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Filed for Record in
BOONE COUNTY, INDIANA
MARY ALICE "SAM" BALDWIN
11-03-2005 At 02:11 pm.
COVENANTS 123.00

FILED
NOV 03 2005
Orestes Smith
Boone County Auditor

DECLARATION OF CONDOMINIUM
AND OF
EASEMENTS, RESTRICTIONS, AND COVENANTS
FOR
MANCHESTER SQUARE CONDOMINIUM

G & L DEVELOPMENT CO., INC.,
as Declarant(s)



CHICAGO TITLE

**DECLARATION OF CONDOMINIUM
AND OF
EASEMENTS, RESTRICTIONS, AND COVENANTS
FOR MANCHESTER SQUARE CONDOMINIUM**

This Declaration is for the establishment of a condominium under the Indiana Condominium Act, I.C. § 32-25-1-1, et seq. ("Condominium Act"), made this 3rd day of November, 2005, by G & L Development Co., Inc., an Indiana corporation ("Declarant Owner"), an Indiana corporation, and Bruce Gunstra Builders, Inc., an Indiana corporation ("Declarant Builder"); Declarant Owner and Declarant Builder will be collectively referred to as "Declarant" unless otherwise noted).

1. **DEFINITIONS.** The following terms, as used in this Declaration, unless the context clearly requires otherwise, will mean the following:

- 1.1 "Applicable Date" means the date determined pursuant to Section 13.4 of this Declaration.
- 1.2 "Architectural Review Committee" has the meaning set forth in Section 16 of this Declaration.
- 1.3 "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, to be filed with the office of the Indiana Secretary of State, as they may be further amended from time to time.
- 1.4 "Assessment" means, collectively, the Regular Assessment and the Special Assessment.
- 1.5 "Association" means the Manchester Square Condominium Homeowners Association, an Indiana nonprofit corporation, an incorporated association of the Declarant and Owners of Manchester Square Condominium, established by the Articles, operated pursuant to the Bylaws, and more particularly described in Section 13 of this Declaration.
- 1.6 "Board of Directors," or "Board," means the governing body of the Association, being the Initial Board or the subsequent Board of Directors to be elected from time to time by the Owners in accordance with the Bylaws. The term "Board of Directors" or "Board" as used in the Articles, Bylaws, and this Declaration are synonymous with the term "Board of Directors" as used in the Nonprofit Act and Condominium Act.

CHICAGO TITLE

- 1.7 "Building" means any or all of the potential twenty-three (23) two and a half (2 ½) story structures on the property of which twenty-one (21) structures are one (1) two and a half (2 ½) story structures with six (6) Units in each. One (1) structure is a two and a half (2 ½) story structure with five (5) Units in each; and, one (1) structure is a two and a half (2 ½) story structure with four (4) Units in each. The Buildings are more particularly described and identified on the Plans and in Section 5 of this Declaration.
- 1.8 "Bylaws" means the Bylaws of the Association providing for the administration and management of the Property as required by and in conformity with the provisions of the Condominium Act and Nonprofit Act. A true copy of the Bylaws is attached to this Declaration as **Exhibit B** and incorporated in this Declaration by this reference.
- 1.9 "Class A Member(s)" have the meaning set forth in Section 13 of this Declaration.
- 1.10 "Class B Member(s)" have the meaning set forth in Section 13 of this Declaration.
- 1.11 "Code" means the Internal Revenue Code of 1986, as amended.
- 1.12 "Common Areas" mean the common areas and facilities appurtenant to the Property as defined in Section 7 of this Declaration.
- 1.13 "Common Expense(s)" means expenses of administration of the Association and expenses for the upkeep, maintenance, repair, and replacement of the Common Areas as provided in this Declaration and the Bylaws, all other costs and expenses incurred by the Association for the benefit of the Common Areas or for the common benefit of all Owners, and all sums lawfully assessed against the Owners by the Association or as declared by the Condominium Act, this Declaration, or the Bylaws.
- 1.14 "Condominium" has the meaning provided under the Condominium Act.
- 1.15 "Condominium Act" means the Condominium Act of the State of Indiana (IC §32-25-1-1, et seq.), as it is amended from time to time.
- 1.16 "Condominium Interest" will mean the following:
- 1.16.1 Fee simple title to a Unit;
- 1.16.2 An undivided Interest, together with all other Owners in the Common Areas in the Property;

CHICAGO TITLE

- 1.16.3 An exclusive right to use the areas described in this Declaration, Plans and accompanying documents as "Limited Areas," the use of which is restricted to the use of the Owner's respective Unit; and
- 1.16.4 A membership in the Association, as subsequently defined, and subject to this Declaration, the Bylaws of said Association and all governing documents of said Association.
- 1.17 "Declarant" will mean and refer to Declarant Builder and Declarant Owner, and any successors and assigns whom it designates in one or more written recorded instruments to have the rights of Declarant under this Declaration, including, but not limited to, any mortgagee acquiring title to all or any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant. A mortgagee acquiring title by virtue of foreclosure against the Declarant does not assume the prior obligations or liabilities of the Declarant. Declarant Builder will cease being the Declarant hereunder when the Declarant Builder is no longer the exclusive builder of the Buildings hereunder.
- 1.18 "Declarant Builder" or "Builder" will mean and refer to Bruce Gunstra Builders, Inc., an Indiana corporation, the entity to which Declarant Owner has conveyed a portion of the Property for the purpose of construction of a Building, exclusive of any other such builders and will retain the rights and obligations under the title Declarant Builder or Builder so long as such entity maintains such exclusivity.
- 1.19 "Declarant Manager" has the meaning set forth in Section 13.7 of this Declaration.
- 1.20 "Declarant Owner" will mean and refer to G & L Development Co., Inc., an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of Declarant Owner hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant Owner.
- 1.21 "Declaration" means this DECLARATION OF CONDOMINIUM AND OF EASEMENTS, RESTRICTIONS, AND COVENANTS FOR MANCHESTER SQUARE CONDOMINIUM, dated November 3, 2005.
- 1.22 "Director(s)" means a member of the Board.
- 1.23 "Guaranteed Charge" has the meaning set forth in the Bylaws.
- 1.24 "Initial Board" has the meaning set forth in the Bylaws.

Declaration

Page - 4 -

- 1.25 "Interest" means the portion of undivided interest in the title to the Common Areas appertaining to each Unit as specifically expressed in this Declaration in Section 9.3.
- 1.26 "Limited Areas" means the portion of the Common Areas which are in use by certain Owners as defined in Section 8 of this Declaration.
- 1.27 "Managing Agent" has the meaning set forth in Section 13.7 of this Declaration.
- 1.28 "Management Agreement" has the meaning set forth in Section 13.7 of this Declaration and is more particularly described in the Bylaws.
- 1.29 "Member(s)" means, individually, or collectively Class A Members and Class B Members of the Association.
- 1.30 "Mortgagee" means the holder, insurer, or guarantor of a first mortgage lien on a Unit.
- 1.31 "Owner(s)" means a person who owns the fee simple title to a Unit, including the Interest inherent therein.
- 1.32 "Nonprofit Act" means the Indiana Nonprofit Corporation Act of 1991, Ind. Code § 23-17-1 et seq., as it is amended from time to time.
- 1.33 "Percentage Vote" means that percentage of the total vote accruing to all of the Units which is appurtenant to each particular Unit and accrues to the Owner of such Unit. The Percentage Vote to which each Member will be entitled on any matter upon which all of the Members are entitled to vote will be the same as the Interest appurtenant to such Owner's Unit.
- 1.34 "Person" means an individual, firm, limited liability company, corporation, partnership, association, trust, or other legal entity or any combination thereof.
- 1.35 "Plans" means the plans and survey more particularly described in Section 5 of this Declaration.
- 1.36 "Property" means the real estate and improvements as defined in Section 4 of this Declaration.
- 1.37 "Regular Assessment" has the meaning set forth in Section 13 of this Declaration and more particularly determined under the Bylaws.
- 1.38 "Rules and Regulations" means those rules and regulations which may be adopted from time to time by the Board.
- 1.39 "Unit" means any one of the single-family dwelling units constituting Manchester Square Condominium. Each Unit will be a separate freehold estate as provided in

the Condominium Act consisting of the space within the boundaries of such Unit and being more particularly described and identified on the Plans and in this Declaration. For purposes of the application of the Condominium Act to the Manchester Square Condominium, the term "Unit" as used in this Declaration and all attending documents will be deemed to be synonymous with the term "Condominium Unit" used in the Condominium Act. Wherever the term "Condominium Unit" is used in the Condominium Act, the name will be deemed to apply to the term "Unit" as used in the documents of the Manchester Square Condominium.

1.40 "Manchester Square Condominium" means the "Manchester Square Condominium, a condominium," the name by which the Property and the Horizontal Property Regime established thereon will be known.

1.41 "Special Assessment" has the meaning set forth in Section 13 of this Declaration and more particularly determined under the Bylaws.

2. DECLARATION AND SUBMISSION OF REAL ESTATE UNDER TERMS AND CONDITIONS OF THE INDIANA CONDOMINIUM LAW

The Declarant, as an owner of fee simple title to the Property, does create, submit, subject, and declare the Property to be known as "Manchester Square Condominium."

Further, the Declarant hereby expressly declares that the Property will be held, conveyed, and transferred in accordance with the provisions of this Declaration.

3. **INDIANA CONDOMINIUM LAW.** Declarant further states and expressly declares that the Condominium Act is incorporated into and made a part of this Declaration by this reference.

4. **DESCRIPTION OF PROPERTY.** The "Property" subject to this Declaration is certain real estate located in Boone County, Indiana, more particularly described in Exhibit A, together with the buildings, improvements, and appurtenances located or to be located thereon as shown and depicted on the Plans. The Property, as it is subjected to the Condominium Act in creation of a horizontal property regime, includes the Units, the Buildings, improvements, recreational facilities, appurtenances, and property of every kind and nature whatsoever, real, personal, and mixed, located upon the Property and used in connection with the operation, use, and enjoyment of Manchester Square Condominium, but expressly does not include the personal property of the Owners or their tenants.

5. **DESCRIPTION OF PLANS AND BUILDINGS.** The "Plans" referred to in this Declaration are the floor plans, building plans, and elevations of the Buildings and Units on the Property, and the site plan and survey of the Property as it is improved, certified as true and correct by Rudney J. Kelly, Registered Land Surveyor Number 24500006, under date of October 10, 2005, and filed in the Office of the Recorder of Boone County, Indiana, in Horizontal Property Plan File Book 16 Pages 25-28, as of

Declaration

Page - 6 -

November 3, 2005, as Document Number 2005-00513166. Such Plans are incorporated into and made a part of this Declaration by this reference.

The Plans show and depict the Buildings as placed upon the Property, set forth the relation of the Buildings to the lot lines, and establish the placement of all other improvements upon the Property and in the Buildings. The Plans further establish the location or locations of the Units within the Buildings. Accordingly, the unit numbers and floor level designating the Units within the Building are set forth on the floor plans of the Buildings submitted with this Declaration, and said floor plans further designate the dimensions, layout, and locations of the respective Units.

There are, or will be, up to twenty-three (23) two and a half (2 ½) story structures on the property of which twenty-one (21) structures are one (1) two and a half (2 ½) story structures with six (6) Units in each. One (1) structure is a two and a half (2 ½) story structure with five (5) Units in each; and, one (1) structure is a two and a half (2 ½) story structure with four (4) Units in each. No other buildings on the Property contain any Units.

Further details, terms and use conditions for all the Buildings and appurtenances, including, but not limited to the storage areas, recreational areas, parking areas and other Common Areas, including the Limited Areas, are set forth in and further delineated on the Plans.

6. DESCRIPTION OF UNITS.

- 6.1 "Identification for Title Purposes" Each Unit is identified and located on the Plans by unit number. A sufficient legal description of each Unit for all purposes will consist of the identifying number of the Unit, the Building in which the Unit is located, the name of the Condominium, and reference to the recording information of this Declaration. By way of example: Unit A of the Manchester Square Condominium may be formally described, conveyed, and referred to as:

"Unit Number A, Building 1, in the Manchester Square Condominium according to the DECLARATION OF CONDOMINIUM AND OF EASEMENTS, RESTRICTIONS, AND COVENANTS FOR MANCHESTER SQUARE CONDOMINIUM, dated November 3, 2005, recorded as Documents No. 2005-00513166 on November 3, 2005, in the Office of the Recorder of Boone County, Indiana."

- 6.2 Appurtenances. Each Unit will consist of all space within the boundaries thereof, as hereinafter defined, all portions of the Building situated within such boundaries, including but not limited to all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Unit wherein the same are located, or to which they are attached, but excluding there from that designated, designed or intended for the use, benefit, support, safety or enjoyment of any other Unit or which may be necessary for the safety, support, maintenance, use and operation of any part of the Buildings or which are normally designed or

designated for common use; provided, however, that all fixtures, equipment and appliances designated, designed or intended for the exclusive enjoyment, use and benefit of a Unit will constitute a part of such Unit, whether or not the same are located within or partly within the boundaries of such Unit. Also, the interior sides and surfaces of all doors and interior and exterior sides and frames of all windows in the perimeter walls of the Unit, whether or not located within or partly within the boundaries of the Unit, and all interior walls and all of the floors and ceilings within the boundaries of a Unit are considered part of the Unit.

- 6.3 Boundaries. The boundaries of each Unit will be as shown on the Plans measured between the interior unfinished surface of the floors, ceilings and perimeter walls of each Unit. In the event any horizontal or vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Unit because of inexactness or construction, settling after construction, or for any other reasons, the boundary lines of each Unit will be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use will exist in favor of the Owner of each Unit in and to such space lying outside of the actual boundary lines of the Unit, but within the appropriate wall, floor or ceiling surfaces of the Unit.
- 6.4 Condominium Interest. Each Unit will carry with it a Condominium Interest, and the Condominium Interest will be inseparable from said Unit and will pass with the fee interest to said Unit as an integral part of such Unit.

7. **COMMON AREAS AND FACILITIES.** "Common Areas" mean, consist of, and include any and all portions of the Property and the improvements located on the Property, excluding the Units as defined and provided for in this Declaration, the Bylaws, and the Plans, except as otherwise provided. Common Areas will include but may not be limited to the following:

- 7.1 The Property (excluding the Units);
- 7.2 The foundations, columns, girders, beams, supports, and exterior surfaces of the roofs of the Buildings;
- 7.3 The parking areas, yards, sidewalks, open spaces, landscaping, recreational facilities, and structures containing only parking spaces, maintenance, and storage facilities;
- 7.4 All facilities providing central electricity, gas, water supply systems, and sanitary sewer and mains serving the Buildings unless separately metered to a particular Unit;

Declaration

Page - 8 -

- 7.5 Exterior lighting fixtures and electrical service lighting exterior of the Buildings unless such fixtures electrical service is separately metered to a particular Unit (in such instance the Owner of the particular Unit is responsible for such fixtures and such electrical service);
- 7.6 Pipes, ducts, electrical wiring, and conduits and public utilities lines outside of the Unit;
- 7.7 Roofs, floors, ceilings, and perimeter walls, except the interior surface thereof as defined in boundaries of individual Units;
- 7.8 All facilities and appurtenances located outside of the boundary lines of the Units except those areas and facilities expressly defined as part of a Unit, but including those classified and defined as Limited Areas;
- 7.9 Any other portions of the property necessary or convenient to its existence, maintenance and safety or normally in common use, except to the extent specifically included within the boundaries of the Units;
- 7.10 All streets in the Manchester Square Condominium;
- 7.11 All street lighting fixtures and electrical service for such fixtures; and
- 7.12 An entrance identification wall sign plus accompanying landscaping at the entrances to the Manchester Square Condominium.

8. **LIMITED COMMON AREAS AND FACILITIES.** The limited common areas, facilities, systems, and equipment (collectively, "Limited Areas") will be those portions of the Common Areas which are limited in their use and enjoyment to fewer than all the Owners. The designation of the Limited Areas and the Unit or Units they serve is set forth and depicted on the Plans and as further described and defined in this Declaration. Such right to use will pass with title to the Unit even though not expressly mentioned in the document passing title. Limited Areas and those Units to which use thereof is limited are as follows:

- 8.1 Mechanical Equipment. Air conditioning equipment, heating equipment, ventilation equipment, ducts, pipes, exterior faucets or hose bibs, wires, bathroom plumbing facilities and fixtures, kitchen plumbing facilities and fixtures, and hot and cold water systems (including water heaters), will be Limited Areas reserved for the use of the Units respectively served by such equipment, facilities and fixtures. The costs of upkeep, maintenance, replacement, and management of the Limited Areas will be charged to the Owners of the Unit or Units served by such equipment as Unit expenses in the manner provided in the Bylaws.
- 8.2 Window Frames, Door Frames, Entrances, Walks, and Steps. Window frames, door frames, entrances, walks, and steps upon or through which access to a Unit is obtained are limited to the use and enjoyment of the Unit or Units served by such

improvements. The exterior sides and surfaces of doors, windows, glass panes, screens, and frames surrounding the same in the perimeter walls of each Unit will be limited to the exclusive use of the Unit to which they appertain and the expense for maintaining or replacing same will be borne by the Owner of the Unit.

- 8.3 Utilities and Improvements Serving Individual Units. All utilities lying within the exterior dimensions of the perimeter walls of any Unit and exclusively serving a particular Unit or Units within a Building will be deemed to be Limited Areas, and will be restricted to the use and enjoyment of the Unit or Units which they serve. Such utilities will expressly be deemed to include, but will not be limited to all water, sewer, gas, electrical, TV, telephone, and heating and air conditioning lines, ducts, improvements, and facilities of every type or nature whatsoever. Except as may otherwise be expressly provided, such utilities and all portions thereof lying outside the exterior perimeters of any Unit will be deemed to be and remain Common Areas. In addition to those facilities established as Limited Areas above, all heating and air conditioning facilities lying within or without the exterior perimeters of any Unit and serving any particular Unit within any such Building will be deemed to be Limited Areas, and will be restricted to the use and enjoyment of the Unit which they serve. The cost of maintaining and replacing such facilities will be borne by the Unit served by such equipment, and the Owner will be personally responsible for such maintenance replacement and costs. Such heating and air conditioning facilities will include all heating and air conditioning ducts, lines, and improvements lying within the exterior or interior perimeters of the Building, all air condenser units located or lying outside any Unit and all lines, ducts, or facilities connecting any such condenser with any of the said lines, ducts or improvements within /the perimeters of a Building.
- 8.4 Decks, Patios, if any, Driveways and Parking Spaces. The Owner of a Unit will have an easement to and the exclusive right to use the decks, balconies, storage areas, and/or patios, if any, exclusively serving such Owner's Unit and located adjacent thereto whether or not such deck, balcony, storage area, and/or patio is part of the Unit or located in the Common Areas. The Owner of a Unit will have an easement to and an exclusive right to use the driveways and sidewalks exclusively serving such Owner's Unit and nonexclusive right to use the sidewalks and driveways serving more than one Unit, whether or not such sidewalks or driveways are part of the Unit or located in the Common Areas. In the event that the Association decides to liquidate, dissolve or transfer all the Common Areas to any public agency, the Association will, prior to such action, convey to the Owner of each Unit the decks, balconies, storage areas, patios, driveways and sidewalks which are designated for such Unit under the terms of this Section.
- 8.5 Limited Areas Depicted on Plans. All other areas and facilities designated and shown on the Plans as Limited Areas will be limited to the Unit or Units to which they appertain and serve as shown on the Plans.

9. **USE AND OWNERSHIP OF COMMON AREAS. INTEREST AND VOTING RIGHTS.**

- 9.1 Use. Each Owner of a Unit may use the Common Areas in accordance with this Declaration, the Bylaws, and Rules and Regulations, and for the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other Owners.
- 9.2 Reservation for Benefit of Declarant. Within the Common Areas, Declarant reserves the right, without the obligation, to build or cause to be built recreational facilities, if any, as Declarant deems appropriate.
- 9.3 Ownership. Each Owner will have an undivided right, title, and easement of enjoyment in and to the Common Areas with all other Owners, as tenants-in-common, equal to his Interest as stated in this Declaration. This undivided right, title and easement of enjoyment will pass with title to each Unit, subject to the provisions of this Declaration as provided by the Condominium Act.

The Interest in the Common Areas applicable to each Unit will be determined in accordance with the Formula set forth below. The Interest in the Common Areas pertaining to each Unit is $1/6^{\text{th}}$, as shall be amended from time to time with the construction of additional Buildings. At the time of the filing of the Declaration, Declarant is constructing the Building #1 in Phase I. Such Building contains 6 Units.

Except as provided in this Declaration in the event of an expansion, the Interest appertaining to each separate Unit in the Common Areas will be permanent and will not be altered or changed without the unanimous written consent of all the Owners and then only if in compliance with all requirements of the Condominium Act.

The Owner of each Unit will have an Interest appurtenant to his Unit Ownership based upon the number of Units owned by that Owner divided by the total number of all of the Units existing in the Manchester Square Condominium at that time in accordance with the Condominium Act ("Formula"). In order to determine the Interests in accordance with the Formula, the total number of all of the Units in the Manchester Square Condominium will be taken from the Plans, which are filed herewith, as such Plans may be amended from time to time. This method of calculating Interest will result in an equal Interest to each Unit. The total Interests will at all times equal "one" as is mathematically possible.

- 9.4 Restrictions on Use of Common Areas. The Common Areas will be held in common for the use and enjoyment of all of the Owners subject to, but not limited to, the following:
- 9.4.1 The right of the Association to charge reasonable admission and other fees for use of any recreational facility.
 - 9.4.2 The right of the Association to suspend any Owner from the right to use any recreational facility for any period during which any Regular or Special Assessment against such Owner's Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Board's published Rules and Regulations.
 - 9.4.3 The right of the Association, upon approval by a written instrument signed by two-thirds (2/3) of all Class A Members, two-thirds (2/3) of all Class B Members, and by two-thirds (2/3) of all first Mortgagees, to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such Common Areas' purposes and subject to such conditions as may be agreed by the Association.
 - 9.4.4 The right of the Association or its Board to determine the time and manner of use of recreational facilities, if any, by the Owners.
 - 9.4.5 The right of the Board to adopt such Rules and Regulations regarding the Common Areas as it deems necessary.
 - 9.4.6 The Common Areas will be conveyed to or owned by the Association at the time of the Applicable Date with Declarant Owner reserving the right of earlier conveyance.
 - 9.4.7 The right of the Association or its Board to charge Owners who have household pets a reasonable fee and/or deposit.
- 9.5 Delegation. Any Owner may delegate, in accordance with provisions of this Declaration and the Rules or Regulations promulgated by the Association, his right of enjoyment, and use of the Common Areas to members of his family, his tenants or contract purchasers who reside in any Unit.

10. **ENCROACHMENTS AND EASEMENTS FOR COMMON AREAS.** If by reason of the location, construction, settling, or shifting of a Building, any Common Areas now encroach or will subsequently encroach upon any Unit, then in such event, an easement will be deemed to exist and run to the Owners and the Association for the maintenance, use, and enjoyment of such Common Areas.

Notwithstanding any other provision in this Declaration to the contrary, each Owner will have an easement in common with another Owner or Owners to use all pipes, wires, ducts,

Declaration

Page - 12 -

cables, conduits, utility lines, and other common facilities of any kind or nature located in or running through any of the other Units and serving his Unit.

Each Owner will have an easement over, across and through the Common Areas for the purpose of ingress and egress from his Unit, and to use all Common Areas wherever located and such easement will be perpetual and appurtenant to the Unit.

In the event the Building, the Unit, or any adjoining Common Areas will be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Areas upon any Unit, or of any Unit upon any other Unit or upon any portion of the Common Areas, due to such rebuilding, will be permitted, and valid easements for such encroachments and the maintenance of such encroaching Common Areas or Unit will exist so long as such Building will stand.

The Board will be authorized and empowered to give, convey, transfer, cancel, relocate, and otherwise deal with utility and other easements located on or within the Common Areas.

All public and quasi-public vehicles, including but not limited to police, fire, and other emergency vehicles, trash and garbage collection, post office vehicles, and privately owned delivery and maintenance vehicles, will have the right to enter upon the streets and Common Areas in the performance of their duties and services. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing, and maintaining of such utilities, including but not limited to water, sewer, gas, telephones, cable television and communications, and electricity on the Property; provided, however, nothing in this Declaration will permit the installation of sewers, electric lines, water lines, telephone lines, cable television lines, or other utilities, except as initially designed and approved by Declarant or as subsequently may be approved by the Board. By virtue of this easement, the electric and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the property and to affix and maintain electric and telephone wires, circuits, and conduits on, above, across, and under the roofs and exterior walls of the Buildings. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant Owner will have the right to grant such easement on such Property, without conflicting with the terms of this Section. The easements granted herein will in no way affect any other recorded easement on the Property. An easement is also granted to the Association, its Directors, officers, agents and employees and to any Managing Agent selected by the Association to enter in or to cross over the Common Areas to perform its duties.

The two main streets (Manchester Square Drive and Parkway Drive) within this development will be dedicated public rights of way. All other streets within this development will be private and shall not be dedicated public rights of way. Acceptance of the street rights-of-way and their improvements by the public for maintenance shall not occur unless repaired, or replaced to the standards of the accepting body in effect at the time of dedication and acceptance. The accepting body shall not be responsible for any costs incurred in said construction, reconstruction, repair or replacement.

11. **REAL PROPERTY TAXES AND ASSESSMENTS.** Real property taxes and assessments are to be separately assessed and taxed to each Unit as provided in the Condominium Act. In the event that for any year real property taxes and assessments are not separately assessed and taxed to each Unit, but are assessed and taxed on the Property as a whole, then each Owner will pay his proportionate share of such taxes and assessments to the extent attributable to the Property in accordance with his respective Interest.

12. **UTILITIES.** To assist the Association in reducing the cost of water and sanitary sewer services at the Property, Owner agrees that the Association may implement water and sanitary sewer sub-metering for each Unit. Owner agrees to be responsible for all water and sanitary sewer charges contributable to the Owner's Unit, including without limitation related taxes, utility surcharges and fees. Sewer fees will be based upon Owner's water consumption. Owner acknowledges that some of the services are separately metered and administered by a service and billing company. Owner shall pay all charges immediately per terms of the invoice or other demand for payment. In the event the Owner fails to pay all utility charges: (a) Association may utilize any remedies, whether in law or in equity available against Owner or (b) the Association shall have the right to file a lien against the Unit in the amount of the unpaid water and or sanitary sewer charges.

13. **ASSOCIATION: FUNCTIONS, MEMBERSHIP, VOTING, AND ORGANIZATION**

13.1 Functions. The Association has been or will be formed for the purpose of providing for the following: the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Areas; the maintenance, repair and replacement of such exterior portions of the Units as designated in this Declaration; the payment of real and personal property taxes and assessments assessed against and payable with respect to the Common Areas; the payment of any other necessary expenses and costs in connection with the Common Areas; and the performance of such other functions as may be designated for it to be performed under this Declaration.

13.2 Organization. Following filing of this Declaration with the office of the Recorder of Boone County, Indiana, Declarant will cause the organization of the Association with the office of the Indiana Secretary of State through the filing of the Articles. The Association's organization and operation will be controlled by and subject to the terms of the Articles, Bylaws, Rules and Regulations, Condominium Act, Nonprofit Act, and this Declaration, as they are amended from time to time. The terms of such Articles, Bylaws, and Rules and Regulations, as they are amended from time to time, are incorporated herein by this reference.

13.3 Membership in Association. Declarant and each other person who owns a Unit (automatically upon becoming an Owner) will be and become a "Member" of the Association and will remain a Member until such time as his ownership of a Unit ceases. Membership will terminate when such person ceases to be an Owner, and will be transferred to the new Owner of his Unit. Any person who holds the

interest of an Owner in a Unit merely as security for the performance of an obligation will not be a Member until and unless he realizes upon his security, at which time he will automatically be and become an Owner and a Member of the Association. Membership will be appurtenant to each Unit and may not be separated from ownership of any such Unit.

13.4 Classes and Voting Rights of Members. The Association will have two (2) classes of membership, with the following voting rights:

(a) Class A. "Class A Members" will be all Owners, except Class B Members. Each Class A member will be entitled to one (1) vote for each Unit of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Unit, all such persons will be Members of the Association, but all of such person will have only one (1) vote for such Unit, which vote will be exercised as they among themselves determine, but in no event will more than one (1) vote be cast with respect to any such Unit.

(b) Class B. "Class B Members" will be Declarant Owner, Declarant Builder, and all successors and assigns of the given Declarant designated by such Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Association. Each Class B Member will be entitled to FIVE (5) VOTES FOREACH UNIT SHOWN ON THE PLANS WHETHER OR NOT A FINAL DETAILED PLANS HAVE BEEN FILED FOR SUCH BUILDING/UNIT of which it is the Owner on all matters requiring a vote of the Members of the Association. The Class B membership will cease and terminate upon the "Applicable Date," which will be the first to occur of:

(1) THE DATE UPON WHICH THE WRITTEN RESIGNATION OF THE CLASS B MEMBERS AS SUCH IS DELIVERED TO THE RESIDENT AGENT OF THE ASSOCIATION;



(2) ON OR BEFORE THIRTY (30) DAYS AFTER THE DATE WHEN THE TOTAL VOTES OUTSTANDING IN THE CLASS A MEMBERSHIP EQUAL OR EXCEED EIGHTY PERCENT (80%) OF THE TOTAL VOTES OUTSTANDING IN THE CLASS A MEMBERSHIP AND CLASS B MEMBERSHIP IN THE AGGREGATE; OR

(3) DECEMBER 31, 2020,

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When more than one person is an Owner of a Unit, all such persons will be Members, but their total vote will not exceed one (1) per Unit owned, and such vote will be cast as one (1) unit in such manner as the majority of the Owners of such Unit may agree. In the event such Owners fail to reach agreement, they will not be entitled to vote and will be considered as abstaining. In the event one (1) or more of the Owners of a Unit do not attend the meeting, in person or by proxy, the Owner(s) of a Unit who are in attendance, in person or by proxy, will be considered as the sole Owner of the Unit.

- 13.5 Power of Attorney. Each Member, by acceptance of a deed to a Unit, or by acquisition of any interest in a Unit by any type of juridical acts, inter vivos or causa mortis, or otherwise, will be deemed to have appointed Declarant Owner as such Member's agent, attorney-in-fact and proxy, which will be deemed with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Member's right to vote as a Member, and to vote as Declarant Owner determines, on all matters as to which members of the Association are entitled to vote under this Declaration, the Articles, the Bylaws or otherwise; provided, however, this right to vote granted to Declarant Owner will not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging Common Areas or merger/consolidation of the Association with another corporation. This appointment of Declarant Owner as such Member's agent, attorney-in-fact and proxy will not be affected by incompetence of the Member granting the same.
- 13.6 Board of Directors. The business and affairs of the Association will be governed and managed by the Board as provided in the Articles and Bylaws. The powers and duties of the Board will include, but are not limited to the setting of Regular Assessments and Special Assessment of the Members to fund the operations of Association as more particularly set forth in the Bylaws.
- 13.7 Managing Agent. The Board has entered or will hereafter enter into a "Management Agreement" with Declarant Owner (or with a corporation or other entity affiliated with Declarant Owner or Declarant Builder or designated by Declarant Owner) ("Declarant Manager") pursuant to which it will serve as "Managing Agent" in connection with the management of the business and affairs of the Association as set forth in the Bylaws.
- 13.8 Start-Up Fund. Upon the Closing of the initial conveyance of each Unit to an Owner other than the Developer, the Purchaser of such Unit shall pay to the Association an addition to any other amounts then owed or due to the Association as a contribution to its start-up fund, an amount equal to two (2) months of the Association Assessments against such Unit, which payment shall be non-refundable and shall not be considered as an advance payment for any Assessment or other charge owed to the Association with respect to such Unit. The start-up fund shall be used by the Association for the payment of, or reimbursement to,

Declaration

Page - 16 -

Developer for advances to the Association and initial and start-up expenses for the Association.

14. **MAINTENANCE, REPAIRS, AND REPLACEMENTS.** The Association will furnish maintenance, repairs, replacements and upkeep of the Common Areas, as a part of its duties, and the cost thereof will constitute a part of the Common Expenses.

In addition to maintenance upon the Common Areas, the Association will provide exterior maintenance upon each Unit as follows: paint, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces. Such exterior maintenance will not include glass surfaces, screens and screen doors, door and window fixtures and other hardware, and such other items as the Board may so designate (unless specifically designated in this Declaration as the Association's obligation) so long as such items of exception will apply to all Units equally. However, the Association will be responsible for staining or painting of the outside surface of exterior doors. Each Owner will be responsible for maintaining and keeping his Unit and all improvements thereon in a good, clean and sanitary condition and will do all work thereon which is not required hereunder to be performed by the Association, unless provided for within its annual budget, including without limitation repairing and maintaining garage door openers and springs, deck and patio areas, and any deck and patio fences, including painting and staining the outside or exterior surfaces of deck and/or patio fences, if any. The Association through the Architectural Control Committee shall dictate the color and type of any paint or stain used on any exterior surfaces.

Notwithstanding any obligation or duty of the Association to repair or maintain any Unit or the Common Areas, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family, or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage will be caused, or if maintenance, repairs or replacements will be required thereby which would otherwise be a Common Expense, then such Owner will pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association the cost of repairing such damage will be added to and become a part of the Regular Assessment to which such Owner's Unit is subject.

If any Owner will fail so to maintain and keep his Unit, Limited Areas exclusive to his Unit, or any part thereof in a good, clean and sanitary condition, the Association may perform any work necessary to do so and charge the Owner thereof for such cost, which cost will be added to and become a part of the Owner's Regular Assessment, and such cost will be immediately due, and will be secured by the Association's lien on the Owner's Unit.

So long as the Property is subject to this Declaration each Owner, by his acceptance of a deed to any Unit, irrevocably grants to the Association, its agents and employees, the right to enter upon, across and over the Unit owned, by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

15. ALTERATIONS, ADDITION AND IMPROVEMENTS. Except as may be otherwise provided in this Declaration or Bylaws, no Owner will make any alterations or additions to any Common Areas or Limited Areas without the prior written approval of the Architectural Review Committee, nor will any Owner make any alterations to the Owner's respective Unit and within the boundaries of the Owner's Unit which would affect the safety or structural integrity of the Building in which the Unit is located.

Declarant reserves the right to change the interior design and arrangement of all Units and alter the boundaries between Units so long as Declarant owns the Units so altered. No such change will increase the number of Units or change the Interest applicable to such Unit. If Declarant will make such changes in the Units so authorized, such changes will be reflected by a supplement to the Plans and such supplement to the Plans need not be approved by the Association or any other Owners.

Any two (2) Units may be interconnected through a common wall, provided the title to the two (2) Units is in the name of one (1) person, or husband and wife, or corporation, or other legal entity. The plans creating the opening and joinder of two (2) Units must be approved by the Declarant and if the Declarant owns no further Units, such approvals must be given by the Architectural Review Committee of the Board which will not be unreasonably withheld provided the integrity of the Building is not compromised.

Owner will be responsible for the exterior maintenance of any approved additions such as sunrooms, screened porches, decks or patios.

16. ARCHITECTURAL CONTROL.

16.1 The Architectural Review Committee. As a standing committee of the Association, there will be, and hereby is, established an Architectural Review Committee consisting of three (3) or more persons as may, from time to time, be provided in the Bylaws. The Architectural Review Committee will be the Initial Board and whomever they appoint thereafter until the last Unit capable of being subjected to this Declaration is conveyed to a purchaser other than one of the Declarants. The Board will thereafter appoint the Architectural Review Committee.

16.2 Purposes. The Architectural Review Committee will regulate the external design, appearance, use, location and maintenance of the Units, Buildings, Common Areas, and any other improvements on the Property in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

16.3 Conditions. No improvements, alterations, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Unit, Building, Common Areas, or any other improvement on the Property from its natural or improved state existing on the date such Unit was first conveyed in fee by the Declarant Owner to Declarant Builder or by Declarant Builder to any

Owner will be made or done without the prior approval of the Architectural Review Committee. Except as otherwise expressly provided in this Declaration, no Building, fence, wall, Unit, or other structure will be commenced, erected, maintained, improved, altered, made or done on the Property without the prior written approval of the Architectural Review Committee.

- 16.4 Procedures. In the event the Architectural Review Committee fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) has been received by the Architectural Committee, approval will be deemed granted by the Architectural Review Committee. A decision of the Architectural Review Committee may be appealed to the Board which may reverse or modify such decision by a two-thirds (b) vote of the Directors then serving. The Architectural Review Committee may establish committees consisting of two (2) or more of its members, which committees will exercise such powers of the Board as may be delegated to them.
- 16.5 Maintenance of Architectural Control. The Association may not waive or abandon the procedure for regulating and enforcing the architectural design or exterior appearance of the Units nor for maintaining the exterior of the Buildings or the Common Areas (including the upkeep of common fences, driveways, lawns and plantings) without the prior written approval of all Owners and all Mortgagees whose mortgage interests have been made known to the Board in accordance with the provisions of this Declaration.

17. **INSURANCE.** The Owners, through the Association, will purchase a master casualty insurance policy affording fire and extended coverage insuring the Property in an amount consistent with the full replacement value, excluding land, of the improvements which, in whole or in part, comprise the Buildings, Units, and Common Areas. If the Board can obtain such coverage for reasonable amounts, they will also obtain "all risk" coverage. The Board will be responsible for reviewing at least annually the amount and type of such insurance and will purchase such additional insurance as is necessary to provide the type of insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal will be a Common Expense. Such insurance coverage will be for the benefit of each Owner and, if applicable, the Mortgagee of each Owner upon the following terms and conditions: All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association will be paid to the Association or to the Board, who will act as the insurance trustee and hold such proceeds for the benefit of the insured parties. The sole duty of the insurance trustee will be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated in this Declaration, and for the benefit of the Owners and their respective Mortgagees. The proceeds will be used or disbursed by the Association or Board, as appropriate, only in accordance with the provisions of this Declaration. The interest of each damaged Owner in the trust fund of insurance proceeds will be the ratio of the direct damage of each damaged Owner to the damages of all Owners directly damaged by an event insured under the said master casualty

insurance policy. Such master casualty insurance policy, and "all risk" coverage, if obtained, will (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board, its agents and employees, Owners, their respective agents, and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board is able to obtain such insurance upon reasonable terms, (i) that the insurer will not be entitled to contribution against casualty insurance which may be purchased by individual Owners as permitted in this Declaration, and (ii) that notwithstanding any provision in this Declaration giving the insurer an election to restore damage in lieu of a cash settlement, such option will not be exercisable in the event the Owners do not elect to restore pursuant to Section 18 of this Declaration.

The Owners, through the Association, will also purchase a master comprehensive public liability insurance policy in such an amount or amounts as the Board will deem appropriate from time to time. Such comprehensive public liability insurance policy will cover the Association, the Board, any committee or organization of the Association or Board, any Managing Agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to all Owners of Units and all other persons entitled to occupy any Unit or other portions of the Owners, through the Association, will also obtain any other insurance required by law to be maintained, including but not limited to workers' compensation insurance, and such other insurance as the Board will from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned by the Association and officers' and directors' liability policies. Such insurance coverage will also provide for and cover cross liability claims of one insured party against another insured party. Such insurance will inure to the benefit of each Owner, the Association, the Board, and any Managing Agent acting on behalf of the Association. Each Owner will be deemed to have delegated to the Board his right to adjust with the insurance companies all losses under policies purchased by the Board.

The premiums for all such insurance described above will be paid by the Association as part of the Common Expenses. When any such policy of insurance described above has been obtained by or on behalf of the Association, written notice of the obtainment of such policy, and of any subsequent changes or termination of such policy, will be promptly furnished to each Owner or Mortgagee whose interest may be affected, which notice will be furnished by the officer of the Association who is required to send notices of meetings of the Association. In no event will any distribution of proceeds be made by the Board directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event, any remittances will be to the Owner and the Owner's Mortgagee jointly.

Each Owner will be solely responsible for and may obtain such additional insurance, as the Owner deems necessary or desirable at the Owner's own expense affording coverage upon the personal property, the contents of the Owner's Unit (including but not limited to, all floor, ceiling and wall coverings and fixtures, betterments, and improvements installed by the Owner) and the Owner's personal property stored elsewhere on the Property, and for the Owner's personal liability, but all such insurance will contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association. Each Owner may obtain casualty insurance at the Owner's own

expense upon the Owner's Unit, but such insurance will provide that it will be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this Section due to pro-ration of insurance purchased by an Owner under this Section, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as provided in this Declaration.

In the event that the Association pays any insurance deductible on a claim which results from any damage or loss attributable to the actions or neglect of an Owner, any occupant of an Owner's Unit, or an Owner's invitee, or in the event that such claim pays to the exclusive benefit of any Owner(s), said Owner(s) are required to reimburse the amount of the deductible to the Association.

18. CASUALTY AND RESTORATION.

18.1 Except as subsequently provided, damage to or destruction of any Building due to fire or any other casualty or disaster will be promptly repaired and reconstructed by the Association, and the proceeds of insurance, if any, will be applied for that purpose; provided, however, that repair and reconstruction will not be compulsory in the event of "complete destruction of all of the Buildings" (as that phrase is defined below), and will only be done in accordance with the provisions of this Section. As used in this Section, the term "complete destruction of all of the Buildings" means a determination, made by a vote of two-thirds (2/3) of all Owners at a special meeting of the Association called for the purpose of making such determination, that total destruction of all of the Buildings has occurred. A special meeting of the Association will be called and held within ninety (90) days after any fire or any other casualty or disaster damaging or destroying any of the Buildings for the purpose of making the determination of whether or not there has been a complete destruction of all of the Buildings. If such a special meeting is not called and held within such ninety (90) day period, or if the determination of whether or not there has been a complete destruction of all of the Buildings has not been made within such ninety (90) days period, then it will be conclusively presumed that the Owners determined that there was not a complete destruction of all of the Buildings, and the Association will proceed with repair and reconstruction as provided in this Section.

18.2 If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, and if the Property is not to be removed from the Condominium, the cost for restoring the damage and repairing and reconstructing the Building or Buildings so damaged or destroyed (or the costs in excess of insurance proceeds received, if any) will be paid by all of the Owners of Units in proportion to the ratio that the Interest of each Unit bears to the total Interest of all Units. Any such amounts payable by the

Owners will be assessed as part of the Common Expenses, and will constitute a lien from the time of assessment as provided herein and in the Condominium Act.

- 18.3 For purposes of Subsections 18.1 and 18.2 above, repair, reconstruction, and restoration will mean construction or rebuilding of the Units to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.
- 18.4 If, under Subsection 18.1 above, it is determined by the Owners at the special meeting of the Association that there has been a complete destruction of all of the Buildings, the Owners will, at the same special meeting, vote to determine whether or not such complete destruction of the Buildings will be repaired and reconstructed. The Buildings will not be reconstructed or repaired if it is the determination of the Owners at said special meeting that there has been a complete destruction of all of the Buildings unless by a vote of two-thirds (2/3) of all of the Owners a decision is made to rebuild, reconstruct, and repair the Buildings. If two-thirds (2/3) of all of the Owners vote and decide that the Buildings are to be rebuilt, reconstructed, and repaired, the insurance proceeds, if any, received by the Association will be applied and any excess of construction costs over insurance proceeds, if any, received by the Association will be contributed and paid as provided in Subsections 18.1 and 18.2.
- 18.5 If, in any case of the complete destruction of all of the Buildings, less than two-thirds (2/3) of all of the Owners vote in favor of the rebuilding, reconstruction, and repair of the Buildings, the Buildings will not be rebuilt, reconstructed or repaired, and in such event, the Property will be deemed and considered as to be removed from the provisions of the Condominium Act and in accordance with the Condominium Act:
- 18.5.1 The Property will be deemed to be owned in common by the Owners;
- 18.5.2 The undivided interest in the Property owned in common which will appertain to each Owner will be the percentage of undivided interest previously owned by such Owner in the Common Areas;
- 18.5.3 Any liens affecting any of the Units will be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Unit Owner in the Property; and
- 18.5.4 The Property will be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, will be considered as one (1) fund and will be divided among all the Owners equal to the Interest owned by each Owner in the Property, after first paying out of the respective shares of the Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Owner.

- 18.6 Immediately after a fire or other casualty causing damage to any property for which the Board or the Association has the responsibility of maintenance and repair, the Board will obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board desire.
- 18.7 The proceeds of insurance collected on account of any such casualty, and the sums received by the Board from collections of assessments against Owners on account of such casualty, will constitute a construction fund which will be disbursed, if the Building or Buildings are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:
- 18.7.1 If the amount of the estimated cost of reconstruction and repair is less than Twenty Thousand Dollars (\$20,000.00), then the construction fund will be disbursed in payment of such costs upon order of the Board; provided, however, that upon request of a Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund will be disbursed in the manner provided in the following Section 18.7.2
- 18.7.2 If the estimated cost of reconstruction and repair of the Buildings or other improvements is more than Twenty Thousand Dollars (\$20,000.00), then the construction fund will be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board to supervise such work, payment to be made from time to time as the work progresses. The architect will be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, sub-contractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (i) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (ii) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (iii) that the costs as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of construction fund remaining after payment of the sum so requested.
- 18.7.3 Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair will not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Buildings were originally constructed. Such encroachments will be allowed to continue in existence for so long as the Buildings stand.

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

19. **CONDEMNATION.** If at any time or times, all or a part of the Property shall be taken or condemned by any Person with the power of eminent domain or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall be applicable:

- 19.1 The Association, or the Insurance Trustee, if so appointed by the Association shall represent the Owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority. Each Owner hereby appoints the Association or its designee as attorney-in-fact for the purposes described in this subparagraph.
- 19.2 All compensation damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the insurance trustee as trustee for all Owners and their Mortgagees according to their respective interests therein.
- 19.3 In the event that the entire Property is taken or condemned, or sold or otherwise disposed of or in lieu of or in avoidance thereof, the Property will be deemed and considered to be removed from the provisions of the Act. The Condemnation Award shall be apportioned among the Owners in accordance with their respective Percentage Interests and paid into separate accounts, each such account representing one Condominium Unit. Each such account shall remain in the name of the Insurance Trustee and shall be further identified by the legal description of the Condominium Unit and the name of the Owner. From each separate account the Insurance Trustee shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to the payment of valid tax and special assessment liens on the Condominium Unit in favor of any governmental taxing or assessing authority, next to payment of any assessments made pursuant to this Declaration or the By-Laws, next to other holders of liens or encumbrances on the Condominium Unit in the order of priority of their liens, and the balance remaining, if any, to each respective Owner.
- 19.4 In the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Property will not be deemed or considered to have been removed from the provisions of the Act. Each Owner shall be entitled to a share of the Condemnation Award to be determined

in the following manner: As soon as practicable the Insurance Trustee shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows:

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

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

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

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

If any allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Insurance Trustee shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by the Insurance Trustee by checks payable jointly to the respective Owners and their respective Mortgagees, provided that, with respect to an Owner whose Condominium Unit was taken or condemned, there shall first be deducted therefrom and paid or applied by the Insurance Trustee as appropriate such Owner's pro-rata share of the expenses of the Insurance Trustee, the amounts of any valid tax or special assessment lien in favor of any governmental taxing or assessing authority and any assessments made pursuant to this Declaration or the By-Laws.

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

19.6 Anything to the contrary in this Section 19 notwithstanding, in the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in

lieu of or in avoidance thereof and any Condominium Unit, Common Area or Limited Common Area may reasonably be restored or repaired, as determined by an independent licensed architect or engineer employed by the Board of Directors for making such determination or by the Majority of Mortgagees, the amount, if any, of the Condemnation Award allocable to the taking of or injury to the Common Areas and Limited Common Areas and to severance damages shall be applied to the cost of Restoration or repair of such Common Area and/or Limited Common Area, and the amount, if any, allocable to the taking of or injury to a particular Condominium Unit that may be restored or repaired shall be applied to the cost of such Restoration or repair. If any amount of the Condemnation Award then remains, such amount shall be allocated and disbursed in accordance with the provisions of subsection 19.4 above. If the amount of the Condemnation Award is insufficient to cover the cost of any such Restoration or repair, the provisions of Subsection 18.1 shall apply.

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

20. PARTY WALLS.

- 20.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Building upon the Property and which connects two (2) Units will constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions will apply thereto.
- 20.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall will be shared by the Owners who make use of the wall, proportionately.
- 20.3 Destruction by Fire or other Casualty. If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such party wall, and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they will contribute to the cost of restoration thereof in equal proportions without prejudice, subject, however, to the right of any such Owners to call for a larger contribution

Declaration

Page - 26 -

from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

- 20.4 Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements will bear the whole cost of furnishing the necessary protection against such elements.
- 20.5 Right of Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article will be appurtenant to the land and will pass to such Owner's successors in title.
- 20.6 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each party will choose one arbitrator, and such arbitrators will choose one additional arbitrator, and the decision will be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore from another party the Board will select an arbitrator for the refusing party.) The cost of the arbitrators will be borne equally by the parties.

21. MORTGAGES.

- 21.1 Notice to Association. Any Owner who places a first mortgage lien upon his Unit, or the Mortgagee, will notify the secretary of the Association thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address will be maintained by the secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise will be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the Bylaws or otherwise will be required and no Mortgagee will be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Association will, upon request of a Mortgagee who has furnished the Association with its name and address as herein above provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.

- 21.2 Certificate of Assessment Account. The Association will, upon ten (10) days prior written request and payment of a reasonable fee (to be established from time to time by the Board, in its sole discretion) of a Mortgagee, a proposed Mortgagee,

or a proposed purchaser who has a contractual right to purchase a Unit, furnish to such Mortgagee or purchaser a statement setting the amount of the unpaid Regular Assessment or Special Assessments or other charges against the Unit, which statement will be binding upon the Association and the Owners, and any Mortgagee or grantee of the Unit will not be liable for nor will the Unit conveyed be subject to a lien for any unpaid Regular Assessment or Special Assessments or charges in excess of the amounts set forth in such statement or as such Assessments may be adjusted upon adoption of the final annual budget, as referred to in the Bylaws.

- 21.3 Right of Mortgagee to Pay Real Estate Taxes or Insurance Premium. Mortgagees will have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Areas that are in default and (2) to pay any overdue premiums on hazard insurance for the Common Areas or to secure new hazard insurance for the Common Areas on the lapse of a policy. The Association will owe any Mortgagee making such payment reimbursement immediately.
- 21.4 Notice of Condemnation or Casualty Loss. Mortgagees will be timely notified of any condemnation loss that affects a material portion of Manchester Square Condominium or any Unit. Mortgagees will also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Association.
- 21.5 Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer will, upon notification and request to the Association, receive the same notices as are required to be given to Mortgagees.

22. **COVENANTS AND RESTRICTIONS.** The following covenants and restrictions on the use and enjoyment of the Units, Buildings, and Common Areas will be in addition to any other covenants or restrictions contained herein and in the Plans, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and will run with the land and inure to the benefit of and be enforceable by any Owner or by the Association. Present or future owners or the Association will be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and will, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there will be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- 22.1 All Units will be used exclusively for residential purposes and each will be occupied by a single family.
- 22.2 Nothing will be done or kept in any Unit, or on any Unit, or on the Common Areas that will cause an increase in the rate of insurance on any Unit or the contents thereof or on any Common Areas. No Owner will permit anything to be done or kept in his Unit or on his Unit or on any of the Common Areas which will result in a cancellation of insurance on any Unit or any part of Common Areas, or

which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

- 22.3 No nuisance will be permitted and no waste will be committed in, on, or to any Unit, Common Areas, or Building. The Board determination as to what is a nuisance will be conclusive.
- 22.4 No Owner will cause or permit anything to be hung or displayed on the outside of the windows of his Unit or placed on the outside walls of any Building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing will be affixed to or placed upon the exterior walls or roofs or any other parts of any Building without the prior consent of the Architectural Review Committee.
- 22.5 No animals, livestock or poultry of any kind will be raised, bred or kept in any Unit or on any Unit or any of the Common Areas, except that pet dogs, cats or customary household pets may be kept in a Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets will be taken outdoors only under leash or other restraint and while attended by its owner and an Owner will be fully liable for any injury or damage to persons or property, including the Common Areas, caused by his pet. The tethering of pets in any area outside an Owner's fenced deck or patio does not constitute "attended." The Board may adopt such other Rules and Regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, will be permanently removed from the Property within ten (10) days after written notice from the Board to the respective Owner to do so.
- 22.6 All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles will be kept from view of neighboring homes and streets. All rubbish, trash or garbage will be stored in closed sanitary containers in areas within enclosed garage of the Unit. Trash containers may be set out for pick-up no earlier than 6:00 p.m. the evening before the day of pickup. Trash will be regularly removed from the premises, and will not be allowed to accumulate on any part of the Property. All clotheslines will be confined to deck or patio areas and will be below the height of the deck or patio fence. No clothes, sheets, blankets, rugs, laundry or other things will be hung out or exposed so as to be visible from any part of the Common Areas. The Common Areas will be kept free and clear of rubbish, debris and other unsightly materials.
- 22.7 No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, will be conducted, practiced or permitted on the Property, except those home occupations which are permitted by applicable zoning regulations in Boone County, Indiana.

- 22.8 One real estate sign shall be allowed in a front window of the Unit visible from the street. No additional "for sale", "for rent" or "for lease" signs, or other signs, or other window or advertising display will be maintained or permitted on any part of the Property, any Unit or any Unit by an Owner without the prior consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Property in connection with any unsold or unoccupied Units and Units.
- 22.9 All Owners and members of their families, their guests, or invitees, and all occupants of any Unit or other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof, will observe and be governed by such Rules and Regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas.
- 22.10 No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trucks (larger than 1/2 ton), motorcycles, mini-bikes, or mopeds will be permitted, parked or stored anywhere within the Property except as otherwise specifically permitted by the Board. No parking will be permitted on any streets except in designated parking areas. Vehicles parked on streets other than in designated parking areas or blocking access to streets or drives, are subject to towing at vehicle owner's expense. No repair work including changing of oil filters or tires will be done on the Property on any vehicles, including passenger automobiles. All inoperable, unlicensed or vehicles with any signs or text shall always be parked within the Garage. The driveway shall not be used for the storage of any vehicle at any time.
- 22.11 No Owner will be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with express written permission from the Board. Architectural Review Committee after submission for approval of same under Section 16. of this Declaration.
- 22.12 Common Areas will be used and enjoyed only for the purposes for which it is designed and intended, and will be used subject to the Rules and Regulations from time to time adopted by the Board.
- 22.13 No Owner may rent or lease his Unit for transient or hotel purposes. ®
- 22.14 Any Owner who leases a Unit will lease the entire Unit and will have a written lease the form of which must be approved by the Board, which will provide that the lease is subject to the provisions of this Declaration and any failure of the lessee to comply with the terms of this Declaration, will be a default under the lease. Owner shall not lease Unit for a period of less than twelve (12) months. Owner shall promptly notify the Board and its agent of his intent to lease and provide a copy of lease and contact information for the Owner and lessee. There shall be a total of not more than ten percent (10%) of all Units leased at any time.

Notwithstanding anything to the contrary contained in this Declaration or in the Articles or Bylaws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant will have the right to use and maintain any Units owned by Declarant and other portions of the Property (other than individual Units owned by persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Buildings and the sale of Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices except to the extent limited to zoning commitments of record. Declarant will have the right to relocate any or all of the same from time to time as it desires. At no time will any of such facilities so used or maintained by Declarant Builder be or become part of the Common Areas, unless so designated by Declarant Owner, and Declarant Owner will have the right to remove the same from the Property at any time.

23. **AMENDMENT OF DECLARATION**

23.1 Generally. Except as otherwise provided in this Declaration, amendments to this Declaration will be proposed and adopted through the procedures as set forth in the Zoning Ordinances of Boone County, Indiana.

Any changes to this Declaration or the Corporation documents may be initiated only by a majority of the Owners. For the purposes of this Section, multiple Owners of a single Unit will be considered a single Owner and the Declarant will be considered a single Owner until all the Units are sold.

23.2 Minor Modification. The Administrative Officer for the Town of Zionsville may determine that the changes referenced in Section 23.1 constitute a minor modification if they meet the requirements of the Boone Zoning Ordinance. Changes to the documents which would alter design aspects of the Manchester Square Condominium, or which are determined by the Administrative Officer to be beyond the scope of minor modification, require rezoning of the Property.

23.3 Adoption Procedures. Amendments to this Declaration will be proposed and adopted in the following manner:

23.3.1 Notice. Notice of the subject matter of any proposed amendment will be included in the notice of the meeting at which the proposed amendment is to be considered.

23.3.2 Resolution. A resolution to adopt a proposed amendment may be proposed by the Board or Owners having in the aggregate at least a majority of the votes of all Owners.

- 23.3.3 Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the Bylaws.
- 23.3.4 Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than fifty-one percent (51%) in the aggregate of all Owners; Provided, that any such amendment will require the prior written approval of the Declarant Owner so long as the Declarant Owner or any entity related to the Declarant Owner owns any Unit within and upon the Property. In the event any Unit is subject to a first mortgage, the Mortgagee will be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of the Corporation in accordance with the provisions of this Declaration.
- 23.4 By Declarant Owner. Declarant Owner hereby reserves the right, so long as Declarant Owner or any entity related to Declarant Owner owns any Unit within and upon the Property, to make any amendments to this Declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Declarant Owner, including without limitation: to bring Declarant Owner or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof, to conform with zoning covenants and conditions; to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages; or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; Provided that in no event will Declarant Owner be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.
- 23.5 Grant of Power of Attorney by Owners to Declarant Owner. In furtherance of the foregoing Subsection 23.4, a power coupled with an interest is hereby reserved and granted to the Declarant Owner to vote in favor of, make, or consent to any amendments described in this Section 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 will be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant Owner to vote in favor of, make, execute and record any such amendments. This right of the Declarant Owner to act pursuant to rights reserved or granted under this Section will terminate at such

time as the Declarant Owner no longer holds or controls title to any part or portion of the Property.

- 23.6 Recording. Each amendment to this Declaration will be executed by Declarant Owner only in any case where Declarant Owner has the right to amend this Declaration without any further consent or approval, and otherwise by the President or Vice President and Secretary of the Association; provided that any amendment requiring the consent of Declarant Owner will contain Declarant Owner's signed consent. All amendments will be recorded in the Office of the Recorder of Boone County, Indiana, and no amendment will become effective until so recorded.
- 23.7 Amendment Prior to the Applicable Date. Notwithstanding anything to the contrary contained herein or in this Declaration, there will be no amendment of this Declaration prior to the Applicable Date without the consent and approval of Declarant Owner.

24. **ACCEPTANCE AND RATIFICATION.** All present and future Owners, Mortgagees, tenants and occupants of the Units will be subject to and will comply with the provisions of this Declaration, the Articles, Bylaws, and Rules and Regulations as adopted by the Board as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Unit will constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and Rules and Regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions will be covenants running with the land and will be binding on any person having at any time any interest or estate in a Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnership, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Unit or Units or any part of the Property in any manner will be subject to this Declaration, the Articles, the Bylaws, and the Rules and Regulations applicable thereto as each may be amended or supplemented from time to time.

25. **NEGLIGENCE.** Each Owner will be liable for the expense of any maintenance, repair or replacement rendered necessary by the Owner's negligence or by that of any member of the Owner's family or guests, employees, agents, or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner will pay the amount of any increase in insurance premiums occasioned by the Owner's use, misuse, occupancy or abandonment of his Unit or its appurtenances or of the Common Areas.

26. **EXPANDABLE CONDOMINIUM AND DECLARANT'S RESERVED RIGHTS.** The individual Buildings of the Manchester Square Condominium are and will be developed on the Property in Phases (that is, not all Buildings will be or being built at the same time). To the extent relevant, the Manchester Square Condominium is and will be an "expandable condominium," as defined in the Condominium Act. Declarant expressly reserves the right and option to expand the Manchester Square Condominium to include any and all future Buildings to

Declaration

Page - 33 -

be constructed on the Property, as proposed in the Plans, and in accordance with the provisions of the Condominium Act and the following provisions:

- 26.1 Buildings 1 through 10 as shown on the Plans are being subjected to the Condominium by this Declaration and constitutes Phase I of the general plan of development of the Manchester Square Condominium. Buildings 11 through 23 shown on the Plans are Buildings which may be built and included in the Manchester Square Condominium upon the recording to the necessary Plans, as amended to include such Buildings as built. In any event, the maximum number of Units which may be developed on the Property will be one hundred thirty five (135). Subject to said limit as to the maximum number of Units to be developed on the Property, Manchester Square Condominium may be expanded by Declarant to include additional Buildings in one or more additional phases by the execution and recording of one (1) or more amendments or supplements to the Plans, and this Declaration, if required. Such right and option of expansion may be exercised by Declarant from time to time as to so long as such expansion is done on or before ten (10) years from the date of this Declaration. Such expansion is entirely at the discretion of Declarant and nothing contained in this Declaration or otherwise will require Declarant to build Buildings 11 through 23 which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration by amendments or supplements to the Plans and this Declaration as provided above.
- 26.2 The Interest which will appertain to each Unit in Manchester Square Condominium, as Manchester Square Condominium may be expanded from time to time by Declarant in accordance with the terms hereof, (including the Interest which appertains to each of the Units included in this original Declaration) will be one divided by the total number of Units which from time to time have been subjected and submitted to this Declaration and then constitute a part of Manchester Square Condominium.
- 26.3 Such amendments or supplements to this Declaration will also include provisions reallocating Interests so that the Units depicted on such new Plans will be allocated to Interests in the Common Areas on the same basis as the Units depicted in the prior Plans. Such reallocation of Interests will vest when the amendment or supplement to this Declaration incorporating those changes has been recorded.
- 26.4 When the amendment or supplement to this Declaration incorporating the addition of Units and reduction of Common Areas, or both, is recorded, all liens including, but not limited to, mortgage liens will be released as to the Interests in the Common Areas described in this Declaration and will attach to the reallocated Interests in the Common Areas as though the liens had attached to those Interests on the date of the recordation of the mortgage or other lien. The Interest appertaining to additional Units being added by the amendment or supplement to this Declaration are subject to mortgage liens upon the recordation of the

amendment or supplement to this Declaration. In furtherance of the foregoing, a power coupled with an interest is granted to the Declarant, as attorney-in-fact, to shift the Interest in the Common Areas appurtenant to each Unit to the percentages set forth in each such amendment or supplement to this Declaration recorded pursuant to this Section. Each deed, mortgage, or other instrument with respect to a Unit and the acceptance of such deed will be deemed a grant and acknowledgment of and consent to such power to said attorney-in-fact, and will be deemed to reserve to said attorney-in-fact the power to shift and reallocate from time to time the percentages of ownership in the Common Areas appurtenant to each Unit to the percentages set forth in each such recorded amendment or supplement to this Declaration. Each Owner of a Unit by acceptance of a deed, further acknowledges, consents, and agrees, as to each such amendment or supplement to this Declaration that is recorded as follows:

- 26.4.1 The portion of the Property described in each such amendment or supplement to this Declaration will be governed in all respects by the provisions of this Declaration.
- 26.4.2 The Interest in the Common Areas appurtenant to each Unit will automatically be shifted and reallocated to the extent set forth in each such recorded amendment or supplement to this Declaration and upon the recording of each such amendment or supplement to this Declaration, will be deemed to be released and divested from such Owner and reconveyed and reallocated among the other Owners as set forth in each such recorded amendment or supplement to this Declaration.
- 26.4.3 Each deed, mortgage, or other instrument affecting a Unit will be deemed given subject to the conditional limitation that the Interest in the Common Areas appurtenant to each Unit will, upon the recording of each amendment or supplement to this Declaration, be divested pro tanto to the reduced percentage set forth in such amendment or supplement to this Declaration and vested among the other Owners, mortgagees, and others owning an interest in the other Units in accordance with the terms and percentages of each such recorded amendment or supplement to this Declaration.
- 26.4.4 A right of revocation is reserved by the grantor in each such deed, mortgage, or other instrument of a Unit to so amend or reallocate the Interest in the Common Areas appurtenant to each Unit.
- 26.4.5 Any additional Buildings will reduce the Common Areas. Each deed, mortgage, or other instrument affecting a Unit will be deemed given subject to the conditional limitation that any and all interest in the portion of the Common Areas appurtenant to the Units added by the expansion will upon the recording of each amendment or supplement to this Declaration, be divested from the other Owners, mortgagees, and others

Declaration

Page - 35 -

owning an interest in the other Units in accordance with the terms and percentages of each such recorded amendment or supplement to this Declaration and vested in the Declarant for the purposes of transfer of the newly established Units.

26.4.6 The recording of any such amendment or supplement to this Declaration will not alter the amount of the lien for expenses assessed to or against a Unit prior to such recording.

26.4.7 Each Owner, by acceptance of the deed conveying his Unit, agrees for himself and all those claiming under him, including mortgagees, that this Declaration and each amendment or supplement to this Declaration are and will be deemed to be in accordance with the Condominium Act and for purposes of this Declaration and the Condominium Act, any changes in the respective Interest in the Common Areas as set forth in each such amendment or supplement to this Declaration will be deemed to be made by agreement of all Owners.

26.4.8 Each Owner agrees to execute and deliver such documents necessary or desirable to cause the provisions of this Section to comply with the Condominium Act as it may be amended from time to time.

27. **MISCELLANEOUS.**

- 27.1 Costs and Attorneys Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Bylaws, or the Rules and Regulations adopted pursuant to the Bylaws, as each may be amended from time to time, the Association will be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure including all administrative costs, collection costs and court costs.
- 27.2 Waiver. No Owner may become exempt from liability for such Owner's contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by abandonment of the Owner's Unit.
- 27.3 Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration or the Bylaws will not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration or the Bylaws.
- 27.4 Pronouns. Any reference to the masculine, feminine, or neuter gender will, unless the context clearly requires the contrary, be deemed to refer to and include the masculine, feminine, and neuter genders. Words in the singular will include and refer to the plural, and vice versa, as appropriate.

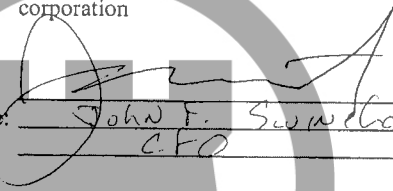
Declaration

Page - 36 -

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

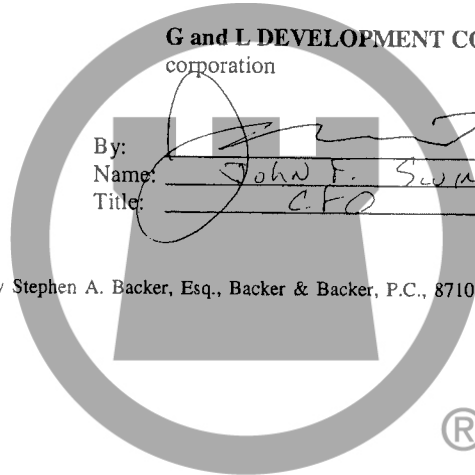
IN WITNESS WHEREOF, the undersigned Declarant has caused this Declaration to be executed the day and year first above written.

G and L DEVELOPMENT CO., INC., an Indiana corporation

By: 

Name: John F. Swadlow

Title: CFO



This instrument was prepared by Stephen A. Backer, Esq., Backer & Backer, P.C., 8710 North Meridian Street, Indianapolis, Indiana 46260

CHICAGO TITLE

Declaration

Page - 37 -

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared John Swinehart, the CEO of G & L Development Co., Inc., an Indiana corporation, who acknowledged the execution of the foregoing Declaration of Condominium and of Easements, Restrictions, Covenants and Bylaws for Manchester Square Condominium, for and on behalf of said corporation and who, having been duly sworn stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 3 day of November, 2005.

EDWARD J. RANZ
HAMILTON COUNTY
COMM # 522661
MY COMMISSION EXPIRES 2-12-2011



Edward J. Ranz
Edward J. Ranz, Notary Public

My County of Residence: Hamilton
My Commission Expires: 2-12-2011



CHICAGO TITLE

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY



CHICAGO TITLE

EXHIBIT A

Legal Description

Part of the Southeast Quarter of the Northwest Quarter of Section 2, Township 17 North, Range 2 East, in Eagle Township, Boone County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of the Southeast Quarter of the Northwest Quarter of Section 2, Township 17 North, Range 2 East; thence South 02 degrees 37 minutes 24 seconds West (assumed bearing) on and along the West line of said Southeast Quarter of the Northwest Quarter 42.03 feet to a point on the South right-of-way line of State Road 334; thence South 88 degrees 39 minutes 37 seconds East on and along said South line 1.50 feet, to the POINT OF BEGINNING of this description; thence continuing on and along said South right-of-way line South 88 degrees 39 minutes 37 seconds East 128.31 feet to the proposed West right-of-way for Manchester Drive; thence South 02 degrees 37 minutes 24 seconds West on and along the said proposed right-of-way line 237.41 feet; thence North 87 degrees 08 minutes 24 seconds West 128.31 feet; thence North 02 degrees 37 minutes 24 seconds East parallel to the West line of said Southeast Quarter of the Northwest Quarter 234.01 feet to the POINT OF BEGINNING, containing in all 0.69 acre, more or less.

(Parent Parcel No. 019-00960-10)

(Proposed legal description for Manchester Square Building 1)



CHICAGO TITLE

EXHIBIT B
BY-LAWS



CHICAGO TITLE

**BY-LAWS OF
MANCHESTER SQUARE
CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I
General**

Section 1. The name of the corporation is Manchester Square Condominium Homeowners Association, Inc. (hereinafter referred to as the "Association").

Section 2. The principal office of the Association shall be located at 8383 Craig Street, Suite 100, Indianapolis IN 46250, until and unless changed in accordance with law by the Board of Directors.

Section 3. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**ARTICLE II
Definitions**

Section 1. "Declarant" shall mean G & L Development Co., Inc., an Indiana corporation and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer under the Declaration, including, without limitation, any mortgagee acquiring title to any portion of the Property (as such term is defined in the Declaration) pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

Section 2. "Declaration" shall mean and refer to the Declaration of Condominium and of Easements, Restrictions and Covenants for Manchester Square Condominiums which was recorded in the Office of the Recorder of Boone County, Indiana on November 3, 2005, as Instrument No. 2005-00513167.

Section 3. "Association" shall mean and refer to this corporation, which is also referred to as the "Association" in the Declaration and the "Corporation" in the Articles of Incorporation of this the Association.

Section 4. "Applicable Date" shall mean and refer to the date the Class B membership terminates as specified in Section 5.03B of the Articles of Incorporation of this Association.

Section 5. All of the terms as defined and used in the Declaration shall have the same meanings in these By-Laws and reference is specifically made to Article II of the Declaration containing definitions of terms.

ARTICLE III Membership and Voting Rights

Section 1. Membership, Transfer, Voting Rights. Reference is hereby made to Article II of the Declaration and Article V of the Articles of Incorporation which sets forth terms, provisions and conditions governing and relating to membership in the Association, transfer of membership and voting rights of classes of Members, all of which terms, provisions and conditions are incorporated herein by reference.

Section 2. Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting of the Members of the Association. Cumulative voting shall not be permitted.

Section 4. Majority Required. A majority of the votes of Members present (in person or by proxy) at a meeting at which a quorum is present shall be sufficient for the transaction of all business of the Association except on matters where a greater vote is required by the Declaration, the Articles of Incorporation, the By-Laws or by statute.

Section 5. Meetings. Meetings of the Members of the Association shall be in accordance with the following provisions:

A. **Place.** Meetings of the Members shall be held at such place in Marion County, Indiana, as may be designated by the Board of Directors of the Association.

B. **Annual Meetings.** The first annual meeting of the Members shall be held within six (6) months after the close of the first fiscal year of the Association, the exact date to be decided by the Board of Directors. At such first annual meeting of the Members, the Members may designate a regular day or date for successive annual meetings, which date shall be not more than six (6) months after the close of each fiscal year of the Association. If the Members fail to designate such a regular day or date, the Board of Directors may continue to designate the day or date of the next annual meeting until such a designation is

made by the Members. If any designated day or date falls upon a legal holiday, the actual date of the meeting shall be the next business day succeeding such designated day or date.

C. Special Meetings. Special meetings of the Members shall be called by the President of the Association, by resolution of the Board of Directors of the Association or upon a written petition signed by Members of the Association who are entitled to vote sixty percent (60%) of all votes of the membership. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

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

E. Order of Business. The order of business at all meetings of the members shall, to the extent applicable, be as follows:

1. Roll call.
2. Proof of notice of meeting or waiver of notice.
3. Reading of minutes of preceding meeting.
4. Reports of officers.
5. Reports of committees.
6. Election of director.
7. Unfinished business.
8. New business.

F. Voting by Co-Owners and Entities. The vote appurtenant to any Lot in which more than one person owns an interest may be exercised by any of such persons present at any meeting, unless the Association is advised (by objection or protest at the meeting or written notice prior thereto) by any other person owning an interest in such Lot that the Owners of the Lot are unable to agree upon the manner in which the vote appurtenant to such Lot shall be cast at such meeting or on any particular question to come before such meeting. In such event, the vote appurtenant to the Lot shall not be counted at the meeting or on the particular question noted, as the case may be. In the event any Lot is owned by a corporation, then the vote appurtenant to such Lot shall be cast by a person designated in a certified resolution signed by the president or any vice president of such corporation and attested by

the secretary or an assistant secretary of such corporation and filed with the Secretary of the Association prior to the meeting. The vote appurtenant to any Lot owned by a trust or partnership may be exercised by any trustee or partner thereof, as the case may be, and unless any objection or protest by any other such trustee or partner is noted at such meeting or in writing prior thereto, the Chairman of such meeting shall have no duty to inquire as to the authority of the person casting such vote or votes.

G. Suspension of Voting Rights. No Class A Member shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due to the Association shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors.

**ARTICLE IV
Nomination and Election of Directors**

Section 1. Nomination. The Initial Board of Directors, named in Section 6.02 of the Articles of Incorporation of this Association, shall serve as the Board of Directors of the Corporation until the Applicable Date and, in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by an individual appointed by Declarant. Any such individual appointed by Declarant shall thereafter be deemed a member of the Initial Board. After the Applicable Date, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of the members of the Association. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors at each annual meeting of the Members and shall serve until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made only from among Members of the Association, or persons deemed to be Members eligible to serve as directors thereof or otherwise eligible to serve on the Board of Directors in accordance with the Declaration and the Articles of Incorporation of the Association.

Section 2. Election. After the Applicable Date, election to the Board of Directors shall be by secret written ballot at the annual meeting of the Members of the Association. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE V Board of Directors

Section 1. Number and Qualification. Until the Applicable Date, the affairs of the Association shall be governed by the Initial Board of Directors and shall consist of not fewer than three (3) members nor more than five (5) members. After the Applicable Date, the affairs of the Association shall be governed by a Board of Directors composed of five (5) persons.

Section 2. Additional Qualifications. Where an Owner consists of more than one person, or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or partner, officer or trustee, as the case may be, of the partnership, corporation, trust or other entity, Owner shall be eligible to serve on the Board of Directors of the Association, except that no Lot may be represented on the Board of Directors by more than one person at a time.

Section 3. Initial Board of Directors. The Initial Board of Directors named in the Articles of Incorporation (the "Initial Board") shall maintain, manage and administer the affairs and the property of the Association until the Applicable Date.

Section 4. Term of Office Generally. At such first annual meeting of the Members of the Association, the Members required by the Declaration, other provisions of these By-Laws, the Articles of Incorporation, or statute.

Section 5. Duties. The Board of Directors shall have the following duties:

- A. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by members holding twenty-five percent (25%) of the total votes of the membership entitled to vote;
- B. To supervise all officers, agents and employees of the Association;
- C. To establish the annual assessment period and fix the amount of the annual assessment against each member for each Lot owned, all in accordance with the terms of the Declaration and these By-Laws;
- D. To fix the amount of any special assessment against each member for each Lot owned, all in accordance with the terms of the Declaration and these By-Laws;
- E. To send written notice of each assessment to each Owner in accordance with the Declaration;

F. To foreclose the Association's lien for assessments against any property for which assessments are not paid within thirty (30) days after the due date thereof or to bring an action at law against the Owner or other person personally obligated to pay the same;

G. To issue, or to cause an appropriate officer to issue, upon demand by any person or entity, a certificate setting forth whether or not any assessment has been paid;

H. To procure and maintain the insurance coverage required by the Declaration and such other insurance coverage as the Board of Directors, in its sole discretion, deems necessary or advisable;

I. To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, and at least as required by the Declaration; and,

J. To cause all of the Common Areas and all easements hereunder, but not limited to Lake Easements, Landscape Easements, Drainage Easements, and Utility Easements to be maintained to the extent of the Association's responsibilities therefore as provided in the Declaration.

Section 6. Vacancies. Until the Applicable Date any vacancy in the Board of Directors shall be filled by the Declarant. Thereafter, any vacancy in the Board of Directors shall be filled by vote of the majority of remaining Directors, even though they may constitute less than a quorum. Each person so elected shall be a director for the unexpired term of his predecessor, or until his successor is elected.

Section 7. Compensation. No Director shall receive compensation for any service he may render to the Association as such director. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties, and any Director may be paid and compensated for services to the Association in a capacity other than as a director.

Section 8. Removal of Directors. After the Applicable Date, any Director may be removed with or without cause by a majority vote of the members of the Association. Prior to the Applicable Date, any Director may be removed, with or without cause by the Declarant.

Section 9. Regular Meetings. Regular meetings of the Board of Directors shall be held at such regular intervals, without notice, at such place and hour as may be determined from time to time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days notice to each Director, given personally, by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of

the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two-thirds (2/3) of the directors.

Section 11. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent of the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be deemed a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which quorum is present shall be the acts of the Board of Directors except as otherwise provided in or required by the Declaration, Articles of Incorporation, these By-Laws or statute. If, at any meeting of the Board of Directors, there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE VI Officers and their Duties

Section 1. Enumeration of Offices. The officers of the Association shall be a President and a Secretary, both of whom shall be members of the Board of Directors, and such other officers, such as a Vice-President or a Secretary, as the Board of Directors may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members of the Association.

Section 3. Term. The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year or until his successor is elected and qualified unless he shall sooner resign, be removed or otherwise disqualified to serve.

Section 4. Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or Secretary. Such resignation shall take effect on the date of receipt of such notice or at any time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

A. **President.** The President shall preside at all meetings of the Board of Directors. He shall see that orders and resolutions of the Board are carried out. He shall have the power to appoint committees from among the members of the Association from time to time as he may in his discretion deem appropriate to assist in conducting the affairs of the Association. The President shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of an association or a stock corporation organized under the laws of the State of Indiana.

B. **Vice-President.** The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him by the Board of Directors or as are delegated to him by the President.

C. **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members; keep the corporate seal of the Association (if any is adopted) and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the members; keep appropriate current records showing the members of the Association, together with their addresses, and shall perform such other duties as required by the Board of Directors.

D. **Treasurer.** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE VII Committees

The Board of Directors shall appoint the committees provided for in the Declaration and the Nominating Committee referred to in Article IV of these By-Laws. In addition, the Board of Directors or the President may appoint various other committees to carry out the purposes of the Association. Except as otherwise expressly provided in Article IV of these By-Laws with respect to the Nominating Committee, members of such committees may, but need not, be members of the Board of Directors.

ARTICLE VIII Books of Account and Fiscal Year

Section 1. Books of Account. The Association shall keep detailed books of account showing all expenditures and receipt of administration which shall specify the maintenance and repair expenses of the Common Areas and all easements including, but not limited to the Lake Easement, Landscape Easement, Drainage Easement and Utility Easement Areas and any other expenses incurred by or on behalf of the Association and the members. Such accounts, books, records, financial statements, and other papers of the Association shall be open for inspection by the members and other persons having an interest in any Lot, including any Owner, any lender and any holds, insurer or guarantor of the first mortgage on any Lot, during reasonable business hours or under other reasonable circumstances and shall be audited annually by qualified auditors. The cost of such audits shall be a Common Expense. Any holder, insurer or guarantor of a first mortgage on a Lot shall be entitled upon written request to receive an audited financial statement for the immediately preceding fiscal year free of charge to the requesting party and within a reasonable time of such request. Current copies of the Declaration, the Articles of Incorporation, and the By-Laws of the Association, and other rules concerning the Property, shall be available for inspection by any Owner and lender, and to holders, insurers or guarantors of any first mortgage at the principal office of the Association during normal business hours or under other reasonable circumstances, where copies of the same and of audits may be purchased at reasonable costs.

Section 2. Fiscal Year. The fiscal year of the Association shall commence January 1, and end the following December 31 each year; provided, however, that the fiscal year for purposes of assessments may be different than the general fiscal year of the Association.

Section 3. Fidelity Bonds. The Board of Directors may provide blanket fidelity bonds and may require the Managing Agent (if any), Treasurer and such other Directors and officers of the Association, as the Board deems necessary, to provide blanket fidelity bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board. Such fidelity bonds will name the Association as an obligee. Such bonds will not be less than the estimated maximum amount of funds in the custody of the Association at any given time during the term of each bond. Any such bond shall specifically include

protection for any insurance proceeds received for any reason by the Board. Such bonds shall also contain waivers of all defenses based on the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The expense of any such bonds will be a Common Expense. The bonds will provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association.

ARTICLE IX Assessment

Section 1. Purpose of Assessments. The Association will provide for the ownership and maintenance of the Common Areas, and will perform such other duties as are authorized or required by the Declaration. The cost thereof will constitute part of the Common Expense.

Notwithstanding any obligation or duty of the Association to repair or maintain certain areas upon the Common Areas, if due to the willful, intentional or negligent acts or omissions of an Owner or of a member of such Owner's family or a guest, tenant, invitee or other occupant or visitor of such Owner damage will be caused, or if maintenance, repairs or replacements will be required thereby which would otherwise be a Common Expense, then such Owner will pay for such damage and such maintenance, repairs and replacements as may be determined by the Association. If not paid by such Owner upon demand by the Association, the cost of repairing such damage will be added to and become part of the Assessment to which such Owner's Unit is subject.

Each Owner will be responsible for maintaining and keeping such Owner's Unit in a good, clean and sanitary condition at such Owner's expense. If any Owner will fail to maintain and keep such Owner's Unit in a good, clean and sanitary condition, the Association may perform any work necessary to do so and charge the Owner of such Unit for such cost, which cost will be added to and become a part of the Assessment to which such Owner's Unit is subject.

The Assessments levied by the Association will be used exclusively to promote the recreation, health, safety and welfare of the residents in the Real Estate and for the costs and expenses incident to operation of the Association.

Section 2. Annual Accounting. Annually, within sixty (60) days after the close of each fiscal year of the Association, the Board will cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then servicing the Association, which statement will show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 3. Proposed Annual Budget. Annually, before the date of the annual meeting of the Association, the Board of Directors will cause to be prepared a proposed annual budget in a manner that corresponds to the matters attributable to the Regular Assessment, as hereafter defined for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and will furnish a copy of such proposed budget to each Member at or prior to the annual meeting.

The annual budget will be submitted to the Members at the annual meeting of the Association for adoption, and, if so adopted, will be the basis for the Regular Assessment for the current fiscal year. At the annual meeting of the Members, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Members present at the meeting; provided, however, that in no event will the annual meeting of the Members be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessment and all sums assessed by the Association will be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget shall include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas and such exterior portion of the Units as designated in this Declaration from the Regular Assessment, which replacement reserve fund (if established) will be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas and such exterior portion of the Units as designated in this Declaration will be maintained by the Association in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Indiana selected from time to time by the Board. The funds from Regular Assessment attributable to usual and ordinary care, maintenance, replacement and insurance responsibilities expenses will be maintained in a separate bank from that of the replacement reserve account.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Members will not constitute a waiver or release in any manner of the obligations of the Members to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Association, there is no annual budget approved by the Members as herein provided for such current fiscal year, the Members will continue to pay the Regular Assessment based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 4. Regular Assessment. The Regular Assessment addresses the care, maintenance, replacement and insurance responsibilities of the Association in this Declaration for any and all improvements made by the Builder in each Building, including but not limited to, the exterior portions of the Units pursuant to the terms and conditions of this Declaration, landscaping within the Common Areas (including the streets, driveways, decks, and patios) as detailed in this Declaration and the Plans. The Regular Assessment also addresses the care and maintenance of the infrastructure, defined herein of Manchester Square Condominium, not otherwise covered by viable maintenance bonds of record under the applicable zoning ordinances of Boone County, Indiana, which include the identification sign at the entranceway, (including entranceway landscaping) and the Common Areas as shown on the Plans.

The annual budget as adopted by the Members will, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed Assessment against each Unit, which the Regular Assessment will be the same amount for each Unit.

Immediately following the adoption of the annual budget, each Member will be given written notice of such Regular Assessment against his respective Unit. In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment will be revised, within fifteen (15) days following adoption of the annual budget by the Members, to reflect the Regular Assessment against each Unit based upon such annual budget as finally adopted by the Members. The aggregate amount of the Regular Assessment will be equal to the total amount of expenses attributable to the Regular Assessment matters as provided and included in the final annual budget, including reserve funds as herein above provided. The Regular Assessment against each Unit will be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installments of the Regular Assessment will be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Members may elect to pay Regular Assessments quarterly, semi-annually or annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget, and:

(a) if the Regular Assessment based upon the final annual budget adopted by the Members exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due will be paid with such next payment, and any payments thereafter during such fiscal year, will be increased so that the Regular Assessment as finally determined will be paid in full by the remaining payments due in such fiscal year, or

(b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Members, such excess will be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited; provided, however, that if any Member had paid his Regular Assessment either quarterly, semi-annually or annually in advance, then the adjustments set forth under (a) or (b) above will be made by a cash payment by, refund to, or credit on account of, the Member by first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Members.

The Regular Assessment for the current fiscal year of the Association will become a lien on each separate Unit as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that a Member who has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Unit or any interest therein, will not relieve or release such Member or his successor as Owner of such Unit from payment of the Regular Assessment for such Unit as finally determined, and such Owner and his successor as Owner of such Unit will be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid Regular Assessments furnished by the

Association prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made will state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon will be bound by such final determinations. Monthly installments of the Regular Assessment will be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association will be responsible for providing any notice or statements to Owners for the same.

Section 5. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that such Assessment will have the assent of two-thirds (b) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, and further provided that the Declarant will not be any Owner's agent, attorney-in-fact or proxy in this vote pursuant to Section 13.4 of the Declaration, the Board of Directors will have the full right, power and authority to make special Assessments which upon resolution of the Board, will become a lien on each Unit, prorated in equal shares ("Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in the Declaration. Further, Special Assessments may be made by the Board of Directors from time to time to pay for non-emergency or non-essential expenditures of such a nature that the Owners would suffer reduction or elimination of services if such Special Assessments were not made.

Section 6. Assessments Prior to the Applicable Date. The purpose of this Section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Association to perform its duties and functions.

(a) **Annual Budget for Regular Assessments and Special Assessments.** Notwithstanding any other provision contained in the Declaration, the Articles or these Bylaws or otherwise, prior to the Applicable Date, the annual budget and all the Regular Assessment and the Special Assessments will be established by the Initial Board without any meeting or concurrence of the Members; provided, however, the Regular Assessment will be determined in accordance with the provisions contained in this Section.

(b) **Replacement Reserve Account.** That portion of the Regular Assessment collected by Declarant prior to the Applicable Date designated for any replacement reserve account which Declarant may create and will if created and funded be held by the Initial Board and if required, applied to the replacement of Common Areas or those portions of Units obligated to be repaired and replaced by the Association. To the extent that any such replacement reserve is not so applied, the balance thereof will be retained by the Association at the Applicable Date.

(c) Payment Dates. Payment of Regular Assessment prior to the Applicable Date with respect to each Unit (that is not owned by Declarant) will commence on the date of conveyance by Declarant Owner or Declarant Builder to an Owner other than Declarant Builder. The first payment will be payable on the date of conveyance prorated to the first day of the next calendar month next ensuing. Thereafter, payment of the Regular Assessment will be paid the first day of each calendar month during the period prior to the Applicable Date. THE DECLARANT WILL PAY TO MANAGEMENT AGENT THE UNPAID BALANCE AFTER THE PAYMENTS OF ALL OTHER OWNERS OF THE AMOUNT OF THE REGULAR ASSESSMENT.

Section 7. Guaranteed Charge. Declarant will guarantee that until the earlier of: (a) the termination of the Management Agreement with the Declarant Manager, or (b) one (1) year after the date of recording of the Declaration with the office of the Boone County Recorder, the monthly Regular Assessment will not exceed One Hundred Dollars and No Cents (\$100.00) ("Guaranteed Charge"). After this date (assuming that said Management Agreement with the Declarant Manager) and so long thereafter as said Management Agreement (or similar agreement) remains in effect and Declarant Manager continues to perform such functions, Declarant guarantees that the monthly Regular Assessment will not exceed the amount of the Guaranteed Charge plus a maximum of a twenty percent (20%) increase in the Guaranteed Charge for each year. Such adjustments to the Guaranteed Charge (up to a twenty percent (20%) increase as determined by the Board) will be made annually on January 1 of each year so long as said Management Agreement remains in effect and Declarant Manager continues to perform such functions. Such monthly charge will during such guaranteed period entirely defray the Member's obligation for his share of Common Expenses or will be the Member's entire Regular Assessment. Declarant will be responsible for any operating deficit, in Regular Assessment, during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures will be covered through Special Assessments, or, if sufficient, the replacement reserve fund, if any such fund exists. Any operating deficiency prior to the Applicable Date will be the responsibility of the Declarant Owner and Declarant Builder.

Section 8. Failure of Owner to Pay Assessments. No Owner (including Declarant Builder) may exempt himself from paying the Regular Assessment and Special Assessments or from contributing toward the Common Expense or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Areas or by abandonment of the Unit belonging to him. Each Owner will be personally liable for the payment of all Regular and Special Assessments. If any payment of a Regular Assessment or Special Assessment is received by the Association more than ten (10) days after its due date, Owner will pay to the Association a late charge in the amount of the greater of Fifty Dollars (\$50.00) or fifty percent (50%) of payment, which will be immediately due and will accompany such payment when made. Where the Owner constitutes more than one person the liability of such person will be joint and several. If any Owner will fail, refuse, or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such Regular Assessment or Special Assessment on the Owner's Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Association as a mechanic's lien on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular

Assessment or Special Assessment when due the Board may in its discretion accelerate the entire balance of unpaid Regular Assessment or Special Assessments in such event the Owner and any occupant of the Unit will be jointly and severally liable for the payment to the Association of reasonable rental for such Unit and the Board will be entitled to the appointment of a receiver for the purpose of preserving the Unit and to collect the rentals and other profits there from for the benefit of the Association to be applied to the unpaid Regular Assessment or Special Assessments. The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same or may turn the account over to a collection agency. In actions to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board for and on behalf of the Association will be entitled to recover from the Owner of the respective Unit costs including late charges and expenses of such action incurred (including, but not limited to, reasonable attorneys' fees, administration fees and collection fees) and interest from the date such Regular Assessment and/or Special Assessments were due until paid at the rate equal to the publicly announced prime interest rate then being charged by Bank One, N.A. to its largest and best corporate customer (or if said bank is no longer in existence then such rate charged by another national bank in Indiana selected by the Board of Directors). The lien of the Regular Assessment and/or Special Assessments provided for herein will be subordinate to the lien of any first mortgage.

Section 9. Subordination of the Regular Assessment and/or Special Assessment Lien to Mortgage. Notwithstanding anything contained in the Declaration, the Articles or the By-Laws, any sale or transfer of a Unit to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures will extinguish the lien of any unpaid installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien will not relieve the prior owner from personal liability therefore. No such sale, transfer or conveyance will relieve the Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of the Regular Assessment or Special Assessments thereafter becoming due or from the lien therefore. Such unpaid share of any Regular Assessment or Special Assessments, the lien for which has been divested as aforesaid will be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Unit from which it arose).

Section 10. Non-Waiver. The failure or delay of the Association to assess or notify the Owner of any Assessment will not constitute a waiver or release of the Owner's Obligation to pay any assessment herein provided whenever the same will be determined and, in the absence of any annual estimate or Assessment, the Owner will continue to pay the Assessment will have been established. No Owner may except himself from liability for the Assessment imposed by the restriction Covenants and these Bylaws.

Section 11. Certificate of Assessment Account. Upon ten (10) days written notice to the Association and payment of the reasonable fee, any Member will be furnished a certificate of his account setting forth the amount of any unpaid Assessment or other charge due or owing from such member. Any purchaser of a Unit may rely on the accuracy of such certificate and such purchaser

will be liable for, nor will the Unit conveyed by subject to a lien for any unpaid assessments against the Member which were incurred prior to the date of such certificate and which are in excess of the amount therein set forth or as such Assessments may be adjusted upon adoption of the final annual budget, as referred to in the Bylaws.

ARTICLE X
Contracts, Loans & Checks

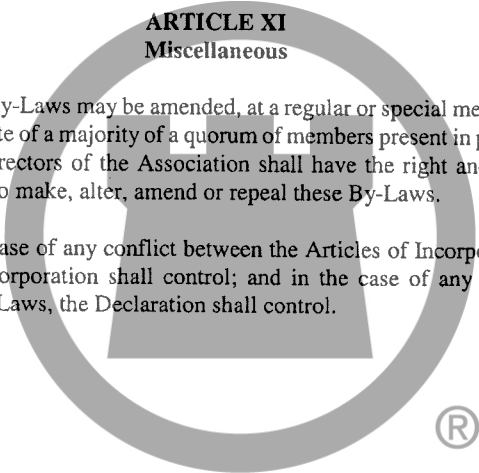
Section 1. Authorization. The Board of Directors may authorize any officer or officers or agent or agents of the Association to enter into any contract or execute any instrument on its behalf. Such authorization may be general or confined to specific instances. Except as provided in these By-Laws, no officer, agent or employee shall have any power to bind the Association or to render it liable for any purpose or amount unless so authorized by the Board of Directors.

Section 2. Checks. All checks, drafts, or other orders for payment of money by the Association shall be signed by the President, Secretary, Treasurer or such other person as the Board of Directors may from time to time designate by resolution.

ARTICLE XI
Miscellaneous

Section 1. These By-Laws may be amended, at a regular or special meeting of the Members of the Association, by a vote of a majority of a quorum of members present in person or by proxy. In addition, the Board of Directors of the Association shall have the right and power, without the consent of the Members, to make, alter, amend or repeal these By-Laws.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.



CHICAGO TITLE