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MARTHA A. WOHACKS
MARION COUNTY CLERK

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DO NOT SIGN FOR DELIVERY
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

DECLARATION OF

LOCKERBIE CORNERS CONDOMINIUMS

THIS DECLARATION OF Lockerbie Corners Condominiums ("Declaration"), made this 15 day of MAY, 2006, by Lockerbie Flats LLC, an Indiana Limited Liability Company, an Indiana Limited Liability Company ("Declarant").

WITNESSETH: That

WHEREAS, Declarant is the owner in fee simple of that certain parcel of land located in Marion County, Indiana, and more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Real Estate").

WHEREAS, Declarant, by execution hereof, creates a Condominium Project upon the Real Estate, subject to the provisions of the Act (as hereinafter defined), and the terms and conditions hereof, and

NOW THEREFORE, Declarant hereby makes this Declaration and declares that the Real Estate shall be a Condominium Project as "Condominium" is defined in the Act, subject to and in accordance with the following terms and conditions:

Section 1. Name and Address. The Condominium shall be known as "The Lockerbie Corners Condominiums" and sometimes referred to herein as "Condominium Project." Its addresses are detailed under Item 3 hereof.

Section 2. Definitions. The following terms whenever used shall have the following assigned meanings:

- (a) "Act" means the Condominium Act of the State of Indiana, I.C. 32-25-1, et seq.
- (b) "Association" means Lockerbie Corners Owners Association, Inc., an Indiana nonprofit corporation.
- (c) "Board" means the Association's governing body elected by the Owners in accordance with the By-Laws, and shall be synonymous with the term "Board" as used in the Act.
- (d) "Building" refers to single existing structure located at the northeast corner of New Jersey and New York Streets, Indianapolis, Indiana with the multiple common street addresses of 301 North New Jersey Street/ 402, 404 and 406 East New York Street which has been interiorly modified (as hereafter detailed) to 10

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residential condominiums and one commercial condominium unit, labeled and known as Unit "C."

- (e) "By-Laws" means the Association's Code of By-Laws providing for administration and management of the Association, a true copy of which is attached hereto and made a part hereof as Exhibit "B".
- (f) "Common Areas" means General Common Areas and Limited Areas as herein defined and as also may appear on the "Plans".
- (g) "Common Expenses" means expenses of administration of the Association, expenses for upkeep, maintenance, repair and replacement of Common Areas, and all other costs and expenses incurred by the Association for the benefit of the Common Areas or for the common benefit of all Owners
- (h) "Control Transfer Date" is defined in Section 9.
- (i) "Declarant" means Lockerbie Flats, LLC, an Indiana limited liability company, and any successor to be assignee of its interest in all or any part of the Tract, or herein, under an instrument which expressly states that the successor or assignee thereunder shall become the Declarant for purposes hereof
- (j) "Unit" means any individual residential condominium Unit and the single commercial condominium Unit within the Building (hereinafter in the aggregate referred to as Units), each "Unit" being more particularly described and identified on the Plans and in the definition of "Building", and in Sections 3 and 4 hereof.
- (k) "Formula" means the method set forth in paragraph 7 for computing the Percentage Interest applicable to each Unit.
- (l) "General Common Areas" means those Common Areas, use and enjoyment of which is not limited to certain Units, as further described and defined in Section 5.
- (m) "Limited Areas" means those Common Areas, use and enjoyment of which is limited to a certain Unit or Units, as further described and defined in Section 6.
- (n) "Managing Agent" means any person to which Association's management responsibilities are delegated under Section 13.
- (o) "Mortgagee" means the holder, insurer or guarantor of any mortgage on any Unit.
- (p) "Owner" means a person that owns fee simple title to a Unit. Persons owning a Unit as tenants in common, joint tenants, tenants by the entireties, or any other form of joint or divided ownership, shall be deemed one Owner for purposes hereof.

- (q) "Percentage Interest" in the "Common Area" means the percentage of undivided interest in the fee simple title to Common Areas appertaining to each Unit, as determined in accordance with Section 7.
- (r) "Vote per Owner" the Owner thereof, as described in Section 8 and in the By-Laws.
- (s) "Plans" means the floor and building plans of the Building Units, and the site plan, survey and elevation plans of the Real Estate and the Buildings, duly certified by a registered architect or licensed professional engineer, prepared, verified and filed with any Amendments. The Exhibit A realty, Units, and carports are depicted in Exhibit "C" attached.
- (t) "Property" means the Real Estate, the Units, the Building, and all other improvements of every kind and nature whatsoever, now or hereafter located upon the Real Estate and used in connection with operation, use and enjoyment of the Condominium project known as Lockerbie Flats.

Section 3. Commercial Units The existing building is a 4-story structured modified interiorly to create 11 Units separated by common party walls for a total of 10 residential Units and one commercial Unit. Reference is directed to the "Plan" for a pictorial depicted accompanied by the following word explanation. The Unit with the address corresponding to a given Unit referencing government assigned addresses the square floor measurement for each Unit has used a consistent measurement approach because of the significance of same on percentage interest in common areas and its likewise relevance on allocation of common expenses. The information that follows will proceed easterly from west to east. The "Percentage Interest" of each Unit owner is detailed in Exhibit "D" attached.

<u>Unit #</u>	<u>Square Foot</u>	<u>Address and Description</u>
(all residential Units except commercial Unit designated as Unit "C")		
301	1673	301 N. New Jersey Street, town house occupies the 1 st and 2 nd floor at the west end of the building with its sole stairway (limited common area) at the west end of the building.
300	882	402 E. New York Street - flat occupying 3 rd floor only located directly above Unit

		301 - west end of building
400	882	402 E. New York Street - flat occupying 4 th floor only located directly above Unit 300-west end of building
202	1192	402 E. New York Street. town house occupying 1 st and 2 nd floor
302	1228	402 E. New York Street - town house occupying the 3 rd and 4 th floor located directly above Unit 202.
204	1228	404 E. New York Street - town house occupying 1 st and 2 nd floor
304	1250	404 E. New York Street - town house occupying 3 rd and 4 th floor directly above Unit 204
206	840	404 E. New York Street - flat occupying 2 nd floor only located in part above a general common area. accessed by a stairway from the southside of the building, which contains electrical, water and other equipment for the entire building and also contains 10 separate storage compartments to be specifically designated for each of the 10 residential Units making these storage compartments limited common areas.
Storage Area	Not applicable	Occupies the 1 st level in part below Unit 206 with details as provided apposite Unit

		206. This is the east end of the building at the 1 st floor.
306	859	404 E. New York Street - flat occupies the 3 rd floor located above Unit 206.
406	859	404 E. New York Street - flat occupies the 4 th floor located above Unit 306
The commercial unit designated as (Unit "C")	234	406 E. New York Street located at the east end within the 1 st floor on the 2 nd floor.

Section 4. Limited Ingress-Egress Stairways (Closets). The stairway at the rear of the building (north) at the west end of the building serves Units 301, 202, 302, 300 and 400.

The stairway at the rear of the building (north) at the east end of the building serves Units 204, 206, 304, 306 and 406.

Closet storage areas within the stairways listed opposite and outside a particular residential Unit shall be limited common area for the referenced Unit. This pertains only to Units 202, 302, 204 and 304.

Section 5. Carports and Unit Pricing. No off street parking is provided for the commercial Unit (the "Lease"). All off street parking located to the north of the building is general common area accessed from New Jersey Street. A total of 11 spaces will be provided in this area with 10 spaces being semi-shielded from carports to be installed. Specific carports shall be designated and assigned to specific Units.

The 11th space, located by an encroachment permit from the City of Indianapolis located in the New Jersey Street right-of-way shall not be assigned to a specific Unit and shall be retained by Declarant until Declarant no longer owns, after which its use shall be regulated by the Association.

There will be installed security lighting in this area subject to a common operating expense.

Exterior water spigots will also be in this area for car washing etc. again subject to the Association Rules and Regulations.

Section 6. Bay Windows and Balconies. The bay windows and balconies are common areas limited in use to the specific Unit to which they are attached and configured. Since the

visual impression of bay window and other window coverings and of what is stored on the balcony can because of unusual taste of a given owner, the Declarant before the control transfer date (CTD) and the Association after the CTD shall have the right to adopt Rules and Regulations to address and control such impressions.

Section 7. Boundaries. Each unit shall include that part of the building containing the unit which lies within the boundaries of the apartment. The boundaries shall be determined in the following manner:

- (a) The upper boundary shall be the plane of the lower surfaces of the dry-walled ceiling.
- (b) The lower boundary shall be the plane of the upper surfaces of the sub-floor or when applicable, the slab for all labeled units.
- (c) The vertical boundaries of the unit shall be (1) the exterior of the outside walls of the unit building bounding another unit except where there is attached to the building a balcony, loggia, terrace, canopy, stairway, or other portion of the building serving only the unit being bounded, in which event the boundaries shall be such as will include all of such structures and fixtures thereon, and (2) the center line of the interior walls bounding a unit.

This boundary description is meant to define the perimeters of the air cube, specifically titled in the owners' names with everything else re: the balance of the building and all of the real estate being owned in common by all titleowners based on their percentage interest. Notwithstanding the above all the Units glass, and exterior doors and screens and frames surrounding the same shall be deemed a part of the Unit with the attendant maintenance obligation relative thereof in the Unit Owner and not in the Association.

Section 8. General Common Areas. General Common Areas are labeled "Common Area" on the Plans and include the following, except to the extent otherwise specifically designated in Section 3, 4 or 6 as being within a Unit or as Limited Areas.

- (a) Parking areas, ingress-egress streets, perimeter wall (if any), open space, and landscaping (if any);
- (b) Sidewalks and stairway to the storage area where storage spaces for each residential Unit are located.
- (c) Exterior lighting fixtures and electrical service, except where separately metered to a particular Unit, which includes the security lighting in the parking area.
- (d) Electrical, water, sanitary sewer, telephone and cable television and sprinkler system lines, mains, pipes, ducts, conduits, wiring and insulation;

- (e) Interiors of all structural walls and floors, including all exterior walls and attic space, walls between horizontally adjacent Units and floors between vertically adjacent Units;
- (f) Foundations, roof and exterior wall surfaces of the Building, and all other structural elements and components of the Building;
- (g) All other structures, areas and facilities not expressly defined as Limited Areas in Section 6, or expressly included within Units by Section 3 or 4.

Section 9. Limited Areas. Limited Areas are labeled "L.C.A" on the "Plans" and consist of the following:

- (a) Entranceways through which access to Units is obtained are limited to use of the respective Unit(s) served by such entranceways.
- (b) Balconies [a/k/a deck(s)] bay windows wherever applicable are limited to use of the respective Unit(s) to which they are appurtenant.
- (c) One assigned parking space for each residential Unit.
- (d) One assigned storage space in storage area located in the first floor at the east end of the building, i.e., closets located in the stairway immediately outside a Unit to serve that Unit.

Section 10. Ownership of Common Area and Percentage Interest in the Common Area. In connection with and as an inseparable part of ownership of each Unit, each Owner shall have an undivided percentage interest in the Common Areas as a tenant in common with all other Owners equal to the listed square foot of that Unit compared to the aggregate square feet of all Units. Reference is made to Exhibit "D" attached for individual Units percentage interest.

Section 11. Membership in Association Vote per Unit. In connection with and as an inseparable part of ownership of each Unit, the Owner thereof shall be a member of the Association and shall have a Vote, which such Owner shall be entitled to cast at each Association meeting on each matter on which Owner(s) may vote under the terms of this Declaration, the Association's Articles of Incorporation or the By-Laws. The Vote allocable to each Unit for all matters upon which Owners are entitled to vote shall be equal to the one (1) vote per Unit. Unless otherwise stated in the Act, the By-Laws or this Declaration, matters to be undertaken or performed by the Association shall be so undertaken or performed only upon the approval thereof by a majority of the Unit Votes present or represented at the Association meeting at which such matter is considered (provided a quorum is present). To determine whether a majority or any specific percentage of the vote required hereby has approved any matter, the number of Owners whose votes have been cast in favor of such matter shall be tallied. For purposes hereof and of the Act, a majority of the Unit Votes or of the Owners shall not exist unless such sum, when divided by the total number of Units then in the Condominium project, exceeds fifty percent (50%). A two-thirds (2/3) majority of the Unit Votes or of the Owners shall not exist unless such

sum, when divided by the total number of Units then in the Condominium project, exceeds the decimal equivalent to two-thirds (2/3).

Section 12. Association of Owners. In order to provide for maintenance, repair, replacement, administration and operation of the Property in compliance with the provisions of the Act, the Association has been created by Declarant. Each Owner shall be a member of the Association, but membership shall terminate when such person ceases to be an Owner, and such membership shall automatically transfer to the new Owner along with transfer of the Unit, whether or not such transfer is stated in the instrument of conveyance. Declarant shall appoint the members of the Initial Board, which shall control during the period of its incumbency all matters which would be within the authority of either the Association or the Board under this Declaration, the By-Laws or the Act, except that certain powers, including the power of assessment, shall be limited as provided herein or in the Bylaws. Each Owner shall confer and shall be deemed to have conferred upon Declarant an irrevocable proxy to vote in such Owner's name, place and stead on any and all matters on which the Owners or any of them are entitled to vote under this Declaration, the By-Laws or the Association's Articles of Incorporation. Such Initial Board shall serve until Declarant turns over control of the Condominium Project to the Owners, which shall take place no later than the earliest to occur of the following events (the "Control Transfer Date")(CTD):

- A. One hundred twenty (120) days after a total of eight (8) Units have been sold by Declarant to other than entities in which Brian Murphy has controlling interest;
- B. Thirty (30) days after the written resignation of the entire Initial Board is delivered to the other Owners;
- C. Four (4) years after the date hereof.

The irrevocable proxy conferred upon Declarant shall terminate as of the Control Transfer Date. Upon such transfer of control, Declarant shall make available to the Association all books, records, plans and other information in its possession regarding activities of such initial Board and operation of the Condominium Project prior to such turnover. Thereafter, the Association shall elect the Board annually in accordance with and as prescribed by the By-Laws, and may take any other actions with respect to control of the Condominium Project provided for by this Declaration, the By-Laws or the Act. The Board shall be the Association's governing body, representing all of the Owners in providing for management, maintenance, repair, replacement and upkeep of the Property.

Section 13. Encroachments and Easements for Common Areas. If, by reason of location, construction, settling or shifting of a Unit, a Common Area encroaches upon a Unit, then in such event an easement shall be deemed to exist and run to the Owners and the Association for maintenance, use and enjoyment of such Common Area. Each Owner shall have an easement in common with each other Owner to use all General Common Areas, wherever located.

Section 14. Easement for Utilities and Public and Quasi-Public Vehicles. All public and

quasi-public vehicles, including, but not limited to, police, fire, ambulance and other emergency vehicles, trash and garbage collection vehicles, post office vehicles, and privately owned delivery and service vehicles, shall have the right to enter upon the General Common Areas in performance of their duties. A transferable easement is also reserved by Declarant heretofore granted or to be granted to the appropriate utilities and their agents, for ingress, egress, installation, replacement, repair and maintenance of utility lines, mains, and other necessary facilities and equipment, within the Condominium Project, including, but not limited to, water, sewers, gas, telephone and electricity; provide, however, that nothing herein shall permit installation of sewers, electric lines, water lines or other utilities, except as initially designed and approved by Declarant, or as thereafter approved by the Board, or permit substantial impairment of any Owner's use and enjoyment of its Unit, and the grantee of any such easement rights shall be responsible for repair or restoration of damage to any Property caused by its activity pursuant to such easement rights. Declarant and the Association shall have the right to grant such other easements, licenses and rights-of-way as may be necessary for proper operation and maintenance of the Condominium Project.

Section 15. Restrictions on Use. The following restrictions apply to use and enjoyment of the Property:

- A. No Owner shall install or maintain any interior or exterior window decor visible from outside any Unit, other than interior draperies having a white or pastel back lining or blinds, without the Board's prior consent.
- B. The Board shall have a right to promulgate rules and regulations as to what the Owners can store and display on the Owners rear decks.

Section 16. Maintenance, Decoration, Repairs and Replacements.

- A. Common Areas. The Association will be responsible for maintenance, repair, decoration, restoration and replacement of the Common Areas, and the cost thereof shall be part of the Common Expenses. The Association may elect to delegate such duties to a Managing Agent, and may enter into a management contract for such purpose, provided that such agent and the terms of such contract are approved by a majority of the Percentage Vote present or represented at any Association meeting. Declarant or a person affiliated therewith shall serve as Managing Agent so long as Declarant retains control of the Association, and shall perform all property management functions on the Associations behalf. Any management contract made or deemed to wise between the Association and Declarant (or any affiliate) shall be terminable by either party without cause or penalty upon thirty (30) days written notice at any time after the Control Transfer Date. The Board has the right to adopt such rules and regulations concerning maintenance, repair, use and enjoyment of the Common Areas as it deems appropriate, including appointment of committees to oversee the same. The Board shall have the exclusive right to determine the outside decor of each Unit, including the bay windows and balconies, including without limitation the color

and type of paint and all decor appurtenant to the exterior of each Unit and shall also have a right to designate what can be stored on the balcony and how it is limited to in use.

- B. Units. Each Owner shall control and have the right to determine the interior decor of its Unit, but this shall not include the right to make structural changes to such Unit or to use interior decor that in the Board's discretion adversely affects the external appearance of such Unit, as more particularly set forth in Section 11. No act or omission that constitutes waste shall be committed or suffered in or upon any Unit or Common Areas. Each Owner shall maintain and repair at its sole cost and expense all fixtures, appliances, equipment and other improvements constituting a part of its Unit under Sections 3 and 4, and each Owner shall promptly repair any condition or defect existing or occurring in its Unit that, if not repaired, might adversely affect any Unit or Common Areas. The Board and the Managing Agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required) to enter into the Units and Common Areas appurtenant to each Unit to replace, repair and maintain such Common Areas. If any Owner fails or is unable to maintain or repair any condition or defect for which it is responsible, and such condition or defect causes or threatens to cause immediate and substantial harm to any person or property outside its Unit, the Board and the Managing Agent shall each have the right to enter such Unit to remedy or repair such condition or defect, and any costs or expenses incurred in connection therewith shall be payable by such Owner upon demand by the Board or the Managing Agent. Nothing contained herein shall be construed to represent a contractual liability to the Owners on the part of Declarant, the Association or the Board for maintenance, repair or replacement of any Common Areas, and the liability of the Association, the Board and the Managing Agent in this regard shall be limited to damages resulting from gross negligence, recklessness or intentional misconduct, unless otherwise provided in the management contract in the case of the Managing Agent.

Section 17. Landscaping, Alterations, Additions and Improvements. No Owner (other than Declarant) shall undertake any landscaping or changes thereto, or make any alterations, additions or improvements to the Common Areas, without the Board's prior written approval, nor shall any Owner make any alterations to its Unit that would impair the safety thereof, or substantially alter or adversely affect any structural portion of any Unit, or impair any easement or hereditament, without the Owners' unanimous consent. Any alterations, additions or improvements made by any Owner wholly or partly outside its Unit with the Board's consent shall remain such Owner's property, shall be owned, maintained and insured by such Owner as part of its Unit, and shall be deemed part thereof for purposes hereof Upon the sale of such Unit, such alterations, additions or improvements shall be transferred along with such Unit, and the purchaser shall be deemed to assume the prior Owner's maintenance and insurance obligations. If, in the Board's reasonable discretion, such alteration, addition or improvement is not properly being maintained, the Board may cause the same to be removed if such condition is not correct

by such Owner within ten (10) days after notice of such determination by the Board, and such Owner shall be liable for all costs incurred in connection with such removal, including attorney fees.

Section 18. Assessments.

- A. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of preserving the value of Units, and promoting health, safety and welfare of the Owners, users and occupants of the same, and, in particular, for improvement, repair, replacement, operation and maintenance of the Common Areas required to be maintained by the Association, including, but not limited to, payment of taxes and insurance thereon, if any, for cost of labor, equipment, material and management furnished with respect to the Common Areas, and for any and all other Common Expenses. Each Owner, excluding DECLARANT, (as hereafter detailed in Subsection L.) shall pay the Association:
- (a) Such Owner's Assessment Percentage Interest of the annual Assessments fixed, established and determined from time to time as hereinafter provided; and
 - (b) Such Owner's Assessment Percentage Interest of any special Assessments fixed, established and determined from time to time as hereinafter provided.
- B. Percentage Interest. The Assessment Percentage Interest of each Owner for purposes of this Section 15 (which is the same as the percentage interest in the common areas) shall be as set forth in Exhibit D attached hereto based on a proration of a given unit square foot of living area to the aggregate of all units square foot of living area. In the event of any expansion of the living area of a unit(s), approved in conformance with section 14 hereof. Exhibit D will be amended to adjust the assessment percentage interest accordingly.
- C. Liability for Assessments. Each Assessment, together with any interest thereon and costs of collection thereof, including attorneys' fees, shall be the personal liability of each Owner, shall be a charge on each Unit, and shall constitute a lien upon each Unit from and after the due date thereof in the Association's favor. Each Assessment, together with any interest thereon and costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Unit at the time when the Assessment is due. The lien for any Assessment shall for all purposes be subordinate to the lien of any Mortgagee under any mortgage recorded prior to the date such Assessment first became due and payable. No sale or transfer shall relieve any Unit from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability imposed hereby. The personal obligation for delinquent Assessments shall not pass to any successor in

title unless such obligation is expressly assumed by such successor.

- D. Basis of Annual Assessments. The Board shall propose and the Owners shall approve an annual budget prior to the beginning of each fiscal year, setting forth all anticipated Common Expenses for such fiscal year, together with a reasonable allowance for contingencies and reserves as the Board deems appropriate. A copy of such budget shall be delivered to each Owner at least thirty (30) days prior to the beginning of such fiscal year.
- E. Basis of Special Assessments. Should the Board at any time during a fiscal year determine that the Assessments levied for such year may be insufficient to pay the Common Expenses for such year, the Board shall call a special meeting of the Association to consider imposing such special Assessments as may be necessary to meet the Common Expenses for such year. A special Assessment shall be imposed only with the approval of two-thirds (2/3) of the Owners present or represented at such meeting, and shall be due and payable on the date(s) determined by such Owners or, if not so determined, by the Board.
- F. Fiscal Year, Date of Commencement of Assessments, Due Dates. The Association's fiscal year shall be from July 1st to the following July 30th and may be changed from time to time by the Board. The first monthly Assessment of the Annual Assessment shall be made for the balance of the Association's month based on its fiscal year in which Declarant first conveys ownership of a Unit to another Owner. Annual Assessments shall be due and payable monthly in the amount of ~~AS PER SCHEDULE~~ per month on the first day of each calendar month, except that the Board may from time to time by resolution authorize and require payment of annual Assessments in quarterly, semi-annual or annual installments.
- G. Duties of Association.
- a) The Board shall cause proper books and records of levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth each Unit and each Assessment applicable thereto, which books and records shall be kept in the Association's office or that of the Managing Agent if delegated and shall be available for inspection and copying by each Owner (or a duly authorized representative of any Owner) during the Association's regular business hours. Except as otherwise provided in the Bylaws, the Association shall cause financial statements to be prepared at least annually for each fiscal year of the Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. The Board shall cause written notice of all Assessments levied by the Association to be mailed to the Owners or their designated representatives. Notices of the amounts of the annual Assessments and the amounts of the installments thereof shall be sent annually within thirty (30) days following determination thereof. Notices of the amounts of special

Assessments shall be sent as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. If such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

- (b) The Association shall promptly furnish upon request to any Owner, prospective purchaser, title insurance company or Mortgagee a certificate in writing signed by an officer or agent of the Association, setting forth the extent to which Assessments have been levied and paid with respect to any Unit in which the requesting party has a legitimate interest. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.
- © The Association shall notify any Mortgagee from which it has received a written request for notice: (i) of any default in performance of any obligation hereunder by any Owner that is not cured within sixty (60) days; (ii) of any condemnation or casualty loss that affects either a material portion of the Condominium Project or the Unit securing its loan; and (iii) of any proposed action that requires consent of the Mortgagees or a specified percentage thereof as set forth herein.

H. Nonpayment of Assessments, Remedies of Association.

- a) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and cost of collection thereof, including attorneys' fees, become a continuing lien on the Unit against which such Assessment was made, in like manner to a Mechanic Lien under I.C. 32-8-3-1 etc., and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Unit as of the date of levy of such Assessment, and shall be enforceable against the real estate interest of such Owner, and all successors and assigns of such Owner, in such Unit; by foreclosure proceeding of a deficiency judgment provided, however, that such lien shall be subordinate to any first mortgage on such Unit recorded prior to the date such Assessment becomes due.
- b) If any Assessment upon any Unit is not paid within fifteen (15) days after the due date, such Assessment, a late fee of \$50, all costs of collection thereof, including attorneys' fees, and shall bear interest from the 16th date of delinquency until paid at a rate of eighteen percent (18%) per annum, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to

foreclose the lien against such Owner's Unit, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys' fees, and, if a judgment is obtained, such judgment shall include such interest, costs and attorneys' fees.

- c) In addition thereto, the Association may deny a delinquent owner the right to vote and to run for or maintain an office in the Association while the delinquency continues.
- I. Adjustments. If the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for such fiscal year, the amount of such deficit may be recouped either by inclusion in the budget for annual Assessments for the following fiscal year or by making one or more special Assessments for such purpose, at the Association's option. If the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount expended by the Association for Common Expenses for such fiscal year, each Owner's Percentage Interest of such excess shall be a credit against the Assessment(s) due from such Owner for the next fiscal year(s), at the discretion of the Board.
- J. Notice and Quorum. for Imposition of Special Assessments. Written notice of any meeting called for the purpose of imposing special Assessments shall be sent to all Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners entitled to cast sixty six and two-thirds percent (66 2/3%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- K. Subordination of Lien to Mortgage. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the Assessment lien. No sale or transfer shall relieve the Owner of such Unit from liability for any Assessments becoming due prior to such sale or transfer; provided, however, that sale or transfer of any Unit pursuant to foreclosure of any first mortgage on such Unit (without the necessity of joining the Association in such foreclosure action), or any proceedings or deed in lieu thereof, shall extinguish the lien of all Assessments first becoming due after the date of recordation of such mortgage but prior to the date of such sale or transfer.
- L. Declarant's Non Liability for Assessments. The Declarant is excused from any Regular Assessments for units owned by Declarant offered for the first time for sale to others (other than to entities in which Brian Murphy has controlling interest) for a period of two (2) years commencing on the date of recordation of

this Declaration and terminating on the first day of the 24th calendar month following the month in which the closing of the sale of the first condominium unit subject to this Declaration. If the common expenses incurred in this stated interval exceed the amount assessed against the other co-owners of units, then Declarant agrees in this interval to pay such excess.

Declarant shall only be responsible for Special Assessments prior to the "Control Transfer Date" to which Declarant agrees.

Section 19. Reserve and Working Capital Funds. The Association shall establish a reserve fund for the repair and replacement of those Common Areas that must be replaced periodically, based upon good faith estimates of the useful lives and replacement costs of such Common Areas made or obtained by the Association. The reserve fund shall be funded through the payments by the Owners of Common Expenses and not by an extraordinary or Special Assessment. Extraordinary expenditures not originally included in the annual budget that become necessary during the year shall be charged first against the reserve fund so established before any Special Assessment is made or levied therefor. In addition to the reserve fund, a working capital fund shall be established and maintained by the Association. At the closing of the initial sale of each Unit to an Owner, the Association shall be paid by the purchaser of such Unit an amount equal to two (2) months' installments of the Regular Assessment for Common Expenses for such Unit, which amount shall be retained by the Association as working capital, which amount shall be adjusted annually so as to keep on deposit an amount at least equal to two (2) months of the Regular Assessment for Common Expenses for such Unit for said calendar year. Amounts paid or deposited into the working capital fund shall not relieve an Owner from this responsibility for the Regular Assessments due in accordance with this Article VII. All amounts held by the Association pursuant to this Section 7.08 shall be maintained in a federally-insured, doing business in Marion County, Indiana.

Section 20. Insurance.

- A. The Association shall obtain fire and extended coverage insurance insuring all Units, including all fixtures, appliances and other improvements installed and sold by Declarant as part thereof, and all Common Area, in an amount equal to the full replacement cost. Such insurance shall be in the form of a master casualty policy for the Condominium Project, shall contain a "Replacement Cost Endorsement", and shall provide that, notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of cash settlement, such option shall not be exercisable if the owners do not elect to restore pursuant to Section 18. Such insurance coverage shall be for the benefit of each Owner, the Association and, if applicable, each Owner's Mortgagee. The amount of coverage shall be increased from time to time to cover all additions to the Condominium Project. The proceeds shall be payable to the Association, which shall hold and apply such proceeds as trustee for the Owners and the Mortgagees, as their respective interests shall appear. The proceeds shall be used or disbursed only in accordance

with the provisions of this Section 16 and Section 18, as applicable, and any surety bond or bonds obtained by the Board covering the Association's officers as provided in paragraph D of this Section 16 shall specifically include protection for any insurance proceeds so received.

- B. The Association also shall obtain comprehensive public liability insurance, and may also secure Worker's Compensation Insurance, employers liability insurance and other liability insurance, if the Board so determines with such coverages and limits as the Board deems appropriate; provided, however, that public liability insurance shall have liability limits of not less than Two Million Dollars (\$2,000,000.00) for personal injury and One Million Dollars (\$1,000,000.00) for property damage; and provided further, that all such policies shall meet the requirements of paragraph E of this Section 16. Such insurance shall inure to the benefit of each Owner, the Association, the Board and any Managing Agent. The Owners, as well as any lessees of any Owners, shall have the right to recover losses insured for their benefit.
- C. Each Owner shall have the right to purchase any additional insurance it may deem necessary, and each Owner shall be solely responsible for loss of or damage to the contents of its Unit, however caused, including all floor, window, door, and wall coverings, appliances, fixtures and betterments installed by such Owner, and for loss of or damage to any of its personal property, whether or not stored or kept in such Unit. Each Owner shall be solely responsible for obtaining its own insurance to cover any such loss and risk.
- D. The Association may obtain a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any Association agent, employee or officer, or any other person handling funds of the Association or the Owners, including other acts of dishonesty by employees which bond shall be written in an amount equal to at least 200% of the annual Common Expenses, including reserves.
- E. All policies of insurance of the character described in Paragraphs A and B of this Section 15 shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, the Board, the Declarant, any Managing Agent, and their respective members, directors, officers, employees and agents, or the Owners; shall further contain a clause whereby the insurer waives any defenses based on co-insurance or invalidity arising from acts of any insured party; and shall cover claims of one or more insured parties against other insured parties. All policies of insurance maintained by the Association pursuant to this Section 16 shall provide such coverages and be in such amounts as may be required from time to time by the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal Housing Administration ("FHA"), or the Veterans' Administration ("VA"). Upon obtaining or changing any policy of insurance

authorized or required by this Section 16, notice of the same shall be sent by the Association's Secretary to each Owner and Mortgagee that may be affected thereby.

Section 21. Condemnation. If all or any part of the Condominium Project is taken or condemned by any competent authority, or any condemnation proceeding is instituted with respect to all or any part of the Condominium Project, the Association shall have the right to appear in and defend such proceeding on behalf of the Owners affected thereby, and to prosecute on such Owners' behalf any action or proceeding, at law or in equity, it may (teem appropriate for adequate protection and compensation of all Owners affected by any confiscatory act of any public body. The proceeds obtained by the Association as a result of any such action or proceeding shall be applied as follows: (a) the portion of such award that is allocated by the court making such award or, if not so allocated, that is determined by a two-thirds (2/3) majority of the Percentage Vote at a special meeting called for the purposes of making such allocation, to the Building and Units taken (the "Building Award"), shall be distributed among the Owners whose Units were taken proportionately according to the relative square footage of each Unit so taken; and (b) the balance of such award after payment of the Building Award shall be paid, first, to reimburse the Association for its costs and expenses in obtaining such award, and the balance, if any, shall be paid to each Owner in proportion to its Percentage Interest. No amounts or damages shall be paid by the Association or any Owner for any partial taking, partial loss of use or impedance of access of or to any Unit, except to the extent that the amount of any such award is specifically determined by the court making such award or by a two-thirds (2/3) majority of the Percentage Vote. Nothing in this Section 17 shall be construed to prevent any Owner affected by any condemnation or, confiscatory action of any public body from participating in any condemnation proceeding or from prosecuting any action for recovery for any confiscation of its property, but such Owner shall not be entitled to distribution out of the proceeds received by the Association to the extent such Owner recovers sums or compensation for the same or similar damages as are the basis of the award of the Association. Nothing contained herein shall be construed to require payment of proceeds to an Owner in derogation of any rights such Owner's Mortgagee may have to such proceeds.

Section 22. Casualty and Restoration. In the event of any damage to or destruction of the Property by fire or other casualty, the following provisions shall be applicable:

- A. In the event of less than complete destruction (as defined in paragraph B of this Section 18) the Units in the Buildings, all Units and other Property damaged shall be repaired, and restored promptly. Any insurance proceeds shall be applied to the cost of such repair and restoration. If the insurance proceeds are not adequate to cover the cost of such repair and restoration, or if there are no proceeds, the amounts needed to complete such repair and restoration beyond available insurance proceeds shall be paid by all Owners as a Common Expense. The application and use of such proceeds shall be determined by the Board acting as trustee under paragraph A of Section 16, and, when so determined in good faith, shall be binding upon all Owners and Mortgagees.

- B. If two-thirds (2/3) or more of the Units are damaged or destroyed by fire or other casualty, a special meeting of the Association shall be called. If, at that meeting, a determination is made by a two-thirds (2/3) majority of the Percentage Vote that a complete destruction has occurred so that the Building and other Property in the Condominium Project shall not be repaired or restored, then the proceeds of insurance and the Property shall be dealt with and disposed of in accordance with Sections 20 and 22 of the Act, as either may be amended from time to time, or in accordance with any substitute provisions governing such matters as may be enacted subsequent to the date hereof, with distributions of proceeds to be made to the Owners in proportion to the relative fair market values of their respective Units as of the date of such damage or destruction, if and to the extent such values can be determined and such distributions are permitted by applicable law.
- C. Restoration, for purposes of paragraphs A and B of this Section 18, shall mean construction or rebuilding of the Units and other Property to substantially the same condition as they existed immediately prior to the damage or destruction, with similar quality of materials and workmanship, and similar type of design and architecture, but excluding all improvements and property added to, or kept in or about, such Units by any Owner.
- D. If restoration of Units is necessary, the insurance funds shall be disbursed by the Association. Such disbursement of funds shall be in the manner and in accordance with the procedure normally used when disbursing funds for initial construction. Each insurer shall be notified of this provision by the Association and each policy of insurance shall comply herewith. Nothing contained in Section 16 or 18 shall be construed to require payment of any proceeds to an Owner in derogation of any rights such Owner's Mortgagee may have to such proceeds.

Section 23. Negligence. Each Owner shall be liable for the expenses of any maintenance, repair or replacement of any of the Property that becomes necessary by reason of its negligence, or that of any member or its family, or its or their guests, employees, agents or lessees, to the extent such expense is not covered by proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by its use, misuse, occupancy or abandonment of its Unit or the Common Areas.

Section 24. Real Estate Taxes. Real estate taxes shall be separately taxed to each nit and the Percentage Interest appurtenant thereto, as provided in the Act. In the event that real estate taxes becoming due and payable in any year are not separately assessed and taxed to each Unit, but are assessed and taxed on the Property as a whole, then each Owner shall pay its proportionate share of such real estate taxes. Each Owner's proportionate shall be equal to its Percentage Interest in the year such real estate taxes become due and payable. Each Owner's proportionate share of such real estate taxes shall be part of the Common Expenses but at the option of the Board of Directors, shall be paid to the Association within twenty (20) days after demand by the Association.

Section 25. Utilities. Each Owner shall pay for those utilities provided to its Unit that are separately billed or metered for such Unit. Utilities that are not separately billed or metered shall be treated and paid as part of the Common Expenses. Only the water and sanitary sewage usage is singly metered and shall be proportioned equally to the Owners unless the Board determines a disproportionate usage in which later instance the Board, in its sole discretion, can adjust the proportions of the bill accordingly.

Section 26. Declarant's Reservation of Rights.

- A. Use and Sale of Units. For the purpose of maintaining the residential character of this Condominium Project and for protection of the Owners, Declarant specifically reserves the mode and method of original sale of each Unit until the last Unit is sold. Declarant may designate any Unit as a unit "model" for sales. Any Unit designated by Declarant for use as a model for sales until all of Declarant's Units are sold as Condominiums may, at Declarant's option, either be owned by Declarant, or sold and leased back by Declarant for such purpose. Declarant's right to so designate and use Units shall continue so long as Declarant owns any Units, and no action of the Association or any Owner shall impair such right. Other than the commercial Unit, all Units shall be used for residential purposes only (but with home occupations permitted under the Districts Zoning Ordinance of Marion County allowed), and no lease (other than a leaseback by Declarant) shall demise any Unit for a term of less than one (1) year.
- B. Declarant reserves the right to use or lease the commercial Unit for any commercial use permitted under its CBD-2 zoning classification. Notwithstanding words to the contrary excluding Declarant from assessments under Section 18L during times of actual commercial use by Declarant or use by a commercial tenant shall make that Unit owner liable for assessments.
- C. Reservation of Right. Declarant reserves the right to amend this Declaration without consent of the Owners, the Mortgagees or the Association until the Control Transfer Date, provided that no such amendment shall materially impair the rights of any Mortgagee, or substantially deprive the Owners, or any of them, of the right conferred upon them hereof or by the By-Laws.

Section 27. Amendment of Declaration. Except as otherwise provided herein, this Declaration may be amended in the following manner:

- A. Notice. Notice of the subject matter of the proposed amendment shall be included in this notice of any meeting at which the proposed amendment is considered, including any annual meeting.
- B. Resolution. A resolution to adopt a proposed amendment may be proposed by the Board or by Owners having at least a majority of the Percentage Vote.

- C. Meeting. The resolution concerning a proposed amendment must be adopted by the appropriate majority vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
- D. Adoption. Any proposed amendment hereto must be approved by a majority of the Percentage Vote. If any Unit is subject to a mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board in accordance with the provisions of the By-Laws.
- E. Amendments. No amendment hereto shall be adopted that changes:
 - a) The Percentage Interest with respect to any Unit or the share of an Owner's liability for Common Expenses, without approval of a two-thirds (2/3) majority of the Percentage Vote and approval of Mortgagees having mortgages on at least two-thirds (2/3) of the mortgaged Units, except as otherwise provided in regard to annexation;
 - b) The provisions of Section 18 with respect to reconstruction or repair in the event of fire or casualty, without approval of a two-thirds (2/3) majority of the Percentage Vote and unanimous approval of all Mortgagees whose mortgage interests have been made known to the Board in accordance with the provisions of the By-Laws;
 - c) The provisions of Section 12, 15, 22, 23, 24 and 25 without Declarant's consent so long as this Condominium Project is still subject to expansion;
or
 - d) Any provision hereof that would be deemed to be of a material nature by FNMA under any current or subsequent relevant guidelines that FNMA may issue, without approval of a two-thirds (2/3) majority of the Percentage Vote and approval of Mortgagees having mortgages on at least two-thirds (2/3) of the mortgaged Units.

Any Mortgagee that duly has been notified of the nature of any proposed amendment shall be deemed -to have approved the same if such Mortgagee or a representative thereof fails to appear at the meeting at which such amendment is to be considered. If a proposed amendment is one permitted by this Section 23 and is deemed by the Board to be one that is not of a material nature, the Board shall notify a Mortgagees whose interests have been made known to the Board of the nature of such proposed amendment, and such amendment conclusively shall be deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notice is mailed, and if such notice advises the Mortgagees of the time limitations contained in this sentence.

- F. Recordation. Each amendment hereto shall be executed only by Declarant in any

case where Declarant has the right to amend this Declaration without any further consent or approval, and otherwise by the President or a Vice President, and the Secretary or an Assistant Secretary of the Association, provided that any amendment requiring Declarant's consent shall contain such consent. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded. In addition, the provisions of this Section 23 are subject to the rights given to Declarant by virtue of the irrevocable proxies held by Declarant on behalf of the Owners, as provided in Section 9.

Section 28. Amendments for Mortgage Purchaser. If FNMA, FHLMC, FHA, VA, or any other guarantor or purchaser of a mortgage of any property in this Condominium Project should impose any requirements pertaining to attributes of the Condominium Project, or provisions hereof or of the By-Laws, for purposes of qualifying for or agreeing to purchase or guaranty of any such mortgage, the Declarant or the Board may fully satisfy such requirements, and shall have the right to amend this Declaration in accordance therewith, without approval or consent of any Owner or Mortgagee.

Section 29. Enforcement of Covenants and Restrictions. The various covenants and restrictions applicable to use and enjoyment of the Units, as set forth herein, are for the mutual benefit and protection of the present and future Owners, shall run with the land, and shall be binding upon, inure to the benefit of and be enforceable by the Declarant, any Owner, or the Board on the Association's behalf, and their respective heirs, successors and assigns. Available relief in any action brought to enforce this Declaration shall include damages, injunctive relief against any violation or attempted violation of these provisions, and recovery of any costs and attorneys' fees incurred by any party successfully enforcing this Declaration against any other party, but there shall be no right of reversion or forfeiture of title resulting from any violation. In addition, the Board is hereby authorized, during the period of any default or delinquency, to take actions to enforce compliance with such provisions, rules, regulations or decisions, including, without limitation: (i) revocation of a defaulting Owner's right to use General Common Areas designed for recreational purposes, and (ii) suspension of a defaulting Owner's voting privileges; (iii) disqualification from office in the Association while the violation continues, provided, that no such enforcement action shall affect any Mortgagee's rights hereunder.

Section 30. Costs and Attorneys' Fees. In a proceeding arising because of an alleged failure of an Owner to make any required payment, or to comply with any provision of this Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Declarant or the Association shall be entitled to recover its attorneys' fees incurred in connection with such proceeding, if it is found or agreed in such proceeding that a failure to make payment as required hereby, or a violation of this Declaration, the Act, the ByLaws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, did occur.

Section 31. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Units shall be subject to and comply with the provisions of this

Declaration, the Act, the By-Laws, and the rules and regulations adopted pursuant thereto, as each may be amended from time to time. Acceptance of a deed of conveyance to or occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, any Amendments, the Act, the By-Laws, and any rules and regulations adopted pursuant thereto, as each may be amended from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land, and shall bind any person having at any time any interest or estate in a Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof Each Owner shall execute and deliver such other documents, if any, as may be necessary or desirable to comply with the Act as it may be amended from time to time. All persons that may occupy, use, enjoy or control a Unit or any part of the Property in any manner shall be subject to this Declaration, the Act, the By-Laws, and the rules and regulations adopted pursuant thereto, as each may be amended from time to time.

Section 32. Waiver. No Owner may exempt itself from liability for its contribution toward Common Expenses by waiver of use or enjoyment of any of the Common Areas, or abandonment of its Unit. The Association does not waive the right to hold a lien on any Unit and foreclose same by any failure to take action when any payment of any Assessment is not timely made when due by any Owner.

Section 33. Construction and Severability. This Declaration and the By-Laws are intended to comply with the provisions of the Act, and shall be construed whenever possible to be consistent therewith. Invalidity of any covenant, restriction, condition, limitation or other provision hereof or of the By-Laws shall not impair or affect in any manner validity, enforceability or effect of the rest hereof or of the By-Laws.

Section 34. Floor Plans. The Plans pertaining to the Real Estate, as described in Section 2(v), are incorporated herein by reference, and have been recorded contemporaneously with recordation hereof in the Office of the Recorder of Marion County, Indiana, as Instrument No. 2006-0077813.

Section 35. Notices. Any notice required or permitted to be sent hereunder or under the By-Laws shall be sufficient if sent by U.S. certified or registered mail, postage prepaid, return receipt requested, to the address shown on the Association's records.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 15 day of MAY, 2006.

LOCKERBIE FLATS, LLC

By: Brian P. Murphy

Brian P. Murphy

Manager

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

SUBSCRIBED AND SWORN to before me, a Notary Public, in and for said County and State, personally appeared **Brian P. Murphy**, Manager of Lockerbie Flats, LLC, Declarant, and acknowledged the execution of the foregoing Declaration.

WITNESS my hand and Notarial Seal this 15th day of May, 2006.

My Commission Expires:

Frances E. Bare
Notary Public

May 7, 2009

Printed: FRANCES E. BARE
Resident of Marion County

Prepared by:
Raymond Good, #7201-49
LOCKE REYNOLDS LLP
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P.O. Box 44961
Indianapolis, IN 46244-0961
(317) 237-3800
683324.2



EXHIBIT LIST

Exhibit A	Legal Description
Exhibit B	By-Laws
Exhibit C	Plans
Exhibit D	Percentage of Interest by Unit

683324.3

EXHIBIT D

PERCENTAGE INTEREST BY UNIT

<u>Unit No.</u>	<u>Percentage Interest</u>
301	15.04
300	7.93
400	7.93
202	10.71
302	11.04
204	11.04
304	11.23
206	7.54
306	7.72
406	7.72
"Lease"	<u>2.10</u>
	100.00