area which is designated as a Limited Common Area herein. Maintenance, repairs, and replacements of the Common Elements (except as specifically provided herein) shall be furnished by the Board as part of the Common Expenses, subject to the By-Laws or rules and regulations of the Association.
- (b) **By the Unit Owner.** Except as otherwise provided in paragraph (a), above, each Unit Owner shall furnish and be responsible for, at his own expense:

i.) All of the maintenance, repairs, and replacements within his own Unit and of the doors and outside windows and frames and screens appurtenant thereto, and all internal installations of such Unit, such as refrigerators, ranges, and other kitchen appliances, lighting fixtures and other electrical fixtures, plumbing fixtures or installations, and any pipes, ducts, flues, shafts, electrical wiring and conduits, and individual heating, cooling, and ventilating system or equipment situated entirely within the Unit and servicing only such Unit, provided, however, that such maintenance, repairs, and replacements as may be required for the bringing of water, gas, and electricity to the Units shall be furnished by the Board as part of the Common Expenses and provided, further, that the Board or the Association may provide, by its rules and regulations as may be imposed from time to time, for ordinary maintenance and minor repairs and replacements to be furnished to Units and appliances therein by building personnel as a Common Expenses or as user charges pursuant to Section 6.08 hereof.

ii.) All of the decorating within his own Unit and the Limited Common Areas servicing his Unit as may be required from time to time, including, but not limited to painting, wallpapering, washing, cleaning, panelling, floor covering, draperies, window shades, curtains, lighting and other furnishings and decoration. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors, and ceiling of his Unit, and such Unit Owner shall maintain such interior surfaces in good condition at his sole expense. Such maintenance and use shall be subject to the rules and regulations of the Board or Association as may be imposed from

time to time. Except with respect to improvements in place as of the date of the recording of this **Declaration**, each **Unit Owner** who shall elect to install in any portion of his **Unit** (other than in bath and powder rooms) hard surface floor covering, i. e., tile, slate, ceramic, parquet, etc., shall be first required to install a sound absorbent undercushion of such kind and quality as to prevent the transmission of noise to the **Unit** below and shall obtain approval of the **Board** prior to making such installation. The **Board**, in addition to exercising all of the other remedies provided for in this **Declaration** for breach of any of the provisions hereof, may require such **Unit Owner** to cover all non-conforming work with carpeting or may require removal of such non-conforming work at the expense of the offending **Unit Owner**. The interior surfaces of all windows forming part of a perimeter wall of a **Unit** shall be cleaned or washed at the expense of each respective **Unit Owner**. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades, or other items visible on the exterior of the **Building** shall be subject to the rules and regulations of the **Board** as may be imposed from time to time.

iii.) All of the maintenance, repair, and replacements of the **Limited Common Areas** benefiting his **Unit**, in whole or in part, except to the extent as otherwise directed by the **Board** or as is otherwise provided herein, shall be performed by the respective **Unit Owner**. In addition, each **Unit Owner** shall be individually responsible for the repair, maintenance, and replacement of all door and window locks and hardware with respect to which each **Unit Owner** is entitled to the exclusive use. At the direction of the **Board**, the **Board** may perform, or

cause to be performed, such maintenance, repairs, and replacements of the **Limited Common Areas**, and the cost thereof shall be assessed in whole or in part to **Unit Owners** benefitted thereby, and, further, at the discretion of the **Board**, the **Board** may direct such **Unit Owners**, in the name and for the account of such **Unit Owners**, to arrange for such maintenance, repairs, and replacements, to pay the costs thereof with the fund of the **Unit Owner**, and to procure and to deliver to the **Board** such lien waivers and contractor's or subcontractor's sworn statements as may be required to protect the **Property** from all mechanics' or materialmen's lien claims that may arise therefrom.

- (c) In the event that any repair or replacement to the **Common Areas** (including **Limited Common Areas**) is made necessary by reason of any act or occurrence for which insurance is maintained by the **Board** pursuant to **Section 5.08** hereof and for which insurance proceeds are available as provided in **Section 8.01** hereof, the **Association**, at its expense, shall be responsible for the repair or replacement of such **Common Areas**.
- (d) **Nature of Obligations.** Nothing herein contained shall be construed to impose a contractual liability upon the **Association** for maintenance, repair, and replacement, but the **Association's** liability shall be limited to damages resulting from negligence. The respective obligations of the **Association** and **Unit Owners** set forth in this **Declaration** shall not be limited, discharged, or postponed by reason of the fact that any such maintenance, repair, or replacement is required to cure a latent or patent defect in material or workmanship in the construction of the **Buildings**, nor because they may become entitled to proceeds under

policies of insurance. In addition, and notwithstanding anything hereinabove to the contrary, no Unit Owner shall have a claim against the Board or Association (or against the Declarant) for any work (such as certain exterior window cleaning, or repair of the Common Areas), ordinarily the responsibility of the Board or Association but which the Unit Owner himself has performed or paid for, unless the same shall have been agreed to in advance by the Board or Association or the Declarant.

4.07 Additions, Alterations, or Improvements.

- (a) The Board may authorize and charge as a Common Expense (or, in the case of Limited Common Areas, may charge the Owners benefitted thereby) additions, alterations, or improvements to the Common Areas. The cost of any such work to the Common Areas may be paid out of a special assessment.
- (b) No additions, alterations, or improvements shall be made by a Unit Owner to any part of the Common Areas, and no additions, alterations, or improvements shall be made by a Unit Owner to his Unit (where such work affects the safety or structural integrity of the Buildings, reduces the value thereof, or impairs any easement granted hereunder) without the prior written consent of all Unit Owners. In the event such consent is obtained, such consent may be conditioned upon the Unit Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration, or improvement, subject to such standards as the Board may from time to time set, or (ii) to pay to the Association from time to time the additional cost of maintenance and/or insurance as a result of the addition, alteration, or improvement. If an addition,

alteration, or improvement is made by a **Unit Owner** without the prior written consent of the **Unit Owners**, then the **Board** may, in its discretion, take any of the following actions:

i.) Require the **Unit Owner** to remove the addition, alteration, or improvement and restore the **Property** to its original condition, all at the **Owner's** expense, or

ii.) If the **Unit Owner** refuses or fails to properly perform the work required under (i), the **Board** may cause such work to be done and may charge the **Owner** for the cost thereof as determined by the **Board**, or

iii.) Ratify the action taken by the **Unit Owner**, and the **Board** may, but shall not be required to, condition such ratification upon the same conditions which it may impose upon the giving of its prior consent under this **Section**.

4.08 Negligence of Unit Owner. If, due to the negligent act or omission of a **Unit Owner**, a member of his family or household, pet, or of a guest or other authorized **Occupant** or visitor of such **Unit Owner**, damage shall be caused to the **Common Areas** or to a **Unit** or **Units** owned by others, or maintenance, repairs, or replacements shall be required which would otherwise be a **Common Expense**, then such **Unit Owner** shall pay for such damage and such maintenance, repairs, and replacements as may be determined by the **Board**.

4.09 Joint Facilities. To the extent that equipment, facilities, and fixtures within any **Unit** or **Units** shall be connected to similar equipment, facilities, or fixtures affecting or serving other **Units** or the **Common Areas**, then the use thereof by the individual **Unit Owners** shall be subject to the rules and regulations of the **Board** as may be imposed from time to time. The authorized representatives of the **Association** or the **Board** or of the manager or the managing agent for the **Buildings** shall be entitled to reasonable access to the individual **Units** as may be required in connection with maintenance, repairs, or replacements of or to the **Common Areas** or any equipment, facilities, or fixtures affecting or serving other **Units** or the **Common Areas**.

ARTICLE V

Administration

5.01 Administration of Property. The direction and the administration of the Property shall be vested in the **Board of Directors** (herein sometimes referred to as the "**Board**" or the "**Board of Managers**") which shall consist of **three (3)** persons who shall be elected in the manner hereinafter set forth, provided, however, that irrespective of anything else contained in this **Declaration**, for a period commencing on the date this **Declaration** is executed and ending upon the qualification of the directors elected at the initial meeting of voting members, the **Declarant** shall have the right to designate and select the persons who shall serve as members of each **Board** or to exercise the powers of the **Board** as provided in the **Act**. The **Board** shall be deemed to be the "**Board of Directors**" for the **Unit Owners** referred to in the **Act**. Except for directors so designated by the **Declarant**, each member of the **Board** shall be one of the **Unit Owners** and shall reside on the **Property**, provided, however, that in the event a **Unit Owner** is a corporation, partnership, trust, or other legal entity other than a natural person or persons, then any designated agent of such corporation, partnership, trust, or other legal entity, shall be eligible to serve as a member of the **Board** so long as any such agent, other than a person designated by the **Declarant**, resides on the **Property**. If a director fails to meet such qualifications during his term, he shall thereupon cease to be a director, and his place on the **Board** shall be deemed vacant.

5.02 Association. The **Association** has been formed, prior to the recording hereof, as a not-for-profit corporation under the **General Not-for-Profit Corporation Act** of the **State of Indiana**, having the name **Ada Building Condominiums, Inc.**, and shall be the governing body for all of the **Unit Owners** for the maintenance, repair, replacement, administration, and operation of the **Property**. The **Association** shall not be deemed to be conducting a business of any kind, and all funds received by the **Association** shall be held and applied by it for the use and benefit of **Unit Owners** in accordance with the provisions contained herein. Each **Unit Owner** shall be a member of the **Association** so long as he shall be a **Unit Owner**, and such membership shall automatically terminate when he ceases to be a **Unit Owner**, and, upon the transfer of his ownership interest, the new **Unit Owner** succeeding to such ownership interest shall likewise succeed to such membership in the **Association**. The **Association** may issue certificates evidencing membership therein and shall have only one class of membership.

5.03 Voting Rights. There shall be one person with respect to each **Unit Ownership** who shall be entitled to vote at any meeting of the **Unit Owners**. Such voting member may be the **Unit Owner** or one of a group who compose the **Unit Owner** of a **Unit Ownership**, or be some person designated by such **Unit Owner** to act as proxy on his or their behalf, which person must be a **Unit Owner**. Such designation shall be made in writing to the **Board** and shall be revocable at any

time by actual notice to the **Board** of the death or judicially declared incompetence of any designator or by written notice to the **Board** by the designator. Any or all **Unit Owners** may be present at any meeting of the voting members and (those constituting a group acting as a single voting member) may vote or take any other action as a voting member either in person or by proxy.

5.04 Meetings.

- (a) **Quorum.** Meetings of the voting members shall be held at the **Property** or at such other place in **Marion County, Indiana**, as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of the voting members having **fifty percent (50%)** of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting members at which a quorum is present at the commencement of the meeting upon the affirmative vote of the voting members having a majority of the total votes present at such meeting. The **Board** may prescribe reasonable rules for the conduct of all meetings of the **Board** and **Unit Owners**, or, in the absence of such rules, **Roberts' Rules of Order** shall be used.
- (b) **Initial and Annual Meeting.** The initial meeting of the voting members shall be held upon not less than **ten (10)** nor more than **thirty (30)** days written notice given by the **Declarant**. Said initial meeting shall be held no later than the first to happen of (i) **sixty (60)** days after the date the **Declarant** sold and delivered its deed for at least **four (4) Units** or (ii) **three (3)** years from the date of the recording of this **Declaration**. Thereafter, there shall be an annual meeting of the voting members on the **second Tuesday of May** following such initial meeting, and on the **second Tuesday of May** of each succeeding year thereafter, at **7:30 o'clock, A. M.**, or at such other reasonable

time or date as may be designated by written notice of the Board delivered to the voting members.

- (c) **Special Meetings.** Special meetings of the voting members may be called at any time after the initial meeting provided for in **Section 5.04 (b)** hereof for the purpose of considering matters which, by the terms of this **Declaration**, require the approval of all or some of the voting members, or for any other reasonable purpose, provided, however, that the following matters shall require the approval of voting members having not less than **two-thirds (2/3s)** of the total votes, namely: (i) the merger or consolidation of the **Association**, (ii) the sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all of the property and assets of the **Association**, and (iii) the purchase or sale or lease of **Units** or other real estate on behalf of all **Unit Owners**. Special meetings may be called by written notice authorized by a majority of the **Board**, the **President** of the **Board**, or by **twenty-five percent (25%)** of the voting members and delivered not less than **ten (10) days** and no more than **thirty (30) days** prior to the date fixed for said meeting. The notices shall specify a date, time, and place of the meeting and the matters to be considered. Matters to be submitted at special meetings of the voting members shall first be submitted to the **Board** at least **ten (10) days** prior to the special meeting, who shall then submit the matters to the voting members.

5.05 Notices of Meetings. Except as otherwise provided herein, notices of meetings of the voting members shall be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the **Board** for the purpose of service of such notice, or to the **Unit** of the **Unit Owner** with respect to which such voting right appertains if no address has been given to the **Board**, provided that such notice shall be delivered no less than **ten (10) days** and no

more than **thirty (30) days** prior to the date fixed for such meeting and shall state the date, time, place, and purpose of such meeting.

5.06 Board of Directors.

- (a) The initial **Board of Directors** designated by the **Declarant** pursuant to **Section 5.01** hereof shall consist of **three (3)** directors who shall serve without compensation. Such initial **Board** shall serve for a period commencing on the date this **Declaration** is executed and ending upon the qualification of the directors elected at the initial meeting of voting members held as provided in **Section 5.04 (b)** hereof. Said initial **Board** may, on behalf of the **Declarant** exercise the rights reserved in **Section 11.01** hereof. At the initial meeting of voting members held as provided in **Section 5.04 (b)** hereof, the voting members shall elect the **Board** consisting of **five (5)** members in all elections for members of the **Board**, each voting member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Members of the **Board** elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting **three (3)** **Board** members shall be elected. The **two (2)** persons receiving the highest number of votes at the first annual meeting shall be elected to the **Board** for a term of **two (2) years**, and the person receiving the lowest number of votes shall be elected to the **Board** for a term of **one (1) year**. The election and term of office as between candidates receiving the same number of votes shall be determined by lot. Upon the expiration of the terms of office of the **Board** members so elected at the first annual meeting and thereafter, successors shall be elected for a term of **two (2) years** each. The

voting members having at least two-thirds (2/3s) of the total votes may from time to time increase or decrease such number of persons on the Board or may decrease the term of office of Board members at any annual or special meeting, provided that (i) such number shall not be less than three (3), (ii) the terms of a least one-third (1/3) of the persons on the Board shall expire annually, and (iii) no Board member shall be elected for a term of more than two (2) years, but Board members may succeed themselves. Members of the Board shall receive no compensation for their services. Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by majority vote of the remaining members thereof, except that a vacant position of the Board last filled by a person appointed by the Declarant shall be filled by a person appointed by the Declarant. Any director so elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the director he succeeds. Except as otherwise provided in this Declaration, the Property shall be managed by the Board, and the Board shall act by majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held, and conducted in accordance with such regulations as the Board may adopt. A majority of the total number of members on the Board shall constitute a quorum.

- (b) The Board shall elect from among its members for the term of one (1) year
- (i) a President who shall preside over both its meetings and those of the voting members and who shall be the chief executive officer of the Board and of the Association and who shall be designated to mail and to receive all notices and execute all amendments hereto as provided herein and in the Act, (ii) a Secretary who

shall keep the minutes of all meetings of the Board and of the voting members and who shall, in general, perform all the duties incident to the office of Secretary, (iii) a Treasurer to keep the financial records and books of account, and (iv) such additional officers as the Board shall see fit to elect. Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of the Board. Any director elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds. Any officer may be removed for cause at any time by a vote of two-thirds (2/3s) of the total membership of the Board at a special meeting thereof.

- (c) Except for directors designated by Declarant pursuant to Section 5.01 hereof, any Board member may be removed from office at any time after the election of directors at the initial meeting of voting members pursuant to Section 5.06 (a) hereof, by affirmative vote of the voting members having at least two-thirds (2/3s) of the total votes, at any special meeting called for the purpose. A successor to fill the unexpired term of a Board member removed may be elected by the voting members at the same meeting or any subsequent meeting called for that purpose.
- (d) Written notice stating the place, date, and hour of any meeting of the Board shall be delivered to each member of the Board not less than ten (10) days prior to the date of such meeting. The purpose for which the meeting is called shall be stated in the notice.

5.07 General Powers of the Board. The Board shall have the following general powers:

- (a) Subject to the rights reserved by the **Declarant** pursuant to **Section 11.01** hereof, the **Board** may engage the services of an agent to manage the portions of the **Property** for which the **Board** is responsible, pursuant to this **Declaration**, to the extent deemed advisable by the **Board**, provided, however, that any agreement for professional management shall provide for termination by either party for cause upon **thirty (30) days** written notice and shall be for a term not to exceed **one (1) year**.
- (b) The **Board** shall have the power and the duty to provide for the designation, hiring, and removal of employees and other personnel, including lawyers and accountants, to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management, and operation of the **Property** and to delegate any such powers to the manager or managing agent and any such employees or other personnel as may be employees of the managing agent.
- (c) The **Board** or its agents, upon reasonable notice, may enter any **Unit** when necessary in connection with any maintenance or construction for which the **Board** is responsible or to make emergency repairs as may be necessary to prevent damage to the **Common Areas** or to any other **Unit** or **Units**.
- (d) The **Board's** powers hereinafter enumerated shall be limited in that the **Board** shall have no authority to acquire and pay for out of the maintenance fund any structural alterations of, capital additions to, or capital improvements of the **Common Areas**, other than for purposes of replacing or restoring portions of the **Common Areas** subject to all the provisions of this **Declaration** or unless required for

emergency repair, protection, or operation of the **Common Areas**, requiring an expenditure in excess of **Ten Thousand Dollars (\$10,000.00)** without, in each case, the prior written approval of **Unit Owners** owning **two-thirds (2/3s)** of the total ownership interest in the **Common Areas**.

- (e) All agreements, contracts, deeds, leases, vouchers for payment of expenditures, and other instruments shall be signed by such officer or officers, agent or agents of the **Board** and in such manner as from time to time shall be determined by written resolution of the **Board**. In the absence of such determination by the **Board**, such documents shall be signed by the **Treasurer** and countersigned by the **President** of the **Board**. The managing agent of the **Property** may be authorized to execute those documents required to enable it to perform its duties under its management agreement.
- (f) The **Board** by vote of at least **two-thirds (2/3s)** of its members, and without approval from any of the voting members except as hereinafter set forth, may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation, and beautification of the **Property**, and for the health, comfort, safety, and general welfare of the **Unit Owners** and occupants of the **Property**. Written notice of such rules and regulations, together with any amendments thereto, shall be given to all voting members.
- (g) Prior to the election by voting members of the first **Board**, the **Declarant** shall, subject to the terms of this **Declaration**, have the authority to lease or to grant licenses, concessions, and contracts with respect to any part of the **Common Areas**, including but without limitation, leases and/or licenses relating to the **Parking Area** and

upon such terms as the **Declarant** deems appropriate. Upon election of the first **Board** and thereafter, the **Board**, by a vote of at least **two-thirds (2/3s)** of the persons on the **Board**, shall have the same authority as aforesaid.

- (h) Nothing hereinabove contained shall be construed to give the **Board** authority to conduct an active business for profit on behalf of all the **Unit Owners** or any of them.
- (i) The **Board** shall have the power to bid for and purchase any **Unit Ownership** (or interest therein) at a sale pursuant to a mortgage foreclosure or a foreclosure of the lien for **Common Expenses** under the **Act**, or at a sale pursuant to an order of direction of a court or other involuntary sale, upon the consent or approval of **Unit Owners** owning not less than **sixty-six and two-thirds percent (66 2/3s %)** in the aggregate of the undivided ownership of the **Common Areas**, which consent shall set forth a maximum price which the members of the **Board** or its duly authorized representatives are authorized to bid and pay for said **Unit Ownership** or interest therein.
- (j) The **Board** shall have the power to exercise all other powers and duties of the **Board of Directors** or **Unit Owners** as a group referred to in this **Declaration** or the **Act**.
- (k) Subject to the provisions of **Section 4.04** and **Section 4.06 (b) (iii)**, hereof, the **Board**, for the benefit of all the **Unit Owners**, shall acquire and shall pay out of the maintenance funds, hereinafter provided for, the following:
 - i.) Operating expenses of the **Common Areas**, including water, electricity, gas, telephone, and other necessary utility services for the **Common Areas** and, if not

separately metered or charged, to the Units.

ii.) Services of any person or firm to act on behalf of the Unit Owners in connection with real estate taxes and special assessments on the Unit Ownerships and in connection with any other matter where the respective interests of the Unit Owners are deemed by the Board to be similar and nonadverse to each other. The costs of such services shall be Common Expenses.

iii.) Painting, cleaning, tuckpointing, maintenance, decorating, repair and replacement of the Common Areas (but not including the interior surfaces of the Units and of the perimeter doors appurtenant thereto, and repair of windows and frames and screens which the Unit Owners shall clean, maintain, and repair) and such furnishings and equipment for the Common Areas as the Board shall determine are necessary and proper.

iv.) Any other materials, supplies, utilities, furniture, equipment, labor, services, maintenance, repairs, or structural alterations which the Board is required to secure or to pay for, pursuant to the terms of this Declaration and By-Laws or which, in its opinion, shall be necessary or proper for the maintenance and operation of the Property as a first-class condominium development or for the enforcement of the restrictions contained herein.

v.) Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the entire Property or any part thereof which may, in the opinion of the Board, constitute a lien against the Property or against the Common Areas, rather than merely against the interests therein of particular Unit Owners. Where one or more Unit

Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Board by reason of said lien or liens shall be specifically assessed to said Unit Owners.

vi.) Maintenance and repair of any Unit if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Areas, or any other portion of the Building, and if a Unit Owner of any Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to said Unit Owner, provided that the Board shall levy a special assessment against such Unit Owner for the cost of said maintenance or repair.

5.08 Insurance.

(a) The Board shall have the authority to and shall obtain insurance for the Property as follows:

i.) Insurance on the Property, including the Units and the Common Areas, against loss or damage by fire and against loss or damage by risks now or hereafter embraced by standard extended coverage and vandalism and malicious mischief endorsements, in an amount sufficient to prevent the insured from being a co-insurer within the terms of the applicable policies but in any event in an amount not less than One Hundred Percent (100%) of the full insurable replacement cost thereof. The "full insurable replacement cost" of the Property, including the Units and the Common Areas, shall be determined from time to time by the Board, which determination may be based upon appropriate insurance appraisals. Insurable replacement cost shall be

deemed to be the cost of restoring the **Common Areas, Units**, or any part thereof, to substantially the same condition in which they existed prior to damage or destruction. The cost of any and all such appraisals shall be **Common Expenses**.

ii.) Comprehensive public liability and property damage insurance against claims for personal injury or death or property damage suffered by the public or by any **Unit Owner**, occurring in, on, or about the **Property** or upon, in or about the streets and passageways and other areas adjoining the **Property**, such public liability and property damage insurance to afford protection to such limits as the **Board** shall deem desirable, but in no event for less than **One Million Dollars (\$1,000,000.00)** with respect to liability for personal injury or property damage arising out of a single accident.

iii.) Such workmen's compensation insurance as may be necessary to comply with applicable laws.

iv.) Employer's liability insurance in such amount as the **Board** shall deem desirable.

v.) A fidelity bond indemnifying the **Association**, the **Board**, and the **Unit Owners** for loss of funds resulting from fraudulent or dishonest acts of any employee of the **Association** or of any other person handling the funds of the **Association**, the **Board**, or of the **Unit Owners**, in such amount as the **Board** shall deem desirable.

vi.) Such other insurance, including insurance with respect to officers' and directors' liability, in such reasonable amounts as the **Board** shall deem desirable.

The premiums for the above described insurance, except as otherwise provided in this **Section 5.08**, shall be **Common Expenses**.

- (b) All insurance provided for in this **Section 5.08** shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to do business in the **State of Indiana**.
- (c) All policies of insurance of the character described in **clause (i)** of **Paragraph (a)** of this **Section 5.08**, **(i)** shall name as insured the **Declarant**, so long as it has an insurable interest, and the **Board** as trustees for the **Unit Owners** in the percentages established in **Exhibit A** to this **Declaration** as the respective interests of all such assureds may appear, **(ii)** shall be without contribution as respects other such policies of insurance carried individually by the **Unit Owners** whether such other insurance covers their respective **Units** and/or the additions and improvements made by such **Unit Owners** to their respective **Unit**, **(iii)** shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement therefor, such option shall not be exercisable in the event the **Unit Owners** elect to sell the **Property** or remove the **Property** from the provisions of the **Act**, and **(iv)** shall contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least **ten (10)** days prior written notice to the mortgagee of each **Unit**. Policies of insurance of the character described in **clause (i)** of **Paragraph (a)** of this **Section 5.08** may contain an endorsement extending coverage so as to include the payment of **Common Expenses** with respect to damaged **Units** during the period of reconstruction thereof. Notwithstanding the issuance of standard mortgage clause endorsements under the policies of insurance of the character described

in clause (i) of Paragraph (a) of this Section 5.08, any losses under such policies shall be payable, and all insurance proceeds recovered thereunder shall be applied and disbursed, in accordance with the provisions of this Declaration.

- (d) All policies of insurance of the character described in clauses (ii), (iv), (v), and (vi) of Paragraph (a) of this Section 5.08 shall name as assured each Unit Owner and their spouses and the Association, Board, and its managing agent, and the other agents and employees of such Association, Board, and managing agent, and the Declarant in his or its capacity as a Unit Owner and Board member. In addition, all policies of insurance of the character described in clause (ii) of Paragraph (a) of this Section 5.08 shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, members of the Board, the Declarant, the managing agent, their respective employees and agents, and the Unit Owners and Occupants and shall cover claims of one or more insured parties against other insured parties.
- (e) The Association, for the benefit of the Unit Owners and the mortgagee of each Unit, shall pay the premiums on the policies of insurance described in Paragraph (a) of this Section 5.08 at least thirty (30) days prior to the expiration date of the respective policies and shall notify the mortgagee of each Unit of such payment within ten (10) days after the date on which payment is made.
- (f) The loss, if any, under any policies of insurance of the character described in clause (i) in Paragraph (a) of this Section 5.08 shall be payable, and the insurance proceeds paid, on account of any such loss shall be paid to the Board, as

trustee for each of the **Unit Owners** in their respective percentages of ownership in the **Common Areas** as established in this **Declaration**, which insurance proceeds, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, shall be applied to the payment of the cost of restoring the **Property** to substantially the same condition in which it existed immediately prior to such damage or destruction, with each **Unit** and the **Common Areas** having the same vertical and horizontal boundaries as before, free from vendor's, mechanic's, materialmen's, and other similar liens.

- (g) Each **Unit Owner** shall be responsible for his own insurance on the contents of his own **Unit** and furnishings and personal property therein and his personal property stored elsewhere on the **Property**, and his personal liability to the extent not covered by the policies of liability insurance obtained by the **Board** for the benefit of all of the **Unit Owners** as above provided. All policies of casualty insurance carried by each **Unit Owner** shall be without contribution as respects the policies of casualty insurance obtained by the **Board** for the benefit of all of the **Unit Owners** as above provided.
- (h) Each **Unit Owner** shall be required to report all additions or alterations to his **Unit** promptly in writing to the **Board**, without prior request from the **Board** or the management agent, and to reimburse the **Board** for any additional insurance premiums attributable thereto, and he shall be responsible for any deficiency in any insurance loss recovery from his failure to so notify the **Board**. The **Board** shall not be responsible for obtaining insurance on such additions, alterations, or improvements unless

and until such **Unit Owner** shall make such report and request the **Board** in writing to obtain such insurance, and shall make arrangements satisfactory to the **Board** for such additional premiums. Upon the failure of such **Unit Owner** to do so, the **Board** shall not be obligated to apply any insurance proceeds to restore the affected **Unit** to a condition better than the condition existing prior to the making of such additions, alterations, or improvements. "Additions" or "alterations" shall mean property attached to the **Unit** and not readily removable without damage to the **Unit**, including but not limited to carpeting, special flooring, special wall covering, and paneling. The insurance coverage described in this paragraph (h) of Section 5.08 shall not be deemed to include personal property owned by the **Unit Owner** and not attached to the **Unit**.

- (i) Each **Unit Owner** hereby waives and releases any and all claims which he may have against any other **Unit Owner**, the **Association**, its officers, members of the **Board**, **Declarant**, the manager and managing agent of the **Property**, if any, and their respective employees and agents, for any damage to the **Common Areas**, the **Units**, or to any personal property located in the **Unit** or **Common Areas** caused by fire or other casualty to the extent that such damage is covered by fire or other form of casualty insurance.

5.09 Cancellation of Insurance. The **Board** shall be responsible, in the event any insurance required under Section 5.08 (a) (i) or (ii) is canceled, for serving notice of such cancellation upon any person insured thereunder. In addition, written notice of the procurement of any insurance obtained by the **Association** and any subsequent changes in said coverage shall be furnished to any person or entity insured thereunder.

5.10 Liability of the Board of Directors. Neither the members of the **Board** nor the officers of the **Association** shall be liable to the **Unit Owners** for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such **Board**

members and officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The **Unit Owners** shall indemnify and hold harmless each of the members of the **Board** and each of the officers of the **Association** against all contractual and other liabilities to others arising out of contracts made by or other acts of the **Board** and officers unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this **Declaration**. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses, including, but not limited to, counsel fees, amounts of judgments paid, and amounts paid or received in settlements, reasonably incurred in connection with the defense of any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, in which any member of the **Board** or officers of the **Association** may be involved by virtue of such persons being or having been such member or officer, provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit, or proceeding to be liable for gross negligence or fraud in the performance of his duties as such member or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the **Board**, there is not reasonable ground for such persons being adjudged liable for gross negligence or fraud in the performance of his duties as such member or officer. It is also intended that the liability of any **Unit Owner** arising out of any contract made by or other acts of the **Board** or officers of the **Association** or out of the aforesaid indemnity in favor of the members of the **Board** and officers of the **Association**, shall be limited to such proportion of the total liability thereunder as his percentage of interest in the **Common Areas** bears to the total percentage interest of all **Unit Owners** in the **Common Areas**. Every agreement made by the **Board** or by the managing agent on behalf of the **Unit Owners** shall provide that members of the **Board** or the managing agent, as the case may be, are acting only as agents for the **Unit Owners** and shall have no personal liability thereunder, except as **Unit Owners**, and that each **Unit Owner's** liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the **Common Areas** bears to the total percentage interest of all **Unit Owners** in the **Common Areas**.

ARTICLE VI

Common Expenses--Maintenance Fund

6.01 Preparation of Estimated Budget. Each year, on or before **November 1**, the **Board** shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services, and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the **Board** to be necessary for a reserve for contingencies and replacements and shall on or before **November 15** notify each **Unit Owner** in writing as to the amount of such

estimate, with reasonable itemization thereof and containing each Unit Owner's respective assessment, provided, however, that such annual budget shall be furnished to each Unit Owner at least thirty (30) days prior to its adoption by the Board. The annual budget shall also take into account the net available cash income for the year derived from the operation or use of the Common Areas. Subject to the provisions of Section 4.04 and 4.06 (b) (iii) hereof, said "estimated cash requirement" shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Areas as set forth in Exhibit A attached hereto. On or before January 1 of the ensuing year, and the first of each and every month of said year, each Unit Owner, jointly and severally, shall be personally liable for and obligated to pay to the Board or as it may direct, one-twelfth (1/12th) of the assessments made pursuant to this paragraph. On or before April 1 of each calendar year following the initial meeting, the Board shall supply to all Unit Owners an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Such accounting shall be prepared by a certified public accountant. Any net shortage or excess shall be applied as an adjustment to the installments due under the current year's estimate in the succeeding six (6) months after rendering of the accounting, subject, however, to the provisions of Section 6.02 hereof.

6.02 Reserve for Contingencies and Replacements--Supplemental Budget. The Board shall build up and maintain a reasonable reserve for contingencies and replacements, which reserve shall be segregated and allocated for specific purposes and maintained in a separate interest-bearing account with a bank or savings and loan association authorized to conduct business in Marion County, Indiana. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such portions of the contingency and replacement reserve which remains unallocated. If the "estimated cash requirement" proves inadequate for any reason or in the event a non-recurring Common Expense is anticipated for any year, then the Board may prepare and approve a supplemental budget covering the estimated deficiency or non-recurring expenses for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit Owner, and thereupon a separate assessment shall be made to each Unit Owner for his proportionate share of such supplemental budget. All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount.

6.03 Initial Budget. The initial Board appointed by the Declarant shall determine and adopt, prior to the conveyance of the first Unit hereunder, the "estimated cash requirement" for the initial period commencing with the first day of the month in which the sale of the first Unit is closed and ending on December 21 of the calendar year in which such sale occurs and shall continue to

determine the "estimated cash requirement" for each succeeding calendar year until such time as the first Board elected hereunder takes office. Assessments shall be levied against the Unit Owners during said periods as provided in Section 6.01 of this Article.

6.04 Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the Unit Owner shall not constitute a waiver or release in any manner of such Unit Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and, in the absence of any annual estimate or adjusted estimate, the Unit Owner shall continue to pay the monthly maintenance charge at the then existing monthly rate established for the previous period until the monthly maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

6.05 Books and Records. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Common Areas, specifying and itemizing the maintenance and repair expenses of the Common Areas and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for inspection at the office of the Association, if any, by any Unit Owner or any holder of a first mortgage lien on a Unit Ownership, at such reasonable time or times during normal business hours as may be requested by the Unit Owner. Upon ten (10) days notice to the Board and payment of a reasonable fee, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

6.06 Status of Collected Funds. All funds collected hereunder shall be held and expended for the purposes designated herein, and, except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments or user charges, shall be deemed to be held for the benefit, use, and account of all the Unit Owners in the percentages set forth in Exhibit A.

6.07 Start-up Costs. At the time the initial sale of each Unit is closed, the purchaser of the Unit shall pay to the Association an amount equal to two (2) times the first monthly assessment for such Unit. This sum shall be used and applied for start-up costs and as a working capital fund in connection with all initial operating expenses for the Common Areas. This payment shall not be refundable or be applied as a credit against the Unit Owner's monthly assessment.

6.08 Non-Use and Abandonment. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his or their Units.

ARTICLE VII

Covenants and Restrictions as to Use and Occupancy

7.01 Use and Occupancy. The Property shall be occupied and used as follows:

- (a) Each Unit or any two (2) or more adjoining Units used together shall be used for housing and related common purposes for which the Property was designed and for no other purpose. That part of the Common Areas separating any two (2) or more adjoining Units which are owned by the same Unit Owner may be altered or removed to afford ingress and egress to and from such adjoining Units, provided, however, that (i) such alteration or removal shall not impair or weaken the structural integrity of any Unit or any portion of the Common Areas, (ii) shall not impede access to any other Unit, (iii) the Unit Owner shall furnish to the Board not less than ten (10) days prior to the date Unit Owner desires to commence such work, plans detailing the work to be done, (iv) the Board consents to the performance of such work, (v) the expense of such alterations shall be paid in full by the Unit Owner making such alterations, and (vi) such Unit Owner shall pay in full the expense of restoring such Common Areas to their former condition prior to such alteration in the event such Units cease to be used together.

- (b) There shall be no obstruction of the Common Areas, nor shall anything be stored in the Common Areas, except in areas designed for such purpose, without the prior consent of the Board or except as hereinafter expressly provided. Each Unit Owner shall be obligated to maintain and keep in good order and repair his own Unit.

- (c) Nothing shall be done or kept in any Unit or in the Common Areas serving the Units which will increase the rate of insurance on the Buildings or contents thereof without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas which will result in the cancellation of insurance on the Buildings or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Areas.
- (d) Without the prior consent of the Board, Unit Owners shall not cause or permit anything to be placed on the outside walls of the Buildings, and no sign, awning, canopy, shutter, radio, or television antenna shall be affixed to or placed upon the exterior walls or roof of any part thereof, and Unit Owners shall not cause or permit the enclosure, either partially or entirely, of any exterior portions of the Buildings.
- (e) In order to enhance the sound conditioning of the Buildings, the floor covering for all occupied Units shall meet the minimum standard as may be specified by rules and regulations of the Board.
- (f) No animals of any kind shall be raised, bred, or kept in any Unit or in the Common Areas except that dogs and cats or other usual household pets may be kept in Units, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purpose, and, provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days' written notice from the Board. The Board may restrict pets from access to any portions of the Common Areas and may designate other portions of

the **Common Areas** to accommodate the reasonable requirements of **Unit Owners** who keep pets.

- (g) No noxious or offensive activity shall be carried on in any **Unit** or in the **Common Areas**, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other **Unit Owners** or **Occupants**.
- (h) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the **Common Areas**. The **Common Areas** shall be kept free and clear of rubbish, debris, and other unsightly materials which are not in receptacles provided for such purpose.
- (i) There shall be no playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches, or chairs on any part of the **Common Areas** except that subject to reasonable rules and regulations of the **Board**, (i) baby carriages, bicycles, and other personal property may be stored in the common storage areas designated for the purpose, and (ii) all amenity and service areas may be used for their intended purposes.
- (k) Without the prior consent of the **Board**, no industry, business, trade, occupation, or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted in any **Unit**.
- (l) No "For Sale" or "For Rent" signs, advertising, or other displays shall be maintained or permitted on any part of the **Property**. The right is reserved by the **Declarant** or its agents to place and maintain on the

Property all model apartments, sales offices, management offices, advertising signs and lighting in connection therewith at such locations and in such forms as shall be determined by the Declarant or its agents. The initial location of the model apartments and sales offices are designated on the Plans. The Declarant or its agents and prospective purchasers and lessees of any Unit from the Declarant are hereby granted the right of ingress, egress, and transient parking in and through the Common Areas for such Unit sale or leasing purposes. The Trustee or Developer further reserve the right to use unsold Units and Common Areas for temporary storage, office sales, and related purposes. The foregoing rights of the Declarant or agents shall terminate upon the closing of the sale of the last Unit.

- (m) The Unit restrictions in paragraphs (a) and (k) of this Section 7.01 shall not, however, be construed in such a manner as to prohibit a Unit Owner from (i) maintaining his personal professional library therein, (ii) keeping his personal business or professional records or accounts therein, or (iii) handling his personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal resident use and not in violation of paragraphs (a) and (k) of this Section 7.01.
- (n) With the exception of a lender in possession of a Unit following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Unit Owner shall be permitted to lease his Unit for transient or hotel purposes. Any lease of a Unit for less than one (1) month shall be deemed to be a lease for transient or hotel

purposes. No Unit Owner may lease less than the entire Unit, and all such leases shall be in writing. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease.

7.02 Amendment to By-Laws. Articles V, VI, and VII of this Declaration comprise the By-Laws of the Association. The By-Laws may be amended pursuant to the provisions of Section 11.07 herein, which are applicable to this Declaration.

ARTICLE VIII

Damage, Destruction, Condemnation, and Restoration of Buildings

8.01 Partial Destruction. In the event of partial destruction of the improvements forming a part of the Property, or any portions thereof, including any Units, from any cause, then the Association shall cause the Property to be promptly repaired and restored, and the proceeds of the insurance carried by the Association shall be applied to the cost of such restoration. If the insurance proceeds are not adequate to cover the cost of such reconstruction, or, in the event there are no proceeds, or, in the event the Property is not withdrawn from the provisions of this Declaration and from the provisions of the Act, then the costs of such reconstruction shall be borne by each Unit Owner in an amount equal to that Unit Owner's percentage of ownership interest in the Common Areas. Such amount shall be assessed as a Common Expense.

8.02 Complete Destruction. Within sixty (60) days after the date of any damage or destruction to any improvements forming a part of the Property, or any portions thereof, including any Units, from any cause, a special meeting of the Unit Owners called for that purpose shall be held to determine, by a vote of no less than two-thirds (2/3s) of all of the Unit Owners, whether a complete destruction has occurred pursuant to the terms of Section 19 (b) of the Act. In the event the Unit Owners determine that a complete destruction has occurred, then, by a vote of no less than two-thirds (2/3s) of all of the Unit Owners, which vote shall occur at the same meeting, the Unit Owners shall determine whether to rebuild the Property. In the event such approval to rebuild is not obtained, then the provisions of Section 21 of the Act shall apply. In the event the Unit Owners determine that a complete destruction has not occurred, then the provisions of Section 8.01 hereof shall apply.

8.03 Eminent Domain. In the event any portion of the **Property** is taken by condemnation or eminent domain proceedings, provision for withdrawal from the provisions of the **Act** of such portion so taken may be made by the **Board**. Upon the withdrawal of any **Unit** or portion thereof due to eminent domain, the percentage of interest in the **Common Areas** appurtenant to such **Unit** or portion thereof shall be reallocated among the remaining **Units** on the basis of the percentage of interest of each remaining **Unit**. If only a portion of a **Unit** is withdrawn, the percentage of interest appurtenant to that **Unit** shall be reduced accordingly, upon the basis of diminution in market value of the **Unit**, as determined by the **Board**. The allocation of any condemnation award or other proceeds to any withdrawing or remaining **Unit Owner** shall be on an equitable basis. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the **Common Areas**, not necessarily including the **Limited Common Areas**, shall be allocated on the basis of each **Unit Owner's** percentage interest therein. Proceeds available from the withdrawal of any **Limited Common Areas** will be distributed in accordance with the interests of those entitled to their use. Upon the withdrawal of any **Unit**, or portion thereof, the responsibility for the payment of assessments on such **Unit** or portion thereof by the **Unit Owner** shall cease.

8.04 Repair, Restoration, or Reconstruction of the Improvements. As used in this **Article**, "repair, restoration, or reconstruction of improvements" means restoring the improvements to substantially the same condition in which they existed prior to the damage or destruction, with each **Unit** and **Common Areas** having the same vertical and horizontal boundaries as before.

ARTICLE IX

Remedies

9.01 Abatement and Enjoyment. The violation of any restriction or condition or regulation adopted by the **Board**, or the breach of any covenant or provision herein contained, shall give the **Board** the right, upon not less than ten (10) days notice, in addition to the rights set forth in the next succeeding section, the following rights and remedies:

- (a) to enter upon that part of the **Property** where such violation or breach exists and summarily abate and remove, at the expense of the defaulting **Unit Owner**, any structure, thing, or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the **Declarant** or its successor assigns, or the **Board**, or its agents, shall not thereby be deemed guilty in any manner of trespass, or

- (b) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

All expenses of the Board in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of eight percent (8%) per annum until paid, shall be charged to and assessed against such defaulting Unit Owner and shall be added to and deemed part of his respective share of the Common Expenses, and the Board shall have a lien for all of the same upon the Unit Ownership of such defaulting Unit Owner and upon all of his additions and improvements thereto and upon all of his personal property in his Unit or located elsewhere on the Property. Any and all such rights and remedies may be exercised at any time and from time to time cumulatively, or otherwise, by the Board. In addition, any aggrieved Unit Owner shall have the same rights and remedies as the Board hereunder in connection with any such violation.

9.02 Involuntary Sale. If any Unit Owner, either by his own conduct or any other occupant of his Unit, shall violate any of the covenants or restrictions or provisions of this Declaration or the regulations adopted by the Board, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall recur after such notice, and subsequent curing thereof by the Unit Owner, then the Board shall have the power to issue to the defaulting Unit Owner a ten (10) day notice in writing to terminate the right of said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use, or control his Unit, and thereupon, an action in equity may be filed by the members of the Board against the defaulting Unit Owner for a decree of mandatory injunction against the Unit Owner or Occupant or, in the alternative, a decree declaring the termination of the defaulting Unit Owner's right to occupy, use, or control the Unit owned by him on account of the breach of covenant and ordering that the right, title, and interest of the Unit Owner in the Property shall be sold, subject to the lien of any existing mortgage, at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Unit Owner from reacquiring his interest in the Property at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Unit Owner in said decree. Any balance of proceeds, if any, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to the Unit Owner. Upon the confirmation of such sale, the purchaser thereof shall thereupon be entitled to a deed to the Unit Ownership and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall provide, that the purchaser shall take the interest in the Property

sold subject to this Declaration.

9.03 Remedies for Failure to Pay Common Expenses. Each Unit Owner shall pay his proportionate share of the Common Expenses. Such proportionate share shall be in the same ratio as his percentage of ownership in the Common Areas as set forth in Exhibit A. In the event of the failure of a Unit Owner to pay such Common Expenses when due, the amount thereof shall constitute a lien on the interest of such Unit Owner, as provided by the Act, provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Unit Owner. Except as hereinafter provided, the lien provided for in this Section 9.03 shall not be affected by any transfer of title to the Unit Ownership. Where title to the Unit Ownership is transferred pursuant to a decree of foreclosure or by deed or assignment in lieu of foreclosure, such transfer of title shall, to the extent permitted by law, extinguish the lien for any assessments or other charges or payments under Section 6.01 which became due prior to (i) the date of the transfer of title, or (ii) the date on which the transferee comes into possession of the Unit, whichever occurs first. However, the transferee of a Unit Ownership shall be liable for his share of any assessments or other charges or payments with respect to which a lien against his Unit Ownership has been extinguished pursuant to the preceding sentence which are reallocated among the Unit Owners pursuant to a subsequently adopted annual, revised, or special assessment, and nonpayment thereof shall result in a lien against the transferee's Unit Ownership as provided in this Section 9.03. If any Owner fails to pay any installment of such Common Expenses within thirty (30) days after notice of default, the Board may accelerate the maturity of the remainder of installments of such Common Expenses due from such Unit Owner for the balance of the assessment year and may enforce collection thereof and of all of such user charges then or thereafter falling due. A late charge in the amount of Thirty Five Dollars (\$35.00) per month shall be charged to and assessed against such defaulting Unit Owner until paid, which late charge shall be subject to review by the Board from time to time. In addition to the foregoing, the Board, or the Declarant, in the exercise of the powers, rights, duties, and functions of the Board as provided in Section 11.01 hereof, or its agents, shall have such other rights and remedies to enforce such collection as shall otherwise be provided or permitted by law from time to time.

ARTICLE X

Miscellaneous Provisions Regarding Mortgages

The following provisions are intended for the benefit of each holder of a first mortgage upon a Unit, and, to the extent, if at all, that any other provisions of this Declaration conflict with the following provisions, the following provisions shall control:

- (a) The Association shall furnish each first mortgagee of a Unit written notice of any default by the Unit Owner of such Unit in the performance of such Unit Owner's obligations under this Declaration which is not cured within thirty (30) days. Any first mortgagee of a Unit who comes into possession of said Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed, or assignment in lieu of foreclosure, shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Unit which accrue prior to the time such holder comes into possession of the Unit, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units, including the mortgaged Unit.
- (b) Upon request in writing, each first mortgagee of a Unit shall have the right:
- i) to examine the books and records of the Association during normal business hours,
 - ii) to receive an annual financial statement from the Association within ninety (90) days following the end of each of the respective fiscal years,
 - iii) to receive notices of all meetings of the Association and to designate a representative to attend all such meetings, and
 - iv) to receive notice of any decision by the Unit Owners to make a material amendment to this Declaration, By-Laws contained herein, or Articles of Incorporation of the Association.
- (c) No provision of this Declaration, or Articles of Incorporation of the Association, or any similar instrument pertaining to the Property or the Units therein shall be deemed to give a Unit Owner or any other party priority over any rights of the first mortgagees of Units pursuant to their mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units and/or the Common Elements, or any portion thereof or interest therein. In such event, the holder of any first mortgage on a Unit shall be entitled to

timely written notice of any such loss.

(d) There shall be included in each annual assessment levied by the **Association**, but not as a special assessment, an amount sufficient to establish an adequate reserve fund for the replacement of the **Common Areas**.

(e) Unless the first mortgagees of all of the individual **Units** which have become a part of the **Property** have given their prior written approval, neither the **Association** nor the **Unit Owners** shall be entitled to:

i) by act or omission seek to abandon or terminate the condominium regime, except for abandonment provided by the **Act** in case of complete destruction to the **Buildings**,

ii) change the pro rata interest or obligations of any **Unit Owner** for (a) purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (b) determining the pro rata share of ownership of each **Unit Owner** in the **Common Areas**, except as provided in **Section 8.03** hereof,

iii) partition or subdivide any **Unit**,

iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the **Common Areas**. The granting of easements for public utilities or for other public purposes consistent with the intended use of the **Common Areas** by the condominium project shall not be deemed a transfer within the meaning of this clause,

v) use hazard insurance proceeds for losses to any **Property**, whether to **Units** or to **Common Areas**, for other than the repair, replacement, or construction of such improvements, except as provided by statute in case of substantial loss to the **Units** and/or the **Common Areas** of the **Property**,

vi) terminate professional management of the **Property** and assume self-management of the same, and

vii) materially amend the **Declaration**.

- (f) Upon specific written request to the Association, each first mortgagee of a Unit shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Areas if such damage or destruction or taking exceeds Ten Thousand Dollars (\$10,000.00), or, if damage shall occur to a Unit in excess of One Thousand Dollars (\$1,000.00), notice of such event shall also be given.
- (g) If any Unit, or portion thereof, or the Common Areas, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first mortgage on a Unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of any document will entitle the owner of a Unit or other party to priority over such institutional holder with respect to the distribution to such Unit of the proceeds of any award or settlement.

ARTICLE XI

General Provisions

11.01 **Certain Rights of the Declarant.** Until the time established by this Declaration for the election of the initial Board by the Unit Owners, the rights, titles, powers, privileges, trusts, duties, and obligations vested in or imposed upon the Board in the Act and in this Declaration shall be held and performed by the Declarant. If the initial Board shall not be elected by the Unit Owners at the time established by the Declaration, the Declarant shall continue in the aforesaid office for a period of thirty (30) days after written notice of its resignation is sent to all of the Unit Owners entitled to vote at such election. In exercising such rights and the other rights reserved by the Declarant pursuant to this Declaration, the Declarant, or its designees on the Board, shall not be under any disability which would otherwise be imposed by law by reason of the Declarant's interest in the subject matter of any transaction, provided, however, that any such transaction shall have been entered into in good faith.

11.02 **Notice to Mortgagees.** Upon written request to the Board, the holder of any duly recorded mortgage or trust deed against any Unit Ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Unit Owner whose Unit Ownership is subject to such mortgage or trust deed.

11.03 Manner of Giving Notices. Notices provided for in this Declaration and in the Act shall be in writing and shall be addressed to the Board or Association or any Unit Owner, as the case may be, at the address of the respective Unit Owner, indicating thereon the number of a respective Unit if addressed to a Unit Owners, or at such other address as herein provided. Any Unit Owner may designate a different address or addresses for notices to him by giving notice of his change of address to the Board or Association. Notices addressed as above shall be deemed delivered three (3) business days after being mailed by United States Postal Service, first class mail, postage prepaid, or when delivered in person with written acknowledgement of the receipt thereof, or, if, addressed to Unit Owner, when deposited in his mailbox in the Building or at the door of his Unit in the Building.

11.04 Notices to Estate or Representatives. Notices required to be given any devisee, heir, or personal representative of a deceased Unit Owner may be delivered either personally or by mail to such party at his or its address appearing in the records of the court wherein the estate of such deceased Unit Owner is being administered.

11.05 Conveyance and Leases. Each grantee of the Declarant and each subsequent grantee, by the acceptance of a deed of conveyance, and each purchaser under a purchase contract therefor, and each tenant under a lease for a Unit accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration, and all rights, benefits, and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having at any time an interest or estate in the Property and shall inure to the benefit of such Unit Owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

11.06 No Waivers. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

11.07 Change, Modification, or Rescission. No provision of this Declaration affecting the rights, privileges, and duties of the Declarant may be modified without written consent. The provisions of Section 9.03, Article X, and the following provisions of Section 11.07 of this Declaration may be changed, modified, or rescinded by an instrument in writing setting forth such change, modification, or rescission, signed and acknowledged by the Board and by all of the Unit Owners and all mortgagees having bona fide liens of record against any of the Unit Ownerships. Other provisions of this Declaration may be changed, modified, or rescinded by an instrument in writing setting forth such change,

modification, or rescission, signed and acknowledged by the Board and approved by Unit Owners having at least seventy-five percent (75%) of the total vote at a meeting called for that purpose, provided, however, that all holders of first mortgages of record have been notified by certified mail of any change, modification, or rescission and an affidavit by the Secretary of the Association certifying to such mailing is made a part of such instrument, and provided further, that any provisions herein which specifically grant rights to holders of first mortgages of record may be amended only with the written consent of all such holders of first mortgages. The change, modification, or rescission shall be effective upon recordation of such instrument in the Office of the Recorder of Marion County, Indiana.

11.08 Partial Invalidity. The invalidity of any covenant, restriction, condition, limitation, or any other provision of this Declaration, or any part of same, shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration.

11.09 Perpetuities and Other Invalidity. If any of the options, privileges, covenants, or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of A'Lelia Josephine Osili, Mother of Ifeanyi Osili II, Director, Empire Development, L. L. C., An Indiana Limited Liability Company.

11.10 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the operation of a first-class condominium development.

11.11 Floor Plans. The Plans setting forth the layout, location, identification numbers, and dimensions of the Units and the Property are incorporated in to this Declaration by reference and have been filed in the Office of the Recorder of Marion County, Indiana, in Horizontal Property Plan File as of _____, 1997, as Instrument Number _____.

1.0.

1.0.

11.12 Special Amendment. Developer and/or Declarant reserves the right and power to record a Special Amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Department of Veterans Affairs, or any other governmental agency or any other public quasi-public or private entity which performs, or may in the

future perform, functions similar to those currently performed by such agencies or entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering Unit Ownerships, (c) to bring this Declaration into compliance with the Act, or (d) to correct clerical or typographical errors in this Declaration or any Exhibit thereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer and/or Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust, deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement and a consent to the reservation of the power to the Developer and/or Declarant to vote in favor of, make, execute, and record Special Amendments. The right of the Developer and Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant and Developer no longer hold or control title to a Unit.

IN WITNESS WHEREOF, EMPIRE DEVELOPMENT, L. L. C., an Indiana Limited Liability Company, has caused this instrument to be executed this 12th day of FEBRUARY, 1997.

EMPIRE DEVELOPMENT, L. L. C.,
An Indiana Limited Liability
Company,

by [Signature]
Ifeanyi Osili II, Director

Before me, a Notary Public in and for the County of Marion, State of Indiana, personally appeared IFEANYI OSILI II, Director, EMPIRE DEVELOPMENT, L. L. C., An Indiana Limited Liability Company, who acknowledged the execution of the foregoing Declaration of Horizontal Property Regime and of Easements, Restrictions, Covenants, and By-Laws for Ada Building Condominiums, Inc., A Not-for-Profit Corporation, for and on behalf of EMPIRE DEVELOPMENT, L. L. C., An Indiana Limited Liability Company, for the uses and purposes therein set forth.

Witness my hand and Notarial Seal this 12th day of Feb.,



[Signature]
Printed Darrow A. Owens
Notary Public

MY COMMISSION EXPIRES:
March 14, 2000

MY COUNTY OF RESIDENCE:
Marion

This instrument prepared by: DARROW A. OWENS
Attorney No. 9797-49
302 North East Street
Indianapolis, Indiana 46202
(317) 638-1468



INSTRUMENT APPROVED
BY
CENTER TOWNSHIP ASSESSOR