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**DECLARATION  
OF  
COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
CIELO VISTA**

This Declaration of Covenants, Conditions and Restrictions, hereinafter called the Declaration, made on the date last below written by Greenwood Development Corporation, a corporation organized and existing under the laws of the State of Indiana, hereinafter referred to as the Declarant or the Sponsor.

#### WITNESSETH

WHEREAS, the Sponsor is the owner in fee simple of real estate located in Johnson County, State of Indiana, and more particularly described in Exhibit A, attached hereto and made a part hereof as though repeated in its entirety, said real estate hereinafter referred to as the Property, and

WHEREAS, the Sponsor by this Declaration intends to establish a plan for the individual ownership of individual lots in fee simple, together with dwelling units to be constructed thereon by the Sponsor, with common areas which will be owned by a not-for-profit corporation whose members will be the individual owners of the lots and homes located within the Project, and

WHEREAS, the Sponsor has deemed it desirable, for the efficient preservation of the values and amenities in the Property, to create an agency to which should be delegated and assigned the powers and duties of maintaining and administering the common areas and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created, and

WHEREAS, the Sponsor has caused or will cause an Association, to be known as the Cielo Vista Community Association, Inc., hereinafter referred to as the Association, the members of which shall be the respective owners of Dwelling Units in the Property, to be formed and incorporated as a not-for-profit corporation under and pursuant to the laws of the State of Indiana, for the purpose of exercising the aforesaid functions:

NOW, THEREFORE, the Sponsor, by execution of this Declaration, hereby creates the Cielo Vista community, and declares that all of the Property shall be held, transferred and conveyed subject to the following easements, covenants, conditions and restrictions, all of which are for the purpose of protecting and enhancing the value, desirability and attractiveness of the Property. These easements, covenants, conditions and restrictions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, subject to the provisions within this Declaration pertaining to abandonment or amendment, and these easements, covenants, conditions and restrictions shall inure to the benefit of each owner of a dwelling unit located within the Property.

#### ARTICLE I DEFINITIONS OF TERMS

As used herein or elsewhere in the Cielo Vista documents, unless otherwise provided, or unless the context requires otherwise, the following terms shall be defined as provided in this Article.

1. "Project" means the property and appurtenant easements for the dwelling units, the buildings, improvements, and property of every kind and nature whatsoever, real, personal, or mixed, located upon the Property and used in connection with the operation, use and enjoyment of Cielo Vista.
2. "Property" means the real estate described in Exhibit A hereto.
3. "Building" means one of the buildings containing the individual living units contained within the Project and offered for sale as an individual unit.
5. "Association" means Cielo Vista Community Association, Inc., a not-for-profit corporation organized or to be organized under the laws of the State of Indiana, and its successors. A copy of the By-Laws of said Corporation is annexed hereto and made a part hereof as Exhibit B.
6. "Common Area" means the common areas and facilities appurtenant within the Property, as may be shown on plats of the Property, and located without the boundaries of the individual dwelling unit lots.
7. "Dwelling Unit Owner" means a person or persons, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who owns the fee simple title to a Dwelling Unit and

ARTICLE I — Definitions of Terms (Continued)

who thus holds membership in the Association. For purposes of this definition, the Sponsor shall be for all intents and purposes a Dwelling Unit Owner of each and every one of those Dwelling Units presently contemplated to be constructed on the Property which has not had ownership transferred by deed by them, whether or not those units have yet been constructed.

8. "Mortgage" means the conveyance of any Dwelling Unit or other portion of the property to secure the performance of an obligation, which conveyance shall be void upon the due performance of said obligation.
9. "Mortgagee" means a person or entity to whom a mortgage is made.
10. "Mortgagor" means a person or entity who mortgages his or its property to another.
11. "Common Expenses" means the actual and estimated costs of maintenance, management, operation, repair and replacement of the Common Elements, those parts of the Dwelling Units as to which, pursuant to other provisions hereof, it is the responsibility of the Association to maintain, repair or replace, utility expenses incurred by the Association either for the Common Elements or on behalf of the combination of individual owners of Dwelling Units, management and administration of the Association, including, without limiting the same, compensation paid by the Association to a managing agent, accountants, attorneys, engineers and other employees, and any other items held by or in accordance with other provisions of this Declaration or the Project Documents to be a common expense, together with all sums legally assessed against the Dwelling Unit Owners by the Association or as declared by the Declaration or the By-Laws of the Association.
12. "Common Surplus" means the excess of all receipts of the Association including but not limited to assessments, rents, profits and revenues on account of the common elements, over the amount of common expenses.
13. "Project Documents" means the Declaration and the exhibits attached hereto as the same from time to time may be amended, together with any plats which may be prepared showing the locations of the individual Dwelling Unit Lots. Said Exhibits are as follows:  
Exhibit A: The legal description of the property as recorded in the Office of the Johnson County Recorder.  
Exhibit B: The By-Laws of the Cielo Vista Community Association, Inc.
14. "Sponsor" means Greenwood Development Corporation, its successors and assigns.
15. "Percentage Interest" means the percentage interest in the Association, as expressed in this Declaration.
16. "Board of Directors" means the governing body of the Association, elected by the members in accordance with the By-Laws of the Association.
17. "By-Laws" means the By-Laws of the Association providing for the administration and management of the Project as required by and in conformity with this Declaration, as those By-Laws may be amended from time to time as provided therein. A copy of the By-Laws is attached to this Declaration as Exhibit B and is incorporated herein by reference.
18. "Rules and Regulations" means rules and regulations providing restrictions on use of the property within the Project as initially adopted by the Sponsor and as may be adopted and amended from time to time by the Board of Directors of the Association.

ARTICLE II  
PROJECT NAME

The name of this Project is Cielo Vista.

ARTICLE III  
NAME OF ORGANIZATION OF DWELLING UNIT OWNERS

The name of the organization of Dwelling Unit Owners is or will be Cielo Vista Community Association, Inc., a not-for-profit corporation organized or to be organized under the laws of the State of Indiana, with a principal place of business at Greenwood, Indiana, or as may be relocated by resolution of the Board of Directors of the Association. The By-Laws of Cielo Vista Community Association, Inc., hereinafter referred to as the Association, are attached hereto as Exhibit B to this Declaration.

**ARTICLE IV  
BOUNDARIES OF DWELLING UNIT LOTS**

The boundaries of each Dwelling Unit Lot may be indicated by plats, surveys or plans prepared or caused to be prepared by the Sponsor, which plats, plans or surveys may be shown on any plat, survey or plan does not coincide with the actual location of the center of the party wall dividing individual Dwelling Units, because of inexactness of construction, settling after construction, or for any other reasons, the boundary lines of each Dwelling Unit shall be, for any and all purposes, including occupancy, possession, maintenance, decoration, use and enjoyment, in the center of the party wall as and where it was actually constructed.

**ARTICLE V  
COMMON ELEMENTS AND FACILITIES**

Common elements and facilities include the yards, gardens, driveways, sidewalks, parking areas and landscape and recreation areas lying outside of the individual Dwelling Unit Lots, and within the individual Dwelling Unit Lots to the extent reserved by easements, central electric, water, and sanitary sewer mains serving the Building, master television antenna and alarm systems with connecting outlets to each Dwelling Unit, and public utility lines. Open and covered parking spaces and enclosed storage areas within the parking areas located within the common areas may be assigned to the Owners of individual Dwelling Units by the Association, whereupon said Dwelling Unit Owners will be entitled to exclusive use and enjoyment of said parking spaces and storage areas, notwithstanding their location within common areas. The entrance is reserved to the use of the Association, and reasonable restrictions of use of certain common areas may be adopted and enforced by the Association, as provided in the By-Laws of the Association.

**ARTICLE VI  
MEMBERSHIP IN THE ASSOCIATION**

Every person or entity who is an owner of record of a Dwelling Unit which is subject, by covenants of record, to assessment by the Association, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from the ownership of a Dwelling Unit which is subject to assessment by the Association. Ownership of a Dwelling Unit shall be the sole qualification for membership in the Association.

**ARTICLE VII  
TRANSFER OF MEMBERSHIP IN THE ASSOCIATION**

The membership held by any owner of a Dwelling Unit shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Dwelling Unit, and then only to the purchaser or mortgagee of such Dwelling Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association, which books and records include the official record of the list of members. In the event the owner of any Dwelling Unit should fail or refuse to transfer the membership registered in his name to the purchaser of such Dwelling Unit, the Association shall have the right to record the transfer upon the books and records of the Association and shall issue a new certificate of membership to the purchaser, and thereupon, the old certificate outstanding in the name of the seller shall be null and void as though the same had been surrendered.

**ARTICLE VIII  
VOTING RIGHTS IN THE ASSOCIATION**

The Association shall have two classes of voting membership:

**Class A Membership:**

Class A members shall be all those Dwelling Unit Owners as defined in Article I of this Declaration with the exception of the Sponsor. Class A members shall be entitled to one vote for each Dwelling Unit in which they hold the interest required for membership by Article VI of this Declaration. When more than one person holds such interest in any Dwelling Unit, all such persons shall be members. When an entity other than a natural person is an owner, that entity owner shall designate who shall be members, subject to such rules and regulations as the Association, acting through its Board of Directors by resolution, may adopt. Where there is more than one member for a Dwelling Unit, the vote for such Dwelling Unit shall be

ARTICLE VIII — Voting Rights in the Association (Continued)

Class A Membership: (Continued)

exercised as they among themselves determine, subject to the provisions of the By-Laws of the Association pertaining to multiple ownership, but in no event shall more than one vote be case with respect to any Dwelling Unit.

**Class B Membership:**

The Class B members shall be the Sponsor, as defined in this Declaration, and shall be entitled to three votes for each Dwelling Unit owned. For purposes of defining such ownership, the Dwelling Units to be located within the Property shall be deemed to be owned by the Sponsor upon presentation to and acceptance by the Indiana Secretary of State of the Articles of Incorporation of the Association and the recording of this Declaration in the public records in the Office of the Johnson County Recorder, whether or not such Dwelling Units have been constructed. The Sponsor shall be entitled to three (3) votes for each Dwelling Unit so owned by the Sponsor. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- A. When the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership.
- B. On that date which is three years after the filing of the Articles of Incorporation of the Association with the Indiana Secretary of State or the recording of this Declaration with the Office of the Johnson County Recorder, whichever occurs later.

However, notwithstanding these provisions, the Class B membership shall cease and be converted into Class A membership upon unanimous vote of the Class B. owners and approval by resolution of the Board of Directors of the Association.

**ARTICLE IX  
RIGHTS AND SHARES IN COMMON AREAS AND EXPENSES**

Each Dwelling Unit Owner who holds Class A membership in the Association shall be liable for common expenses in a percentage interest for each dwelling unit of one divided by the total number of Dwelling Units to be constructed in the Project, which number is anticipated to be.

These respective liabilities are to be conveyed with the respective Dwelling Units, and the Sponsor, its successors and assigns and grantees covenant and agree that the liabilities and the fee titles to the respective Dwelling Units conveyed therewith shall not be separated.

**ARTICLE X  
LIMITATIONS ON USE**

The Dwelling Units and common areas shall be used and occupied subject to the following provisions:

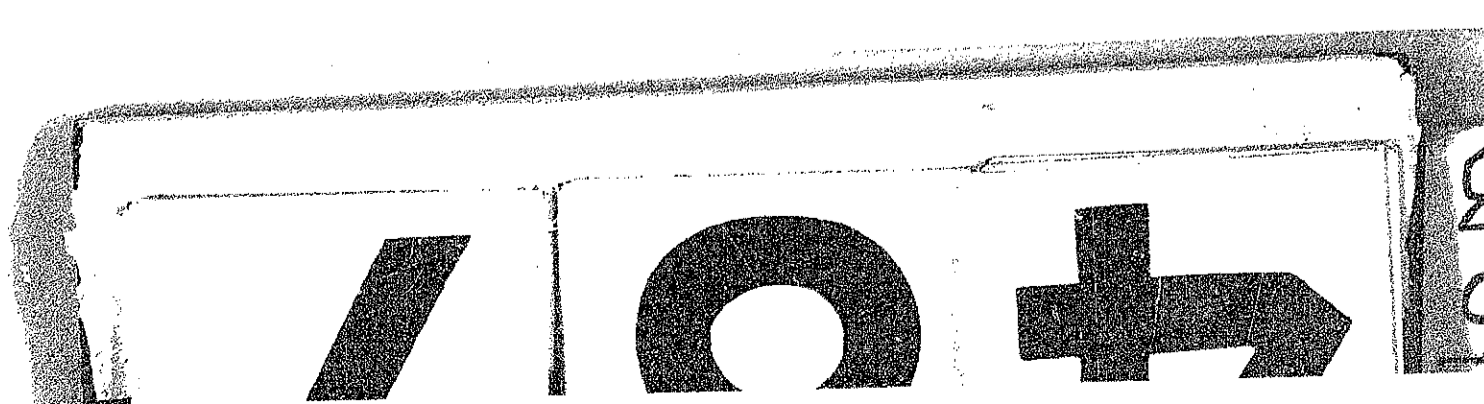
**Permitted Uses:** No part of the Project shall be used for other than housing and the common recreational purposes for which the Project was designed and intended.

**Obstruction of Common Elements:** There shall be no obstruction of the common elements nor shall anything be stored in the common elements except in enclosed storage areas which may be provided without the prior consent of the Board of Directors, except as hereinafter expressly provided. Each Dwelling Unit Owner shall be obligated to maintain and keep in good order and repair his own Dwelling Unit in accordance with the provisions of this Declaration and the By-Laws of the Association.

**Restriction on Use:** Nothing shall be done or kept in any Dwelling Unit or in the common areas which will increase the rate of insurance of any of the buildings, or contents thereof, applicable for residential use or permitted professional purposes, without the prior written consent of the Board of Directors of the Association.

No Dwelling Unit Owner shall permit anything to be done, or kept in his Dwelling Unit, or in the common areas which will result in the cancellation of insurance on any of the buildings, or contents thereof, or which would be in violation of any law.

No waste shall be committed in the common elements.



ARTICLE X — Limitations on Use (Continued)

**Exterior Display:** Dwelling Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls or doors of a building and no sign, awning, canopy, shutter or radio or television antenna shall be affixed to or placed upon the exterior walls or doors, roof or any part thereof or exposed on or at any window, without the prior consent of the board of Directors.

No clothes, sheets, blankets, laundry or any kind of other articles shall be hung out of a Dwelling Unit or exposed on any part of the common elements.

**Animals:** No animals or reptiles of any kind shall be raised, bred, or kept in any Dwelling Unit or in the common areas, except that dogs, cats or other household pets, not to exceed two per Dwelling Unit, may be kept in Dwelling Units subject to any rules and regulations which may be adopted regarding animals by the Board of Directors, provided that they are not kept, bred or maintained for any commercial purposes; and provided further than any such pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Project subject to these restrictions upon three days written notice from the Board of Directors of the Association.

**Offensive Activities:** No noxious or offensive activity shall be carried on in any Dwelling 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 Dwelling Unit Owners or occupants.

No Dwelling Unit Owner shall make or permit any disturbing noises in the buildings by himself, his family, servants, employees, agents, visitors or licensees, nor do or permit anything by such persons that will interfere with the rights, comforts or conveniences of other Dwelling Unit Owners.

**Exterior Signs:** No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designed for profit, altruism, or otherwise, shall be conducted, maintained or permitted on any part of the Project, nor shall any "For Sale," "For Rent" or "For Lease" signs or other window displays or advertising be maintained or permitted on any part of the Property or in any Dwelling Unit therein nor shall any Dwelling Unit be used or rented for transient, hotel, or motel purposes, except that short term rental and leasing programs shall be allowed by the Sponsor and the Association under leasing or renting plans reviewed and approved by them.

The right is reserved by the Sponsor and the Board of Directors, or its agent, to place such exterior signs on any unsold or unoccupied units, and the right is hereby given to any mortgagee, who may become the owner of any Dwelling Unit, to place such signs on any Dwelling Unit owned by such mortgagee, but in no event will any such sign be larger than one foot by two feet in size.

Notwithstanding this provision, or any other provision to the contrary, Dwelling Units may be used as a professional office by a person who owns the Dwelling Unit. Such professional use is subject to applicable governmental regulations and the prior written permission of the Board of Directors. However, no illuminated or other sign may be used in connection with said use excepting only a professional shingle, non-illuminated, not larger than the size permitted by local zoning requirements but in no event larger than three inches by eighteen inches.

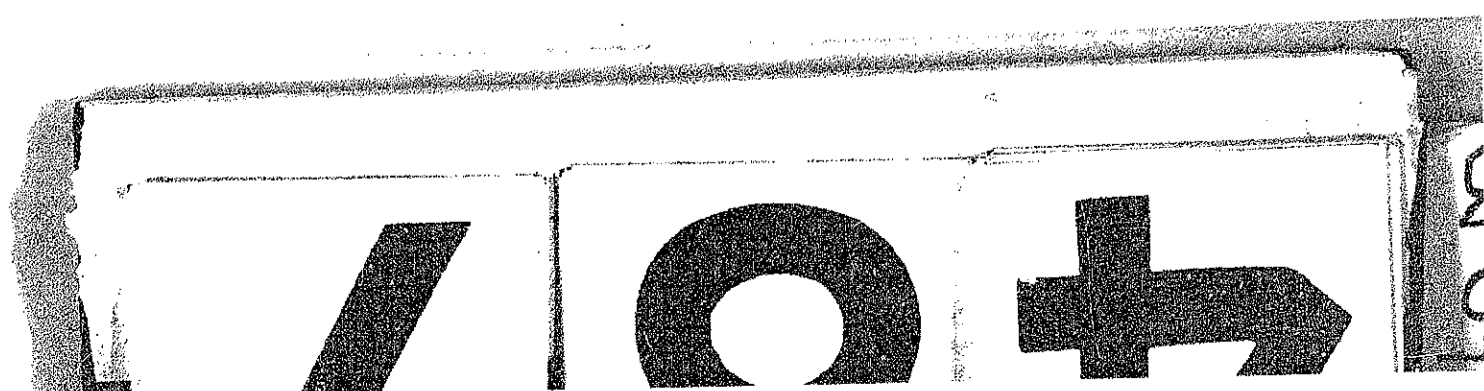
**Alteration of Common Elements:** Nothing shall be altered or constructed in or removed from the common elements, except upon the written consent of the Board of Directors.

**Electrical Equipment:** All radio, television, or other electrical equipment of any kind or nature installed or used in each Dwelling Unit shall fully comply with all rules, regulations, requirements or recommendations of the Board of Fire Underwriters and the public authorities having jurisdiction, and the Dwelling Unit Owner alone shall be liable for any damage or injury caused by any radio, television or other electrical equipment in such Dwelling Unit.

**Refuse:** No garbage cans shall be placed in the entryways or patios, or any place other than trash receptacles or other areas expressly designated for such purposes by the Board of Directors.

**Automobiles:** No washing of automobiles shall take place on any of the Project other than areas designated for such use by the Board of Directors. No parking area shall be used for any purpose other than to park automobiles, specifically excluding trucks, motor homes, commercial vehicles in excess of 6,000 pounds gross weight or trailers.

Automobiles shall be parked only in areas designated for such use by the Board of Directors. The Association reserves the right to make monthly charges to the Dwelling Unit Owners in amounts sufficient to cover estimated maintenance costs for covered parking spaces.





ARTICLE X — Limitations on Use (Continued)

**Objectionable Odors:** Dwelling Unit Owners shall not cause or permit any unusual or objectionable odors to be produced upon or emanate from their Dwelling Units.

**Dangerous Substances:** No Dwelling Unit Owner or occupant or any of his agents, servants, employees, licensees or visitors shall at any time, bring into or keep in his Dwelling Unit any flammable, combustible or explosive fluid, material, chemical or substance.

**Architectural Control:** No building fence, wall or other structure shall be commenced, erected or maintained upon the Project, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Committee composed of three or more representatives which shall be appointed by the Board of Directors of the Association.

The Association, acting through its Board of Directors and in accordance with the Association By-Laws, is authorized to adopt rules and regulations relating to use of the common areas. Any rules or regulations so adopted shall be furnished in writing to the Dwelling Unit Owners, and such Owners shall permit no violation of such rules and regulations.

The Sponsor, notwithstanding any other provisions in this Declaration, hereby reserves to itself, its agents and representatives the non-exclusive use of the common areas and the facilities located therein, including parking areas, for display and exhibit purposes in connection with the sale of Dwelling Units within the Project, provided, however, that such use shall not be for a period of more than three years from the date of recording of this Declaration, and provided further that no such use by the Sponsor or its agents or representatives shall otherwise restrict the Dwelling Unit Owners in their use and enjoyment of the common areas or the facilities located thereon.

ARTICLE XI  
DELEGATION OF USE

Any Dwelling Unit Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the common areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

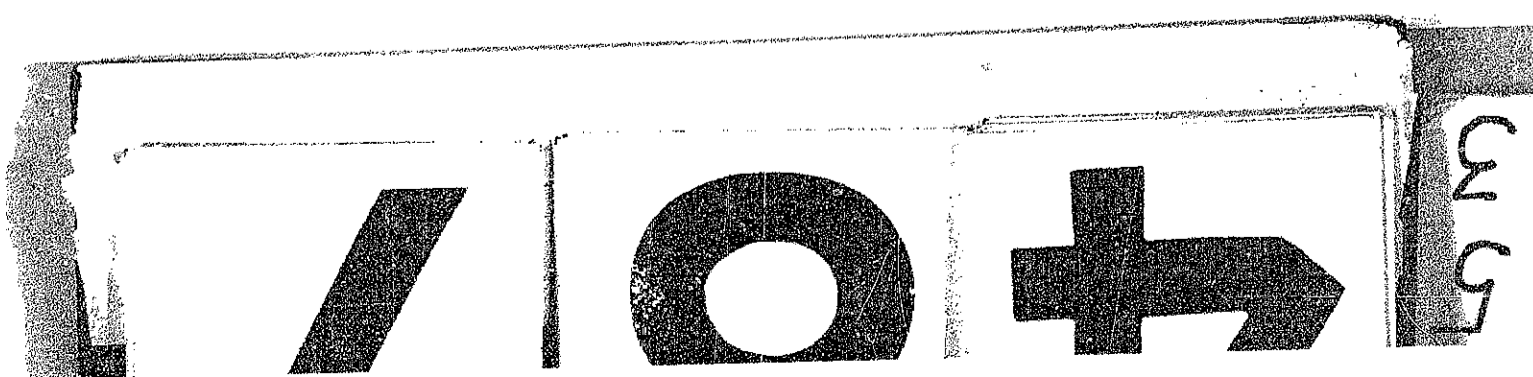
ARTICLE XII  
WAIVER OF USE

No Dwelling Unit Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Dwelling Unit owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the common area and the facilities thereon or by abandonment of his Dwelling Unit.

ARTICLE XIII  
ADDITIONAL PROVISIONS RELATING TO COMMON AREAS

The Sponsor, its successors and assigns, and all future Dwelling Unit Owners, by their acceptance of their respective deeds, covenant and and agree as follows:

1. That if any portion of the common area encroaches upon the Dwelling Unit, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event a building is partially or totally destroyed, and then rebuilt, the owners of Dwelling Units agree that minor encroachments of parts of the common areas due to construction shall be permitted and that valid easements for said encroachment and the maintenance thereof shall exist.
2. That the common area is and shall always be subject to easements for minor encroachments thereon of the Dwelling Unit and that a non-exclusive easement for ingress, egress and support through the common area is appurtenant to each Dwelling Unit and the common area is subject to such easements.
3. That the fronts of the individual Dwelling Unit Lots are encumbered by access easements in favor of the owners of adjacent Dwelling Units.



**ARTICLE XIV  
OWNERS'S OBLIGATION TO REPAIR**

Except for those portions which the Association is required to maintain and repair hereunder, each Dwelling Unit Owner is required to maintain and repair, at his own expense, the interior of his Dwelling Unit and its equipment and appurtenances, and to keep the same in good order, condition, and state, and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may be at any time necessary to maintain the good appearance and condition of his Dwelling Unit. In addition to decorating and keeping the interior of the Dwelling Unit in good repair, the Dwelling Unit Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, furnaces, lighting fixtures, including outdoor lighting fixtures connected to the walls of the Dwelling Unit, refrigerators, air conditioning equipment, dishwashers, washers and dryers, trash compactors, disposals or ranges that may be in or connect with the Dwelling Unit.

The Dwelling Unit Owner shall also, at his own expense, keep the interior of the patio, garage storage shed and covered parking space which may be assigned to his Dwelling Unit in a clean and sanitary condition. The Association shall not be responsible to the Dwelling Unit Owner for loss or damage by theft, or otherwise, of articles which may be stored by the Owner in the patio, enclosed exterior storage area or covered or uncovered parking space, or Dwelling Unit.

**ARTICLE XV  
PROHIBITION AGAINST STRUCTURAL CHANGES**

The Dwelling Unit Owner shall not, without first obtaining written consent of the Association, make or permit to be made any structural alteration, improvement or addition in or to his Dwelling Unit or in or to the exterior of the Buildings or common area. The Dwelling Unit Owner shall do no act nor any work that will impair the structural soundness or integrity of the Buildings or safety of the Property or impair any easement or hereditament without the written consent of all Dwelling Unit Owners and the Association. The Dwelling Unit Owner shall not paint or decorate any portion of the exterior of the Buildings or other common area or any portion of the patio fences, garages enclosed storage areas or covered parking spaces without first obtaining written consent of the Association.

**ARTICLE XVI  
SPONSOR'S LICENSE TO USE COMMON AREAS**

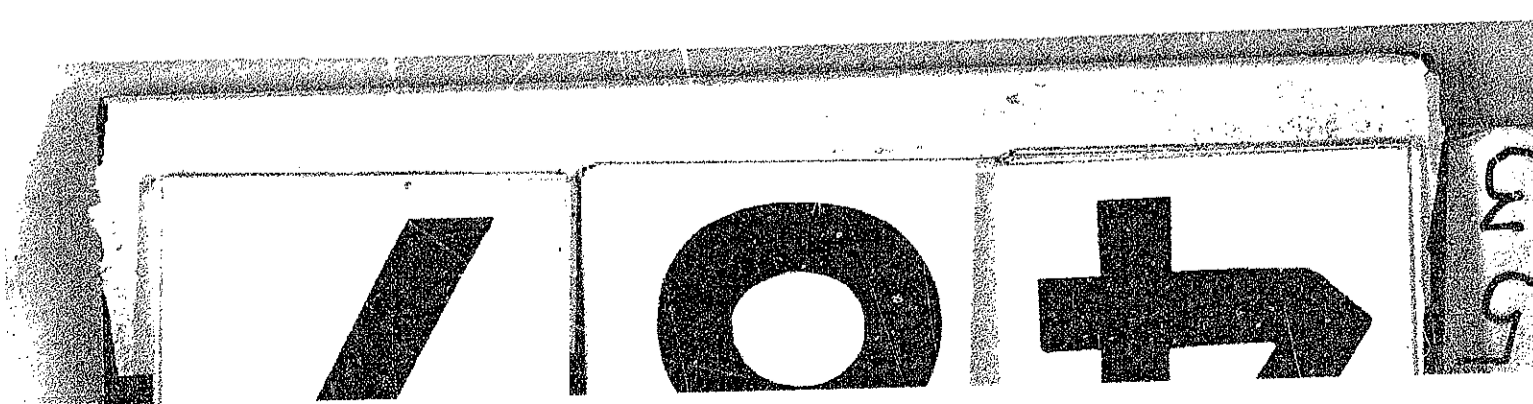
The Sponsor contemplates constructing the Project in stages, and Dwelling Unit Owners hereby grant an easement and license to the Sponsor to use the common areas for construction purposes, including storage of materials and equipment. The common areas will revert to the Association, and said license and easement will cease upon completion of construction.

**ARTICLE XVII  
ENTRY FOR REPAIRS**

The Association or its agents may enter any Dwelling Unit when necessary in connection with any maintenance, landscaping or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as possible, and any damage caused thereby shall be repaired by the Association out of the common expense fund.

**ARTICLE XVIII  
FAILURE OF ASSOCIATION TO INSIST ON STRICT PERFORMANCE NO WAIVER**

The failure of the Association to insist in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future, or such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association of any assessment from a Dwelling Unit Owner, which knowledge of the breach of any covenant hereof shall not be deemed as a waiver of such breach, and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors of the Association.





**ARTICLE XIX  
LIMITATION OF ASSOCIATION'S LIABILITY**

The Officers and/or Directors of the Association shall not be liable for any failure of water supply or other service to be obtained and paid for by the Association hereunder, or for injury or damage to person or property caused by the elements or by another Dwelling Unit Owner or person in the Project, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of the Buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless caused by gross negligence of the Officers and/or Directors of the Association. No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising out of or from the making of repairs or improvements to the common area or from any action taken to comply with any law, ordinance or orders of a governmental authority.

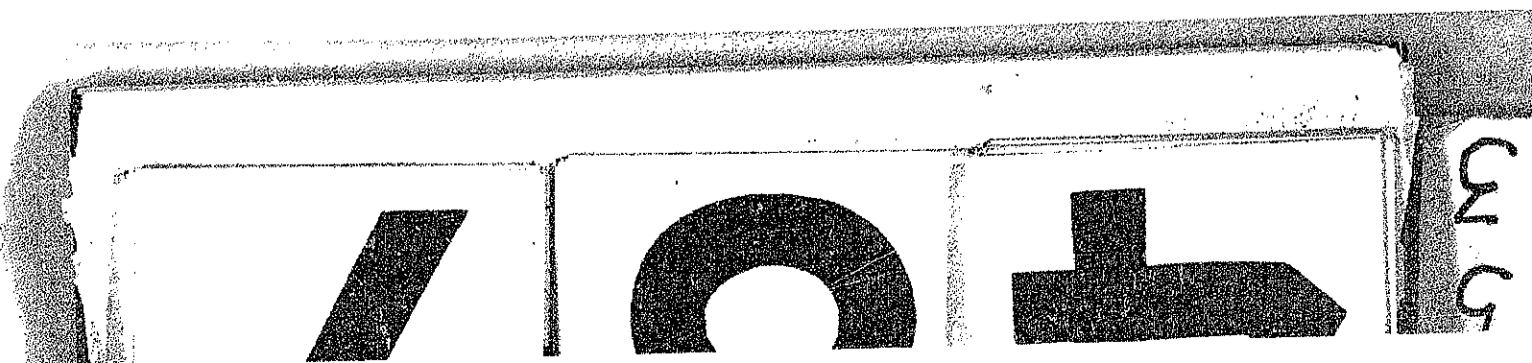
**ARTICLE XX  
NON-LIABILITY OF DIRECTORS AND INDEMNITY OF DIRECTORS**

The Directors shall not be liable to the Dwelling Unit Owners for any error or mistake of judgement exercised in carrying out their duties and responsibilities as Directors, except for their own willful misconduct, bad faith or gross negligence. The Dwelling Unit Owners shall indemnify and hold harmless each of the Directors against any and all liability to any person, firm, or corporation or other legal entity arising out of contracts made by the Board of Directors on behalf of the Project, unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration or the By-Laws of the Association. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Project or the Association, and that in all matters the Board is acting for and on behalf of the Dwelling Unit Owners, as their agent. The liability of any Dwelling Unit Owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the Directors shall be limited to such percentage of the total liability or obligation thereunder as is equal to his percentage interest. Every contract made by the Board of Directors or the managing agent on behalf of the Project or the Association shall provide that the Board of Directors or the managing agent, as the case may be, is acting as agent for the Dwelling Unit Owners, and shall have no personal liability thereunder, except in their capacity as Dwelling Unit Owners, and then only to the extent of their percentage interest.

The Dwelling Unit Owners shall indemnify any person, his heirs, assigns and legal representatives made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorneys fees, actually and necessarily incurred by him in connection with any appeal therefrom, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Dwelling Unit Owners shall also reimburse to any such Director the reasonable costs of settlement of or judgement rendered in any action, suit or proceeding if it shall be found by a majority of the total votes of the membership that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the managing agent of the Project or any officer or employee thereof, or an accountant, attorney, or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Association.

**ARTICLE XXI  
NO PARTITION**

There shall be no judicial partition of the Project or any part thereof, nor shall the Sponsor or any person acquiring any interest in the Project or any part thereof seek any such judicial partitions except in the case of damage or destruction, provided, however, that if any Dwelling Unit shall be owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants, but such partition shall not affect any other Dwelling Unit.



**ARTICLE XXII  
REAL ESTATE TAXES**

Real estate taxes are to be separately taxed to each Dwelling Unit Lot. In the event that for any year real estate taxes are not separately assessed and taxed to each Lot, but are assessed and taxed on the Property as a whole, then each Dwelling Unit Owner shall pay his proportionate share thereof, based upon the square footage of his Unit in relation to the Total square footage of all Dwelling Units in the Project.

**ARTICLE XXIII  
PERSONAL PROPERTY**

The Association may acquire and hold, for the benefit of the Dwelling Unit Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the Association for the Dwelling Unit Owners in the same proportion as their respective interests in the Association, and shall not be transferable except with a transfer of a Dwelling Unit. A transfer of a Dwelling Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property.

**ARTICLE XXIV  
AUDIT**

Any Dwelling Unit Owner may at any time at his own expense cause an audit or inspection to be made of the books and records of the Association, and the Association, at the expense of the common expenses, shall obtain an audit of all books and records pertaining to the Project at no greater than annual intervals and furnish copies thereof to the Dwelling Unit Owners.

**ARTICLE XXV  
POWERS AND DUTIES OF THE ASSOCIATION**

All of the powers and duties of the Association shall be exercised by the Board of Directors, including those existing under the common law and statutes, this Declaration, and the By-Laws. Such powers and duties shall be exercised in accordance with this Declaration and the By-Laws, and shall include, without limiting the generality of the foregoing, the following:

1. To make, levy, and collect assessments against members and member's Dwelling Units to defray the costs of the Project common costs, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association.
2. The maintenance, repair, replacement, operation and management of the Project wherever the same is required to be done and accomplished by the Association for the benefit of the members.
3. The reconstruction of improvements after casualty, and the further improvement of the Property, real and personal.
4. To make and amend regulations governing the use of the Property, real and personal, in the Project, so long as such regulations and amendments thereto do not conflict with the restrictions and limitations which are placed upon the use of such property under the terms of this Declaration.
5. To acquire, operate, lease, manage and otherwise trade and deal with property, real and personal including Dwelling Units in the Project as may be necessary or convenient in the operation and management of the Project, and in accomplishing the purposes set forth in this Declaration.
6. To contract for the management of the Project and to designate to such contractor all of the powers and duties of the Association, except those which may be required by this Declaration to have the approval of the Board of Directors or membership of the Association.
7. To enforce by legal means the provisions of this Declaration, the By-Laws of the Association, and the regulations which may be adopted by the Board of Directors of the Association.
8. To pay all taxes and assessments which are liens against any part of the Project other than Dwelling Units and the appurtenances thereto, and to assess the same against the members and their respective Dwelling Units subject to such liens.
9. To carry insurance for the protection of the members and the Association against casualty and liability, as provided in this Declaration.
10. To pay all costs of power, water and sewer and other utility services rendered to the Project and not billed to the Dwelling Unit Owners.

ARTICLE XXV — Powers and Duties of the Association (Continued)

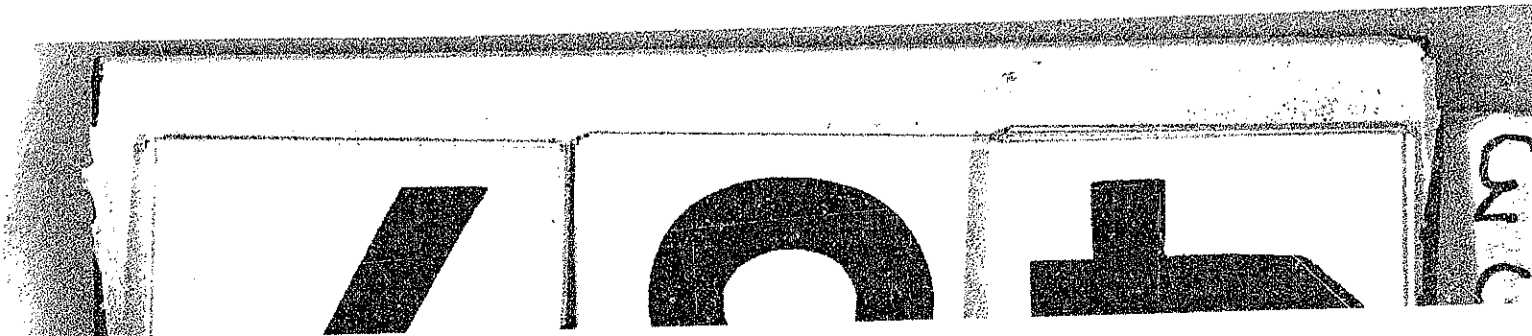
11. To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association.
12. To pay any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Property or any part thereof which may in the opinion of the Board of Directors of the Association constitute a lien against the Project or against the common elements of the Project, rather than merely against the interests therein of particular Dwelling Unit Owners. Where one or more Dwelling 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 of Directors of the Association by reason of said lien shall be specially assessed to said Dwelling Unit Owners.
13. To provide maintenance and repair of any Dwelling Unit if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements or any other portion of the Project, and a Dwelling Unit Owner has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of such maintenance or repair was delivered by the Board to said Owner, provided that the Board shall levy a special assessment against such Owner for the cost of such maintenance or repair.
14. To enter into any Dwelling Unit when necessary in connection with any maintenance or construction for which the Board is responsible. Such entry shall be made with as little inconvenience to the Dwelling Unit Owners as possible, and any damage caused thereby shall be repaired by the Board at the expense of the Maintenance fund.
15. To employ legal counsel, architects, engineers, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Project.
16. To open and maintain a bank account or accounts in the name of the Association.
17. To provide property insurance and liability insurance as provided in this Declaration.
18. To cause to be prepared an annual budget, a copy of which shall be mailed or delivered to each Dwelling Unit Owner at the same time as the Notice of Annual Meeting is mailed or delivered.
19. To cause to be kept a current, accurate and detailed record of receipts and expenditures affecting the Project, specifying and itemizing the common expenses. All records and vouchers shall be available for examination by an Owner during normal hours.

**ARTICLE XXVI  
LIMITATION ON BOARD ACTION**

The powers of the Board of Directors of the Association herein enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the common or maintenance fund any structural additions or alterations, capital additions to, or capital improvements of the common elements, other than for purposes of replacing or restoring portions of the common elements, subject to all the provisions of this Declaration and the By-Laws of the Association, requiring an expenditure in excess of five thousand dollars without in each case, obtaining the approval of a majority of the votes of each class of membership in the Association.

**ARTICLE XXVII  
EXECUTION OF CONTRACTS**

All agreements, contracts, deeds, leases, and vouchers for payment of expenditures and other instruments shall be signed by such officer or officers, agent or agents of the Board of Directors of the Association 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.



**ARTICLE XXVIII  
RULES AND REGULATIONS**

The Board of Directors of the Association, at the direction of the voting members having two-thirds of the total votes of either class of membership in the Association, may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of Cielo Vista, and for the health, comfort, safety, and general welfare of the Dwelling Unit Owners and occupants of the Project. Written notice of such rules and regulations shall be given to all Dwelling Unit Owners and occupants and the entire Project shall at all times be maintained subject to such rules and regulations.

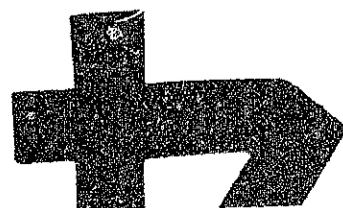
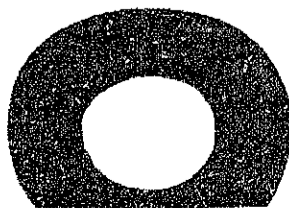
**ARTICLE XXIX  
CONCESSIONS**

The Board of Directors of the Association shall have the authority to lease or grant licenses or concessions with respect to any part of the common areas or elements, subject to the terms of this declaration.

**ARTICLE XXX  
AUTHORITY OF THE ASSOCIATION**

The Association, for the benefit of the Dwelling Unit Owners, shall enforce the provisions hereof and shall acquire and shall pay for out of the common expense fund hereinafter provided for, the following:

1. Water, sanitary sewer, garbage and trash collection, electric service, telephone service, and other necessary utility service for the common area and for the Dwelling Units as a whole, to the extent not separately metered or charged to the individual Dwelling Units.
2. A policy or policies of fire insurance as the same are more fully set forth in this Declaration, with extended coverage endorsement, for the full insurable replacement value of the Dwelling Units and the common areas, payable as provided elsewhere in this Declaration, or such other fire and casualty insurance as the Association shall determine gives substantially equal protection to the Dwelling Unit Owners, and their mortgagees, as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Unit, if any.
3. A policy or policies of insurance as the same are more fully set forth elsewhere in this Declaration insuring the Association and the Dwelling Unit Owners against any liability to the public or to the Dwelling Unit Owners and the invitees or tenants incident to the ownership and/or use of the Project, and including the personal liability exposure of the Dwelling Unit Owners limits of liability under such insurance shall not be less than One Hundred Thousand Dollars (\$100,000) for any one person injured, and Three Hundred Thousand Dollars (\$300,000) for any one accident, and shall not be less than One Hundred Thousand Dollars (\$100,000) for property damage for each occurrence, with such limits and coverage to be reviewed at least annually by the Association and increased in its discretion. Said policy or policies shall be issued on a comprehensive liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.
4. Workmen's Compensation insurance to the extent necessary to comply with any applicable laws.
5. The services of a person of firm to manage the Project, herein called the Manager, as well as such other personnel as the Association shall determine shall be necessary or proper for the operation of the Common Area, whether such personnel are employed directly by the Association or are furnished by the Manager. Any change in Manager after the date of the consent of the Mortgagee attached hereto shall not be effective unless thirty days written notice of such change is given to the Mortgagee who has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws.
6. Legal and accounting services necessary or proper in the operation of the common area or the enforcement of this declaration.
7. Painting, maintenance, repair and all landscaping of the common areas, and such furnishings and equipment for the common area as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the common area, provided, however, that the interior services of each Dwelling Unit shall be painted, maintained, and repaired by the Owners thereof, all such maintenance to be at the sole cost and expense of the particular Dwelling Unit Owner.



ARTICLE XXX — Authority of the Association (Continued)

8. Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation of the common area or for the enforcement of this Declaration, provided that if any such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for particular Dwelling Units, the cost thereof shall be specially assessed to those particular Dwelling Unit Owners.
9. Maintenance and repair of any Dwelling Unit, if such maintenance or repair is reasonably necessary in the discretion of the Association to protect the common area or preserve the appearance and value of the Project, and the Dwelling Unit Owner or Owners have 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 Association to said Owner or Owners, provided that the Association shall levy a special assessment against the Dwelling Unit of such owner or Owners for the cost of said maintenance and repair.

ARTICLE XXXI  
COVENANT FOR MAINTENANCE ASSESSMENTS

The Sponsor, for each Dwelling Unit owned by it hereby covenants, and each Dwelling Unit Owner of any Dwelling Unit which becomes subject to the jurisdiction of the Association, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) Regular Assessments or charges and (2) Special Assessments for capital improvements. Such assessments are to be fixed, established and collected from time to time as hereinafter provided. The Regular and Special Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the real property and shall be a continuing lien upon the Dwelling Unit against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Dwelling Unit Owner at the time when the assessment became due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Project and for the improvement and maintenance of the common areas.

In addition to the Regular Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Written notice of any meeting called for the purpose of taking any action above authorized shall be sent to all members not less than thirty days nor more than sixty days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

Both Regular and Special Assessments must be fixed at a uniform rate for all Dwelling Units, since each Dwelling Unit Owner has an equal share in the common areas and elements.

The Regular Assessments provided for herein shall commence as to all Dwelling Units owned by Class A members on the first day of the month following transfer of title to them by the Sponsor. Subject to other provisions contained in this Declaration, the Board of Directors shall fix the amount of the Regular Assessment against each Dwelling Unit at least thirty days in advance of each Regular Assessment period. Written notice of the Regular Assessment shall be sent to every Dwelling Unit Owner subject thereto. The due dates shall be established by the Board of Directors, and, unless otherwise provided, the Association shall collect each month from the Dwelling Unit Owner the Regular Assessment for each month for such Dwelling Unit. The Association shall, upon demand, and for a reasonable charge, furnish a cer-



ARTICLE XXXI — Covenant for Maintenance Assessments (Continued)

certificate signed by an officer of the Association setting forth whether the assessments on a specified Dwelling Unit have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**ARTICLE XXXII  
DEFAULT IN PAYMENT OF ASSESSMENTS**

Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Dwelling Unit Owner against whom the same are assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgement for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether Regular or Special, assessed to the Dwelling Unit Owner plus interest at eight percent, and costs, including reasonable attorney's fees, shall become a lien upon such Dwelling Unit as provided in this Declaration. The said lien for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

1. Tax and special assessment liens on the Dwelling Unit in favor of any assessment unit, or special district, and
2. Encumbrances on the Owner's Dwelling Unit recorded prior to the due date of regular and/or special assessments.

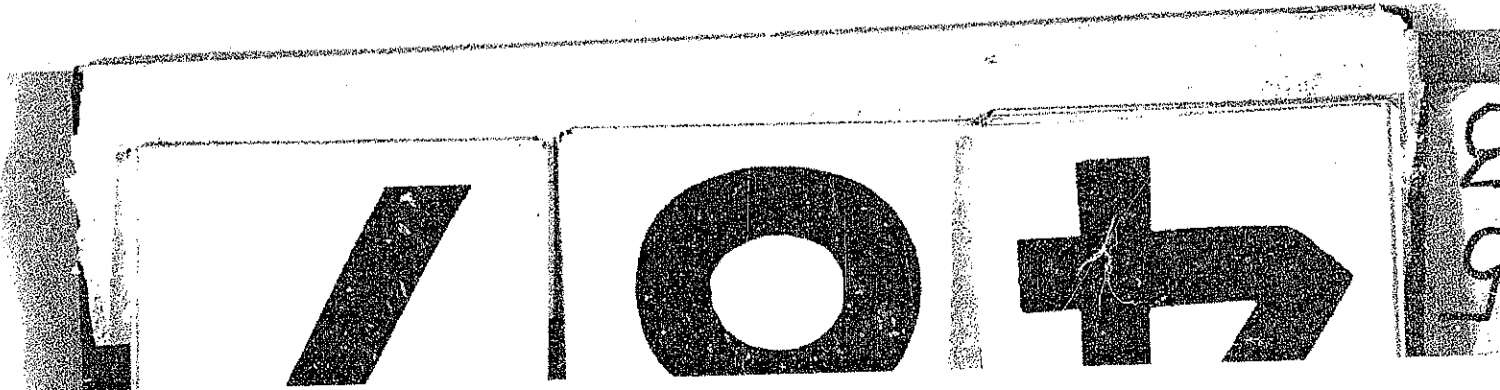
A certificate executed and acknowledged by a majority of the Board of Directors stating the indebtedness secured by the lien upon any Dwelling Unit created hereunder, shall be conclusive upon the Association and the Dwelling Unit Owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Dwelling Unit Owner or any encumbrancer or prospective encumbrancer of a Dwelling Unit upon request for a certificate of indebtedness shall be complied with within ten days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien held by the person making the request. Any encumbrancer holding a lien on a Dwelling Unit may pay any unpaid common expenses payable with respect to such Dwelling Unit and upon such payment, such encumbrancer shall have a lien on such Dwelling Unit for the amounts paid of the same rank as the lien of his encumbrance.

Such lien for nonpayment of assessments may be enforced by sale by the Association, such sale to be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds or mortgages or in any manner permitted by law. In any foreclosure or sale, the Dwelling Unit Owner shall be required to pay the costs and expenses of such proceedings and reasonable attorney's fees.

**ARTICLE XXXIII  
MORTGAGE PROTECTION**

Notwithstanding all other provisions hereof:

1. The liens created hereunder upon any Dwelling Unit shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage, meaning a mortgage with first priority over other mortgages, upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Article XXXII hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether Regular or Special, assessed hereunder to such purchaser as a Dwelling Unit Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.
2. No amendment of this paragraph or Article shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.
3. By subordination agreement executed by a majority of the Board of Directors, the benefits of (1) and (2) above may be extended to mortgages not otherwise entitled thereto.





**ARTICLE XXXIV  
INSURANCE**

The Association shall obtain and maintain at all times insurance of the type and kind and in at least the amounts provided herein, and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other projects similar in construction, design and use, which insurance shall be governed by the following provisions:

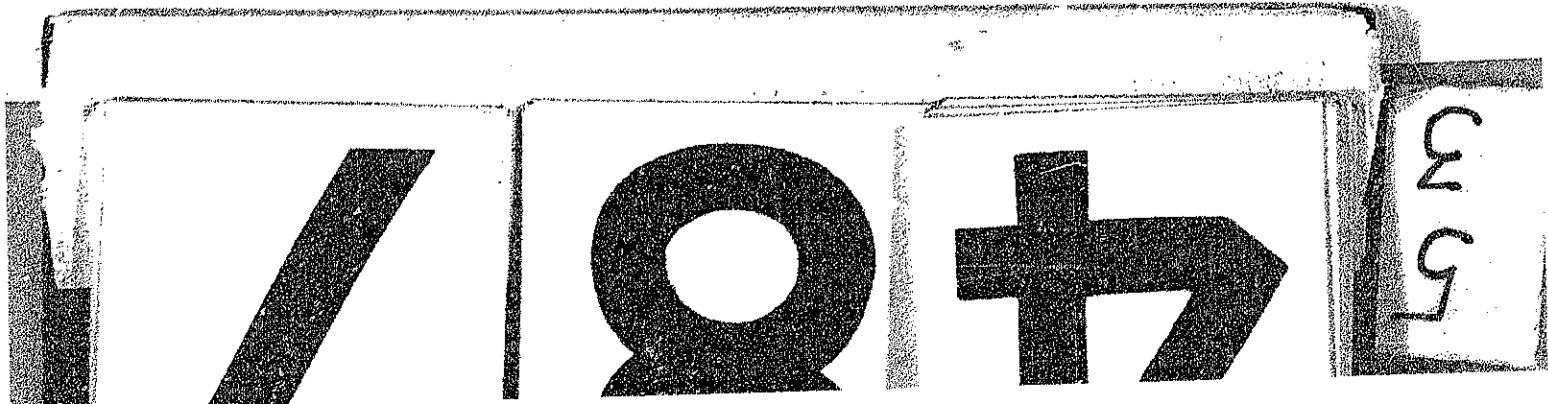
1. All policies shall be written with a company licensed to do business in the State of Indiana.
2. Exclusive authority to adjust losses under policies hereafter in force in the Project shall be vested in the Association or its authorized representatives.
3. In no event shall the insurance coverage obtained and maintained by the Association hereunder, be brought into contribution with insurance purchased by individual Dwelling Unit Owners or their mortgagees.
4. Each Dwelling Unit Owner may obtain additional insurance at his own expense, provided, however, that no Dwelling Unit Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, in behalf of all of the Dwelling Unit Owners, may realize under any insurance policy which the Association may have in force on the Project at any particular time.
5. Each Dwelling Unit Owner shall be required to notify the Association of all improvements made by the Owner to his Dwelling Unit, the value of which is in excess of One Thousand Dollars (\$1,000).
6. Any Dwelling Unit Owner who obtains individual insurance policies covering any portion of the Project other than personal property belonging to such Owner, shall be required to file a copy of such individual policy or policies with the Association within thirty days after purchase of such insurance.
7. The Association shall be required to make every effort to secure insurance policies that will provide for the following:
  - A. A waiver of subrogation by the insurer as to any claims against the Association, the Dwelling Unit Owners and their respective servants, agents and guests.
  - B. That the master policy on the Project cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Owners.
  - C. That the master policy on the Project cannot be cancelled, invalidated or suspended on account of the conduct of any officer, director or employee of the Association with a prior demand in writing that the Association cure the defect.
  - D. That any "no other insurance" clause in the master policy exclude individual owners' policies from consideration.
8. The annual insurance review by the Association as required shall include an appraisal of the improvements in the Project by a representative of the insurance carrier writing the master policy.

**ARTICLE XXXV  
DAMAGE AND DESTRUCTION**

In case of fire, casualty or other disaster of less than two-thirds of all Dwelling Units in the Project, the insurance proceeds, if sufficient to reconstruct the Buildings, shall be applied to such reconstruction. Reconstruction of the Buildings, as used in this Article, means restoring the Buildings to substantially the same condition in which they existed prior to the fire, casualty or other disaster, with each Dwelling Unit and the Common Area having the same vertical and horizontal boundaries as before to the extent possible. Such reconstruction shall be accomplished by the Association.

If the insurance proceeds are insufficient to reconstruct the Buildings, damage to or destruction of the Buildings shall be promptly repaired and restored by the Association, using proceeds of insurance, if any, on the Buildings for that purpose, and the Dwelling Unit Owners shall be liable for any assessment for any deficiency. However, if two-thirds or more of the Buildings are destroyed or substantially damaged and if the Dwelling Unit Owners, by a two-thirds vote, do not voluntarily, within one hundred eighty days after such destruction or damage, make provision for reconstruction, the Association shall record, with the Office of the Johnson County Recorder, a notice setting forth such facts, and upon the recording of such notice:

1. The Property shall be deemed to be owned in common by the Dwelling Unit Owners;



**ARTICLE XXXV — Damage and Destruction (Continued)**

2. The undivided interest in the Property owned in common which shall appertain to each Dwelling Unit Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Area, being determined for purposes of this Article as being the original floor space of the Dwelling Unit divided by the total floor space of all Dwelling Units which were in existence in completed form at the time of the destruction;
3. Any liens affecting any of the Dwelling Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owner in the Property; and
4. The Property shall be subject to an action for partition at the suit of any Dwelling Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Dwelling Unit Owners in the percentage interest as defined hereinabove, after first paying out of the respective shares of the owners, to the extent sufficient for the purposes, all liens on the undivided interest in the Property owned by each Dwelling Unit Owner.

Notwithstanding all other provisions hereof, the Dwelling Unit Owners may, at a meeting of Dwelling Unit Owners called for such purpose, elect to sell or otherwise dispose of the Property. Such action shall be binding upon all Dwelling Unit Owners and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.

**ARTICLE XXXVI  
PROVISIONS PERTAINING TO THE SPONSOR**

For so long as the Sponsor has not sold to individual Dwelling Unit Owners more than forty-five Dwelling Units and as provided herein, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Sponsor from any obligations of a Dwelling Unit Owner to pay assessments as a Class B member of the Association as to each Dwelling Unit owned by it, in accordance with the schedule of assessment rates to be established by the Board of Directors of the Association:

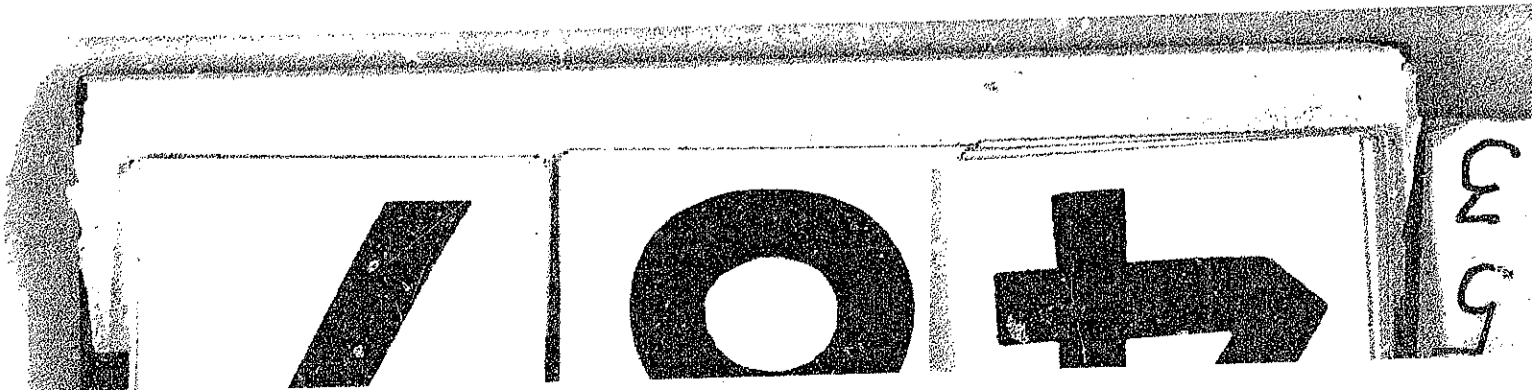
1. The Sponsor specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Project documents except as specifically set forth therein, and no person shall rely upon any warranty or representation not so specifically made therein. The estimates of common expenses are deemed accurate, but no warranty or guaranty is made or intended, nor may one be relied upon.
2. In order to maintain high standards and to assure the proper development of the Project, the grantors herein, known as the Sponsor, hereby reserve for a period of three years from the date of recording of this Declaration, the right and the power to contract with persons, firms or corporations of its choice for the management of the Project, and to delegate to such managing agent, which may be the Sponsor or any of them, all powers of the Association in regards to maintenance, repair, management and operation of the Association. The management costs and fees as may be contained in such management agreement shall be common expenses of the Association.

**ARTICLE XXXVII  
DWELLING UNIT DEEDS**

Any transfer of a Dwelling Unit shall include all appurtenances thereto whether or not specifically described, including the membership of the Dwelling Unit Owner in the Association.

**ARTICLE XXXVIII  
ENFORCEMENT**

Each Dwelling Unit Owner shall comply strictly with the provisions of this Declaration and with the administrative rules and regulations drafted pursuant thereto as the same may be lawfully amended from time to time and with decisions adopted pursuant to the Declaration and administrative rules and regulations, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association on behalf of the Dwelling Unit Owners, or in a proper case, by an aggrieved Owner.



**ARTICLE XXXIX  
AMENDMENT OF DECLARATION**

Amendments to this Declaration shall be proposed and adopted in accordance with the following provisions:

1. **Notice:** Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.
2. **Resolution:** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or the Owners of at least a majority of the total voting power of each class of membership in the Association.
3. **Meeting:** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly held in accordance with the provisions of the By-Laws of the Association.
4. **Adoption:** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent of the total vote of each class of membership of the Association. In the event any Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws of the Association, but in no event shall such notice to mortgagees be given less than thirty days prior to the scheduled meeting.
5. **Special Amendments:** No amendment to this Declaration shall be adopted which changes:
  - The percentage interest with respect to any Dwelling Unit or the applicable shares of an Owner's liability for the common expenses, or
  - The provisions of this Declaration with respect to reconstruction or repair in the event of fire or casualty;with the approval of one hundred percent of the Owners and also the unanimous approval of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of the By-Laws; nor shall any amendment to this Declaration be adopted without the unanimous approval of the Mortgagees herein mentioned which fails to employ a professional manager for the Project.
6. **Recording:** Each amendment to this Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the Office of the Johnson County Recorder, and such amendment shall not become effective until so recorded.

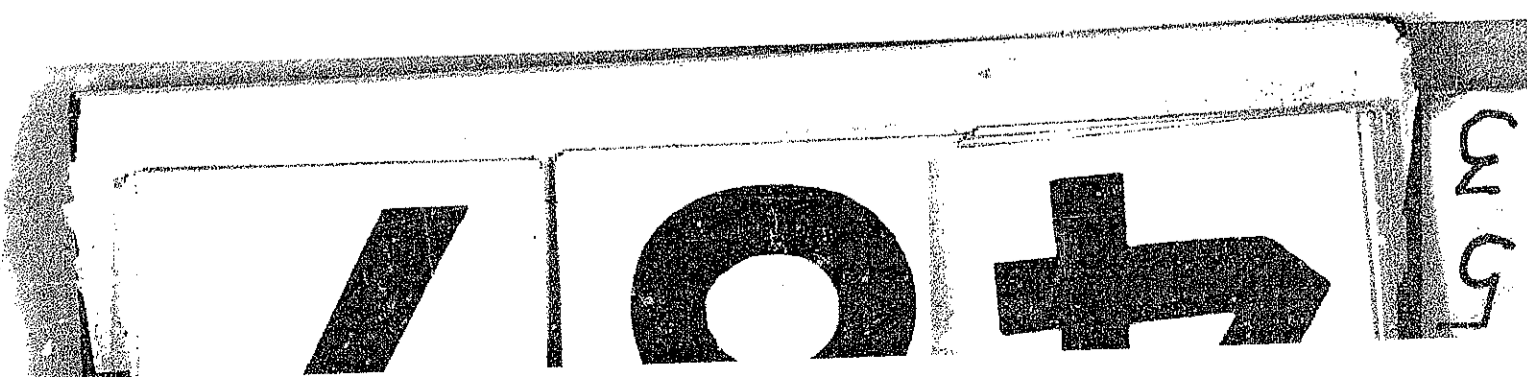
**ARTICLE XL  
ENCROACHMENT EASEMENT**

Each Dwelling Unit within the Property is hereby declared to have an easement over all adjoining Dwelling Units for the purpose of accommodating all encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, provisions of utility services, or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Dwelling Unit Owners shall not be altered in any way by said encroachment, settlement or shifting or provision of utility services, provided, however, that in no event shall a valid easement for encroachment occur due to the willful misconduct of said Owner or Owners. In the event a Building is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Dwelling Unit agree that minor encroachments over adjoining Dwelling Units shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

**ARTICLE XLI  
PARTY WALLS**

Each wall which is built as a part of the original construction of the Dwelling Units upon the property contained within the Project and placed on the dividing line between the property lot lines of the individual Dwelling Units shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply hereto.

The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners of the Dwelling Units who make use of the wall.



**ARTICLE XLI — Party Walls (Continued)**

If a party wall is destroyed or damaged by fire or other casualty, any Dwelling Unit Owner who has used the wall may restore it, and if the other Dwelling Unit Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Dwelling Unit Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Notwithstanding any other provision of this Article, a Dwelling Unit Owner who by his negligent or willful act causes the party wall to be exposed to the elements in such manner that damage may occur to the party wall shall bear the whole cost of furnishing the necessary protection against the elements.

The right of any Dwelling Unit Owner to contribution from any other Dwelling Unit Owner under this Article shall be appurtenant to the land and shall pass to such Dwelling Unit Owner's successors in title.

**ARTICLE XLII  
EXTERIOR MAINTENANCE**

In addition to maintenance upon the common areas, the Association shall provide exterior maintenance upon each Dwelling Unit which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, parking shelters, and other exterior improvements, excepting patio gardens located within the property boundaries of an individual Dwelling Unit and planted by the Owner of the Dwelling Unit rather than the Association or the Sponsor, and further excepting glass surfaces in exterior walls.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Dwelling Unit Owner, his family or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which the Dwelling Unit is subject.

The Board of Directors of the Association shall make the initial determination of whether or not the cost shall be assessed against the Dwelling Unit Owner, after granting such Owner the right to present evidence as to the cause of the need for maintenance or repairs.

**ARTICLE XLIII  
SEVERABILITY OF DOCUMENTS**

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

**ARTICLE XLIV  
CAPTIONS**

Captions used in the Project Documents are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of the text of the Project Documents.

**ARTICLE XLV  
GENDER, SINGULAR, PLURAL**

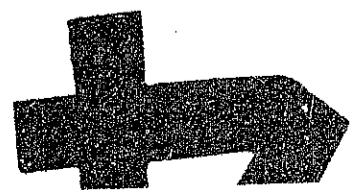
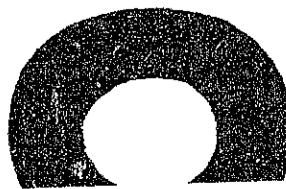
Whenever the context so permits, the use of the plural shall include the singular, and the plural and any gender shall be deemed to include all genders.

**ARTICLE XLVI  
STREETS AND COMMON AREAS ARE OWNED  
BY THE ASSOCIATION**

The Association, for the benefit of the Dwelling Unit Owner, shall be the owner and is responsible for the streets and common areas contained within the Project, and such will not be the responsibility of the City of Greenwood.

**ARTICLE XLVII  
EFFECTIVE DATE**

This Declaration shall take effect upon recording in the Office of the Johnson County Recorder.



100

IN WITNESS WHEREOF, on this the 6<sup>th</sup> day of Feb., 1980,  
the undersigned has caused this Declaration to be executed.

Greenwood Development Corporation

By: Carl W. Grow  
Carl W. Grow, Vice President

STATE OF INDIANA )  
                          )  
COUNTY OF JOHNSON)

By: Betty A. Linton  
Betty A. Linton, Secretary

Before me, a Notary Public in and for said County and State, personally appeared  
Greenwood Development Corporation, by Carl W. Grow its Vice  
President, and Betty A. Linton its Secretary, who acknowledged  
the execution of the foregoing instrument as the free and voluntary act of the  
Corporation.

Witness my hand and Notarial Seal this 6th day of Feb. 1980.

This Instrument Prepared by  
Carl W. Grow, Attorney at Law

Lorraine V. Mayhew  
Notary Public  
Lorraine V. Mayhew, Resident of Johnson  
Co., Ind.

My commission expires 10-28-82

RECEIVED  
FOR RECORD  
800A 53 487

FEB 11 12 06 PM '80

S. Harrison Pitts  
JOHNSON COUNTY RECORDER



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AMENDMENTS TO THE  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR CIELO VISTA  
AND THE CODE OF BY-LAWS OF THE  
CIELO VISTA COMMUNITY ASSOCIATION, INC.

Pursuant to Article XXXIX of the Declaration of Covenants, Conditions, and Restrictions for Cielo Vista, dated February 6, 1980 and recorded on February 11, 1980, in Miscellaneous Record 53, page 487, in the office of the Johnson County Recorder, Indiana, and the Code of By-Laws of the Cielo Vista Community Association, Inc., recorded as an Addendum to said Declaration on February 14, 1980 in Miscellaneous Record 53, page 492, in the office of the Johnson County Recorder, Indiana, the terms and conditions of said Declaration and By-Laws are amended as follows:

A. Paragraphs seven (7), eight (8) and fifteen (15) of Article I of the Declaration are amended to read as follows:

7. "Dwelling Unit Owner" means a person or persons, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who owns the fee simple title to a Dwelling Unit lot as shown on any recorded plat section and who thus holds membership in the Association. For purposes of this definition, the Sponsor shall be for all intents and purposes a Dwelling Unit Owner of each and every one of those Dwelling Units presently contemplated to be constructed on the property which has not had ownership transferred by deed by them, whether or not those units have yet been constructed.
8. "Mortgage" means the conveyance of a security interest in a Dwelling Unit or other portion of the property to secure the performance of an obligation, which security interest shall be void upon due performance of said obligation.



15. "Limited Common Area" shall be a portion of the Common Area reserved by the Sponsor of the Association for the use of a certain Dwelling Unit or Dwelling Units to the exclusion of all other units. Any portion of the Common Areas which, by its nature or location is clearly intended to serve exclusively a certain Dwelling Unit or Dwelling Units, such as appurtenant sidewalks, driveways and patios, but less than all units shall be deemed a Limited Common Area.

B. Article IV of the Declaration is amended to read as follows:

#### ARTICLE IV

##### BOUNDARIES OF DWELLING UNIT LOTS

The boundaries of each Dwelling Unit lot may be indicated by plats, surveys or plans prepared or caused to be prepared by the Sponser, which plats, surveys or plans may be prepared prior to and without regard to any final construction of the Dwelling Units. If any portion of the Common Areas shall encroach upon any Dwelling Unit lot, or if any Dwelling Unit lot or any improvement, building, overhang, fixture, or other structure or improvements of whatever type shall for any reason encroach upon any other Dwelling Unit lot, or upon any portion of the Common Area as a result of the construction of any Dwelling Unit improvements, a valid, perpetual easement for the encroachment and for its maintenance is retained by the Sponsor, for its benefit and for the benefit of the Association and any owner of a Dwelling Unit lot whose lot is effected thereby and shall exist perpetually. In the event that the Dwelling Unit or improvements shall be partially or totally destroyed as the result of fire or any other casualty, or as a result of condemnation or eminent domain proceedings, and then rebuilt, any resultant encroachments shall be permitted and a valid easement for such encroachment is hereby reserved by the Sponsor for its benefit and for the benefit of the Association and any Owner of a Dwelling Unit lot whose lot is effected thereby and shall exist perpetually.

C. Article V of the Declaration is amended to read as follows:

ARTICLE V

COMMON ELEMENTS AND FACILITIES

Common elements and facilities include the yards, gardens, driveways, sidewalks, parking areas and landscape and recreation areas lying outside of the individual Dwelling Unit lots, and within the individual Dwelling Unit lots to the extent reserved by easements, central electric, water, and sanitary sewer mains serving the Building, master television antenna and alarm systems with connecting outlets to each Dwelling Unit, and public utility lines. Open and covered parking spaces and enclosed storage areas within the parking areas located within the Common Areas may be assigned to the owners of the individual Dwelling Units by the Sponsor or the Association as Limited Common Areas whereupon said Dwelling Unit Owners will be entitled to exclusive use and enjoyment of said parking spaces and storage areas, notwithstanding their location within Common Areas. The entrance is reserved to the use of the Association, and reasonable restrictions of use of certain Common Areas may be adopted and enforced by the Association, as provided in the By-Laws of the Association. Every Dwelling Unit Owner shall have an easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Dwelling Unit. The easement of enjoyment in Limited Common Areas shall be reserved to the owner of the Dwelling Unit lot appurtenant thereto.

D. Article XVII of the Declaration is amended to read as follows:

ARTICLE XVII

ENTRY FOR REPAIRS

The Association or its agents may enter any Dwelling Unit or Dwelling Unit lot when necessary in connection with any maintenance, landscaping or construction for which the

Association is responsible. Such entry shall be made with as little inconvenience to the Owners as possible, and any damage caused thereby shall be repaired by the Association out of the common expense fund.

Additionally, adjacent Dwelling Unit Owners shall have an easement upon each others lot for the purpose of maintenance of their respective units. Such entry by Dwelling Unit Owner upon the lot of another shall be made with as little inconvenience to the adjoining lot owner as possible and any damage caused thereby shall be repaired by the party entering the adjacent lot for maintenance purposes.

Paragraph sixteen (16) of Article XXV of the Declaration is amended to read as follows:

16. To open and maintain an account or account(s) with suitable bank(s) and/or savings or loan institution(s).

E. Article XXVI of the Declaration is amended to read as follows:

#### ARTICLE XXVI

##### LIMITATION ON BOARD ACTION

The powers of the Board of Directors of the Association as hereinafter enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the common or maintenance fund any structural additions or alterations, capital additions to, or capital improvements of the portions of the Property for which it is responsible other than for purposes of replacing or restoring portions of said areas, subject to all the provisions of this Declaration and the By-Laws of the Association, requiring an expenditure in excess of five thousand dollars (\$5,000.00) without in each case, obtaining the approval of a majority of the votes of each class of membership in the Association.

F. Article XXVIII of the Declaration is amended to read as follows:

#### ARTICLE XXVIII

##### RULES AND REGULATIONS

The Board of Directors of the Association, at the direction of the voting members having two-thirds of the total votes of either class of membership in the Association, may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of Cielo Vista, and for the health, comfort, safety, and general welfare of the Dwelling Unit Owners and occupants of the Project. Written notice of such rules and regulations shall be given to all Dwelling Unit Owners and occupants and the entire Project shall at all times be maintained subject to such rules and regulations.

G. Paragraphs five (5) and seven (7) of Article XXX of the Declaration are amended to read as follows:

5. The services of a person or firm to manage the Project, herein called the Manager, as well as such other personnel as the Association shall determine shall be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Association or are furnished by the Manager.

7. Painting, maintenance, repair and all landscaping of the Common Areas, Limited Common Areas, Portions of the Property adjacent to the Dwelling Unit foundation and the exteriors of each of the Dwelling Units pursuant to Article XLII. Additionally, the Association shall have the authority to purchase such furnishing and equipment for the areas it maintains as the Association shall determine are necessary and proper.

H. Paragraph two (2) of Article XXX of the Declaration is amended to read as follows:

2. A policy or policies of fire and casualty insurance as the same are more fully set forth in this Declaration, with extended coverage endorsement, for the full insurable replacement value of the Dwelling Units and the common areas, payable as provided elsewhere in this Declaration, or such other fire and casualty insurance as the Association shall determine gives substantially equal protection to the Dwelling Unit Owners, and their mortgagees, as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Unit, if any.

I. Article XXXI of the Declaration is amended to read as follows:

#### ARTICLE XXXI

##### CONVENANT FOR MAINTENANCE ASSESSMENTS

The Sponsor, for each Dwelling Unit owned by it hereby covenants, and each Dwelling Unit Owner of any Dwelling Unit which becomes subject to the jurisdiction of the Association, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) Regular Assessments or charges and (2) Special Assessments for capital improvements. Such assessments are to be fixed, established and collected from time to time as hereinafter provided. The Regular and Special Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the real property and shall be a continuing lien upon the Dwelling Unit against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Dwelling Unit Owner at the time when the assessment became due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Project and for the improvement and maintenance of those portions of the Property for which the Association is responsible under Articles XXX and XLII.

In addition to the Regular Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon those portions of the Property for which the Association is responsible under Articles XXX and XLII, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Written notice of any meeting called for the purpose of taking any action above authorized shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.



Except as otherwise provided in this Declaration, Regular and Special Assessments are to be fixed in equal share for all Dwelling Units.

The Regular Assessments provided for herein shall commence as to all Dwelling Units owned by Class A members on the first day of the month following transfer of title to them by the Sponsor. Subject to other provisions contained in this Declaration, the Board of Directors shall fix the amount of the Regular Assessment against each Dwelling Unit at least thirty (30) days in advance of each Regular Assessment period. Written notice of the Regular Assessment shall be sent to every Dwelling Unit Owner subject thereto. The due dates shall be established by the Board of Directors, and, unless otherwise provided, the Association shall collect each month from the Dwelling Unit Owner the Regular Assessment for each month for such Dwelling Unit. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Dwelling Unit have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

J. Article XXXII of the Declaration is amended to read as follows:

#### ARTICLE XXXII

##### DEFAULT IN PAYMENT OF ASSESSMENTS

Each monthly assessment and each special assessment shall be the separate, distinct and personal debts and obligations of the Dwelling Unit Owner against whom the same are assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall

be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether Regular or Special, assessed to the Dwelling Unit Owner plus interest at eight percent (8%), and costs, including reasonable attorney's fees, shall become a lien upon such Dwelling Unit as provided in this Declaration. The said lien for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

1. Tax and special assessment liens on the Dwelling Unit in favor of any assessment unit, or special district, and
2. Encumbrances on the Owner's Dwelling Unit recorded prior to the due date of regular and/or special assessments.

A certificate executed and acknowledged by a majority of the Board of Directors stating the indebtedness secured by the lien upon any Dwelling Unit created hereunder, shall be conclusive upon the Association and the Dwelling Unit Owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Dwelling Unit Owner or any encumbrancer or prospective encumbrancer of a Dwelling Unit upon request. Unless the request for Certificate of Indebtedness is complied with within ten (10) days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien held by the person or entity making the request. Any encumbrancer holding a lien on a Dwelling Unit may pay any unpaid common expenses with respect to such Dwelling Unit and upon such payment, such encumbrancer shall have a lien on the Dwelling Unit for the amounts paid of the same rank as a lien of his encumbrance.

The Association may bring an action at law against the Owner personally obligated but delinquent in paying any Regular or Special Assessment or foreclose the lien against the Dwelling Unit Lot.

The lien for nonpayment of assessments may be enforced by foreclosure in accordance with applicable law. In any foreclosure or sale, the Dwelling Unit Owner shall be responsible for the amount of any assessment, interest at eight percent (8%), from date of delinquency, costs and expenses of such proceedings including reasonable attorney's fees.

K. Article XXXIII of the Declaration is amended to read as follows:

ARTICLE XXXIII  
MORTGAGE PROTECTION

Notwithstanding all other provisions hereof:

1. The liens created hereunder upon any Dwelling Unit shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage, meaning a mortgage with first priority over other mortgages, upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage or any proceedings in lieu thereof, there may be a lien created pursuant to Article XXXII hereof on the interest of the purchaser at such foreclosure sale or transfer to secure all assessments, whether Regular or Special, assessed hereunder to such purchaser as a Dwelling Unit Owner after the date of such foreclosure sale or transfer, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided in Article XXXII.

2. No amendment of the Declaration shall affect the rights of the holder of any such mortgage recorded prior to recordation of

such amendment who does not join in the approval thereof.

3. By subordination agreement executed by a majority of the Board of Directors, the benefits of one (1) and two (2) above may be extended to mortgages not otherwise entitled thereto.

4. Upon written request by a Mortgagee to the Association, the Mortgagee of a Dwelling Unit lot shall be entitled to see written notification of any default, not cured within sixty (60) days after its occurrence by the Dwelling Unit Owner of any obligation of the owner under the Declaration, the By-Laws of the Association, or the Articles of Incorporation of the Association. The request for notification can be made by any Mortgagee of a Dwelling Unit, its successor or assigns.

5. Mortgagees, their successors or assigns shall have the right to request and inspect the Association's annual audit statement.

6. No provision in the Declaration, By-Laws or Articles of Incorporation of the Association shall give a Dwelling Unit Owner or any other party, priority over any rights of first mortgagees of Dwelling Units pursuant to their mortgages in the case of a suit by the Association or any Dwelling Unit Owner, or distribution to Dwelling Unit Owners of insurance proceeds for losses to any portions of the Property.

7. If any Dwelling Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or is otherwise sought to be acquired by condemning authority, then the institutional holder of any first mortgage on a Dwelling Unit will be entitled to timely written notice of any such proceedings or proposed acquisition. No provision of any document will entitle the owner

of a Dwelling Unit or any other party to priority over such institutional holder with respect to the distribution to such Dwelling Unit Owner of the proceeds of any award or settlement.

L. Article XXXIV of the Declaration is amended to add a new paragraph numbered nine (9), which paragraph reads as follows:

9. Insurance maintained by the Association shall be charged to the Dwelling Unit Owners on a uniform basis as a part of the any Assessment.

M. Article XXXV of the Declaration is amended to read as follows:

#### ARTICLE XXXV

#### DAMAGE AND DESTRUCTION

In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association, the Board of Directors shall, upon receipt of the insurance proceeds, reconstruct, rebuild or repair such damage or destroyed portions of the property to as good as condition as formally. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signatures of at least one third (1/3) of the members of the Board of Directors, or by the signature of an agent duly authorized by the Board of Directors.

The Board of Directors shall advertise for sealed bids with any licensed contractors, then may negotiate with any contractor, who shall be required to provide a full performance, and payment bond for the repair, reconstruction or rebuilding of such destroyed or damaged Dwelling Units.

In the event that the insurance proceeds are insufficient to pay all of the costs of repairing and/or rebuilding of all damaged Dwelling Units then, the Association shall levy a special assessment against all owners of the damaged Dwelling Units in such proportion as the Board of Directors deem fair and equitable in light of the damages sustained by such Dwelling Units to make any deficiency in the insurance proceeds, except that the special assessment shall be levied against all such Dwelling Unit Owners to make up a deficiency for repair or rebuilding of the Common Area.

N. Article XXXIX of the Declaration is amended to read as follows:

#### ARTICLE XXXIX

##### AMENDMENT OF DECLARATION

Amendments to this Declaration shall be proposed and adopted in accordance with the following provisions:

1. Notice: Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.
2. Resolution: A resolution to adopt a proposed amendment may be proposed by the Board of Directors or the Owners of at least a majority of the total voting power of each class of membership in the Association.
3. Meeting: The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly held in accordance with the provisions of the By-Laws of the Association.
4. Adoption: Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) of the total vote of each class of membership of the Association. In the event any Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has



given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws of the Association, but in no event shall such notice to Mortgagees be given less than thirty (30) days prior to the scheduled meeting unless notice is otherwise waived by all Mortgagees.

5. Special Amendments: No amendment to this Declaration shall be adopted which changes:

The percentage interest with respect to any Dwelling Unit or the applicable shares of an Owner's liability for the common expenses; or

The provisions of this Declaration with respect to reconstruction or repair in the event of fire or casualty; without the approval of one hundred percent (100%) of the Owners and also the unanimous approval of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of the By-Laws.

6. Recording: Each amendment to this Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the Office of the Johnson County Recorder, and such amendment shall not become effective until so recorded.

O. Section A of Article VII of the Code of By-Laws of the Cielo Vista Community Association, Inc., is amended to read as follows:

Each monthly assessment and each special assessment shall be the separate, distinct and personal debt and obligation of the Dwelling Unit Owner against whom the same is assessed at the time that the assessment is made and shall be collectable as such. The assessments shall also be a continuing lien upon the Dwelling Unit lot against which each such assessment is made. Assessments unpaid and due at the time of a conveyance of a Dwelling Unit shall continue to be a lien upon the real estate but shall not be the personal obligation of the new Dwelling Unit

Owner. However, where there is a foreclosure of a recorded first mortgage, or any proceedings in lieu thereof, any unpaid assessments due at the time of foreclosure or transfer shall be extinguished as of the date of such foreclosure or transfer in lieu thereof and shall not be a lien upon the property thereafter.

P. Paragraph sixteen (16), Section K, of Article IV of the Code of By-Laws of the Cielo Vista Community Association, Inc., is amended to read as follows:

16. The depositories of the Association shall be such bank(s) and/or savings or loan institution(s) as shall be designated from time to time by the Board of Directors. Withdrawal of the moneys from such accounts shall be signed by such person or person(s) as are authorized by the Board of Directors.

GREENWOOD DEVELOPMENT CORPORATION

By: Carl W. Brown President  
CARL W. BROWN

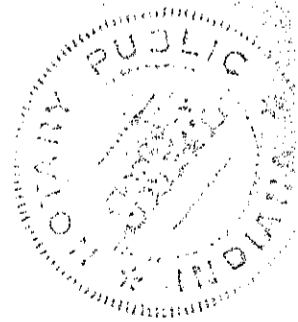
ATTESTED:

Betty A. Hinton  
Betty A. Hinton Secretary

DATED: 3/28/80

STATE OF INDIANA )  
COUNTY OF Marion )

Before me, a Notary Public in and for said County and State, personally appeared Cielo Vista Community Association, Inc., by Betty A. Hinton and Carl W. Brown its President and Secretary, respectively, who acknowledged the



AMENDMENTS TO THE DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR CIELO VISTA AND THE CODE OF  
BY-LAWS OF THE CIELO VISTA COMMUNITY ASSOCIATION, INC.

Misc. 53 Page 487

Plat 9-55 B-680

To be added to By-Laws section and amended in declaration section:

**VIII - Declaration**

**Voting Rights in the Association**

The Association shall have two classes of voting membership:

Class A Membership:

Class A members shall be all those Dwelling Unit Owners as defined in Article I of this Declaration with the exception of the Sponsor. Class A members shall be entitled to one vote for each Dwelling Unit in which they hold the interest required for membership by Article VI of this Declaration. When more than one person holds such interest in any Dwelling Unit, all such persons shall be members. When an entity other than a natural person is an owner, that entity owner shall designate who shall be members, subject to such rules and regulations as the Association, acting through its Board of Directors by resolution, may adopt. Where there is more than one member for a Dwelling Unit, the vote for such Dwelling Unit shall be exercised as they among themselves determine, subject to the provisions of the By-Laws of the Association pertaining to multiple ownership, but in no event shall more than one vote be cast with respect to any Dwelling Unit.

Class B Membership:

The Class B members shall be the Sponsor, as defined in this Declaration, and shall be entitled to three votes for each Dwelling Unit owned. For purposes of defining such ownership, the unsold Dwelling units to be located within the property shall be deemed to be have become owned by the new Sponsor upon presentation by Union Federal Savings and Loan Association of a deed conveying all of its interests in the unconveyed property of Cielo Vista on June 14, 1985, whether or not such Dwelling Units have been constructed. The Sponsor shall be entitled to three (3) votes for each Dwelling Unit so owned by the Sponsor. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- A. When the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership.

B. June 14, 1988.

## VII - By-Laws

### Lien Rights

#### Section C:

The Association on behalf of the Dwelling Unit owners, shall have a lien upon the Dwelling Unit, as hereinabove described, for unpaid common expenses assessed against a Dwelling Unit by the Association. Such lien shall be effective from and after the filing of a notice thereof with the Office of the Johnson County Recorder and until all sums secured thereby, with interest thereon, shall have been fully paid, and shall be subordinate to liens for real estate taxes on the Dwelling Unit and to mortgages or other liens or record on such Dwelling Unit recorded prior to the recordation of the lien for unpaid common expenses. Such lien may be foreclosed by a suit brought in the name of the Association in like manner as the foreclosure of a mortgage on real property. The Association shall not, however, record such claim of lien until the assessment is due and unpaid for not less than twenty calendar days. Such a claim may include only assessments which are due and payable when the claim of lien is recorded. If any Dwelling Unit Owner is delinquent in paying said regular assessments for a period of forty-five (45) days or more, the full amount of one (1) years assessments shall become immediately due and payable, and such amount, plus any delinquency due, shall constitute a recordable lien upon the Dwelling Unit, and be enforced as any other delinquency discussed above and in Article VII, Section E.

## VII - By-Laws

### Liability for Common Expenses

#### Section A:

The Dwelling Unit Owners and their grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of a conveyance of a Dwelling Unit, except in the case of transfer pursuant to foreclosure or transfer by deed to a first mortgage holder in lieu of foreclosure, as hereinafter set forth, but without prejudice to the right of a grantee to recover from his grantor any amounts paid by the grantee

therefore. Notwithstanding the foregoing, a purchaser of a Dwelling Unit at a mortgage foreclosure sale shall be liable only for assessments coming due after such sale.

Section D - Interest and late fees

Effective June 14, 1985, all assessments and installments thereof paid on or before 5 calendar days after the date when due shall not bear interest. Whenever such amounts are not paid within 5 calendar days, a late fee of ten dollars (\$10.00) per month shall be added to the amount due and said overdue sums shall bear interest computed and compounded monthly at a rate determined by the Board of Directors of the Association, not to exceed three (3) percentage points over the prime lending rate then in existence; until such sums are paid in full.

**IV - Declaration**

**Boundaries of Dwelling Unit Lots**

The following paragraph is substituted for that in existence prior to this amendment:

The boundaries of each Dwelling Unit lot may be indicated by plats, surveys or plans prepared or caused to be prepared by the Sponsor, which plats, surveys or plans may be prepared prior to and without regard to any final construction of the Dwelling Units. If any portion of the Common Areas shall encroach upon any Dwelling Unit lot, or if any Dwelling Unit lot or any improvement, building, overhand, fixture, or other structure or improvements of whatever type shall for any reason encroach upon any other Dwelling lot, a valid, perpetual easement for the encroachment and for its maintenance is retained by the Sponsor, for its benefit and for the benefit of the Association and any owner of a Dwelling Unit lot whose lot is affected thereby and shall exist perpetually. In the event that the Dwelling Unit or improvements shall be partially or totally destroyed as the result of fire or any other casualty, or as a result of condemnation or

eminent domain proceedings, and then rebuilt, any resultant encroachments shall be permitted and a valid easement for such encroachment is hereby reserved by the Sponsor for its benefit and for the benefit of the Association and any owner of a Dwelling Unit lot whose lot is affected thereby and shall exist perpetually.

## V - Declaration

### Common Elements and Facilities

The following paragraph is substituted for that in existence prior to this amendment:

Common elements and facilities include the yards, gardens, driveways, sidewalks, parking areas and landscape and recreation areas lying outside of the individual Dwelling Unit lots, and within the individual Dwelling Unit lots to the extent reserved by easements, central electric, water, and sanitary sewer mains serving the Building, master television, antenna and alarm systems with connecting outlets to each Dwelling Unit, and public utility lines. Open and covered parking spaces and enclosed storage areas within the parking areas located within the Common Areas may be assigned to the owners of the individual Dwelling Units by the Sponsor or the Association as Limited Common Areas whereupon said Dwelling Unit Owners will be entitled to exclusive use and enjoyment of said parking spaces and storage areas, notwithstanding their location within Common Areas. The entrance is reserved to the use of the Association, and reasonable restrictions of use of certain Common Areas may be adopted and enforced by the Association, as provided in the By-Laws of the Association. Every Dwelling Unit Owner shall have an easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Dwelling Unit. The easement of enjoyment in Limited Common Areas shall be reserved to the owner of the Dwelling Unit lot appurtenant thereto.

a. "Limited Common Area" shall be a portion of the Common Area reserved by the Sponsor of the Association for the use of a certain Dwelling Unit or Dwelling Units to the exclusion of all

other units. Any portion of the Common Areas which, by its nature or location is clearly intended to serve exclusively a certain Dwelling Unit or Dwelling Units, such as appurtenant sidewalks, driveways and patios, but less than all units shall be deemed a Limited Common Area.

**ARTICLE XXXIII**  
**MORTGAGE PROTECTION**

Notwithstanding all other provisions hereof:

1. The liens created hereunder upon any Dwelling Unit shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage, meaning a mortgage with first priority over other mortgages, upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Article XXXII hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether Regular or Special, assessed hereunder to such purchaser as a Dwelling Unit Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.
  
2. No amendment of this paragraph shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who did not have notice and opportunity to be heard at any meeting where such amendments were adopted.
  
3. Upon written request by a Mortgagee to the Association, the Mortgagee of a Dwelling Unit lot shall be entitled to see written notification of any default, not cured within forty-five (45) days after its occurrence by the Dwelling Unit Owner of any obligation of the owner under the Declaration, the By-Laws of the Association, or the Articles of Incorporation of the Association. The request for notification can be made by any Mortgagee of a Dwelling Unit, its successor or assigns.



4. Payment of charges by first mortgagees. First mortgagees of PUD units may

- a. jointly or singly pay taxes or other charges that are in default and that may or have become charges against any PUD common property;
- b. pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the common property in case of lapse of a policy.

First mortgagees making such payments are due immediate reimbursement from the PUD homeowners association, corporation, or trust. Entitlement to reimbursement is reflected in an agreement duly executed by the PUD homeowners association, corporation, or trust in favor of all first mortgagees of PUD units. The Seller must possess an original or certified copy of the agreement.

5. By subordination agreement executed by a majority of the Board of Directors, the benefits of (1) and (2)-(4) above may be extended to mortgagees not otherwise entitled thereto.

#### XXXV - Declaration

##### Damage and Destruction

In case of fire, casualty or other disaster of less than two-thirds of all Dwelling Units in the Project, the insurance proceeds, if sufficient to reconstruct the Dwelling Units, shall be applied to such reconstruction. Reconstruction of the Dwelling Units, as used in this Article, means restoring the Dwelling Units to substantially the same condition in which they existed prior to the fire, casualty or other disaster, with each Dwelling Unit and the Common Area having the same vertical and horizontal boundaries as before to the extent possible. Such reconstruction shall be accomplished by the Association. If the insurance proceeds are insufficient to reconstruct the dwelling units, damage to or destruction of the dwelling units shall be promptly repaired and restored by the Association, using proceeds of insurance, if any, on the Buildings for that purpose, and the Dwelling Unit Owners shall be liable for any assessment for any deficiency. If two-thirds or more of the Buildings are destroyed or substantially damaged restoration shall proceed as set forth above, unless at least two-thirds

(2/3) of the Dwelling Unit Owners and mortgagees vote, within one hundred eighty days after such destruction or damage, not to restore the property and continue the existence of the association.

If at least two-thirds (2/3) of the Dwelling Unit Owners and mortgagees do so vote not to restore the property, the Association shall record with the Office of the Johnson County Recorder, a notice setting forth such facts, and upon the recording of such notice:

1. The Property shall be deemed to be owned in common by the Dwelling Unit Owners;
2. The undivided interest in the Property owned in common which shall appertain to each Dwelling Unit Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Area, being determined for purposes of this Article as being the original floor space of the Dwelling Unit divided by the total floor space of all Dwelling Units which were in existence in completed form at the time of the destruction;
3. Any liens affecting any of the Dwelling Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owner in the Property; and
4. The Property shall be subject to an action for partition at the suit of any Dwelling Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Dwelling Unit Owners in the percentage interest as defined hereinabove, after first paying out of the respective shares of the owners, to the extent sufficient for the purposes, all liens on the undivided interest in the Property owned by each Dwelling Unit Owner; except that no such action shall affect any Dwelling Unit owner's undivided interest in the lot upon which his unit was erected and which remains solely his individual property.

5. Any net proceeds accruing due to disposition of the property pursuant to items one (1) through four (4) above shall be distributed as first priority to the first mortgage holders of each unit, up to the amount of their interest in the respective properties at the time of such disposition.

#### **XLV - Declaration**

##### **Gender, Singular, Plural, Voting Majority**

Any action regarding sale of common elements or a change in the method of determining assessments, referred to in these by-laws and declaration of covenants, conditions and restriction, shall be interpreted to require a two-thirds (2/3) voting consent if not so specifically stated.

#### **XXXI - Declaration**

4. Both regular and special assessments must be fixed at a uniform rate for all dwelling units (with the exception of item "a" below), since each dwelling unit owner has an equal share in the common areas and elements.

a. Because of certain pre-existing conditions present only in units in existence prior to July 1, 1985, a special assessment of Two Thousand Eight Hundred Twenty-Seven and 00/100 Dollars (\$2,827.00) may be assessed against the seventeen (17) original dwelling units only, said units being identified and said special assessment being described in a Resolution of the Board of Directors made on May 18, 1986, and duly recorded in the Office of the Johnson County Recorder. Any claims for indemnification or damages which may arise or accrue to any dwelling unit owners because of the actions or inaction of the prior project developer, Union Federal, must be pursued by the individual dwelling unit owners, and the Association shall be in no way involved in such claims.

#### **XXX - Declaration**

##### **Authority of Association**

5. The services of a person or firm to manage the Project, therein called the Manager, as well as such other personnel as the Association shall

determine shall be necessary or proper for the operation of the Common Area, whether such personnel are employed directly by the Association or are furnished by the Manager. If the services of a Manager are obtained, any Professional Management Agreement entered into by the Association shall be limited to a period not to exceed three (3) years, and both parties shall retain the right to terminate such Agreement without cause and payment of termination fee upon ninety (90) days notice. Any change in Manager after the date of the consent of the Mortgagee attached hereto shall not be effective unless thirty days written notice of such change is given to the Mortgagee who has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws.

**XXXIX - Declaration  
Amendment**

#5 change "with" to "without"

7. In the case of the adoption and recordation of any Amendments to this Declaration or By-Laws, such Amendments shall take precedence over prior Declarations and By-Laws which are in conflict therewith, and any unamended provisions of same which present a conflict with the valid Amendments are deemed to be also amended to the extent necessary to avoid such conflict.

**AFFIDAVIT OF ADOPTION**

We, as officers of the Board of Directors of the Cielo Vista Community Association, Inc. hereby certify and affirm upon our oaths that the foregoing amendments to the By-laws and Declaration of the Cielo Vista Community Association, Inc. were duly presented to the members of said association pursuant to required procedure, and that said amendments were approved, ratified, and adopted by over seventy-five percent (75%) of said members on August 18, 1986.

*Robert Montgomery*  
Robert Montgomery, President  
Cielo Vista Community Association, Inc.

Subscribed and sworn to before me this 27<sup>th</sup> day of August, 1986

*John S. Miller*  
Notary Public  
A Resident of Marion County

My Commission Expires:

**ELSE S MILLER**  
NOTARY PUBLIC STATE OF INDIANA  
MARION CO.  
MY COMMISSION EXPIRES NOV 30, 1987  
ISSUED THRU INDIANA NOTARY ASSOC.

*Rosemary Browning*  
Rosemary Browning, Secretary  
Cielo Vista Community Association, Inc.  
Association, Inc.

Subscribed and sworn to before me this 27 day of August, 1986.

*Arthur McKenzie*  
Arthur McKenzie  
Notary Public  
A Resident of Munson County

My Commission Expires:

Sept 24, 1988

Prepared by: Susan D. Burke,  
Attorney-at-Law  
JONES LOVEALL JOHNSON AND BAILEY  
150 N. Main Street  
Franklin, IN 46131  
(317) 736-7174

AUG 27 2 26 PM '86

RECEIVED FOR RECORD  
BOOK 58 PAGE 730  
S. KATHRYN PITTS  
JOHNSON COUNTY RECORDER

89000666

Cielo Vista

Sec. 1 Plat 9 pg. 55

Sec. 2 Plat 9 pg. 98

Sec. 3 Plat 10 pg. 10

AMENDMENTS TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR CIELO VISTA  
COMMUNITY ASSOCIATION, INC. AND THE CODE OF  
BY-LAWS OF THE CIELO VISTA COMMUNITY ASSOCIATION, INC.

Pursuant to Article XXXIX of the Declaration of Covenants,  
Conditions, and Restrictions for Cielo Vista, dated Febru-  
ary 6, 1980 and recorded on February 11, 1980, in Miscella-  
neous Record 53, Page 487, in the Office of the Johnson  
County Recorder, Indiana, and the Code of By-Laws of the  
Cielo Vista Community Association, Inc., recorded as an  
Addendum to said Declaration on February 14, 1980 in Mis-  
cellaneous Record 53, Page 492, in the Office of the Johnson  
County Recorder, Indiana, and the Amendments to the Declara-  
tion of Covenants, Conditions and Restrictions for Cielo  
Vista and the Code of By-Laws of Cielo Vista Community Asso-  
ciation, Inc. adopted on August 18<sup>th</sup> 1986, and signed and recorded  
on August 27, 1986, in Miscellaneous Record, Book 58, Page  
730, in the Office of the Johnson County Recorder, Indiana.

To be added to the Declaration Section, as a new section  
below the entire Class B Membership section in Article  
VIII, entitled "VOTING RIGHTS IN THE ASSOCIATION".

VOTING

Except as otherwise provided, in the Articles of Incorpor-  
ation, or in the Declaration of Covenants, Conditions, and  
Restrictions for Cielo Vista Community Association, Inc., or  
in the Code of By-Laws of the Cielo Vista Community Associa-  
tion, Inc., no member whose Regular Monthly Assessments or  
Special Assessments, are unpaid, and considered delinquent,



as Certified by the Secretary of the Corporation prior to any Annual or Special Meeting of the membership; provided, however, nothing herein contained shall preclude any member from appearing at any such meeting, and being present at such meeting.

To amend, Article III, Section C. ANNUAL MEETINGS of the Code of By-Laws of the Cielo Vista Community Association, Inc. to:

ANNUAL MEETINGS:

Section C. There shall be an Annual Meeting of the voting members in December of each year, at a time and place established by the President or the Board of Directors. The Annual Meeting shall be held for the purpose of electing Directors and transacting any other business which may properly come before the meeting, with notice delivered to the voting members not less than ten calendar days prior to the date fixed for said meeting.

AFFIDAVIT OF ADOPTION

We, as officers of the Board of Directors of the Cielo Vista Community Association, Inc., hereby certify and affirm upon our oaths that the foregoing amendments to the Declaration of Covenants, Conditions and Restrictions and the Code of By-Laws of Cielo Vista Community Association, Inc. were duly presented to the members of said Association pursuant to required procedure, and that said amendments were approved,



ratified, and adopted by over seventy-five percent (75%) of  
said members on January 9, 1989.

*Robert L. Montgomery*  
Robert L. Montgomery  
President  
CIELO VISTA COMMUNITY ASSOCIATION, INC.

DATED: 1/18/89

*Dolores J. Montgomery*  
Dolores J. Montgomery  
Secretary  
CIELO VISTA COMMUNITY ASSOCIATION, INC.

DATED: 1-18-89

STATE OF INDIANA     )  
                                  )  
COUNTY OF *Marion*     )

Before me, a Notary Public in and for said County and State personally appeared Cielo Vista Community Association, Inc., by Robert L. Montgomery and Dolores J. Montgomery, its President and Secretary, respectively, who acknowledge the execution of the foregoing instrument as the free and voluntary act of the Association.

Witness by hand and Notarial Seal this 18th day of January, 1989.

My Commission Expires:

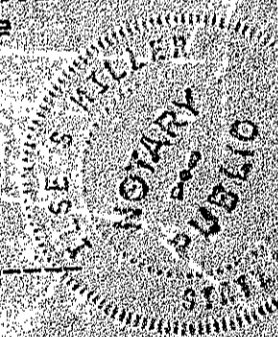
11-30-91

My County of Residence:

*She S. Miller*  
SIGNATURE, Notary Public

This instrument was prepared by Dolores Montgomery, Secretary, Cielo Vista Community Association, Inc.

**SEE S. MILLER**  
**NOTARY PUBLIC STATE OF INDIANA**  
**MARION COUNTY**  
**MY COMMISSION EXP. NOV 30 1991**



JAN 18 1 28 PM '89

RECEIVED FOR RECORD  
BOOK 61 PAGE 40  
JACQUOLINE E. KELLER  
JOHNSON COUNTY RECORDER