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DECLARATION OF CONDOMINIUM OWNERSHIP
AND OF
EASEMENTS, RESTRICTIONS, COVENANTS
AND PZ-LAWS FOR
LIONS HEAD CONDOMINIUM ASSOCIATION,
A Not-For-Profit Corporation

FILED

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THIS DECLARATION is made and entered into by KSC Development Company, an Indiana general partnership, (hereinafter referred to as the "Declarant".)

WITNESSETH:

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

A part of the North Half of the Southeast Quarter of Section 27, Township 17 North, Range 3 East of the Second Principal Meridian in Marion County, Indiana, being more particularly described as follows, towit:

Beginning at a point on the North line of the said Half Quarter Section and the South line of "Spring Meadow Addition", a Subdivision in Marion County, Indiana, the plat of which is recorded in Plat Book 27, page 252 in the Office of the Recorder of Marion County, Indiana, a distance of 692.17 feet South 89 degrees 46 minutes 02 seconds West from the Northeast corner of the said Half Quarter Section; thence South 00 degrees 00 minutes 00 seconds and parallel with the East line of the said Half Quarter Section 1331.59 feet to the South line of said Half Quarter Section; thence South 89 degrees 41 minutes 37 seconds West along the South line of the said Half Quarter Section and the center line of 73rd Street, as now located and established, 662.17 feet to a point; thence North 00 degrees 00 minutes 00 seconds parallel with the East line of said Half Quarter Section 1332.44 feet to the North line of said Half Quarter Section and the South line of said "Spring Meadow Addition"; thence North 89 degrees 46 minutes 02 seconds East along the North line of said Half Quarter Section and said South line of "Spring Meadow Addition" 662.17 feet to the POINT OF BEGINNING, containing 20.246 acres, more or less.

Subject, however, to 50 feet by parallel lines off the entire South side thereof per right of way grant to the City of Indianapolis and recorded as Instrument numbered 71-30239 in the Office of the Recorder of Marion County, Indiana.

Subject to easements, restrictions, covenants and agreements of record.

WHEREAS, the Declarant desires and intends by this Declaration to submit the Property, as hereinafter defined, to

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

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

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

ARTICLE I

DEFINITIONS

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

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

1.02 Parcel. The entire tract of land above described, which is hereby submitted to the provisions of the Act.

1.03 Buildings. The twenty-two (22) - two (2) story apartment buildings, the community building and bath house, and other improvements located on the Parcel, forming a part of the Property and containing the Units, as shown by the Plans.

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

1.05 Unit. A part of the Property within the Buildings designed and intended for any type of independent use and more specifically described hereafter in Article II.

1.06 Common Areas. All portions of the Property except the Units, more specifically described in Section 3.01 hereof. For convenience of reference only, a portion of the Common Areas is hereafter referred to as Limited Common Areas. Except as specifically otherwise provided, the term Common Areas, when used herein, is inclusive of Limited Common Areas.

1.07 Limited Common Areas. A part of the Common Areas serving exclusively, to the exclusion of other Units, a single Unit or adjoining Units as an inseparable appurtenance thereto and more specifically described in Section 3.03 hereof.

1.08 Unit Ownership. A part of the Property consisting of one Unit and the undivided interest in the Common Areas appurtenant thereto.

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

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

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

1.12 Unit Owner. Person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit Ownership, provided that a lien holder shall not be included in the definition of Unit Owner unless it is in possession. For the purposes of Article VIII hereof, the word "Unit Owner" shall include any beneficiary of a trust, shareholder of a corporation or partner of a partnership holding legal title to a Unit.

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

1.14 By-Laws. The provisions for the administration of the Property, including, but not limited to, assessment, maintenance, use, occupancy, sale, leasing and alienation, all as hereinafter set forth, or as the same may be from time to time duly amended, the same to have full force and effect whether applied to or by the Declarant, the Developer, as hereinafter defined, the Board or the Association as hereinafter defined. Articles V, VI and VII and Section 12.07 hereof shall constitute the By-Laws of the Association.

1.15 Association. Lions Head Condominium Association, Inc., an Indiana not-for-profit corporation.

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

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

1.18 Common Expenses. The proposed or actual expenses affecting the Property, including reserves, if any, lawfully assessed by the Board, including but without limitation, the expenses of maintenance, repair, administration and operation of the Common Areas.

1.19 Developer. Lions Head Associates, an Illinois limited partnership, or such other persons or entities as the Declarant may from time to time designate.

1.20 Insurance Trustee. The Indiana National Bank, or such other persons or entities as may from time to time be designated in accordance with Article 5, Section 5.08 (f) (1).

1.21 Plans. The Plans setting forth the layout, the location, the identification numbers and the dimensions of the

Units and the Property, including the Common Areas, as have been filed in the office of the Recorder of Marion County, Indiana, in Horizontal Plan File _____, as of October 12, 1977, as Instrument No. 79-78657, which are incorporated herein by reference.

ARTICLE II

UNITS

2.01 Description and Ownership.

(a) There are twenty-two (22) residential structures, 2 stories in height, with a total of 132 Units. All Units are delineated on the Plans and are listed on Exhibit A; and shall have lawful access to a public way.

(b) Each Unit consists of the space enclosed and bounded by the horizontal and vertical planes set forth in the delineation thereof on the Plans. The legal description of each Unit shall consist of the identifying number of such Unit and Building as shown on the Plans. Every deed, lease, mortgage or other instrument shall legally describe a Unit by its identifying numbers as shown on Exhibit A, and every such description shall be deemed good and sufficient for all purposes.

(c) Except as provided by the Act, no Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plans.

2.02 Certain Structures Not Constituting Part of a Unit.

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

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

ARTICLE III

COMMON AREAS

3.01 Description. Except as otherwise provided in this Declaration, the Common Areas shall consist of all portions of the Property except the Units. Without limiting the generality of the foregoing, the Common Areas shall include the Parcel, the portions of the Buildings occupied by the stairways, entrances and exits, lobbies, corridors, communication system, master antenna connections and facilities (whether leased or owned), storage areas, community building, bath house, outside walks and driveways, landscaping, the parking areas, refuse

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collection system (including chutes and related refuse equipment), the laundry room facilities, the swimming pool, the pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, such component parts of walls, floors and ceilings as are not located within the Units, and structural parts of the Buildings, including structural members located within the Units.

3.02 Ownership of Common Areas. Each Unit Owner shall own an undivided interest in the Common Areas as a tenant in common with all other Unit Owners of the Property. The extent or amount of such ownership shall be expressed by a percentage amount, and, once determined, shall remain constant, and may not be changed without unanimous approval of all Unit Owners. The Declarant has so determined each Unit's corresponding percentage of ownership in the Common Areas as set forth in Exhibit A attached to this Declaration, in accordance with the IC 32-1-6-7(a) of the Act.

3.03 Limited Common Areas. The Limited Common Areas are part of the Common Areas serving exclusively a single Unit or adjoining Units as an inseparable appurtenance thereto, including specifically but not by way of limitation, balconies, patios, some stoops, and storage areas and such portions of the perimeter walls, floors and ceilings, doors, vestibules, windows and entryways, and all associated fixtures and structures therein as lie outside the Unit boundaries.

ARTICLE IV

GENERAL PROVISIONS AS TO UNITS AND COMMON AREAS

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

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

4.03 Easements.

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

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

(b) Easements for Utilities. Indiana Bell Telephone Company, Indianapolis Power & Light Company, Citizens Gas & Coke Utility and Indianapolis Water Company and all other suppliers of utilities serving the Property are hereby granted the right to install, lay, construct, operate, maintain, renew, repair or replace, conduits, cables, pipes and wires and other equipment into, over, under, along and on any portion of the Common Areas for the purpose of providing the Property with utility services, together with the reasonable right of ingress to and egress from the Property for said purpose. The Declarant, Developer, Board or Association may hereafter grant other or additional easements for utility purposes for the benefit of the Property, over, under, along and on any portion of said Common Areas, and each Unit Owner hereby grants the Declarant, Developer, Board or Association an irrevocable power of attorney to execute, acknowledge and record for and in the name of such Unit Owner, such instruments as may be necessary to effectuate the foregoing. Easements are also hereby declared and granted to install, lay, operate, maintain, repair and replace any pipes, wire, ducts, conduits, public utility lines, components of the communications systems, if any, or structural components, which may run through the walls of a Unit, whether or not such walls lie in whole or in part within the Unit boundaries.

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

(d) Easement for Construction. During the period of any construction or reconstruction on the Property by the Developer, Declarant, Board or Association, the Developer, Declarant, Board or Association, its contractors and subcontractors, and their respective agents and employees shall have the right and easement to use the Common Areas for purposes of ingress, egress and access to the Building and the Property as may be required in connection with said construction or reconstruction.

4.04 Storage and Parking Areas.

(a) Storage Areas. Each Unit Owner shall be responsible for his personal property located in any storage areas of the Common Areas.

(b) Parking Areas. The Parking Areas are a part of the Common Areas. Each Unit shall be entitled to the use of one (1) carport as a parking space within the Parking Area. All entrances, exits, fixtures, equipment and associated facilities are part of the Common Areas. Subject to the foregoing, all such carports and the remaining Parking Area shall be allocated to the respective Unit Owners or as general unassigned parking in such manner and subject to such rules and regulations as the Board may prescribe.

4.05 Use of Common Areas.

(a) General. Subject to the provisions of this Declaration, each Unit Owner shall have the nonexclusive right to use the Common Areas (except the Limited Common Areas) in common with all other Unit Owners, as may be required for the purpose of ingress and egress to and use, occupancy and enjoyment of the respective Unit owned by such Unit Owner, and such other incidental uses permitted by this Declaration. Each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Areas serving such Unit alone or with adjoining Units. Such rights to use and possess the Common Areas, including the Limited Common Areas, shall be subject to and be governed by the provisions of the Act, this Declaration, By-Laws, and rules and regulations of the Association. The Association shall have the authority to lease or grant concessions with respect to parts of the Common Areas subject to the provisions of this Declaration and By-Laws, including specifically, but not by way of limitation, laundry area, and parking areas. All income derived by the Association from leases, concessions or other sources shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

(b) Guest Privileges. The aforescribed rights shall extend to the Unit Owner and the members of the immediate family and authorized guests and other authorized occupants and visitors of the Unit Owner, subject to reasonable rules and regulations with respect thereto. The use of the Common Areas and the rights of the Unit Owners with respect thereto shall be subject to and governed by the provisions of the Act, this Declaration and the By-Laws and rules and regulations of the Board as may be imposed from time to time.

(c) Disclaimer of Bailee Liability. Notwithstanding anything to the contrary contained in this Declaration, neither the Board, the Association, any Unit Owner, nor the Declarant shall be considered a bailee of any personal property stored in the Common Areas (including property located in storage lockers and vehicles parked in the Parking Area), whether or not exclusive possession of any particular areas shall be given to any Unit Owner for storage or parking or other purposes, and shall not be responsible for the security of such personal property or for any loss or damage thereto whether or not due to negligence.

4.06 Maintenance, Repairs and Replacements.

(a) By the Board. The Board or Association, at its expense, shall be responsible for the maintenance, repair and replacement of those portions, if any, of each Unit which contribute to the support of a Building excluding, however, interior wall, ceiling and floor surfaces. In addition, except as otherwise provided herein, the Board or Association shall maintain, repair and replace all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which may be located within the Unit boundaries as specified in Section 2.02 hereof, exclusive of any portions of the foregoing which may be located at or beyond the wall outlets, or which may be the responsibility of an individual Unit Owner under subparagraph (b) below, or any other provision of this Declaration. Maintenance, repairs and replacements of the Common Areas and the Limited Common Areas (except as otherwise specifically provided herein) shall be furnished by the Board as part of the Common Expenses, subject to the By-Laws or rules and regulations of the Association.

(b) By the Unit Owner. Except as otherwise provided in paragraph (a) above, each Unit Owner shall furnish and be responsible for, at his own expense:

(i) All of the maintenance, repairs and replacements within his own Unit and of the doors and outside windows appurtenant thereto, and all internal installations of such Unit such as refrigerators, ranges, and other kitchen appliances, lighting fixtures and other electrical fixtures, plumbing and any portion of any other utility service facilities located within the Unit boundaries as specified in Sections 2.01 and 2.02; provided, however, that such maintenance, repairs and replacements as may be required for the bringing of water, gas and electricity to the Units, shall be furnished by the Board as part of the Common Expenses, and provided further that the Board or the Association may provide, by its rules and regulations as may be imposed from time to time, for ordinary maintenance and minor repairs and replacements to be furnished to Units and appliances therein by Association personnel as a Common Expense or as user charges pursuant to Section 6.08 hereof.

(ii) All of the decorating within his own Unit (initially and thereafter from time to time), including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceiling, and such Unit Owner shall maintain such portions in good condition at his sole expense as may be required from time to time, which said maintenance and use shall be subject to the rules and regulations of the Board or Association as may be imposed from time to time. Each Unit Owner of a Unit located on the second floor of a Building who shall hereinafter elect to install in any portion of his Unit where the same does not now exist (other than in bath and powder rooms) hard surface floor covering (i.e., wood, parquet, tile, slate, ceramic, etc.) shall be first required to install a sound-absorbent undercushion of such kind and quality

as to prevent the transmission of noise to the Unit below, and shall obtain approval of the Board prior to making such installation. If such prior approval is not so obtained, the Board may, in addition to exercising all of the other remedies provided for in this Declaration for breach of any of the provisions hereof, require such Unit Owner to cover all non-conforming work with carpeting, or may require removal of such non-conforming work, at the expense of the offending Unit Owner. The interior surfaces of all windows forming part of a perimeter wall of a Unit shall be cleaned or washed at the expense of each respective Unit Owner. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades, window coverings or other items visible from the exterior of a Building, shall be subject to the rules and regulations of the Board as may be imposed from time to time.

(iii) All of the maintenance, repairs and replacements of the Limited Common Areas benefiting his Unit, in whole or in part, to the extent determined by the Board to be performed by the respective Unit Owner. At the discretion of the Board, the Board may perform, or cause to be performed, such maintenance, repairs and replacements of the Limited Common Areas and the cost thereof shall be assessed in whole or in part to Unit Owners benefited thereby, and further, at the discretion of the Board, the Board may direct such Unit Owners, in the name and for the account of such Unit Owners to arrange for such maintenance, repairs and replacements, to pay the cost thereof with the funds of the Unit Owner, and to procure and deliver to the Board such lien waivers and contractor's or subcontractor's sworn statements as may be required to protect the Property from all mechanics' or materialmen's lien claims that may arise therefrom.

(c) Nature of Obligations. Nothing herein contained shall be construed to impose a contractual liability upon the Association for maintenance, repair and replacement, but the Association's liability shall be limited to damages resulting from negligence. The respective obligations of the Association and Unit Owners set forth in this Declaration shall not be limited, discharged or postponed by reason of the fact that any such maintenance, repair or replacement is required to cure a latent or patent defect in material or workmanship in the construction of a Building, nor because they may become entitled to proceeds under policies of insurance. In addition, and notwithstanding anything hereinabove to the contrary, no Unit Owner shall have a claim against the Board or Association (or against the Declarant or Developer) for any work (such as exterior window cleaning, or repair of the Common Areas), ordinarily the responsibility of the Board or Association, but which the Unit Owner himself has performed or paid for, unless the same shall have been agreed to in advance by the Board or Association or the Developer.

4.07 Negligence of Unit Owner. If, due to the negligent act or omission of a Unit Owner, or of a member of his family or household pet or of a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Areas or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which

would otherwise be at the Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board.

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

ARTICLE V

ADMINISTRATION

5.01 Administration of Property. The direction and administration of the Property shall be vested in the Board of Directors (herein sometimes referred to as the "Board" or the "Board of Managers") which shall consist of five (5) persons except that the initial Board shall consist of three (3) members who shall be elected in the manner hereinafter set forth; provided, however, that, irrespective of anything else contained in this Declaration, for a period commencing on the date this Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of voting members, the Declarant or Developer shall have the right to designate and select three (3) persons who shall serve as the initial Board and to exercise the powers of the Board as provided in the Act. Except for directors designated by the Declarant or Developer, each member of the Board shall be one of the Unit Owners and shall reside on the Property; provided, however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any designated agent of such corporation, partnership, other legal entity, or beneficiary of such trust, shall be eligible to serve as a member of the Board, so long as any such agent or beneficiary (other than a person designated by the Declarant or Developer) resides on the Property.

5.02 Association. The Association has been formed, prior to the recording hereof, as a not-for-profit corporation under the General Not-for-Profit Corporation Act of the State of Indiana, having the name LIONS HEAD CONDOMINIUM ASSOCIATION, INC. and shall be the governing body for all of the Unit Owners for the maintenance, repair, replacement, administration and operation of the Property. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of Unit Owners in accordance with the provisions contained herein. Each Unit Owner shall be a member of the Association so long as he shall be a Unit Owner, and such membership shall automatically terminate when he ceases to be a Unit Owner, and upon the transfer of his ownership interest the new Unit Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. The Association may issue certificates evidencing membership therein. The form of such certificate shall be prescribed by the Board. Such certificate shall not be transferable. The Association shall have no seal.

5.03 Voting Rights. There shall be one person with respect to each Unit Ownership who shall be entitled to vote at any meeting of the Owners. Such person shall be known (and hereinafter referred to) as a "voting member". Such voting member may be the Unit Owner or one of the group composed of all the Unit Owners of a Unit Ownership, or be some person designated by such Unit Owner or Unit Owners to act as proxy on his or their behalf and who must be a Unit Owner. Such designation shall be made in writing to the Board and filed with the secretary of the meeting before the commencement of any meeting at which it may be voted. Such designation shall be revocable at any time by actual notice to the Board of a death or judicially declared incompetence of any designator, or by written notice to the Board by the designator. Any or all such Unit Owners may be present at any meeting of the voting members and (those constituting a group acting as a single voting member) may vote or take any other action as a voting member either in person or by proxy. The total number of votes of all voting members shall be one hundred (100), and each Unit Owner or group of Unit Owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the Common Areas applicable to his or their Unit Ownership as set forth in Exhibit A. The person designated by the Declarant or Developer shall be the voting member with respect to any Unit Ownership owned by the Declarant or Developer.

5 04 Meetings.

(a) Quorum. Meetings of the voting members shall be held at the Property or at such other place in Marion County, Indiana, as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of the voting members having twenty-five percent (25%) of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting members at which a quorum is present upon the affirmative vote of the voting members having a majority of the total votes present at such meeting.

(b) Initial and Annual Meeting. The initial meeting of the voting members shall be held upon ten (10) days written notice given by the Declarant or Developer. Said initial meeting shall be held no later than the first to happen of (i) sixty (60) days after the date the Declarant or Developer has sold and delivered its deed for at least one hundred (100) of the Units provided that sales or conveyances of Units by Declarant to Developer shall not be counted nor considered for this purpose or (ii) three (3) years from the date of the recording of this Declaration. Thereafter, there shall be an annual meeting of the voting members on the second Tuesday of October following such initial meeting, and on the second Tuesday of October of each succeeding year thereafter at 7:30 PM, or at such other reasonable time or date as may be designated by written notice of the Board delivered to the voting members.

(c) Special Meetings. Special meetings of the voting members may be called at any time after the initial meeting provided for in Section 5.04(b) hereof for the purpose of considering matters which, by the terms of this Declaration, require the approval of all or some of the voting members, or for any other reasonable purpose. Special meetings may be called by written notice authorized by a majority of the Board, the President of the Board, or by twenty percent (20%) of the voting members and delivered not less than ten (10) days and no more than thirty (30)

days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

(d) Special Matters. The following matters shall require the approval of voting members having not less than two-thirds (2/3) of the total votes; (i) the merger or consolidation of the Association; (ii) the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all of the property and assets of the Association; and (iii) the purchase or sale or lease of a Unit or other real estate by the Association.

5.05 Notices of Meetings. Except as otherwise provided herein, notices of meetings required to be given herein may be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Unit of the Unit Owner with respect to which such voting right appertains, if no address has been given to the Board provided that any such notice shall be delivered no less than ten (10) days and no more than thirty (30) days prior to the date fixed for such meeting and shall state the time, place and purpose of such meeting. Notice of any meeting may be waived by any person entitled to notice thereof who files a waiver of such notice in writing with the Secretary of the meeting before the commencement thereof. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

5.06 Board of Directors.

(a) The initial Board of Directors designated by the Declarant or Developer pursuant to Section 5.01 hereof shall consist of three (3) directors who shall serve without compensation. Such initial Board shall serve for a period commencing on the date this Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of voting members held as provided in Section 5.04(b) hereof. Said initial Board may, on behalf of the Declarant or Developer, exercise the rights reserved in Section 12.01 hereof. At the initial meeting of voting members held as provided in Section 5.04(b) hereof, the voting members shall elect the Board which shall consist of five (5) members. In all elections for members of the Board, each voting member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting five (5) Board members shall be elected. The three (3) persons receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of two (2) years and the other two (2) persons receiving the next highest number of votes shall be elected to the Board for a term of one (1) year. The election and term of office as between candidates receiving the same number of votes shall be determined by lot. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of two (2) years each. The voting members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease such number of persons on the Board or may decrease the term of office of Board members at any annual or special meeting, provided that such number

shall not be less than three (3), that the terms of at least one-third (1/3) of the persons on the Board shall expire annually and that no member of the Board nor officer of the Association shall be elected for a term of more than two (2) years, but that officers and Board members may succeed themselves. Members of the Board shall receive no compensation for their services. Except for vacancies in the initial Board designated by Declarant or Developer pursuant to Section 5.01 hereof, vacancies in the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by the voting members present at the meeting at which the vacancy occurs, the next annual meeting or a special meeting of the voting members called for such purpose. Any vacancies in the initial Board designated pursuant to Section 5.01 shall be filled by appointment by Declarant or Developer. Except as otherwise provided in this Declaration, the Property shall be managed by the Board and the Board shall act by majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt provided, however, that (i) each Unit Owner shall be entitled to notice, in the same manner as provided in Section 5.05 hereof, of any meeting of the Board called for the purpose of considering the adoption of the proposed annual budget or any increase or establishment of an assessment; and (ii) the Board shall meet no less than four (4) times each year. A majority of the total numbers of members on the Board shall constitute a quorum.

(b) The Board shall elect from among its members a President who shall preside over both its meeting and those of the voting members, and who shall be the chief executive officer of the Board and the Association and who shall be designated to mail and receive all notices and execute all amendments hereto as provided herein and in the Act. The Board shall elect from among its members a Secretary who shall keep the minutes of all meetings of the Board and of the voting members and who shall, in general, perform all the duties incident to the office of the Secretary. The Secretary shall at all times keep at the principal office of the Corporation a complete and current list of all voting members; such lists may be inspected by any voting member for any proper purpose at any reasonable time. The Board shall elect from among its members a Treasurer to keep the financial records and books of account, and such additional officers as the Board shall see fit to elect from among the members of the Board. The duties of President and Secretary shall not be performed by the same person.

(c) Except for directors designated by Declarant or Developer pursuant to Section 5.01 hereof, any Board member may be removed from office, at any time after the election of directors at the initial meeting of voting members pursuant to Section 5.06(a) hereof, by affirmative vote of the voting members having at least two-thirds (2/3) of the total votes, at any special meeting called for the purpose. A successor to fill the unexpired term of a Board member removed may be elected by the voting members at the same meeting or any subsequent meeting called for that purpose.

(d) Written notice stating the place, date and hour of any meeting of the Board shall be delivered to each member of the Board not less than five (5) days prior to the date of such meeting. The purpose for which the meeting is called shall be stated in the notice.

(e) All meetings of the Board shall be open to attendance by any Unit Owner.

(f) Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, if prior to such action a written consent to such action is signed by all members of the Board and such consent is filed with the minutes of proceedings of the Board.

(g) Within sixty (60) days following the election of a majority of members of the Board other than those members designated by the Declarant or Developer, the Developer shall deliver to the Board the following:

(i) All original documents pertaining to the Property and its administration including this Declaration, the Articles of Incorporation for the Association, a minute book containing the minutes of any meetings held by the Association and any rules and regulations governing the Property;

(ii) A detailed accounting by the Developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the Property;

(iii) Any Association funds on hand which shall at all times be segregated from any other funds of the Developer;

(iv) A schedule of all personal property, equipment and fixtures owned by the Association, including documents such as invoices or bills of sale, if available, evidencing transfer of title to such property.

5.07 General Powers and Duties of the Board. The powers and duties of the Board shall include but are not limited to the following:

(a) The Board shall provide for the operation, maintenance, repair, replacement and improvement of the Common Areas, as and to the extent not otherwise provided herein.

(b) The Board shall prepare, adopt and distribute the annual budget for the Association and provide the manner of assessing and collecting from the Unit Owners their respective shares of the estimated expenses.

(c) The Board shall have the power and duty to provide for the designation, hiring and removal of employees and other personnel, including lawyers and accountants, to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Property and to delegate any such powers to the manager or managing agent (and any such employees or other personnel as may be employees of the managing agent).

(d) The Board shall have the power to own, convey, encumber, lease or otherwise deal with Units conveyed to or acquired by the Association.

(e) The Board by vote of at least two-thirds (2/3) of the entire Board, and without approval from any of the voting members except as hereinafter set forth, may adopt

and amend such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Unit Owners and occupants of the Property. Written notice of such rules and regulations shall be given to all voting members; and if within thirty (30) days from the date of such notice: (i) voting members holding at least one-fourth (1/4) of the total number of Units shall file with the Board a written objection to any rule or regulation which affects any portion of the Property, then: (ii) if such written objection shall have been received from the voting members as provided in (i) above, such rule and regulation shall be deemed rescinded until approved by the voting members holding two-thirds (2/3) of the total number of Units.

(f) The Board or its agents, upon reasonable notice, may enter any Unit when necessary in connection with any maintenance or construction for which the Board is responsible or to make emergency repairs as may be necessary to prevent damage to the Common Areas or to any other Unit or Units.

(g) Subject to the rights reserved by the Declarant or Developer pursuant to Section 12.01 thereof, the Board may engage the services of an agent to manage the portions of the Property for which the Board is responsible pursuant to this Declaration, to the extent deemed advisable by the Board provided, however, that any agreement for professional management or any agreement for services to be provided for by the Developer shall provide for termination by either party without cause or payment of a termination fee upon ninety (90) days or less written notice and shall be for a term not to exceed two (2) years.

(h) The Board's powers herein enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any structural alterations, capital additions to, or capital improvements of the Common Areas (other than for purposes of replacing or restoring portions of the Common Areas, subject to all the provisions of this Declaration or unless required for emergency repair, protection or operation of the Common Areas), requiring an expenditure in excess of Ten Thousand Dollars (\$10,000.00) without in each case the prior written approval of Unit Owners owning two-thirds (2/3) of the total ownership interest in the Common Areas.

(i) All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the Treasurer and countersigned by the President of the Board. The managing agent of the Property may be authorized to execute those documents required to enable it to perform its duties under its management agreement.

(j) Prior to the election by voting members of the first Board, the Declarant or Developer shall, subject to the terms of this Declaration, have the authority to lease or to grant licenses, concessions and contracts with respect to any part of the Common Areas, upon such terms as the Declarant or Developer deems appropriate. Upon election of the first Board, and thereafter, the Board by a

vote of at least two-thirds (2/3) of the persons on the Board shall have the same authority as aforesaid.

(k) Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all the Unit Owners or any of them.

(l) The Board shall have the power to bid for and purchase any Unit Ownership at a sale pursuant to a mortgage foreclosure, or a foreclosure of the lien for Common Expenses under the Act, or at a sale pursuant to an order or direction of a court, or other involuntary sale, upon the consent or approval of Unit Owners owning not less than sixty-six and two-thirds percent (66-2/3%) in the aggregate of the undivided ownership of the Common Areas.

(m) The Board shall have the power to exercise all other powers and duties of the Board of Directors or Unit Owners as a group referred to in the Declaration or the Act.

(n) Subject to the provisions of Section 4.04, Section 4.06(b)(iii) and Section 6.08 hereof, the Board for the benefit of all the Unit Owners shall acquire and shall pay out of the maintenance fund hereinafter provided for, the following:

(i) Operating expenses of the Common Areas, including water, electricity and telephone and other necessary utility service for the Common Areas, and (if not separately metered or charged) for the Units.

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

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

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

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

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

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

5.08 Insurance.

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

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

(ii) Insurance on the Property (exclusive of the Parcel and excavations, foundation and footings) against all loss or damage from explosion of boilers, heating apparatus, pressure vessels and pressure pipes installed in, on or about said Property, without co-insurance clause so long as available, in such amount as the Board shall deem desirable.

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

(iv) Such worker's compensation insurance as may be necessary to comply with applicable laws.

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

(vi) A fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or its management agent or of any other person handling the funds of the Association, the Board or the Owners in an amount of not less than one hundred fifty percent (150%) of the total annual budget for the Property.

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

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

(b) All insurance provided for in this Section 5.08 shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to do business in the State of Indiana.

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

(d) All policies of insurance of the character described in clauses (iii), (iv), (v), (vi) and (vii) of Paragraph (a) of this Section 5.08 shall name as assureds each Unit Owner and their spouses individually and severally, and the Association, Board and its managing agent, and the other agents and employees of such Association, Board and managing agent and the Declarant and Developer so long as they have an insurable interest. In addition, all policies of insurance of the character described in clause (iii) of Paragraph (a) of this Section

5.08 shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, members of the Board, the Declarant, Developer, the managing agent, their respective employees and agents and the Unit Owners and Occupants and shall cover claims of one or more insured parties against other insured parties.

(e) The Association, for the benefit of the Unit Owners and the mortgagee of each Unit, shall pay the premiums on the policies of insurance described in Paragraph (a) of this Section 5.08 at least ten (10) days prior to the expiration dates of the respective policies.

(f) The loss, if any, under any policies of insurance of the character described in clauses (i) and (ii) in Paragraph (a) of this Section 5.08 shall be payable, and the insurance proceeds paid on account of any such loss shall be applied and disbursed, as follows:

(i) To the Board, as trustee for each of the Unit Owners in their respective percentages of ownership in the Common Areas as established in the Declaration, in the case of any one loss, of Fifty Thousand Dollars (\$50,000.00) or less in the aggregate, which insurance proceeds, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, shall be applied to the payment of the cost of restoring the Property to substantially the same condition in which it existed immediately prior to such damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before, free from vendor's, mechanic's, materialman's and other similar liens; or,

(ii) In case of any one loss exceeding Fifty Thousand Dollars (\$50,000.00) in the aggregate, then the insurance proceeds shall be paid to The Indiana National Bank or if it shall decline, then any other company licensed in the State of Indiana to provide trust company services, which corporation shall be designated by the Declarant or Developer to act as trustee for the Board (the "Insurance Trustee") for the purpose of collecting and disbursing the insurance proceeds described in this subparagraph (ii). If The Indiana National Bank (or its successor appointed pursuant hereto) shall fail or cease for any reason to act as the Insurance Trustee, then the Board shall appoint as successor Insurance Trustee a corporation qualified to accept and execute trusts in the State of Indiana and having a capital of not less than Five Million Dollars (\$5,000,000.00). Such proceeds less the actual cost, fees and expense, if any, incurred in connection with the adjustment of the loss, and the fees of the Insurance Trustee, shall be applied by the Insurance Trustee to the payment of the cost of restoring the Property to substantially the same condition in which it existed immediately prior to such damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before. Such proceeds shall be paid by the Insurance Trustee to or for the account of the Association, from time to time as work progresses, in such manner as shall be required to facilitate the prompt restoration of the Property. The Association and the Insurance Trustee may, prior or subsequent to

any such loss, enter into an insurance trust agreement further implementing the provisions of this Declaration with respect to the collection and disbursement of proceeds of insurance by the Insurance Trustee.

(g) Each Unit Owner shall be responsible for his own insurance on the contents of his own Unit, and furnishings and personal property therein, and his personal property stored elsewhere on the Property, and his personal liability to the extent not covered by the policies of liability insurance obtained by the Board for the benefit of all of the Unit Owners as above provided. All policies of casualty insurance carried by each Unit Owner shall be without contribution as respects the policies of casualty insurance obtained by the Board for the benefit of all of the Unit Owners as above provided.

(h) Each Unit Owner shall be required to report all additions or alterations to his Unit promptly in writing to the Board, without prior request from the Board or the management agent, and to reimburse the Board for any additional insurance premiums attributable thereto, and he shall be responsible for any deficiency in any insurance loss recovery resulting from his failure to so notify the Board. The Board shall not be responsible for obtaining insurance on such additions, alterations or improvements unless and until such Unit Owner shall make such report and request the Board in writing to obtain such insurance, and shall make arrangements satisfactory to the Board for such additional premiums; and upon the failure of such Unit Owner so to do, the Board shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. "Additions" or "alterations" shall mean property hereinafter attached to the Unit and not readily removable without damage to the Unit, including but not limited to, carpeting, special flooring (parquet), special wall covering and paneling. The insurance coverage described in this paragraph (h) of Section 5.08 shall not be deemed to include personal property owned by the Unit Owner and not attached to the Unit.

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

(j) Any insurance premiums assessed on a basis reflecting increased charges for coverage on certain Units shall be assessed to such Unit.

5.09 Cancellation of Insurance. The Board shall be responsible, in the event any insurance required under Section 5.08(a)(i), (ii) or (iii) is cancelled, for serving notice of such cancellation upon any persons insured thereunder.

5.10 Liability of the Board of Directors. Neither the members of the Board nor the officers of the Association shall be liable to the Unit Owners for any mistake of judgment or for

any other acts or omissions of any nature whatsoever as such Board members and officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Unit Owners shall indemnify members of the Board, officers and employees of the Association in the manner and to the extent provided in the Articles of Incorporation of the Association. It is also intended that the liability of any Unit Owner arising out of any contract made by or other acts of the Board or officers of the Association, or out of the aforesaid indemnity in favor of the members of the Board and officers of the Association, shall be limited to such proportion of the total liability hereunder as his percentage of interest in the Common Areas bears to the total percentage interest of all the Unit Owners in the Common Areas. Every agreement made by the Board or by the managing agent on behalf of the Unit Owners shall provide that the members of the Board or the managing agent, as the case may be, are acting only as agents for the Unit Owners, and shall have no personal liability thereunder (except as Unit Owners) and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Areas bears to the total percentage interest of all Unit Owners in the Common Areas.

ARTICLE VI

COMMON EXPENSES-MAINTENANCE FUND

6.01 Preparation of Estimated Budget. Each year on or before November 1, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall on or before November 15 notify each Unit Owner in writing as to the amount of such estimate, with reasonable itemization thereof and containing each Unit Owner's respective assessment provided, however, that such annual budget shall be furnished to each Unit Owner at least thirty (30) days prior to its adoption by the Board. The annual budget shall also take into account the net available cash income for the year derived from the operation or use of the Common Areas. Subject to the provisions of Section 4.06(b)(iii) and Section 6.08 hereof, said "estimated cash requirement" shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Areas as set forth in Exhibit A attached hereto. On or before January 1 of the ensuing year, and the first of each and every month of said year, each Unit Owner, jointly and severally, shall be personally liable for and obligated to pay to the Board or as it may direct, one-twelfth (1/12) of the assessments made against their respective Unit pursuant to this paragraph. On or before April 1 of each calendar year following the initial meeting of voting members as provided for in Section 5.04(b) hereof, the Board shall supply to all Unit Owners an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Such accounting shall be prepared by a certified public accountant. Any net shortage or excess shall be applied as an adjustment to the installments due under the current year's estimate in the succeeding six (6) months after rendering of the accounting subject, however, to the provisions of Section 6.02 hereof.

6.02 Reserve for Contingencies and Replacements - Supplemental Budget. The Board shall build up and maintain a

reasonable reserve for contingencies and replacements, which reserve shall be segregated and allocated for specific purposes. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such portion of the contingency and replacement reserve which remains unallocated. If the "estimated cash requirement" proves inadequate for any reason or in the event of an unanticipated Common Expense, then the Board may prepare and approve a supplemental budget covering the estimated deficiency or non-recurring expense for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit Owner, and thereupon a separate assessment shall be made to each Unit Owner for his proportionate share of such supplemental budget. All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount. Any such separate assessment, if it involves proposed expenditures resulting in a total payment assessed to a Unit greater than the greater of (i) five times the Unit's most recent monthly assessment or (ii) Three Hundred Dollars (\$300.00), shall be subject to the affirmative vote of at least two-thirds (2/3) of the total ownership of the Common Areas at a meeting specifically called for approving such separate assessment.

6.03 Initial Budget. The Board appointed by the Declarant or Developer shall determine and adopt, prior to the conveyance of the first Unit hereunder, the "estimated cash requirement" for the initial period commencing on the day on which the sale of the first Unit is closed and ending on December 31 of the calendar year in which such sale occurs and shall continue to determine the "estimated cash requirement" for each succeeding calendar year until such time as the first Board elected hereunder pursuant to Section 5.04(b) hereof takes office. Assessments shall be levied against the Unit Owners during said periods as provided in Section 6.01 of this Article, provided, however, that until such day on which the sale of the first Unit is closed there shall be no assessments levied against the Unit Owners or payable with respect to the Units notwithstanding anything to the contrary contained herein, including but not limited to Section 6.01 hereof.

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

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

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

6.07 Initial Deposit for Contingencies and Replacements. At the time the initial sale of each Unit is closed (provided that sales by Declarant to Developer shall not be considered as an initial sale), the purchaser of the Unit shall pay to the Association an amount equal to two (2) times the first full monthly assessment for such Unit. This sum shall be used to initially fund the reserve for contingencies and replacements described in Section 6.02 hereof. This payment shall not be refundable or be applied as a credit against the Unit Owner's monthly assessments.

6.08 User Charges. The Board, or the Declarant or Developer acting pursuant to Section 12.01 hereof, may establish, and each Unit Owner shall then pay, user charges to defray the expense of providing services, facilities or benefits which may not be used equally or proportionately by all of the Unit Owners or which, in the judgment of the Board, should not be charged to every Unit Owner. Such expenses may include, without limitation, charges for use of facilities located in the Common Areas; and fees for such other services and facilities provided to Unit Owners which should not be reasonably allocated among all of the Unit Owners in the same manner as the Common Expenses. Such user charges may be billed separately to each Unit Owner benefited thereby, or may be added to such Unit Owner's share of the Common Expenses, as otherwise determined, and collected as a part thereof. Nothing herein shall require the establishment of user charges pursuant to this Section 6.08, and the Board or Declarant or Developer may elect to treat all or any portion thereof as Common Expenses.

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

ARTICLE VII

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

7.01 The Property shall be occupied and used as follows:

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

paid in full by the Unit Owner making such alterations; and (v) such Unit Owner shall pay in full the expense of restoring such Common Areas to their former condition prior to such alterations in the event such Units cease to be used together.

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

(c) Nothing shall be done or kept in any Unit or in the Common Areas serving the Units which will increase the rate of insurance on the Building or contents thereof without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas which will result in the cancellation of insurance on the Building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Areas.

(d) Without the prior consent of the Board, Unit Owners shall not cause or permit anything to be placed on the outside walls of the Building and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof; and without such prior written consent Unit Owners shall not cause or permit the enclosure (either partially or entirely) of any exterior portions of the Building.

(e) In order to enhance the sound conditioning of the Building, the floor covering for all occupied Units shall meet the minimum standard as may be specified by rules and regulations of the Board.

(f) No animals of any kind shall be raised, bred, or kept in any Unit or in the Common Areas, except that dogs (not to exceed one (1) per Unit), cats (not to exceed two (2) per Unit) or other usual household pets may be kept in Units, subject to rules and regulations adopted by the Board, provided that they are not kept, bred or maintained for any commercial purpose; and provided, further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon ten (10) days' written notice from the Board. The Board may restrict pets from access to any portions of the Common Areas, and may designate other portions of the Common Areas to accommodate the reasonable requirements of Unit Owners who keep pets.

(g) No noxious or offensive activity shall be carried on in any Unit or in the Common Areas, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants.

(h) Nothing shall be done in any Unit or in, on or to the Common Areas which will impair the structural integrity of the Building or which would structurally change the Building except as is otherwise provided herein. No Unit Owner shall overload the electric wiring in the Building, or operate machines, appliances, accessories or equipment

in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others. No Unit Owner shall overload the floors of any Unit. The use of water-beds and similar furnishings which may cause floor overloads shall be subject to Board approval. Structural changes and alterations may be made by the Declarant or Developer in Units used by the Declarant or Developer as model apartments and in the adjacent Common Areas, as may be reasonably necessary to adapt the same to the uses permitted therein. Such changes may include the elimination or alteration of perimeter walls for the purpose of combining adjoining Units or improving access thereto or visibility thereto.

(i) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials which are not in receptacles provided for such purpose.

(j) There shall be no playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Areas except that subject to reasonable rules and regulations of the Board, (i) baby carriages, bicycles and other personal property may be stored in the common storage areas designated for the purpose; and (ii) all Common Areas may be used for their intended purposes.

(k) No industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise shall be conducted, maintained, or permitted in any Unit and no activity shall violate any zoning or other law or regulation of governmental agencies.

(l) No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Property. Notwithstanding the foregoing, the right is reserved by the Declarant and Developer or their agents to place and maintain on the Property all models, sales offices, advertising signs and banners and lighting in connection therewith at such locations and in such forms as shall be determined by the Declarant or Developer or their agents and the Declarant or Developer or their agents and prospective purchasers and lessee of any Unit from the Declarant or Developer are hereby granted the right of ingress, egress and transient parking in and through the Common Areas for such Unit sale or leasing purposes. The Declarant or Developer or agents further reserve the right to use unsold Units for temporary storage, office and related purposes.

(m) The Unit restrictions in paragraph (a) and (k) of this Section 7.01 shall not, however, be construed in such a manner as to prohibit a Unit Owner from: (i) maintaining his personal professional library therein; (ii) keeping his personal business or professional records or accounts therein; or (iii) handling his personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal resident use and not in violation of paragraphs (a) and (k) of this Section 7.01.

ARTICLE VIII

SALE, LEASE OR OTHER ALIENATION

8.01 Sale or Lease. Subject to the exceptions set forth in Section 6.08 of this Declaration any Unit Owner (other than

Declarant, Developer or a mortgagee who has obtained title to the Unit Ownership by foreclosure or deed in lieu of foreclosure) who wishes to sell his Unit Ownership shall give to the Board prior written notice of the terms of any contemplated sale, together with a copy of the contract, executed by the purchaser, and the name, address and financial character references of the proposed purchaser and such other information concerning the proposed purchaser as the Board may reasonably require. The members of the Board acting on behalf of the other Unit Owners shall at all times have the first right and option to purchase such Unit upon the same terms, which option shall be exercisable for a period of thirty (30) days following the date of receipt of such notice. If said option is not exercised by the Board within said thirty (30) day period, the Unit Owner may, at the expiration of said thirty (30) day period or prior thereto if said option is waived by the Board and at any time within one hundred eighty (180) days after the expiration of said thirty (30) day period, sell such Unit to the proposed purchaser named in such notice upon the terms specified therein. If the Unit Owner fails to close said proposed sale transaction within said one hundred eighty (180) day period, the Unit shall again become subject to the Board's right of first refusal as herein provided. If any Unit Owner of a Unit (other than the Declarant or Developer) leases a Unit, a copy of such lease shall be furnished to the Board within ten (10) days after execution thereof. The lessee under each such lease shall be bound by and shall be subject to all of the non-monetary obligations of the Unit Owner-lessor under this Declaration and each such lease shall so provide. The Unit Owner-lessor shall not be relieved thereby from any of said obligations. No Unit Owner may lease a Unit for hotel or transient purposes.

8.02 Involuntary Sale.

(a) In the event any Unit Ownership or interest therein is sold at a judicial or execution sale (other than a mortgage foreclosure sale or a conveyance or sale in lieu of such foreclosure by a mortgagee of such Unit), the person acquiring title through such sale shall, before taking possession of the Unit so sold, give written notice to the Board of his intention so to do, together with the name, address and financial and character references of the person so acquiring title and such other information concerning the person so acquiring title as the Board may reasonably require whereupon members of the Board acting on behalf of the Unit Owners shall have an irrevocable option for a period of thirty (30) days following receipt of such notice to purchase such Unit or interest therein at the same price for which it was sold at said sale. If said option is not exercised by the Board within said thirty (30) day period after receipt of such notice, it shall thereupon expire and said purchaser may thereafter take possession of said Unit. The Board shall be deemed to have exercised its option if it tenders the required sum of money to the purchaser within said thirty (30) day period.

(b) In the event any Unit Owner shall default in the payment of any monies required to be paid under the provisions of any mortgage against his Unit, the Board shall have the right to cure such default by paying the amount so owing to the party entitled thereto and shall thereupon have a lien therefor against such Unit, junior to all then existing liens against such Unit, which lien shall have the same force and effect and may be enforced in the same manner as provided in Article X hereof.

8.03 Consent of Voting Members. The Board shall not exercise any options granted it pursuant to Section 8.01 or

8.02 hereof to purchase any Unit or interest therein, without prior written consent of the voting members having sixty-six and two-thirds percent (66-2/3%) of the total votes. The members of the Board or their duly authorized representatives, acting on behalf of the other Unit Owners, may bid to purchase at any sale of a Unit or interest therein of any Unit Owner, living or deceased, which is held pursuant to an order or direction of a court, upon the prior written consent of the voting members having sixty-six and two-thirds percent (66-2/3%) of the total votes, which consent shall set forth a maximum price which the members of the Board or their duly authorized representatives are authorized to bid and pay for said Unit or interest therein.

8.04 Release or Waiver of Option. Upon the approval of the Board, the options contained in Section 8.01 and Section 8.02 hereof may be released or waived and the Unit or interest therein which is subject to an option set forth in this Article may be sold or conveyed free and clear of the provisions of this Article. Any such release or waiver shall be effective only as to such sale for which it was given.

8.05 Proof of Termination of Option. A certificate executed and acknowledged by the acting Secretary of the Board or Association stating that the provisions of this Article VIII as hereinabove set forth have been met by a Unit Owner, or duly waived by the Board, and that the rights of the Board hereunder have terminated, shall be conclusive upon the Board and the Unit Owners in favor of all persons who rely thereon in good faith and such certificate shall be furnished to any Unit Owner who has in fact complied with the provisions of the Article or in respect to whom the provisions of this Article have been waived, upon request at a reasonable fee not to exceed Ten Dollars (\$10.00).

8.06 Financing of Purchase Under Option.

(a) Acquisition by the Board of Unit Ownerships or any interest therein under the provisions of this Article shall be made from the reserve for contingencies and replacements. If said reserve is insufficient, the Board shall levy an assessment against each remaining Unit Owner in proportion to the interests of all remaining Unit Owners in the Common Areas which assessment shall become a lien and be enforceable in the same manner as provided in Section 10.03 of this Declaration.

(b) The members of the Board, in their discretion, may borrow money to finance the acquisition of any Unit Ownership or interest therein authorized by this Article; provided, however, that no financing may be secured by an encumbrance or hypothecation of any portion of the Property other than the Unit Ownership or interest therein to be acquired.

8.07 Title to Acquired Interest. Unit Ownerships or interests therein acquired by the Board pursuant to the terms of this Article shall be held of record in the name of the members of the Board and their successors in office, or such nominee as they shall designate, for the benefit of the Association. Said Unit Ownership or interests therein shall be sold by the members of the Board in such manner as the Board shall determine without complying with the foregoing provisions relating to the Board's right of first refusal. All proceeds of such sale shall be deposited in the maintenance fund and credited to each Unit Owner in the same proportion in which the Board could levy a special assessment under the terms of Section 8.06(a) of this Declaration.

8.08 Exceptions to Board's Right of First Refusal.

(a) The rights of first refusal provided for in Sections 8.01, 8.02 and 8.03 of this Declaration shall not apply to any sale, gift, devise or other transfer or conveyance by the Declarant or Developer or by a mortgagee who has obtained title to Unit Ownership by foreclosure or deed (or assignment) in lieu of foreclosure or by any other remedy provided in the mortgage or between co-owners of the same Unit, or to the spouse, or to any descendants of the Unit Owner, or any one or more of them, or to any trustee of a trust, the sole beneficiary or beneficiaries of which are the Unit Owner, the spouse or descendants of the Unit Owner, or any one or more of them.

(b) The rights of first refusal provided for in Section 8.01 of this Declaration shall not apply to any sale, or other transfer or conveyance by a Unit Owner to the Association, or by the Association to any other person.

(c) Irrespective of anything else contained in this Declaration, the Declarant or the Developer may at any time sell or lease (or consent to the sublease of), or otherwise transfer a Unit or Unit Ownership upon terms satisfactory to the Declarant or Developer, without complying with the provisions of this Article VIII, provided that any such sale, lease, sublease or transfer is made subject to the remaining terms of this Declaration.

ARTICLE IX

DAMAGE, DESTRUCTION, CONDEMNATION
AND RESTORATION OF BUILDING

9.01 Sufficient Insurance. In the event the improvements forming a part of the Property, or any portion thereof, including any Unit, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds shall be applied by the Board or the payee of such insurance proceeds (including the Insurance Trustee) in payment therefor; provided, however, that in the event within thirty (30) days after said damage or destruction, the Unit Owners elect to withdraw the Property from the provisions of this Declaration and from the provisions of the Act as therein provided, then such repair, restoration, or reconstruction shall not be undertaken. In the event such repair, restoration or reconstruction is not undertaken the net proceeds of insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Areas as set forth in Exhibit A after first paying out of the shares of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens.

9.02 Insufficient Insurance. In the event the Property, or any part thereof, shall suffer damage or destruction from any cause and the proceeds of any policy insuring against such loss or damage, and payable by reason thereof, shall be insufficient to pay the cost of repair, restoration or reconstruction, or the Property is not insured against the peril causing the loss or damage, and the Unit Owners and all other parties in interest do not voluntarily make provision for reconstruction, repair or restoration within one hundred and eighty (180) days after said damage or destruction, then the

provisions of the Act in such event shall apply. Notwithstanding the foregoing, if such damage or destruction renders uninhabitable fewer than one-half (1/2) of the Units, then, upon the affirmative vote of not fewer than two-thirds (2/3) of the Unit Owners voting at a meeting called for that purpose, the Board shall cause the Property or any affected part thereof to be repaired and reconstructed. Such meeting shall be held within thirty (30) days following the final adjustment of insurance claims, if any; otherwise, such meeting shall be held within ninety (90) days of the damage or destruction. At such meeting, the Board, or its representative, shall present an estimate of the cost of repair or reconstruction and the estimated amount of necessary separate assessments to be levied against each Unit Owner.

9.03 Condemnation. In the case of a taking or condemnation by competent authority of any part of the Property, the Association shall, if necessary, restore the improvements in the remaining portion of the Property to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking or condemnation. Any proceeds or awards made to the Association in connection with any such taking or condemnation shall be applied first to the cost of any restoration and any remaining portion of such proceeds or awards shall be, in the discretion of the Board, either (i) applied to pay the Common Expenses, or (ii) distributed to the remaining Unit Owners and their respective first mortgagees, as their interests may appear, based on their current percentage of interest in the Common Areas. In the event that part or all of one or more Units is taken or condemned, then the portions so taken or condemned shall be deemed to have been removed from the provisions of the Declaration and the Act and the court which has jurisdiction of the action shall adjust the percentage of interest in the Common Areas of the remaining Units in a just and equitable manner and as provided under the Act, and if the court fails to make such adjustment, such adjustment may be made by the Board. The President and Secretary of the Association shall execute and record an instrument on behalf of the Association as required by the Act which amends this Declaration, effective as of the effective date of the taking or condemnation, to reflect the removal of property and adjustments, if any, in the percentage of interest in the Common Areas as a result of an occurrence covered by this Section 9.03. From and after the effective date of the amendment referred to in the preceding sentence, the Owner of a Unit which is removed in part or in whole from the provisions of this Declaration shall only be liable for the payment of assessments based on the percentage of interest in the Common Areas, if any, allocated to the Unit in the amendment.

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

ARTICLE X

REMEDIES

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

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

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

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

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

10.03 Remedies for Failure to pay Common Expenses or User Charges. Each Unit Owner shall pay his proportionate share of the Common Expenses. Such proportionate share shall be in the same ratio as his percentage of ownership in the Common Areas as set forth in Exhibit A. Each Unit Owner shall also pay all user charges for which he is responsible pursuant to Section 6.08 of this Declaration. In the event of the failure of a Unit Owner to pay such Common Expenses, user charges or Parking Area charges pursuant to Section 4.04(b) when due, the amount thereof shall constitute a lien on the interest of such Unit Owner, as provided by the Act; provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Unit Owner. If any Unit Owner fails to pay any installment of such Common Expenses, or any user charges for which he is responsible pursuant to Section 6.08 of this Declaration, within thirty (30) days after notice of default, the Board may accelerate the maturity of the remainder of installments of such Common Expenses due from such Unit Owner for the balance of the assessment year, and may enforce collection thereof and of all of such user charges then or thereafter falling due. A "late charge" in the amount of Thirty-five Dollars (\$35.00) per month shall be charged to and assessed against such defaulting Unit Owner until paid, which late charge amount shall be subject to review and revision by the Board from time to time. In addition to the foregoing, the Board or the Declarant or Developer in the exercise of the powers, rights, duties and functions of the Board as provided in Section 12.01 hereof or its agents shall have such other rights and remedies to enforce such collection as shall otherwise be provided or permitted by law from time to time. Without limiting the generality of the foregoing, if any Unit Owner shall fail to pay his proportionate share of the Common Expenses or of any other expenses required to be paid hereunder when due, such rights and remedies shall include the right to take possession of such Unit Owner's interest in the Property and to maintain for the benefit of all the other Unit Owners an action for possession in the manner prescribed by applicable law.

ARTICLE XI

MISCELLANEOUS PROVISIONS RE: MORTGAGEES

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

(a) Any first mortgagee of a Unit who takes title to said Unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed in lieu of foreclosure shall, to the extent permitted by law, take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Unit which accrue prior to the time such holder takes title to said Unit.

(b) Upon request in writing, each first mortgagee of a Unit shall have the right:

(i) to examine the books and records of the Association during normal business hours;

(ii) to receive any annual audited or unaudited financial statements which are prepared and distributed by the Association to the Unit Owners at the end of each of its respective fiscal years; and

(iii) to receive written notification from the Association of any default in the performance by the respective Unit Owner of such Unit Owner's obligation under this Declaration which is not cured within sixty (60) days.

(c) No provision of this Declaration or Articles of Incorporation of the Association or any similar instrument pertaining to the Property or the Units therein shall be deemed to give a Unit Owner or any other party priority over any rights of the first mortgagees of Units pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units, and/or the Common Areas, or any portion thereof or interest therein. In such event, the holder of any first mortgage on a Unit shall be entitled, upon specific written request, to timely written notice of any such loss.

(d) There shall be included in each annual assessment levied by the Association (but not as a special assessment) an amount sufficient to establish an adequate reserve fund for maintenance, repairs and replacement in connection with those portions of the Common Areas that must be replaced on a periodic basis.

(e) Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each Unit upon which a first mortgage is owned) of all of the individual Units which have become a part of the Property or seventy-five percent (75%) of the Unit Owners (other than Units owned by the Declarant or Developer) of such individual Units have given their prior written approval, the Association shall not be entitled to:

(i) by act or omission seek to abandon or terminate the condominium regime;

(ii) change the pro rata interest or obligations of any Unit Owner for (1) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (2) determining the pro rata share of ownership of each Unit Owner in the Common Areas, except as provided in Section 9.03 hereof;

(iii) partition or subdivide any Unit;

(iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas; and

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

(f) Each first mortgagee of a Unit shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Areas if such damage or destruction or taking exceeds Fifty Thousand Dollars (\$50,000.00) or if damage shall occur to a Unit in excess of Five Thousand Dollars (\$5,000.00), notice of such event shall also be given.

(j) Any first mortgagee of a Unit who obtains title to said Unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed in lieu of foreclosure will be exempt from any right of first refusal provisions contained in this Declaration, as to any conveyance by said mortgagee but not as to any subsequent conveyances.

ARTICLE XII

GENERAL PROVISIONS

12.01 Certain Rights of the Declarant and Developer. Until the time established by the Declaration for the election of the first Board by the Unit Owners, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board in the Act and in this Declaration shall be held and performed by the Declarant and/or Developer. In exercising such rights, and the other rights reserved by the Declarant or Developer pursuant to this Declaration, the Declarant or Developer shall not be under any disability which would otherwise be imposed by law by reason of the Declarant's or Developer's interest in the subject matter of any transaction, provided, however, that any such transaction shall have been entered into in good faith.

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

12.03 Manner of Giving Notices. Notices provided for in this Declaration and in the Act shall be in writing and shall be addressed to the Board or Association, or any Unit Owner, as the case may be, at the Unit address of any member of the Board or any Unit Owner, as the case may be, or at such other address as herein provided. Any Unit Owner may designate a different address or addresses for notices to him by giving written notice of his change of address to the Board or Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof, or, if addressed to a Unit Owner, when deposited in its mailbox in the Building or at the door of his Unit in the Building.

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

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

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

12.07 Change, Modification or Rescission. No provision of this Declaration affecting the rights, privileges and duties of the Declarant or Developer may be modified without its written consent. The provisions of Sections 3.02, 10.03 and 12.07 and Article XI of this Declaration may only be changed, modified, or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the entire Board, and by all of the Unit Owners and all mortgagees having bona fide liens of record against all of the Unit Ownerships. Other provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by a majority of the entire Board and by the Unit Owners having at least seventy-five percent (75%) of the total vote, provided, however, that all holders of first mortgages of record have been notified by certified mail of any change, modification, or rescission, and an affidavit by the Secretary of the Association certifying to such mailing is made a part of such instrument and provided further that any provisions herein which specifically grant rights to holders of first mortgages of record may be amended only with the written consent of all such holders of first mortgages. The change, modification or rescission shall be effective upon recordation of such instrument in the Office of the Recorder of Marion County, Indiana; provided, however, that no such change, modification or rescission shall change the boundaries of any Unit, the allocation of percentages of ownership in the Common Areas and votes in the Association, quorum and voting requirements for action by the Association, or liability for Common Expenses assessed against any Unit, except to the extent authorized by other provisions of this Declaration or by the Act.

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

12.09 Perpetuities and Other Invalidity. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints or alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of Charles E. Wilson.

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

12.11 Ownership by Land Trustee. In the event title to any Unit Ownership is conveyed to a land title holding trust, under the terms of which all powers of management, operation and control of the Unit Ownership remain vested in the trust beneficiary or beneficiaries, then the Unit Ownership under such trust and the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this

Declaration against such Unit Ownership. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Unit Ownership and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title of such Unit Ownership.

12.12 Special Amendment. Developer and/or Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Unit Ownerships, (iii) to bring this Declaration into compliance with the Act, or (iv) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer and/or Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer and/or Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Developer and Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant or Developer no longer holds or controls title to a Unit.

IN WITNESS WHEREOF, the said KSC Development Company, has caused its name to be signed to these presents this 30th day of September, 1979.

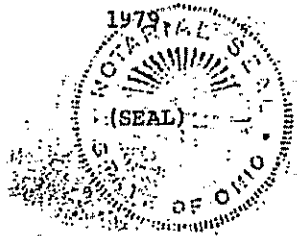
KSC DEVELOPMENT COMPANY

By: Morton L. Spitz, Partner
Morton L. Spitz, Partner

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Morton L. Spitz, a partner of KBC Development Company, an Indiana general partnership, duly authorized in the premises, who duly acknowledged the execution of the foregoing Declaration on behalf of said partnership as one of its general partners and who, after being duly sworn, stated that he was authorized to execute and deliver said Declaration by said partnership.

WITNESS my hand and notarial seal, this 30th day of September,



Linda L. Dillon
Notary Public
LINDA L. DILLON
Notary Public, State of Ohio
Printed My Commission Expires Oct. 27, 1981

My Commission Expires:

10/27/81

Resident of Hamilton County, Ohio

This instrument was prepared by Bruce A. Cordingley, Esq., Ice Miller Donadio & Ryan, 10th Floor, 111 Monument Circle, Indianapolis, Indiana 46204

79-72667

EXHIBIT A
 TO
 DECLARATION OF CONDOMINIUM OWNERSHIP
 AND OF
 EASEMENTS, RESTRICTIONS, COVENANTS
 AND BY-LAWS FOR
 LIONS HEAD CONDOMINIUM ASSOCIATION, INC.,
 A Not-For-Profit Corporation

<u>Building No.</u>	<u>Unit No.</u>	<u>Percentage of Ownership In Common Elements</u>
1	1	.00713
1	2	.00713
1	3	.00713
1	4	.00794
1	5	.00794
1	6	.00794
2	1	.00518
2	2	.00954
2	3	.00954
2	4	.00518
2	5	.01018
2	6	.01018
3	1	.00518
3	2	.00713
3	3	.00954
3	4	.00518
3	5	.00840
3	6	.00954
4	1	.00713
4	2	.00713
4	3	.00713
4	4	.00794
4	5	.00794
4	6	.00794
5	1	.00518
5	2	.00713
5	3	.00954

<u>Building No.</u>	<u>Unit No.</u>	<u>Percentage of Ownership In Common Elements</u>
5	4	.00518
5	5	.00840
5	6	.00954
6	1	.00794
6	2	.00713
6	3	.00713
6	4	.00838
6	5	.00794
6	6	.00794
7	1	.00713
7	2	.00713
7	3	.00713
7	4	.00794
7	5	.00794
7	6	.00794
8	1	.00713
8	2	.00713
8	3	.00713
8	4	.00794
8	5	.00794
8	6	.00794
9	1	.00713
9	2	.00713
9	3	.00713
9	4	.00794
9	5	.00794
9	6	.00794
10	1	.00518
10	2	.00713
10	3	.00713
10	4	.00518
10	5	.00794

<u>Building No.</u>	<u>Unit No.</u>	<u>Percentage of Ownership In Common Elements</u>
10	6	.00794
11	1	.00957
11	2	.00713
11	3	.00713
11	4	.00957
11	5	.00794
11	6	.00794
12	1	.00713
12	2	.00713
12	3	.00713
12	4	.00794
12	5	.00794
12	6	.00794
13	1	.00518
13	2	.00713
13	3	.00713
13	4	.00518
13	5	.00794
13	6	.00794
14	1	.00713
14	2	.00713
14	3	.00713
14	4	.00794
14	5	.00794
14	6	.00794
15	1	.00518
15	2	.00713
15	3	.00954
15	4	.00518
15	5	.00840
15	6	.00954
16	1	.00794
16	2	.00713

<u>Building No.</u>	<u>Unit No.</u>	<u>Percentage of Ownership In Common Elements</u>
16	3	.00713
16	4	.00794
16	5	.00794
16	6	.00794
17	1	.00713
17	2	.00713
17	3	.00713
17	4	.00794
17	5	.00794
17	6	.00794
18	1	.00518
18	2	.00954
18	3	.00954
18	4	.00518
18	5	.01018
18	6	.01018
19	1	.00518
19	2	.00713
19	3	.00713
19	4	.00518
19	5	.00794
19	6	.00794
20	1	.00518
20	2	.00954
20	3	.00954
20	4	.00518
20	5	.01018
20	6	.01018
21	1	.00518
21	2	.00713
21	3	.00954
21	4	.00518
21	5	.00840

<u>Building No.</u>	<u>Unit No.</u>	<u>Percentage of Ownership In Common Elements</u>
21	6	.00954
22	1	.00713
22	2	.00713
22	3	.00713
22	4	.00794
22	5	.00794
22	6	.00794