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2001-22417**DECLARATION OF CONDOMINIUM OWNERSHIP****OF****HOLY CROSS COMMONS**

THIS DECLARATION, made this 2<sup>nd</sup> day of February, 2001, by THE RE-DEVELOPMENT GROUP INC., an Indiana corporation (the "Declarant"),

**RECITALS**

A. Declarant is the sole owner of the fee simple title to the real estate located in Marion County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein (the "Real Estate").

B. Declarant is the sole owner of the fee simple title to that portion of the Real Estate more particularly described in Exhibit B, attached hereto and incorporated herein (the "Tract"), which shall be the first phase of development of the expandable condominium project described herein.

C. Declarant, by execution of this Declaration, desires to create a Horizontal Property Regime upon the Tract, subject to the provisions of the Horizontal Property Law of the State of Indiana and the terms and conditions of this Declaration.

**DECLARATION**

1. Definitions. The following terms, as used in this Declaration shall mean the following, unless the context clearly requires otherwise:

"Act" means the Horizontal Property Law of the State of Indiana, Indiana Code 32-1-6-1, et seq., as amended. The Act is incorporated herein by reference.

"Applicable Date" means the earliest of (a) ten (10) years from the date of recording hereof; or, (b) four (4) months after ninety percent (90%) of the Condominium Units that may be developed

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on the Real Estate have been conveyed to purchasers, or (c) the date Declarant files of record in the Office of the Recorder of Marion County, Indiana, an instrument waiving and releasing its reserved rights as set forth in Paragraph 16 of this Declaration, to expand or further expand Holy Cross Commons.

"Association" means Holy Cross Commons Homeowners Association, Inc. an Indiana nonprofit corporation, being the association of Owners of Holy Cross Commons more particularly described in Paragraph 12 hereof.

"Board of Directors" or "Board" means the governing body of the Association, being the initial Board of Directors referred to in the By-Laws or subsequent Board of Directors elected by the Owners in accordance with the By-Laws.

"Building" means any structure on the Tract in which one or more Units are located, including any additional structure containing one or more Units which may be submitted and subjected to the Act and this Declaration by Supplemental Declarations as herein provided. The initial Buildings are more particularly described and identified on the Plans and in Paragraph 3 of this Declaration and any additional Buildings will be identified in Supplemental Declarations and on plans that will be filed therewith.

"By-Laws" means the By-Laws of the Association providing for the administration and management of the Property, a true copy of which is attached to this Declaration and incorporated herein by reference.

"Common Areas" means the common areas and facilities defined in Paragraph 6 of this Declaration.

"Common Expenses" means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Areas (to the extent provided herein) and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the By-Laws.

"Condominium Unit" means each one of the living units constituting Holy Cross Commons, each individual living unit being more particularly described and identified on the Plans and in Paragraphs 4 and 5 of this Declaration, and each additional living unit that may be submitted and subjected to the Act and this Declaration by Supplemental Declarations as herein provided, together with the undivided interest in the Common Areas and Limited Areas appertaining to each such unit.

"Condemnation Award" shall have the meaning ascribed in Paragraph 11(b) hereof.

"Constitutional Majority" means those Owners of Condominium Units eligible to cast not less than sixty-seven percent (67%) in the aggregate of the Percentage Vote eligible to be cast by the Owners.

"Declarant" means The Re-development Group, Inc., an Indiana corporation, and any of its successors and assigns whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

"Expansion Parcel" shall have the meaning ascribed in Paragraph 16(g) hereof.

"Garage Unit" means each one of the garage units for the exclusive use of a Condominium Unit.

"Holy Cross Commons" means the name by which the Property and Regime shall be known.

"Insurance Trustee" means such bank with trust powers authorized to do business in Marion County, Indiana, as the Board of Directors may designate for the custody and disposition, as herein or in the By-Laws provided, of insurance proceeds and condemnation awards.

"Limited Areas" means the limited common areas and facilities defined in Paragraph 7 of this Declaration.

"Majority of Mortgagees" means those Mortgagees who hold first mortgages on Condominium Units to which are allocated at least seventy-five percent (75%) of the Percentage Vote allocated to Mortgaged Units.

"Majority of Owners" and "Majority of the Percentage Vote" means the Owners entitled to cast more than fifty percent (50%) of the Percent Votes in accordance with the applicable percentages set forth in this Declaration.

"Mortgaged Unit" means a Condominium Unit that is subject to the lien of a mortgage held, insured or guaranteed by a Mortgagee.

"Mortgagee" means the holder, insurer or guarantor of a first mortgage lien on a Condominium Unit who has requested notice in accordance with the provisions of Section 12.01 of the By-Laws.

"Owner" means a Person who or which owns the fee simple title to a Unit.

"Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Unit as specifically expressed in Paragraph 4 and 8 of this Declaration.

"Percentage Vote" means that percentage of the total vote accruing to all of the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof.

"Person" means an individual, firm, corporation, partnership, association, trust, limited liability company, or other legal entity, or any combination thereof.

"Plans" means (a) the floor and building plans and elevations of the initial Buildings and Units located on the Tract, and (b) a site plan of the Tract and the initial Building, prepared by Allan H. Weihe of Weihe Engineers, Inc., a registered professional surveyor, under date of December 1, 2000, copies attached in Exhibit C, as the same may be supplemented and amended to reflect the addition of Buildings and Units as contemplated by Paragraph 16.

"Property" means the Tract and appurtenant easements, the Units, the Buildings, and all other improvements, and property of every kind and nature whatsoever, real or personal, located upon the Tract and used in connection with the operation, use and enjoyment of Holy Cross Commons, excluding the personal property of Owners.

"Regime" means Holy Cross Commons Horizontal Property Regime created by this Declaration pursuant to the Act.

"Restoration" means construction, reconstruction, building, or rebuilding of the Buildings, the Units, the Common Areas and the Limited Areas to not less than the same condition as they existed immediately prior to any loss, damage or destruction with the same type of architecture and using, which appropriate, new materials of like kind and quality.

"Supplemental Declaration" means any supplement or amendment to this Declaration that may be recorded by Declarant and that extends the provisions of this Declaration to any part of the Real Estate and contains such complementary of supplementary provisions for such part of the Real Estate as are required or permitted by the Act or this Declaration.

"Tract" means the real estate described in Exhibit B and such other portions of the Real Estate as have, as of any give time, been subjected to the Act and this Declaration either by this Declaration or by a Supplemental Declaration as herein provided.

"Unit" means a Condominium Unit or a Garage Unit, as the context requires.

2. Declaration. Declarant hereby expressly declares that the Property shall by a Horizontal Property Regime in accordance with the provisions of the Act.

3. Description of Buildings. There are three (3) Buildings each containing two (2) Condominium Units on the Tract and three (3) Buildings each containing two (2) Garage Units on the Tract as of the date hereof, as shown on the Plans. A description of the Buildings and the Units contained therein is set forth in Exhibit C, attached hereto and hereby made a part hereof by this reference.

4. Legal Description. Each Unit is identified on the Plans by a distinct number which identifies the Unit. The legal description for each Unit shall consist of the number for such Unit as shown on the Plans, and shall be stated as "Condominium Unit (the identifying number) in Holy Cross Commons Horizontal Property Regime" or "Garage Unit (the identifying number) in Holy Cross Commons Horizontal Property Regime", as applicable.

5. Description of Units.

(a) Appurtenances. Each Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including, without limitation, all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Unit wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Unit or which may be necessary for the safety, support, maintenance, use and operation of any of the Buildings or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Unit shall constitute a part of such Unit, whether or not the same are located within or partly within the boundaries of such Unit. The interior sides and surfaces of all doors and windows in the perimeter walls of a Unit, whether or not located within or partly within the boundaries of a Unit, and all interior walls (except load-bearing walls) and all of the floors and ceilings within the boundaries of a Unit, are considered part of the Unit.

(b) Boundaries. The boundaries of each Unit shall be as shown on the Plans without regard to the existing construction. The vertical boundaries shall run from the upper surfaces of the interior, unfinished surfaces of the lowest floors or subfloors to the interior unfinished surfaces of the highest ceilings and the horizontal boundaries shall be the interior, unfinished surfaces of the common exterior and interior load-bearing walls (including windows and doors) of each Unit. In the event any horizontal, vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Unit, because of inexactness of construction, settling after construction, Restoration, or any other reason, the boundary lines of each Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Owner of each Unit in and to such space lying outside of the actual boundary lines of the Unit, but within the appropriate wall, floor or ceiling surfaces of the Unit.

6. Common Area and Facilities. "Common Areas" mean (a) the land portion of the Tract except as otherwise provided herein, (b) the foundations, roofs and exterior wall surfaces of the Buildings, (c) the yards, gardens, open spaces, landscaping, lakes, woodland areas, sidewalks and parking areas, except to the extent the same are otherwise classified and defined herein as Limited

Areas, (d) central electricity, telephone, gas, water, and sanitary sewer lines or mains serving the Units, (e) exterior lighting fixtures and electrical service lighting the exterior of the Buildings and certain of the other Common Areas unless separately metered to a particular Unit, (f) master television antenna or other telecommunication systems with connecting wiring and outlets to each Condominium Unit, if any, (g) pipes, ducts, insulation, electrical wiring and conduits and public utilities lines that serve more than one Unit, (h) the recreational facilities, if any, located on the Tract, (i) subfloors, ceilings and interiors of all structural walls, including all exterior perimeter and other load-bearing walls, walls between attached Units, except to the extent the same are otherwise classified and defined herein as part of the Unit or Limited Areas, and (j) all structures, structural components, facilities and appurtenances located outside of the boundary lines of the Units, except those areas and facilities expressly classified and defined herein as Limited Areas or as part of the Unit.

7. Limited Areas and Facilities. "Limited Areas" means those areas and facilities of the Tract to which use thereof is limited as follows:

(a) The entranceways through which access to a Unit is obtained shall be limited to the use of the Unit served by such entranceway.

(b) Balconies, patios, decks and porches, storage areas, if any, together with any area around such patios, deck or porch specifically shown and designated on the Plans and any fences and gates therein enclosing or surrounding the same serving a particular Unit to which there is direct access.

(c) Air conditioning compressors, if any, attached to, or located in, a Building are limited to the use of the Units to which they are connected.

(d) The exterior sides and surfaces of doors, windows and frames surrounding the same in the perimeter walls in each Unit shall be limited to the exclusive use of the Unit to which they appertain.

(e) Structural separations between Units or the space that would be occupied by such structural separations may become Limited Areas for the exclusive use of the Owner or Owners of the Units on either side thereof as provided in Paragraph 21. ®

(f) Any other areas designated and shown on the Plans as Limited Areas shall be limited to the Unit or Units to which they appertain as shown on the Plans.

8. Ownership of Common Area and Percentage Interest. Each Owner shall have an undivided interest in the Common Areas and Limited Areas equal to his Condominium Unit's Percentage Interest. The Percentage Interest in the Common Areas and Limited Areas appertaining to each Condominium Unit is set forth in Exhibit D attached hereto and made a part hereof. The Percentage Interest of each Condominium Unit shall be equal for all purposes and shall be a

percentage equal to the number one (1) divided by the total number of Condominium Units that, from time to time, have been submitted and subjected to the Act and this Declaration as herein provided and that constitute a part of Holy Cross Commons. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Areas shall be of a permanent nature and shall not be altered except in compliance with all requirements of the Act.

The Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to Holy Cross Commons and the Association upon which the Owners are entitled to vote.

9. Encroachments and Easements for Common Areas. If, by reason of the location, construction, Restoration, settling or shifting of a Building, any Common Area or Limited Area now encroaches or shall hereafter encroach upon any Unit, then in such event, an easement shall be deemed to exist and run to the Owners and the Association for the maintenance, use and enjoyment of such Common Area or Limited Area.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Units and serving his Unit.

Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit and any Limited Area designated for use in connection therewith, and shall have the right to the horizontal and lateral support of his Unit. Such rights shall be appurtenant to and pass with the title to each Unit.

10. Casualty and Restoration.

(a) Except as hereinafter provided, damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose; provided, however, that repair and reconstruction shall not be compulsory in the event of "complete destruction of all of the Buildings" (hereinafter defined) and shall only be done in accordance with the provisions hereinafter set forth. As used herein, the term "complete destruction of all of the Buildings" means a determination made by a vote of a Constitutional Majority of all Owners at a special meeting of the Association called for the purpose of making such determination, that total destruction of all of the Buildings has occurred. A special meeting of the Association shall be called and held within ninety (90) days after any fire or any other casualty or disaster damaging or destroying any of the Buildings for the purpose of making the determination of whether or not there has been a complete destruction of all of the Buildings. If such a special meeting is not called and held within such ninety (90) day period, of if the determination of whether or not there has been a complete destruction or all of the Buildings has not been made within such ninety (90) day period, then it shall be conclusively

presumed that the Owners determined that there was not a complete destruction of all of the Buildings, and the Association shall proceed with repair and reconstruction as herein provided.

(b) If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, and if the Property is not to be removed from the Regime, the cost of restoring the damage and repairing and reconstructing the Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by all of the Owners in proportion to the ratio that the Percentage Interest of such Unit bears to the total Percentage Interest of all Units. Any such amounts payable by the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein and in the Act.

(c) For purposes of subparagraphs (a) and (b) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Units to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

(d) If, under subparagraph (a) above, it is determined by the Owners at the special meeting of the Association referred to therein that there has been a complete destruction of all of the Buildings, the Owners shall, at the same special meeting, vote to determine whether or not such complete destruction of the Buildings shall be repaired and reconstructed. The Buildings shall not be reconstructed or repaired if it is the determination of the Owners at such special meeting that there has been a complete destruction of all of the Buildings unless by a vote of a Constitutional Majority of the Owners a decision is made to rebuild, reconstruct and repair the Buildings. If a Constitutional Majority of the Owners vote and decide that the Buildings are to be rebuilt, reconstructed and repaired, the insurance proceeds, if any, received by the Association shall be applied and any excess of construction costs over insurance proceeds, if any, received by the Association shall be contributed and paid as hereinabove provided in subparagraphs (a) and (b).

(e) If, in any case of the complete destruction of all of the Buildings, less than a Constitutional Majority of the Owners vote in favor of the rebuilding, reconstruction and repair of the Buildings, the Buildings shall not be rebuilt, reconstructed or repaired and, in such event, the Property shall be deemed and considered as to be removed from the provisions of the Act under Section 28 of the Act and, in accordance with Section 21 of the Act:

(i) the Property shall be deemed to be owned in common by the Owners;



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

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

(iv) the Property shall be subject to an action for partition at the suit of any 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 (1) fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Property, after first paying out of the respective shares of the Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Owner.

(f) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to replace the damaged property in condition as good as that before the casualty. Such costs may include the professional fees and premiums for such bonds as the Board of Directors desires.

(g) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Building or Buildings are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

(i) If the amount of the estimated cost of reconstruction and repair is less than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; provided, however, that upon request of a Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the following paragraph (ii).

(ii) If the estimated cost of reconstruction and repair of the Building or other improvement is more than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect, or other persons who have rendered services or furnished materials in

connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is not other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(iii) Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceedings or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Buildings were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Buildings stand.

(iv) In the event that there is any surplus of monies in the construction fund after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Board of Directors as a reserve or may be used in the maintenance and operation of the Common Areas, or, in the discretion of the Board of Directors it may be distributed to the Owners of the Buildings affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver or any rights against another Owner for committing willful or malicious damage.

11. Condemnation. If at any time or times during the continuance of this Regime, all or a part of the Property shall be taken or condemned by any Person with the power of eminent domain or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall be applicable:

(a) Representation. The Association, or the Insurance Trustee, if so appointed by the Association shall represent the Owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority. Each Owner hereby appoints the Association or its designee as attorney-in-fact for the purposes described in this subparagraph.

(b) Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Insurance Trustee as trustee for all Owners and their Mortgagees according to their respective interests therein.

(c) **Total Taking.** In the event that the entire Property is taken or condemned, or sold or otherwise disposed of or in lieu of or in avoidance thereof, this Horizontal Property Regime shall terminate. The Condemnation Award shall be apportioned among the Owners in accordance with their respective Percentage Interests and paid into separate accounts, each such account representing one Condominium Unit. Each such account shall remain in the name of the Insurance Trustee and shall be further identified by the legal description of the Condominium Unit and the name of the Owner. From each separate account the Insurance Trustee shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to the payment of valid tax and special assessment liens on the Condominium Unit in favor of any governmental taxing or assessing authority, next to payment of any assessments made pursuant to this Declaration or the By-Laws, next to other holders of liens or encumbrances on the Unit in the order of priority of their liens, and the balance remaining, if any, to each respective Owner.

(d) **Partial Taking.** In the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, this Horizontal Property Regime shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Insurance Trustee shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows:

(i) the total amount allocated to the taking of or injury to the Common Areas and Limited Areas shall be apportioned among the Owners in proportion to their respective Percentage Interests;

(ii) the total amount allocated to the severance damages shall be apportioned to the Owners of those Units that were not taken or condemned;

(iii) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within his own Unit shall be apportioned to the Owner of the particular Unit involved; and

(iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Insurance Trustee determines to be equitable in the circumstances.

If any allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Insurance Trustee shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by the Insurance Trustee by checks payable jointly to the respective Owners and their respective Mortgagees, provided that, with respect to an Owner whose Unit was taken or condemned, there shall first be deducted therefrom and paid or applied by the

Insurance Trustee as appropriate such Owner's pro-rata share of the expenses of the Insurance Trustee, the amounts of any valid tax or special assessment lien in favor of any governmental taxing or assessing authority and any assessments made pursuant to this Declaration or the By-Laws.

(e) Reorganization. In the event a partial taking results in the taking of a complete Condominium Unit, the Owner thereof shall automatically cease to be an Owner and a member of the Association. Thereafter, the Board of Directors shall reallocate to the remaining Owners, pro-rata, the Percentage Interest and Percentage Vote of such Owner. Such reallocation shall be submitted by the Board of Directors to the Owners of the remaining Condominium Units for approval by a Constitutional Majority thereof and appropriate amendment of this Declaration, but any such amendment to be effective must be approved by seventy-five percent (75%) of First Mortgagees.

(f) Restoration and Repair. Anything to the contrary in this Paragraph 11 notwithstanding, in the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof and any Unit, Common Area or Limited Area may reasonably be restored or repaired, as determined by an independent licensed architect or engineer employed by the Board of Directors for making such determination or by seventy-five percent (75%) of the First Mortgagees, the amount, if any, of the Condemnation Award allocable to the taking of or injury to the Common Areas and Limited Areas and to severance damages shall be applied to the cost of Restoration or repair of such Common Area and/or Limited Area, and the amount, if any, allocable to the taking of or injury to a particular Unit that may be restored or repaired shall be applied to the cost of such Restoration or repair. If any amount of the Condemnation Award then remains, such amount shall be allocated and disbursed in accordance with the provisions of subparagraph (d) above. If the amount of the Condemnation Award is insufficient to cover the cost of any such Restoration or repair, the provisions of Paragraph 10(a) shall apply.

(g) Alternative Valuation in Event of Total Taking. In the event the amount of the Condemnation Award is determined in negotiation, judicial decree or otherwise according to the value of individual Units as separately determined, the Condemnation Award shall be apportioned, with respect to such Units, according to the values so determined and not in accordance with the respective Percentage Interests of the Owners; but if the value of the Common Areas and/or Limited Areas is determined separately, the amount of the Condemnation Award attributable thereto shall be allocated among the Owners in accordance with their respective Percentage Interests.

12. Association of Owners. Subject to the rights of Declarant reserved in paragraph 19 hereof, the maintenance, repair upkeep, replacement, administration, management and operation of the Property shall be by the Association. Each Owner shall, automatically upon becoming an Owner of a Condominium Unit, be and become a member of the Association and shall remain a member until

such time as his ownership ceases, but membership shall terminate when such Person ceases to be an Owner, and will be transferred to the new Owner.

The Association shall elect a Board of Directors annually (except for the Initial Board as defined in the By-Laws) in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast his Percentage Vote for the election of the Board of Directors, except for the Initial Board who shall serve for the period provided in the By-Laws. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Association and an Owner solely for the purposes of the Statute (as defined in the By-Laws) and of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Association nor an Owner for any other purpose (unless he is actually an Owner and thereby a member of the Association).

An individual designated by an Owner that is not a natural Person shall be deemed a member of the Association for the purpose of qualifying for membership on the Board of Directors.

The Board of Directors shall be the governing body of the Association, representing all of the Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Property (exclusive of the Units except to the extent herein or in the By-Laws otherwise provided).

13. Covenants and Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Units, the Common Areas and Limited Areas are set forth in the By-Laws, including the limitation that each of the Condominium Units shall be limited to residential use. These covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future Owners and the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for and injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the By-Laws, including but not limited to any covenants and restrictions set forth in the By-Laws, Declarant shall have, until the date described in Paragraph 16 hereof as the date upon which Declarant's right to expand the Property and Holy Cross Commons terminates, the right to use and maintain any Units owned by Declarant, such other portions of the Property (other than individual Units owned by persons other than Declarant) and any portions of the Real Estate not then part of the Tract, all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the renovation and sale of Units, or to promote or effect sales of Units or for the conduct of any business or activity attendant thereto, including, without limitation, model Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all

of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Property at any time.

14. Amendment of Declaration. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) 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.

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the Percentage Vote.

(c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

(d) Adoption. Except as otherwise provided herein, any proposed amendment to this Declaration must be approved by a Majority of Owners.

(e) Restrictions on Amendments.

(i) The consent of a Constitutional Majority and the approval of Mortgagees holding first mortgages on Condominium Units to which at least seventy-five percent (75%) of the Percentage Vote of Mortgaged Units appertain, shall be required to terminate the Regime.

(ii) The consent of a Constitutional Majority and the approval of seventy-five percent (75%) of Mortgagees shall be required to amend materially any provisions of the Declaration, By-Laws or equivalent organizational documents of the Regime or to add any material provisions thereto which establish, provide for, govern or regulate any of the following:

- (A) voting;
- (B) assessments, assessment liens or subordination of such liens;
- (C) reserves for maintenance, repair and replacement of the Common Areas;
- (D) insurance or fidelity bonds;

- (E) rights of use of the Common Areas;
- (F) responsibility for maintenance and repair of the several portions of the Property;
- (G) expansion or contraction of the Regime or the addition, annexation or withdrawal of property to or from the Regime except as provided for in Paragraph 16;
- (H) boundaries for any Unit;
- (I) the interest in the Common Areas or Limited Areas;
- (J) convertibility of Units into Common Areas or Common Areas into Units;
- (K) leasing of Units;
- (L) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Unit.

(iii) The consent of a Constitutional Majority and the approval of seventy-five percent (75%) of Mortgagees shall be required to amend any provisions included in the Declaration, By-Laws or the equivalent organizational documents of the Regime that are for the express benefit of Mortgagees.

(f) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association provided that any amendment requiring the consent of Declarant shall contain Declarant's signed consent. All amendments shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

(g) **Amendments by Declarant Only.** Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have the right acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration from time to time if (i) such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time, (ii) such amendment or supplement is made to implement expansion of the Property and Holy Cross Commons pursuant to Declarant's reserved rights to so expand the same as set forth in Paragraph 16 hereof, (iii) such amendment or supplement is made to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other

1 1

governmental agency or any other public, quasi public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (iv) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages, or (v) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 14 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendment, but the right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 14 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

15. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of Directors as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Act, the By-Laws and rules and regulations as each may be amended or supplemented from time to time are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may occupy, use, enjoy or control a Unit or Units or any part of the Property in any manner shall be subject to the Declaration, the Act, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

16. Expandable Condominium and Declarant's Reserved Rights. Holy Cross Commons is and shall be an "expandable condominium", as defined in the Act, and Declarant expressly reserves the right and option to expand the Property and Holy Cross Commons in accordance with the provisions of the Act and the following provisions:

(a) The real estate described and defined herein as the Tract and described in Exhibit B is the real estate being subjected to the Regime by this Declaration and constitutes the first phase of the general plan of development of the Real Estate. The balance of the Real Estate described in Exhibit A is the area into which expansion of Holy Cross Commons may be made by Declarant. The maximum number of Condominium Units that may be developed on the Real Estate, including Condominium Units on the Tract as defined in this original Declaration, shall be six (6). The maximum number of Garage Units that may be developed on the Real Estate, including Garage Units on the Tract as defined in this original Declaration, shall be six (6). Subject to said limit as to the maximum number of Units to be developed on the Real Estate, Holy Cross Commons may be expanded by Declarant to include additional portions



of the Real Estate described in Exhibit A in one (1) or more additional phases by the execution and recording of one (1) or more Supplemental Declarations; but no single exercise of such right and option of expansion as to any part or parts of the Real Estate shall preclude Declarant from thereafter from time to time further expanding Holy Cross Commons to include other portions of the Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Real Estate so long as such first expansion is done on or before five (5) years from date of recording hereof, and a time limit of not exceeding ten (10) years in which all phases may be added to the Regime from date of recording hereof. Such expansion is entirely at the discretion of Declarant and nothing contained in this original Declaration or otherwise shall require Declarant to expand Holy Cross Commons beyond the Tract (as described in Exhibit B to this Declaration) or any other portions of the Real Estate that Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration by Supplemental Declarations as provided above.

(b) The Percentage Interest that will appertain to each Condominium Unit in Holy Cross Commons as Holy Cross Commons may be expanded from time to time by Declarant in accordance with the terms hereof (including the Percentage Interest that appertains to each of the Condominium Units included in this original Declaration) shall be equal and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units that, from time to time, have been subjected and submitted to this Declaration and then constitute a part of Holy Cross Commons.

(c) Simultaneously with the recording of Supplemental Declarations expanding Holy Cross Commons, Declarant shall record new Plans as required by the Act. Such Supplemental Declarations shall also include provisions reallocating Percentage Interests so that the Condominium Units depicted on such new Plans shall be allocated Percentage Interests in the Common Areas and Limited Areas on the same basis as the Condominium Units depicted in the prior Plans. Such reallocation of Percentage Interests shall vest when the Supplemental Declarations incorporating those changes has been recorded.

(d) When the Supplemental Declaration incorporating the addition of Units or expansion of Common Areas and Limited Areas, or both, is recorded, all liens including, but not limited to, mortgage liens shall be released as to the Percentage Interests in the Common Areas and Limited Areas described in this Declaration and shall attach to the reallocated Percentage Interests in the Common Areas and Limited Areas as though the liens had attached to those Percentage Interests on the date of the recordation of the mortgage or other lien. The Percentage Interests appertaining to additional Condominium Units being added by the Supplemental Declaration are subject to mortgage and liens upon the recordation of the Supplemental Declaration.

(e) In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, as attorney-in-fact, to shift the Percentage Interest in the Common Areas and Limited Areas appurtenance to each Condominium Unit to the percentages set

forth in each Supplemental Declaration recorded pursuant to this Paragraph 16. Each deed, mortgage or other instrument with respect to a Unit and the acceptance thereof shall be deemed a consent to and acknowledgment of, and grant of, (i) such power to said attorney-in-fact and (ii) the right pursuant to such power to shift and reallocate from time to time the percentages of ownership in the Common Areas and Limited Areas appurtenant to each Condominium Unit to the percentages set forth in each such recorded Supplemental Declaration.

(f) Each Owner of a Unit by acceptance of a deed thereto, further acknowledges, consents and agrees, as to each recorded Supplemental Declaration, as follows:

(i) The portion of the Real Estate described in each such Supplemental Declaration shall be governed in all respects by the provisions of this Declaration.

(ii) The Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit shall automatically be shifted and reallocated to the extent set forth in each Supplemental Declaration and upon the recording thereof such Percentage Interests shall thereby be and be deemed to be released and divested from such Owner and reconveyed and reallocated among the other Owners as set forth in each recorded Supplemental Declaration.

(iii) Each deed, mortgage or other instrument affecting a Unit shall be deemed given subject to the conditional limitation that the Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit shall, upon the recording of each Supplemental Declaration, be divested pro tanto to the reduced percentage set forth in such Supplemental Declaration and vested among the other Owners, mortgagees and others owning an interest in the other Condominium Units in accordance with the terms and percentages of each such recorded Supplemental Declaration.

(iv) A right of revocation is hereby reserved by the grantor in each deed, mortgage or other instrument affecting a Condominium Unit to so amend and reallocate the Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit.

(v) The Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit shall include and be deemed to include any additional Common Areas and Limited Areas included in land to which Holy Cross Commons is expanded by a recorded Supplemental Declaration and each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed to include such additional Common Areas and Limited Areas and the ownership of any such Condominium Unit and lien of and such mortgage shall automatically include and

attach to such additional Common Areas and Limited Areas as such Supplemental Declarations are recorded.

(vi) Each Owner shall have a perpetual easement appurtenant to his Unit or Units for the use of any additional Common Areas described in any recorded Supplemental Declaration, for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easements granted to the Owners (Limited Areas) of specific Condominium Units as may be provided in such Supplemental Declaration, and each Owner of a Condominium Unit described in any recorded Supplemental Declaration shall have a perpetual easement appurtenant to his Condominium Unit for the use of all Common Areas (except Limited Areas) described in this Declaration as supplemented or amended prior to the date of such recorded Supplemental Declaration.

(vii) The recording of any Supplemental Declaration shall not alter the amount of the lien for expenses assessed to or against a Condominium Unit prior to such recording.

(viii) Each Owner, by acceptance of the deed conveying his Unit or Units, agrees for himself and all those claiming under him, including mortgagees, that this Declaration and each Supplemental Declaration are and shall be deemed to be in accordance with the Act and, for the purposes of this Declaration and the Act, any change in the respective Percentage Interests in the Common Areas and Limited Areas as set forth in each Supplemental Declaration shall be deemed to be made by agreement of all Owners.

(ix) Each Owner agrees to execute and deliver such documents necessary or desirable to cause the provisions of this Paragraph 16 to comply with the Act as it may be amended from time to time.

(x) Assessments, method of payment and enforcement thereof on Units built as an expandable Unit pursuant to any Supplemental Declaration shall be governed by the same provisions pertaining to Assessments as set forth in the By-Laws.

(xi) Voting rights of an Owner in an expandable Condominium Unit created by Supplemental Declaration shall vest upon becoming a Member of the Association as prescribed by the By-Laws.

(g) In the event Declarant elects to expand the Property and Holy Cross Commons, all improvements constructed on that portion of the Real Estate added to the Tract (the "Expansion Parcel") shall be consistent with the improvements then located on the Tract in terms of the quality of construction and all such improvements shall be substantially completed before the Expansion Parcel is added to the Tract. No lien arising in connection

with Declarant's ownership of, and construction of improvements on, the Expansion Parcel shall adversely affect the rights of existing Owners or the priority of first mortgages on Units in the existing Property. All taxes and other assessments relating to the Expansion Parcel covering any period prior to the additions of the Expansion Parcel shall be paid by or otherwise satisfactorily provided for by Declarant.

17. Granting and Amendment of Easements. After the Applicable Date, the Board of Directors is granted the authority to grant such easements and to amend easements encumbering the Common Areas upon such terms and conditions and for such consideration as they deem appropriate.

18. Reservation of Rights to the Use of the Common Areas.

(a) If, at any time, and from time to time, any portion of the Real Estate has not been subjected and submitted to this Declaration or to the Act by a Supplemental Declaration and such portion or portions of the Real Estate not so subjected to this Declaration or to the Act is/are developed with single or multi-family dwelling units (whether for rent or otherwise), then the owner or owners of such portions of the Real Estate shall have the benefit of the Common Areas or portions thereof, to include the use of all parking areas and utilities for the use of the Persons occupying such dwelling units upon the same terms and conditions as the owners of the Units, their families, tenants and guests may use the Common Areas. The owner or owners of such portions of the Real Estate shall then pay for the use of such facilities based on the cost of operation and maintenance of such facilities for the year of such usage and based on the number of dwelling units so entitled to use such facilities in the proportion that the number of dwelling units on the Real Estate exclusive of the Tract bears to the sum of (i) such number of dwelling units plus (ii) the number of Condominium Units. The owner or owners of such dwelling units shall make payments for the usage provided herein to the Association at the same time as the Owners pay their assessments to the Association.

(b) Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas, including, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining, repairing, replacing, relocating and otherwise servicing utility and telecommunication equipment, facilities and installations to serve the Property and any portions of the Real Estate that are not part of the Property, to provide access to and ingress and egress to and from the Property and to any such portions of the Real Estate that are not part of the Property, to make improvements to and within the Property and any such portions of the Real Estate that are not part of the Property, and to provide for the rendering of public and quasi-public services to the Property and such portions of the Real Estate that are not part of the Property. The foregoing easement shall be a transferable easement and Declarant may at any time and from time to time grant similar easements, rights or privileges to other Persons for the same purposes. By way of example, but not in limitation of the generality of the foregoing, Declarant, and others to whom Declarant may grant such similar easements, rights or privileges, may so use the Common

Areas and, to the extent necessary, the Limited Areas, to supply utility and telecommunication services to the Property and any portions of the Real Estate that are not part of the Property and to permit public and quasi-public vehicles, including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, and their personnel to enter upon and use the drives and streets, the Common Areas and, to the extent necessary, the Limited Areas of Holy Cross Commons in the performance of their duties.

19. Initial Management. As set forth in the By-Laws, the initial Board of Directors consists and will consist of Persons selected by Declarant until the Applicable Date. The Board of Directors has entered, or may hereafter enter, into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term which will expire not later than the Applicable Date, under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Areas and, to the extent the same is not otherwise the responsibility of Owners, the Limited Areas, and, in general, perform all of the duties and obligations of the Association. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) at any time prior to the expiration of its term, in which event the Association shall thereupon and thereafter resume performance of all of its duties and obligations and functions. Notwithstanding anything to the contrary contained herein, so long as such management agreement remains in effect, Declarant (or its affiliate, as appropriate) shall have, and Declarant hereby reserves to and for its benefit (or to its affiliate, as appropriate), the exclusive right to manage the Property and to perform all the functions of the Association.

The initial Board may extend the management agreement beyond the Applicable Date providing the contract includes a right of termination without cause that the Association can exercise at any time after the Applicable Date. Such right of termination shall not require the payment of any penalty or an advance notice of more than ninety (90) days. Both the term and termination provisions apply only to professional management contracts and not to any other types of service contracts.

20. Assessments and Limitation on Declarant's Liability for Assessments. Owners are obligated to contribute pro rata in the same percentages as their established Percentage Interest in Common Areas and Limited Areas set forth in Paragraph 8 of this Declaration to the usual and ordinary maintenance and replacement reserve fund to assure continuous and adequate maintenance of Holy Cross Commons as prescribed by the Act, the assessment procedures and the method of collection and enforcement set forth under Article VI of the By-Laws attached to this Declaration. Provided, however, Declarant or its successors in interest, as an Owner, shall be excused from payment of assessments from the date this Declaration is recorded until the first day of the twenty-fourth (24th) calendar month following the month in which the closing of the sale of the first Condominium Unit occurs in the Buildings committed by this Declaration to the Regime; such provision shall also apply to assessments for Units owned by Declarant in Buildings committed by Supplemental Declarations. Provided, further, that if the expenses incurred under the assessment procedure exceed the amount assessed against the other Owners, then the Declarant or its successor shall pay the excess of the twenty-four (24) month period. Prior to the Applicable Date, Declarant

shall bear all expenses incurred with respect to the Tract arising out of construction or other activities on any portion of the Real Estate not included in the Tract, including but not limited to road damage and clean-up of debris caused by construction traffic, connection to any utility lines or mains located on the Tract and damage to, or deterioration of, grass, trees, fences or other portions of the Property due to construction off site or the state of areas under development.

21. Sale or Lease of Condominium Unit by Owners.

(a) Lease. It is in the best interests of all the Owners that those persons residing in Holy Cross Commons have similar proprietary interests in their Condominium Units and be Owners. For the purpose of maintaining the congenial and residential character of Holy Cross Commons, no Owner including the Declarant shall lease his Condominium Unit or enter into any other rental or letting arrangement for his Condominium Unit unless such lease is in writing and is for an initial period of at least six (6) months. Any such lease shall be made explicitly subject to the terms of this Declaration and the By-Laws.

(b) Sale. The Association shall have no right of first refusal to purchase any Condominium Unit which an Owner wishes to sell and an Owner may sell or lease his Condominium Unit free of any such restriction.

22. Right of Action. Subject to the provisions of Paragraph 28, the Association and any aggrieved Owner shall have a right of action against any Owner or Owners for failure to comply with the provisions of the Declaration, By-Laws or any decision of the Association or its Board of Directors which are made pursuant to authority granted to the Association or its Board of Directors in such documents. Owners shall have a similar right against the Association.

23. Costs and Attorneys' Fees. In any proceeding arising because of failure of any Owner to make any payments required by this Declaration, the By-Laws or the Act, or to comply with any provision of the Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

24. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or by abandonment of his Condominium Unit.

25. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration or the attached By-Laws.

26. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include the masculine,

feminine and neuter genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

27. **Floor Plans.** The Plans setting forth the layout, location, identification numbers, and dimensions of the Condominium Units and the Property are incorporated into this Declaration by reference, and have been filed in the office of the Recorder of Marion County, Indiana, in Horizontal Property Plan file \_\_\_\_\_, as Instrument Number 2001-0022417.

28. **Exculpation.** This instrument is executed and delivered on the express condition that anything herein to the contrary notwithstanding, each and all of the representations, covenants, undertakings and agreements herein made on the part of Declarant ("Representations"), while in form purporting to be the Representations of Declarant, are nevertheless each and every one of them, made and intended not as personal Representations by Declarant or for the purpose or with the intention of binding Declarant personally but are made and intended for the purpose of binding only the Tract; and no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against Declarant personally or its Directors and Officers, on account of this instrument or on account of, in connection with or arising out of any Representations of Declarant in this instrument contained, either express or implied, all such personal liability, if any, being expressly waived and released by each Person who acquires any interest in a Condominium Unit as a condition to the acquisition thereof.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

"DECLARANT"

THE RE-DEVELOPMENT GROUP INC., an  
Indiana corporation

By: Patrick D. Dubach  
Patrick D. Dubach, President

®

CHICAGO TITLE

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Patrick D. Dubach, known to me to be the President of The Re-development Group Inc., an Indiana corporation, and acknowledged the execution of the foregoing Declaration of Condominium Ownership of Holy Cross Commons for and on behalf of said corporation.

Witness my hand and Notarial Seal, this 2<sup>nd</sup> day of February, 2001.



*Teri L. Young*  
Notary Public - Signature

\_\_\_\_\_  
Notary Public - Printed

My Commission Expires:  
\_\_\_\_\_

My County of Residence:  
\_\_\_\_\_

This instrument prepared by John B. Baxter, Attorney at Law, Johnson, Smith Pence & Heath, LLP, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204.

TERI L. YOUNG  
NOTARY PUBLIC STATE OF INDIANA  
COUNTY OF RESIDENCE, SHELBY  
MY COMMISSION EXPIRES MAY 13, 2008



INSTRUMENT APPROVED  
BY  
CENTER TOWNSHIP ASSESSOR



**EXHIBIT A**

Lots 14, 15 and 16 in C.E. Coffin's East Vermont Street Addition, an Addition to the City of Indianapolis, as per plat thereof recorded in Plat Book 8, pages 96 and 97 in the Office of the Recorder of Marion County, Indiana.



CHICAGO TITLE

EXH299453.1

11

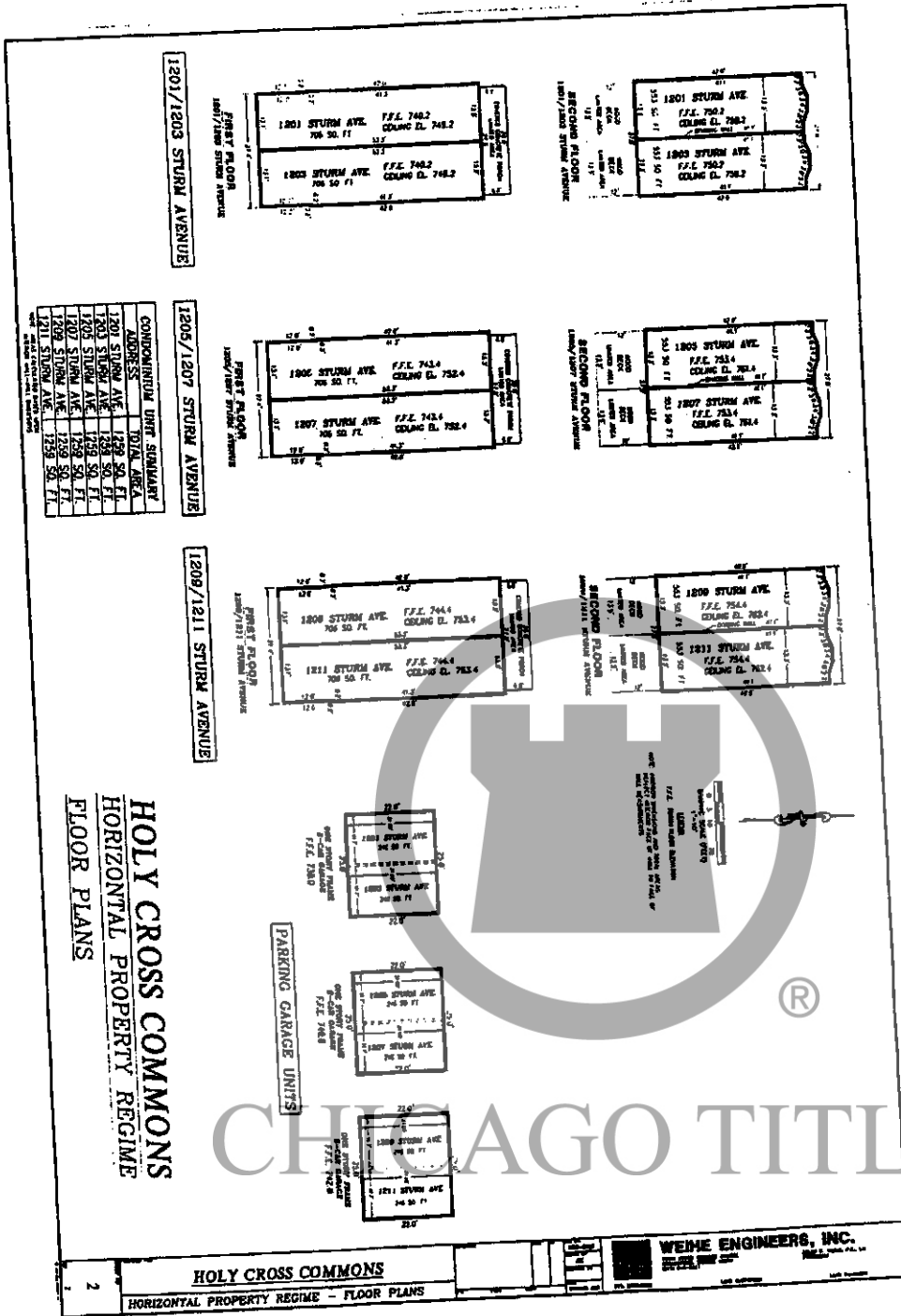
**EXHIBIT B**

Lots 17 and 18 in C.E. Coffin's East Vermont Street Addition, an Addition to the City of Indianapolis, as per plat thereof recorded in Plat Book 8, pages 96 and 97 in the Office of the Recorder of Marion County, Indiana.



CHICAGO TITLE

EXR0299454.1



**EXHIBIT C**

**EXHIBIT D**

**Percentage Interest in the Common Areas and Limited Areas**

<u>CONDOMINIUM UNIT</u>	<u>PERCENTAGE INTEREST</u>
1201 Sturm Avenue	one-sixth(1/6)
1203 Sturm Avenue	one-sixth(1/6)
1205 Sturm Avenue	one-sixth(1/6)
1207 Sturm Avenue	one-sixth(1/6)
1209 Sturm Avenue	one-sixth(1/6)
1211 Sturm Avenue	one-sixth(1/6)



CHICAGO TITLE

5

**Cross Reference Instrument Number 2001-0022418**

**AMENDMENT TO DECLARATION OF CONDOMINIUM OWNERSHIP  
OF HOLY CROSS COMMONS**

THIS AMENDMENT TO DECLARATION OF CONDOMINIUM OWNERSHIP OF HOLY CROSS (the "Amendment"), is made this 14<sup>th</sup> day of June, 2001, by THE RE-DEVELOPMENT GROUP INC., an Indiana corporation (hereinafter referred to as "Declarant").

**RECITALS:**

- A. On February 2, 2001, Declarant entered into that certain Declaration of Condominium Ownership of Holy Cross Commons, recorded February 13, 2001 in the Office of the Recorder of Marion County, Indiana as Instrument Number 2001-0022418 (the "Declaration").
- B. Exhibit A and Exhibit B were incorrectly described in the Declaration.
- C. Declarant desires to correct such errors to Exhibit A and Exhibit B of the Declaration by amending the Declaration as herein provided.
- E. Pursuant to Section 14 (g) (v) of the Declaration, Declarant, has the absolute right to amend the Declaration in order to correct or clarify any clerical or typographical errors.

**AMENDMENT:**

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares that:

- 1. "Exhibit A" and "Exhibit B" are hereby replaced by the Exhibit A and Exhibit B attached hereto and made a part hereof and made a part of the Declaration.

AFPD/J307159.1

CHICAGO TITLE

06/29/01 09:20PM NMBDA MARTIN MARION CTY RECORDER JRC 16.00 PAGES: 5

Inst # 2001-0106069

2. All other terms, conditions and provisions set forth in the Declaration not specifically relating to those items explicitly modified by or otherwise disclosed in this Amendment shall remain unchanged and shall continue in full force and effect.

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed as of the day and year first above written.

"DECLARANT"

THE RE-DEVELOPMENT GROUP INC.

By: Patrick D. Dubach  
Patrick D. Dubach, President



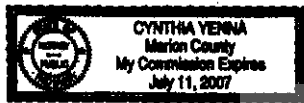
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CHICAGO TITLE

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said County and State, personally appeared Patrick D. Dubach, known to be the President of **The Re-Development Group Inc.**, an Indiana corporation, and acknowledged the execution of the foregoing for and on behalf of said corporation.

WITNESS my hand and notarial seal this 14<sup>th</sup> day of June, 2001.



Cynthia Yenna  
Notary Public - Signature

\_\_\_\_\_  
Notary Public - Printed

My Commission Expires:

\_\_\_\_\_

My County of Residence:

\_\_\_\_\_



This instrument was prepared by, and after recording return to, John B. Baxter, Esquire, BARNES & THORNBURG, 11 South Meridian Street, Indianapolis, Indiana 46204.

**EXHIBIT A**

Lots 14, 15, 16, 17 and 18 in C.E. Coffin's East Vermont Street Addition, an Addition to the City of Indianapolis, as per plat thereof recorded in Plat Book 8, pages 96 and 97 in the Office of the Recorder of Marion County, Indiana.



CHICAGO TITLE

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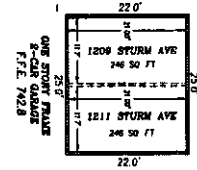
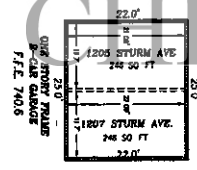
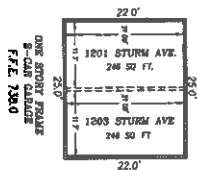
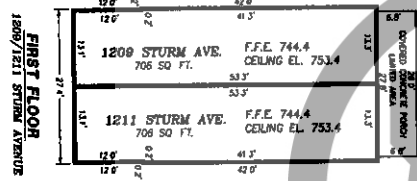
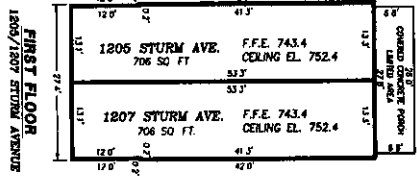
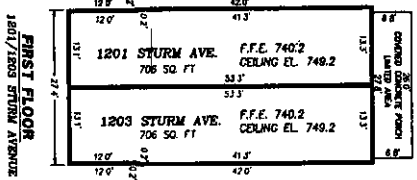
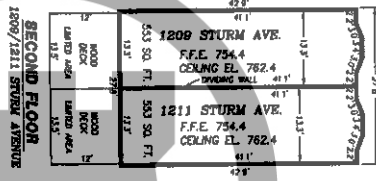
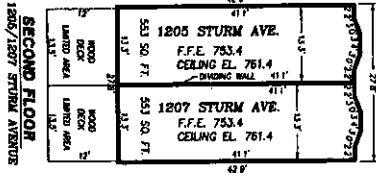
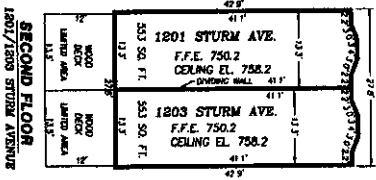
**EXHIBIT B**

Lots 14, 15 and 16 in C.E. Coffin's East Vermont Street Addition, an Addition to the City of Indianapolis, as per plat thereof recorded in Plat Book 8, pages 96 and 97 in the Office of the Recorder of Marion County, Indiana.



CHICAGO TITLE





1201/1203 STURM AVENUE

1205/1207 STURM AVENUE

1209/1211 STURM AVENUE

CONDOMINIUM UNIT SUMMARY		
ADDRESS	TOTAL AREA	
1201 STURM AVE.	1259 SQ. FT.	
1203 STURM AVE.	1259 SQ. FT.	
1205 STURM AVE.	1259 SQ. FT.	
1207 STURM AVE.	1259 SQ. FT.	
1209 STURM AVE.	1259 SQ. FT.	
1211 STURM AVE.	1259 SQ. FT.	

PARKING GARAGE UNITS

# HOLY CROSS COMMONS

## HORIZONTAL PROPERTY REGIME

### FLOOR PLANS

**WEIHE ENGINEERS, INC.**  
 1500 N. LAUREL AVENUE, SUITE 100  
 CHICAGO, ILLINOIS 60642  
 TEL: (773) 525-1111  
 FAX: (773) 525-1112  
 WWW.WEIHENG.COM