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MERRILL STREET TOWNHOMES HORIZONTAL PROPERTY REGIME

WANDA MARTIN
MARION COUNTY RECORDER

AND OF

MERRILL STREET TOWNHOMES OWNERS ASSOCIATION, INC.

FILED

ARTICLE I

JUN 10 2004

Identification and Applicability

Tracie R. Womack

Section 1.01. Identification and Adoption . These By-Laws are adopted simultaneously with the execution of a certain Declaration creating Merrill Street Townhomes Horizontal Property Regime to which these By-Laws are attached and made a part. The Declaration is incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. Except as otherwise provided in Section 1.02 hereof, the definitions and terms as defined and used in the Declaration shall have the same meaning in these By-Laws and reference is specifically made to Paragraph 1 of the Declaration containing definitions of terms. The provisions of these By-Laws shall apply to the Property and the administration and conduct of the affairs of the Association. These By-Laws shall also constitute the By-Laws of the Association.

Section 1.02. Additional Definitions. Notwithstanding any other definition in the Declaration, the following terms as used in these By-Laws shall have the following meanings:

- a. "Articles" means the Articles of Incorporation of the Association.
- b. "Assessment" means all sums lawfully assessed against the Owners or as declared or authorized by the Act, the Declaration, any Supplementary Declaration, the Articles, or these By-Laws.
- c. "Directors" means all the members of the Board of Directors and "Director" means any individual member thereof.
- d. "Initial Board" means those individuals appointed by Declarant as Directors pursuant to the power reserved to Declarant by Section 3.02 in their capacity as the Board of Directors.
- e. "Managing Agent" means a reputable and recognized professional property management agent employed by the Board pursuant to Section 3.06.
- f. "Majority Vote" means a majority of the Percentage Vote present and voting at any duly constituted meeting of the Members.
- g. "Member" means a member of the Association and "Members" means more than one member of the Association.

h. "Regular Assessment" means the Assessment levied pursuant to Section 6.02.

i. "Special Assessment" means the Assessment levied pursuant to Section 6.03.

j. "Statute" means the Indiana Nonprofit Corporation Act of 1991, as amended.

Section 1.03. Individual Application. All of the Owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy a Unit or any part of the Property, shall be subject to the restrictions, terms and conditions set forth in the Declaration, the Articles, these By-Laws and the Act, and to any rules and regulations adopted by the Board as herein provided.

ARTICLE II

Meetings of Association

Section 2.01. Purpose of Meetings. At least annually, and at such other times as may be necessary, the meetings of the Owners shall be held for the purpose of electing the Board (subject to the provisions of Section 3.02 hereof), approving the annual budget, providing for the collection of Common Expenses and for such other purposes as may Declaration, the Articles, these By-Laws, the Act or the Statute.

Section 2.02. Annual Meetings. The annual meeting of the Members shall be held on the fifteenth day of April in each calendar year. The date of the annual meeting may be altered by the Board so long as at least ten (10) days written notice, the manner of which is set forth in Section 2.04, is furnished to the Members; however, the annual meeting must be neither earlier than nor later than thirty (30) days from April 15. At the annual meeting, the Owners shall (subject to the provisions of Section 3.02 hereof) elect the Board of Directors in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 2.03. Special Meetings. A special meeting of the Members may be called by resolution of the Board or upon a written petition of Owners who have not less than fifty percent (50%) of the Percentage Vote. The resolution or petition shall be presented to the President or Secretary of the Association (references herein to an officer shall be to that officer of the Association) and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.04. Notice and Place of Meeting. All meetings of the Members shall be held at any suitable place in Marion County, Indiana, as may be designated by the Board. Written notice stating the date, time and place of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be

delivered or mailed by the Secretary to each Member entitled to vote thereat not less than ten (10) days prior to the date of such meeting. The notice shall be mailed or delivered to the Owners at the addresses of their respective Condominium Units and not otherwise. A copy of each such written notice shall also be delivered or mailed simultaneously by the Secretary to each Mortgagee (a) who requests in writing that such notices be delivered to it, and (b) who has furnished the Association with its name and address in accordance with Section 12.01 of these By-Laws. Attendance at any meeting in person by agent or by proxy shall constitute a waiver of notice of such meeting.

Section 2.05. Voting.

a. Number of Votes. All Persons who own a Condominium Unit shall jointly (and not severally) be entitled to cast one vote for each Condominium Unit they own on each matter coming before the meeting as to which they are entitled to vote.

b. Multiple Owner. Where the Owner of a Condominium Unit constitutes or consists of more than one Person, or is a partnership, there shall be only one voting representative entitled to all of the Percentage Vote allocable to that Condominium Unit. At the time of acquisition of title to a Condominium Unit by a multiple Owner or a partnership, those Persons constituting such Owner or the partners shall file with the Secretary an irrevocable proxy appointing one of such Persons or partners as the voting representative for such Condominium Unit, which shall remain in effect until all of those Persons constituting such multiple Owner or a majority of the partners in such partnership designate another voting representative in writing, or such appointed representative relinquishes such appointment in writing, becomes incompetent, dies or such appointment is otherwise rescinded by order of a court of competent jurisdiction or the Owner no longer owns such Condominium Unit. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to paragraph (a) of this Section 2.05, which shall not constitute a permanent relinquishment of his right to act as voting representative for the Condominium Unit.

c. Voting by Corporation or Trust. Where a corporation or trust is a Owner or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust and the agent or other representative of the corporation duly empowered by the board of directors of such corporation may cast the vote to which the corporation is entitled. The secretary of the corporation or a trustee of the trust so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary stating who is authorized to vote on behalf of said corporation or trust.

d. Proxy. An Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the owner shall duly designate his attorney-in-fact in writing, delivered to the Secretary prior to the commencement of the meeting.

e. Pledges. If the vote of an Owner or Owners has been pledged by mortgage, security agreement, conditional assignment, or other instrument, an executed copy of which has been filed with the Secretary, only the pledgee shall be entitled to cast the vote of such Owner or Owners upon those matters upon which the Owner or Owners vote is so pledged.

f. Quorum. Except in the Declaration, these By-Laws, the Act or the Statute, a Majority of Owners shall constitute a quorum at all meetings of the Members.

Section 2.06. Conduct of Meetings.

a. Annual Meeting. The President shall act as the chairman of all annual meetings of the Association if he is present. At all annual meetings, the chairman shall call the meeting to order at the duly designated time and business will be conducted in the following order:

i. Reading of Minutes. The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto, unless such reading is waived by a Majority Vote.

ii. Treasurer's Report. The Treasurer shall report to the Owners concerning the financial condition of the Association and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed budget for the current year.

iii. Budget. The proposed budget for the current fiscal year shall be presented to the Owners for approval or amendment.

iv. Election of Board of Directors. After the Applicable Date, nominations for the Board may be made by any Owner from those Persons eligible to serve. Such nominations must be in writing and presented to the Secretary at least seven (7) days prior to the date of the annual meeting. Voting for the Board will be by paper ballot. The ballot shall contain the name of each Person nominated to serve as a member of the Board. Each Owner may cast the total number of votes to which he is entitled for as many nominees as are to be elected; however, he shall not be entitled to cumulate his votes. Those Persons receiving the highest number of votes shall be elected. Each voting Owner shall sign his ballot. Prior to the Applicable Date, the nomination and election of the Board shall be governed by the provisions of Section 3.02 hereof.

v. Other Business. Other business may be brought before the meeting only by decision of the Board of Directors or upon a written request of an Owner submitted to the Secretary of the Association at least seven (7) days prior to the date of the meeting, except that such written request may be waived at the meeting if agreed by a Majority of Owners.

vi. Adjournment.

b. Special Meeting. The President shall act as chairman of any special meetings of the Association if he is present. The chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be the matters for which such meeting was called, as set forth in the notice of such special meeting.

ARTICLE III

Board Of Directors

Section 3.01. Management. The affairs of the Association and Merrill Street Townhomes shall be governed and managed by the Board of Directors. Prior to the Applicable Date, the Board shall be composed of three (3) individuals; after the Applicable Date, the Board shall be composed of three (3) individuals. No individual shall be eligible to serve as a Director unless he is, or is deemed in accordance with the Declaration to be, an Owner, including an individual appointed by Declarant as provided in Section 3.02 hereof.

Section 3.02. Initial Board of Directors. The initial Board of Directors shall be Charles V. Loring, C. Jefferson Cragen, and John Tinkle, all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, these By-Laws, the Declaration, the Act or the Statute (a) the Initial Board shall hold office until the Applicable Date, and (b) 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, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Unit or by acquisition of any interest in a Unit by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which appointment shall be deemed coupled with an interest and irrevocable until the Applicable Date, to exercise all of said Owner's right to vote and to vote as Declarant determines on all matters as to which Members are entitled to vote under the Declaration, these By-Laws, the Act, the Statute or otherwise. This Appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same.

Section 3.03. Additional Qualifications. Where an Owner consists of more than one individual or is not a natural Person, then one of the individuals constituting the multiple Owner, or a partner, an officer or the trustee of a Owner shall be eligible to serve on the Board, except that no single Condominium Unit may be represented on the Board by more than one individual at a time.

Section 3.04. Term of office and Vacancy. Subject to the provisions of Section

3.02 hereof, one (1) member of the Board shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one (1) Director shall be elected for a three (3) year term, one (1) for a two (2) year term, and one (1) for a one (1) year term so that the terms of one-third (1/3) of the Directors shall expire annually. There shall be separate nominations for the office of each Director to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 3.02 hereof as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Directors or by vote of the Owners if a Director is removed in accordance with Section 3.05. The Director so filling a vacancy in accordance with the Members and shall serve until the next annual meeting or until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

Section 3.05. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote or a Majority of Owners at a special meeting of the Members duly called and constituted for that purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Members or until his successor is duly elected and qualified.

Section 3.06. Duties of the Board of Directors. The Board shall provide for the administration of Merrill Street Townhomes, the maintenance, repair, upkeep and replacement of the Common Areas and Limited Areas (unless the same are otherwise the responsibility or duty of the Owners of Units), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Association, employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent shall assist the Board in carrying out its duties, which include, but are not limited to:

a. protection, surveillance and replacement of the Common Areas and Limited Areas, unless the same are otherwise the responsibility or duty of the Owners of Units; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

b. procuring of utilities used in connection with Merrill Street Townhomes, removal of garbage and waste, and snow removal from the Common Areas;

c. landscaping, painting, decorating, furnishing, maintaining and repairing the Common Areas and, where applicable, the Limited Areas;

- d. surfacing, paving and maintaining drives, parking areas and sidewalks;
- e. washing and cleaning of exterior window surfaces of the Units;
- f. assessment and collection from the Owners of the Owner's of the Common Expenses;
- g. preparation of the proposed annual budget;
- h. preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year;
- i. keeping a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses;
- j. procuring and maintaining for the benefit of the Owners, the Association and the Board the insurance coverages required by Section 8.01 and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
- k. making available to Owners and Mortgagees current copies of the Declaration, By-Laws and rules and regulations governing Merrill Street Townhomes ("Organizational Documents") and any other books, records and financial statements of the Association. The Board shall also make available to prospective purchasers of Condominium Units current copies of the Organizational Documents and the most recent annual audited financial statement if such statement has been prepared. "Available" means available for inspection upon request during normal business hours or under other reasonable circumstances. Upon written request by the United States Department of Housing and Urban Development or the Veterans Administration, the Board shall also prepare and furnish within a reasonable time an audited financial statement for the Association for the immediately preceding fiscal year.

Section 3.07. Powers of the Board of Directors. The Board shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- a. to employ a Managing Agent to assist the Board in performing its duties;
- b. to purchase for the benefit of the Owners such equipment, materials, labor and services as may be necessary in the judgment of the Board;
- c. to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board may be necessary or desirable in connection with the business and affairs of Merrill Street Townhomes;
- d. to employ, designate, discharge and remove such personnel as in the

judgment of the Board may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas and, where applicable, the Limited Areas;

e. to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

f. to open and maintain a bank account or accounts in the name of the Association; and

g. to adopt, revise, amend and alter from time to time rules and regulations with respect to use, occupancy, operation and enjoyment of the Property.

Section 3.08. Limitation on Board Action. After the Applicable Date, the authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than \$10,000.00 without obtaining the prior approval of a Majority of Owners, except that in the following cases such approval shall not be necessary:

a. contracts for replacing or restoring portions of the Common Areas or Limited Areas damaged or destroyed by fire or other cause where the cost thereof is payable out of insurance proceeds actually received;

b. proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

c. expenditures necessary to deal with emergency conditions in which the Board reasonably believes there is insufficient time to call a meeting of the Owners.

Section 3.09. Compensation. No Director shall receive any compensation for his services as a Director except to such extent as may be expressly authorized by a Majority of Owners. However, this does not preclude the payment of attorney fees by the Declarant to any attorney who may serve as an Initial Director for the purpose of establishing the Horizontal Property Regime. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 3.10. Meetings.

a. Organization Meeting. The Board shall meet each year within ten (10) days following the date of the annual meeting of the Association, at such time and place as shall be fixed at the annual meeting, for the purpose of organization, election of officers and consideration of any other business that may properly be brought before the meeting, and no notice shall be necessary to any newly elected Directors in order legally to constitute such meeting if a quorum is present.

b. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors. The

Secretary shall give notice of regular meeting of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meeting.

c. Special Meetings. Special meetings may be called by the president or any two (2) members of the Board. The Director or Directors calling such meeting shall give written notice thereof to the Secretary who shall either personally or by mail, and at least three (3) days prior to the date of such special meeting, give notice to the members of the Board. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place and at such time within Marion County, Indiana, as shall be designated in the notice.

Section 3.11. Waiver of Notice. Before any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting or his subsequent consent to the actions taken thereat, shall, as to such Director, constitute a waiver of notice of the time, place and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 3.12. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if a consent in writing setting forth such actions so taken is signed by all Directors and such written consent is filed with the minutes of the proceedings of the Board.

Section 3.13. Quorum. At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the director present at a meeting at which a quorum is present shall be the decision of the Board.

Section 3.14. Non-Liability of Directors. The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any Persons arising out of contracts made by the Board on behalf of Merrill Street Townhomes or the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these By-Laws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of Merrill Street Townhomes or the Association and that in all matters the Board is acting for and on behalf of the Owners as their agent. The liability of any Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Directors shall be limited to such percentage of the total liability or obligation thereunder as is equal to his Percentage Interest. Every contract made by the Board or the Managing Agent on behalf of Merrill Street Townhomes shall provide that the Board and the Managing Agent, as the case may be, are acting as agent for the Owners and shall have no personal liability thereunder, except in their capacity as Owners (if applicable) and then only to the extent of their Percentage

Interests.

Section 3.15. Additional Indemnity of Directors. The Association shall indemnify, hold harmless and defend any individual, his heirs, assigns and legal representatives made a party to any action, suit or proceeding by reason of the fact that he is or was a Director, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a Majority of Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent or any officer or employee thereof, or any accountant, attorney or other person employed by the Association to render advice or service unless such director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board.

Section 3.16. Transactions Involving Affiliates. No contract or other transaction between the Association and one or more of its Directors, or between the Association and any Person (including Declarant or and shareholder of Declarant) in which one or more of the Directors are directors, officers, partners, or employees or are pecuniarily or otherwise interested shall be void or voidable because such Director or Directors are present at the meeting of the Board that authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose if:

a. the contract or transaction is between the Association and Declarant or any affiliate of Declarant entered into prior to the Applicable Date; or

b. the fact of the affiliation or interest is disclosed or known to the Board or a majority thereof or noted in the minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

c. the fact of the affiliation or interest is disclosed or known to the Owners, or a majority thereof, and they approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

d. the contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Affiliated or interested Directors may be counted in determining the presence of the quorum of any meeting of the Board thereof that authorizes, approves or ratifies any contract or transaction, and may vote thereat to authorize any contract or transaction with like force and effect as if they were not so affiliated or not so interested.

Section 3.17. Bonds. Blanket fidelity bonds shall be maintained by the Association for all officers, directors and employees of the Association and all other persons handling, or responsible for, funds of or administered by the Association. Where the Managing Agent has the responsibility for handling or administering funds of the Association, the Managing Agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association and the Association shall be named as an additional obligee thereon. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or Managing Agent, as the case may be, at any given time during the term of each bond. In no event, however, may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units plus reserve funds. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms of expressions. The expense of all such bonds shall be a Common Expense. The bonds may not be cancelled or substantially modified without thirty (30) days notice in writing to the Association, the Insurance Trustee and each servicer of a FNMA (Fannie Mae) owned mortgage in the Property.

ARTICLE IV

Officers

Section 4.01. Officers of the Association. The principal officers of the Association shall be the President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two (2) or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 4.02. Election of Officers. The officers of the Association shall be elected annually by the Board at the initial meeting of the Board. Upon an affirmative vote of a majority of all members of the Board, any officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4.03. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and the Board, shall have and discharge all the general

powers and duties usually vested in the office of president or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including but not limited to the power to appoint committees from among the Owners as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

Section 4.04. The Secretary. The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings, shall perform all other duties incident to the office of the Secretary, including without limitation, keeping the minute book for the Association wherein resolutions of the Board of Directors shall be recorded, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 4.05. The Treasurer. The Board shall elect a Treasurer who shall maintain a correct and complete record of accounts showing accurately at all times the financial condition of the Association and who shall perform such other duties incident to the office of Treasurer. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Association. He shall immediately deposit all funds of the Association coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account or accounts in the name of the Association. The Treasurer may permit the Managing Agent to handle and account for monies and other assets of the Association to the extent appropriate as part of its duties.

Section 4.06. Assistant Officers. The Board may, from time to time, designate and elect from among the Members an Assistant Secretary and an Assistant Treasurer who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board may prescribe.

ARTICLE V

Management

Section 5.01. Maintenance, Repairs and Replacements.

a. Condominium Units. Each Owner shall, at his expense, be responsible for the maintenance, repairs, decoration and replacement his own Unit, except as may otherwise be provided herein. This shall include, but not be limited to, all air conditioning and heating units located on the condominium Units' respective patios. Each Owner shall promptly perform all maintenance and repair within his Unit which, if neglected, might adversely affect the Property. In addition, each Owner shall furnish, and shall be responsible at his own expense for the maintenance, repairs and replacements of, his Unit and appurtenant Limited Areas, and all equipment serving

the same except to the extent otherwise provided herein.

b. Appurtenant Maintenance. Each Owner shall be responsible for doors, screens and windows (including exterior and interior of all glass and screen surfaces), interior grouting and/or caulking and all other accessories appurtenant to the Unit or belonging to the Owner thereof. In the event that the maintenance or repair of any Unit is reasonably necessary in the discretion of the Board to protect the Common Areas or Limited Areas, or to preserve the appearance or value of the Property, or is otherwise in the interest of the general welfare of the Owners, the Board shall have the power to undertake such maintenance or repair; but no such maintenance or repair shall be undertaken without a resolution by the Board and reasonable written notice to the Owner of the Unit proposed to be maintained. The cost of any such maintenance or repair shall be assessed against the Unit on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of the Unit at which time the Assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects as provided in Section 6.06 hereof.

c. Certain Limited Areas. Each Owner shall, at his expense, be responsible for the replacement of the air conditioning compressor, installed to service his Condominium Unit and for the decoration and general maintenance of any balcony, patio, deck, or porch to which there is direct access from the interior of his Condominium Unit. Any balcony, patio, deck, or porch shall be kept free and clean of snow, ice and any other accumulation by the Owner of such Condominium Unit who shall also make all repairs thereto caused or permitted by his negligence, misuse or neglect.

d. Common Areas and Limited Areas. All maintenance, repairs and replacements to the Common Areas and Limited Areas (except as otherwise provided in the Declaration, a Supplemental Declaration, or these By-Laws) shall be furnished by the Association as part of the Common Expenses. The Board of Directors may adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas.

Section 5.02. Right of Entry. The Board of Directors, the Managing Agent, or any other Person authorized by the Board or the Managing Agent shall have the right, at reasonable times and upon reasonable prior notice (except in cases of emergency in which event no notice shall be required), to enter into each individual Unit for the purposes of inspection of the Common Areas and Limited Areas appurtenant thereto and replacement, repair and maintenance of the same.

Section 5.03. Alterations and Additions. No Person shall make any alterations or additions to the Common Areas or Limited Areas without the prior written approval of the Board of Directors, nor shall any Owner make any alteration or addition within the boundaries of his Unit that would affect the safety or structural integrity of the Building in which the Unit is located.

Section 5.04. Real Estate Taxes. Real estate taxes are to be separately taxed to each Unit as provided in the Statute. In the event that for any year real estate taxes are not separately assessed and taxed to each Unit, but are assessed and taxed on the Property as a whole, then each Owner shall pay his proportionate share thereof in accordance with his respective Percentage Interest. If real estate taxes are assessed on the Tract and other portions of the Real Estate, then the tax for the Tract shall be allocated on a proportionate Tract shall be allocated on a proportionate value basis as shall be determined by the Board of Directors.

Section 5.05. Utilities. Each Owner shall pay for his own utilities that are separately metered. Utilities that are not separately metered shall be treated as and paid as part of the Common Expenses, unless, after the Applicable Date, alternative payment arrangements are authorized by a Majority of Owners.

Section 5.06. Limitation of Liability. The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for out of the Common Expenses, or for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other Person, or resulting from electricity, water, snow or ice that may leak or flow from any portion of the Common Areas or Limited Areas or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of articles that may be stored upon any of the Common Areas or Limited Areas. No diminution or abatement of Assessments for Common Expenses shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or Limited Areas or from any action taken by the Association to comply with any law, ordinance, order or directive of any municipal or other governmental authority.

Section 5.07. Negligence. Each Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his negligence or by that of his 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 shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, or occupancy or abandonment of his Unit or its appurtenances or of the Common Areas or Limited Areas.

Section 5.08. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by, or to comply with any provisions of, the Declaration, the Act, these By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

ARTICLE VI

Assessments

Section 6.01. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Association, the Board shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a Majority Vote; provided, however, that in no event shall the annual meeting of the Owners 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 Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments may include the amounts required for funding the reserve accounts described by Section 6.04 and 6.05, if applicable. The failure or delay of the Board to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners 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 Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments 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 6.02. Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash required for the Common Expenses in the current fiscal year and required reserve amounts as set forth in said budget, contain a proposed assessment against each Condominium Unit based on the Percentage Interest of each Condominium Unit. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Condominium Unit. In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners to reflect the Assessment against each Condominium Unit based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Condominium Unit shall be paid in advance in equal quarterly installments, commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the quarterly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay quarterly assessments semi-annually or annually, in advance. At the election and option of the Board, the Regular Assessment may be required to be paid by the Owners in advance in equal monthly

installments rather than quarterly installments.

a. if the Regular Assessment based upon the final annual budget adopted by the Owners 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 that is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether quarterly or monthly, shall be increased so that the Regular Assessment as finally determined shall 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 budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether quarterly or monthly, until the entire amount of such excess has been so credited; provided, however, that if a Owner had paid his Regular Assessment either semi-annually or annually in advance, then the foregoing adjustments shall be made by a cash payment by or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

c. The Regular Assessments shall be payable in advance and shall commence at the time of closing and delivery of deed. In computing the initial payment the amount of the Regular Assessments shall be calculated by apportioning the payment based upon a thirty (30) day month until the due date for payment of the next Regular Assessment occurs.

The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Condominium 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 an Owner 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, and sells, conveys or transfers his Condominium Unit or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Condominium Unit from payment of the Regular Assessment for such Condominium Unit as finally determined, and such Owner and his successor as Owner of such Condominium Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 12.03 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall 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 shall be bound by such final determinations. Quarterly or monthly (if so determined by the Board) installments of Regular Assessments shall 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 shall be responsible for to Owners for the same.

Section 6.03. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in these By-Laws, the Declaration or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Condominium Unit, prorated in accordance with the Percentage Interest on each Condominium Unit. 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 or to pay for the cost of any repair or reconstruction of damage caused by fire or other cause or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described herein or in the Declaration.

Section 6.04. Reserve for Replacements. The Board of Directors may cause to be established and maintained a reserve fund for replacements by the allocation and payment to such reserve fund not less often than annually of an amount determined by the Board to be sufficient to meet the costs of periodic maintenance, repair, renewal and replacement of the Common Areas and Limited Areas, including, but not limited to, painting the exterior of buildings, repairing or replacing the recreational facilities, and resurfacing, repairing or replacing streets, parking areas, sidewalks, roofs and other facilities and appurtenances. In determining the amount, the Board shall take into consideration the expected useful life of such Common Areas and Limited Areas, projected increases in the cost of materials and labor, interest to be earned by such funds, and the advice of Declarant, the Managing Agent and consultants the Board may employ. Such fund shall be conclusively deemed to be a Common Expense. Such fund shall be deposited in an interest bearing account with a bank or savings and loan association authorized to conduct business in Marion County, Indiana. The reserve for replacements may be expended only for the purpose of effecting the periodic maintenance, repair, renewal or replacement of the Common Areas and Limited Areas and equipment of the Property. The Board shall annually review the adequacy of the reserve fund. The proportionate interest of any Owner in any reserve for replacements shall be considered an appurtenance of his Condominium Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Condominium Unit to which it appertains and shall be deemed to be transferred with such Condominium Unit.

Section 6.05. Working Capital Fund. To meet unforeseen expenditures or to purchase any additional equipment or services, Declarant may establish a working capital fund equal to two months of the initial estimated Common Expenses for each Condominium Unit in the initial Tract. In each subsequent Tract that may be created by Supplemental Declaration a like working capital fund contribution may be made. Any amounts paid into this fund shall not be considered as advance payments of Regular Assessments.

Section 6.06. General Operating Reserve. The Board of Directors may establish and maintain a reserve fund for general operating expenses of a non-recurring nature by the allocation and payment to such reserve fund not less frequently than annually of such amount as the Board in its discretion determines to be reasonable under the circumstances. Such fund shall be conclusively deemed to be a Common Expense. Such fund shall be deposited in an interest bearing account with a bank or savings and loan association authorized to conduct business in Marion County, Indiana. The general operating reserve may be expended only for operating contingencies of a non-recurring nature. The proportionate interest of any Owner in any reserve fund for general operating expenses shall be considered an appurtenance of his Condominium Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Condominium Unit to which it appertains and shall be deemed to be transferred with such Condominium Unit.

Section 6.07. Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and, in the proper case, of the Limited Areas, of the Buildings, and toward any other expenses lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Condominium Unit belonging to him. Each Owner shall be personally liable for the payment of his Percentage Interest of all Assessments. Where the Owner constitutes more than one person, the liability of such person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Assessment when due, a lien for such Assessment on the Owner's Condominium Unit may be filed and foreclosed by the Board for and on behalf of the Association as provided by law; provided, however, any lien for delinquent Assessments or other charges that the Association has on a Condominium Unit will be subordinate to a first mortgage on the Condominium Unit if the mortgage was recorded before the delinquent Assessment was due. Upon the failure of an Owner to make timely payments of any Assessment when due, the Board may in its discretion accelerate the entire balance of the unpaid Assessments for the remainder of the current fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Condominium Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Condominium Unit, and the Board shall be entitled to the appointment of the receiver for the purpose of preserving the Condominium Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Assessment without foreclosing or waiving the lien securing the same. In any action to recover an Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorneys' fees, from the Owner of the respective Condominium Unit.

Section 6.08. Waiver of Lien Upon Foreclosure. Notwithstanding anything to the contrary contained in the Declaration and these By-Laws, any sale or transfer of a

Condominium Unit to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any Person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Assessment as to such installments that became due prior to such sale, transfer or conveyance, but extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Condominium Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the Condominium Unit from which it arose), as provided in the Act.

Section 6.09. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Declaration, in the Act, in the Statute or otherwise, until the Applicable Date the annual budget and all Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 3.02 hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Assessments until the Applicable Date.

ARTICLE VII

Restriction, Entry and Rules and Regulations

Section 7.01. Restrictions on Use. The following restrictions on the use and enjoyment of the Units, Common Areas, Limited Areas and the Property shall be applicable to Merrill Street Townhomes:

*Modified
10/2/14*
~~(a) All Condominium Units shall be used exclusively for residential purposes and for occupancy by a single family excepting Declarant specifically reserves the right to occupy and maintain a Condominium Unit as a sales office or sales area.~~

(b) No additional buildings shall be erected or located on the Tract other than the Buildings designated in the Declaration or a supplement or amendment to the Declaration, and shown on the Plans or plans filed with such a supplement or amendment to the Declaration, without the consent of the Board of Directors, excepting Declarant reserves the right to maintain a mobile office for construction, marketing or management.

(c) Nothing shall be done or kept in any Unit or in the Common Areas or Limited Areas that will cause an increase in the rate of insurance on any Building or the contents thereof. No Owner shall permit anything to be done or kept in his Unit or in the Common Areas or Limited Areas that will result in a cancellation of insurance on any building or any part of the Common Areas or contents thereof, or that would be in violation of any law or ordinance or the requirements of any insurance underwriting or

Currently, Section 7.01(a) reads as follows:

"All Condominium Units shall be used exclusively for residential purposes and for occupancy by a single family..."

Our bylaws were amended at our October 6, 2014 association meeting and now read as follows:

Section 7.01(a) All Condominium Units shall be used exclusively for residential purposes and for occupancy by owners as principal residences or second homes. Any exception to this requirement is subject to unanimous approval of all Members of the Association.

rating bureau.

(d) No nuisance shall be permitted and no waste shall be committed in any Unit, Common Areas or Limited Areas.

(e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls or balcony of any Building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or be placed upon the exterior wall or roofs or any other parts of any Building without the prior consent of the Board. Interior window and door drapes or coverings shall be of a neutral translucent color and texture or of the same color of the exterior facade surrounding the window or door.

(f) Nothing shall be done or permitted in any Unit that will impair the structural integrity of any Building or that would structurally change any Building or that would affect the exterior appearance of any Unit, except as otherwise provided in the Declaration or these By-Laws. No Unit shall be used in any unlawful manner or in any manner that might cause injury to the reputation of Merrill Street Townhomes or that might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of and loud speakers, electrical equipment, amplifiers or other equipment or machines or loud person.

(g) The Common Areas and Limited Areas shall be kept free and clear of rubbish, debris and other unsightly materials. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the Common Area or Limited Areas.

(h) All Owners, guests, tenants or invitees, and all occupants of any Condominium Unit or other Persons entitled to use the same and to use and enjoy the Common Areas and Limited Areas or any part thereof, shall 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 Units, the Common Areas and Limited Areas; including but not limited to rules relating to the keeping of animals, the parking or storage of vehicles or trailers and other matters incidental to the use of the Common Areas and Limited Areas.

(i) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas or Limited Areas, except with express permission from the Board.

(j) No Owner shall be allowed to place or cause to be placed in the lobbies, vestibules, stairways, hallways or areas of a similar nature and used for a similar purpose, both Common Areas and Limited Areas, any furniture or objects of any kind, without the consent of the Board.

(k) All garbage, trash and refuse shall be stored in appropriate containers inside

the Unit or in an inconspicuous place within the Limited Area appurtenant thereto and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. In the event trash chutes are provided within the Building then such chute shall be used by the Owners in a clean and sanitary manner that does not clutter the flooring and discharge point into the chute. In the event such garbage, trash or refuse is too bulky to place within the trash chute then garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collection as are designated by the Board.

(l) No "for sale," "for rent" or "for lease" signs or other advertising display shall be maintained or permitted on the property without the prior consent of the Board except that the right to place or display such signs is reserved to Declarant and the Association with respect to unsold or unoccupied Condominium Units.

(m) Common Areas and Limited Areas shall be used only for the purposes for which they are designed and intended, and shall be used subject to the provisions of the Declaration, these By-Laws and the rules and regulations from time to time adopted by the Board.

(n) Animals. No animals shall be kept or maintained on any lot except domestic, household pets traditionally kept in individual residences throughout the state of Indiana. All such pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of dogs or vicious animals shall constitute a nuisance and may be ordered by the Association to be removed from the property. No more than one dog may be kept in each Unit. There may be no more than two cats kept in each Unit. No pets may be left unattended on the Unit's patio. It is the homeowner's responsibility to dispose of any waste left in the common areas by a pet.

(o) The Association shall have no right of first refusal to purchase any Unit which an Owner wishes to sell and an Owner may sell his/her Unit free of any such restriction.

Section 7.02. Right of Board to Adopt Rules and Regulations. The Board may promulgate such rules and regulations regarding the operation of the Property, including but not limited to the use of the Common Areas and Limited Areas, as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board. The Board shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Owners.

Section 7.03. Enforcement. The Declarant, the Association and any of its members shall have the right of enforcement of all restrictions and regulations adopted pursuant to this Article VII. Any costs including reasonable attorneys fees may be recovered from any Owner for violation thereof; however, any reservation of right to the use of summary abatement or similar means to enforce restrictions against a Unit or its use shall require that judicial proceedings be instituted before any items of

construction can be altered or demolished.

ARTICLE VIII

Insurance

Section 8.01. Coverage. The Board of Directors on behalf of the Owners shall obtain, maintain and pay the premiums upon, as a Common Expense, and keep in full force and effect at all times the following insurance coverage underwritten by companies duly authorized to do business in Indiana:

(a) Casualty or physical damage insurance In an amount equal to the full replacement cost of all buildings and property owned by the Association with "agreed amount" and "inflation guard" endorsements, without deduction or allowance for depreciation (as determined annually by the Board with the assistance of the insurance company affording such coverage), such coverage to afford protection against at least the following:

OK
12 months
(i) Loss or damage by fire or other hazards covered by the standard extended coverage endorsement together with coverage for Common Expenses with respect to Units, during any period of repair or construction;

OK
(ii) such other risks as are customarily covered with respect to projects similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm, water damage, machinery, explosion or damage, and such other insurance as the Board may from time to time determine.

OK
(b) Comprehensive public liability insurance in such amounts as may be considered appropriate by the Board including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile, and any and all other liability incident to the ownership and/or use of the Property or any portion thereof. Such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under the insurance policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas and Limited Areas, and legal liability arising out of lawsuits related to employment contracts of the Association.

(i) Such liability insurance shall contain no provisions relieving the insurer from liability for loss occurring while the hazard is increased, whether or not within the knowledge or control of the Board, or because of any breach of any warranty or condition or any other act or neglect by the Board or any Owner or any other Person under either of them.

(ii) Such liability insurance shall provide that such policy may not be cancelled or substantially modified (whether or not requested by the Board) except by the insurer giving at least thirty (30) days prior written notice thereof to the Board, the Insurance Trustee, all Owners, all Mortgagees and every other Person in interest who shall have requested such notice of the insurer.

(c) Workmen's compensation and employer's liability insurance in respect to employees of the Association in the amounts and in the form necessary to comply with any applicable law.

(d) Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Board of Directors.

The provisions of this Section 8.01 shall not be construed to limit the power or authority of the Board to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association or the Board may deem appropriate from time to time.

Section 8.02. Definition. As used in Section 8.01, the term "all buildings and improvements" means, without limitation, the Common Areas, Limited Areas, and the standard separation walls, fixtures, pipes, wires, conduits and installations installed in Units as of the date of initial sale by Declarant, as shown on the Plans as amended from time to time, and replacements thereof, but does not mean any fixtures, alterations, installations or additions in or to a Unit made by an individual Owner of that Unit and not shown on the Plans. Fixtures, equipment and other personal property inside the Unit as shown on the Plans that will be financed by a first mortgage shall be included, whether or not such property is part of the Common Area.

Section 8.03. Form. Casualty insurance shall be carried in a form or forms naming as the insured the Association for the use and benefit of the Owners according to the loss or damage to their respective Units and Percentage Interest and payable in case of loss to the Insurance Trustee. Every such policy of insurance shall:

(a) Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Owner;

(b) contain no provisions relieving the insurer from liability for loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board or any Owner or any other Person under either of them;

(c) Provide that such Policy may not be cancelled or substantially modified (whether or not requested by the Board) except by the insurer giving at least thirty (30)

days' prior written notice thereof to the Board, the Insurance Trustee, all Owners, all Mortgagees and every other Person in interest who shall have requested such notice of the insurer;

(d) contain a waiver by the insurer of any right of subrogation to any right of the Board or Owners against any of them or any other Person under them;

(e) provide that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Paragraph 10 of the Declaration;

(f) provide that the policy is primary in the event an Owner has other insurance covering the same loss.

(g) contain a standard mortgagee clause which shall

(i) provide that any reference to a mortgagee in such policy shall mean and include any Mortgagee, whether or not named therein and, where applicable, name as mortgagee Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or their respective servicers, successors and assigns;

(ii) provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or any Owner, or any Persons under any of them;

(iii) waive any provision invalidating such mortgagee clauses by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, and requirement that the Mortgagee pay and premium thereon, and any contribution clause;

(iv) provide that without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Insurance Trustee; and

Public liability and property damage insurance shall be carried in a form or forms naming as the insured the Board of Directors as trustee for each individual Owner, the Association, the Board of Directors, the Managing Agent, and any Person acting on behalf of the Association, and providing for payment of any proceeds therefrom to the Insurance Trustee. The Board shall promptly upon effecting such insurance deposit with each Owner a current certificate of such insurance, without prejudice to the right of and Owner to maintain additional public liability insurance for his Unit.

Section 8.04. Allocation of Insurance Proceeds. In the event of damage or destruction by fire or other cause to any part of the Property covered by insurance

written in the name of the Board as trustee for Owners and their Mortgagees, the following provisions shall apply:

(a) Common Areas and Limited Areas. Proceeds on account of damage to Common Areas and Limited Areas shall be allocated among the Owners in accordance with their respective Percentage Interests.

(b) Condominium Units. Proceeds on account of damage to Units shall be allocated as follows:

(i) If the Building in which the damaged Unit is located is to be restored, insurance proceeds shall be allocated to such Unit in the proportion that the cost of Restoration of such Unit bears to the cost of Restoration to all damaged Units, such cost to be determined by the Board. In determining such cost, the Board shall not take into consideration the cost of repairing any items specifically excluded from insurance coverage pursuant to the provisions of Section 8.02.

(ii) If the Building in which the damaged Unit is located is not to be restored, insurance proceeds shall be allocated to such Unit in accordance with the agreed amount of the replacement cost of such Unit.

(iii) In the event a mortgage endorsement has been issued with respect to a particular Unit, the amount of the insurance proceeds allocated to the Owner of such Unit shall be held in trust for the Mortgagee and the Owner as their interests may appear, but no Mortgagee shall have the right to determine or participate in the determination as to whether or not any damaged property shall be restored or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Owner and Mortgagee pursuant to the provisions of these By-Laws.

Section 8.05. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the Owners and their Mortgagees as their respective interests appear, in the following manner:

(a) Expense of Trust. All expenses of the Insurance Trustee shall be first paid or provision made therefor.

(b) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof pursuant to the provisions of Article IX. Any proceeds remaining after defraying such costs shall be retained by the Association and added to the reserve for replacements established pursuant to the reserve for replacements established

pursuant to Section 6.04, except that, with respect to a Unit in which there was damage to items excluded from insurance coverage pursuant to Section 8.02, the Owner of such Unit shall be entitled to receive out of such remaining proceeds his pro-rata share thereof determined according to his Percentage Interest.

(c) Failure to Reconstruct or Repair. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in accordance with Section 21 of the Act.

(d) Certificate. In making distributions to Owners and their mortgagees, the Insurance Trustee may rely upon a certificate issued by the Board as to the names of the Owners and their respective shares of the distribution, and, with respect to the names of mortgagees, may rely upon a certificate from an attorney-at-law who, or a title insurance company which, has examined the Mortgage Records in the office of the Recorder of Marion County, Indiana, as to the names of the holders of mortgages of record.

Section 8.06. Association as Owner's Agent. The Association, acting by its Board of Directors, is hereby irrevocably appointed agent for each Owner and for each Owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Property to negotiate all claims arising under insurance policies purchased by the Board, and to execute and deliver releases upon the payment of claims.

Section 8.07. Individual Policies - Recommendation of Declarant. Any Owner or Mortgagee may obtain additional insurance (including a "condominium unit-owner's endorsement" for acquired at the expense of the Lender) at his own expense. Such insurance shall provide that it shall be without contribution as against the insurance maintained by the Board. Such insurance shall contain the same waiver of subrogation provision as that set forth in Section 8.03(d). If an insured loss is sustained on the Property and the amount of insurance proceeds that would otherwise be payable to the Insurance Trustee is reduced due to proration of insurance purchased pursuant to this Section, the Owner shall assign the proceeds of the personally purchased insurance, to the extent of the amount of the reduction, to the Insurance Trustee to be distributed as provided in Section 8.05. The Declarant recommends that each Owner obtain, in addition to the insurance hereinabove provided to be obtained by the Board of Directors, a policy insuring against loss or damage to personal property used or incidental to the occupancy of the Unit, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "condominium unit owner's endorsement" covering losses to improvements and betterments to the Unit made or acquired at the expense of the Owner.

Section 8.08. Certificates. Shall cause to be issued to each certificate of insurance evidencing Association. Upon request, the Association Owner and each Mortgagee a certificate insurance carried by the Association.

ARTICLE IX

Damage or Destruction

Section 9.01. Procedure for Restoration or Repair. In the event of damage or destruction to the Common Property by fire, other cause, or as a result of condemnation, and Restoration or repair of the Property is required or authorized pursuant to Paragraph 10 or Paragraph 11 of the Declaration, such Restoration or repair shall be undertaken in accordance with the provisions of this Article.

Section 9.02. Estimate of Cost. Promptly after the occurrence of the damage or destruction to the Property that the Association has the responsibility to restore or repair, the Board shall obtain reliable and detailed estimates of the cost to restore or repair. In the event of damage after the Applicable Date to any structure exceeding \$25,000.00, the Board shall retain the services of an architect to supervise the Restoration or repair and the disbursement of the construction funds.

Section 9.03. Plans and Specifications. Any Restoration or repair must be either substantially in accordance with the Plans or according to plans and specifications approved by a Majority of Owners, and if damaged Property contains any Condominium Units, by all of the Owners of the damaged Condominium Units, which approval shall not be unreasonably withheld.

Section 9.04. Sealed Bids. After the Applicable Date, the Board shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who may be required to provide a full performance and payment bond for the Restoration or repair of the damaged Property.

Section 9.05. Responsibility. If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of an Owner, then the Owner shall be responsible for the cost of Restoration and repair unless such damage is specifically covered by the insurance purchased by the Board, in which event the Association shall be responsible for said costs.

Section 9.06. Construction Funds. The funds for payment of the costs of Restoration or repair, which shall consist of the proceeds of insurance held by or payable to the Insurance Trustee, such amounts from the reserve for replacements as are authorized by the Board for the purpose of Restoration or repair, and the funds collected by the Board from Special Assessments against Owners, shall be deposited with the Insurance Trustee who shall apply or disburse the same in payment of the costs of Restoration or repair as provided in this Article.

Section 9.07. Certificates. The Insurance Trustee may rely upon a certificate from the Board to determine whether or not the damaged Property is to be restored or repaired and upon a certificate from the architect employed by the Board to supervise the Restoration or repair, or, if such Restoration or repair is undertaken prior to the Applicable Date, from Declarant or the Board, with respect to the payments to be made

to contractors undertaking the Restoration and/or repair.

Section 9.08. Insurance Trustee. The Insurance Trustee shall not be liable for payment of insurance premiums, the renewal or the sufficiency of insurance policies, nor for the failure to collect any insurance proceeds or condemnation awards. The duty of the Insurance Trustee shall be to receive such proceeds or awards as are paid and to hold the same in trust for the purposes herein and in the Declaration stated, and for the benefit of the Owners and their Mortgagees as herein and in the Declaration provided.

ARTICLE X

Fiscal Management

Section 10.01. Fiscal Year. The fiscal year of the Association shall be fixed by resolution of the Board of Directors.

Section 10.02. Books of Account. Books of account of the Association shall be kept under the direction of the Treasurer in accordance with good accounting practices, and shall include a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses.

Section 10.03. Inspection. All books, records and accounts, and all vouchers accrediting the entries made thereupon, shall be available for examination by an Owner or a Mortgagee or any duly authorized agent or attorney of an Owner or Mortgagee at any time during normal business hours for purposes reasonably related to his interest as an Owner.

Section 10.04. Auditing. Unless otherwise agreed by a Majority of Owners, at the close of each fiscal year, the books and accounts of the Association shall be audited by two volunteer Members selected by the Board, whose report shall be prepared and certified in accordance with generally accepted auditing standards.

Section 10.05. Annual Financial Statement. Prior to the annual meeting of the Association, the Board of Directors shall cause to be prepared and delivered to the Owners an annual financial statement, certified to by the Treasurer, showing all income and all disbursements of the Association during the previous fiscal year. To the extent possible, such financial statement shall be based upon the report prepared pursuant to Section 10.04. The requirements of this Section 10.05 shall be satisfied if the Board causes to be delivered to each Owner prior to the annual meeting of the Association a copy of the report prepared pursuant to Section 10.04.

Section 10.06. Execution of Association Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President, and all checks shall be executed on behalf of the Association by such officers, agents, or other individuals as are from time to time so authorized by the Board.

ARTICLE XI


Amendment to By-Laws

Section 11.01. Procedure. Subject to any contrary, overriding or superseding provisions set forth herein or in the Declaration, these By-Laws may be amended in the same manner, and subject to the same limitations and requirements as amendments to the Declaration, as set forth in Paragraph 14 of the Declaration. Amendments to these By-Laws shall be considered as amendments of the Declaration and shall be recorded in the Office of the Recorder of Marion County, Indiana, as required by the Declaration and the Act. Notwithstanding anything to the contrary contained herein or in the Declaration there shall be no amendment of the Declaration or these By-Laws prior to the Applicable Date without the consent and approval of Declarant.

Section 11.02. Amended and Restated By-Laws. An amended and restated By-Laws, containing the original By-Laws and all amendments theretofore made, may be executed any time or from time to time by a majority of the then Board of Directors and shall, upon recording in the office of the Recorder of Marion County, Indiana, be conclusive evidence of all amendments contained therein and may thereafter be referred to in lieu of the original By-Laws and the various amendments thereto.

ARTICLE XII

Mortgages

 Section 12.01. Notice to Association. Any Owner who places a first mortgage lien upon his Unit or the Mortgagee shall notify the Secretary thereof and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, these By-Laws or the Act shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in 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 the Declaration, these By-Laws or the Act shall be required and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled to vote by virtue of the Declaration, these By-Laws, the Act, or proxy granted to such Mortgagee in connection with the mortgage.

✓ Section 12.02. Notices to Mortgagees. The Association shall promptly provide to any Mortgagee of whom the Association has been provided notice under Section 12.01 of these By-Laws notice of any of the following:

(a) Any proposed termination of the Regime or any condemnation or casualty loss that affects either a material portion of Merrill Street Townhomes or the Unit

securing its mortgage;

(b) Any delinquency in the payment of Regular or Special Assessments owed by the Owner of any Unit on which said Mortgagee holds a mortgage, if said delinquency continues for more than sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action that requires the consent of a specified percentage of Mortgagees; and,

(e) Any proposed amendment of the Organizational Documents effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interests in the Common Areas or Limited Areas appertaining to any Unit or the liability for Common Expenses appertaining thereto, (iii) the Percentage Vote appertaining to a Condominium Unit or (iv) the purposes for which any Unit or the Common Areas are restricted.

Section 12.03. Notice of Unpaid Assessments. The Association shall, upon request of the 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 forth the amount of the unpaid Assessments against the Unit, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Unit shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement or as such Assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 6.02 hereof.

Section 12.04. Financial Statements. Upon the request of any Mortgagee, the Association shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Association pursuant to Section 10.04 and 10.05 of these By-Laws.

ARTICLE XIII

Section 13.01. Membership. Each Member shall automatically become a member of the Association upon delivering of title to a Condominium Unit. Such membership shall be nontransferable and membership shall automatically transfer to the new owner.

Section 13.02. Personal Interests. No Member shall have or receive any earnings from the Association, except a Member who is an officer, director or employee of the Association may receive fair and reasonable compensation for his services as officer, director or employee, if permitted as described in Section 3.09, and a Member may also receive principal and interest on monies loaned or advanced to the Association as provided in the Statute.

IN WITNESS WHEREOF, the undersigned has caused this Code of By-Laws to be executed the day and year first above written.

"DECLARANT"

Charles V. Loring
(Signature)

Charles V. Loring

(Printed)

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Charles V. Loring, and acknowledged the execution of the foregoing Code of By-Laws of Merrill Street Townhomes and of Merrill Street Townhomes Owners Association, Inc., as of his voluntary act and deed.

Witness my hand and Notarial Seal, this 9th day of JUNE, 2004.

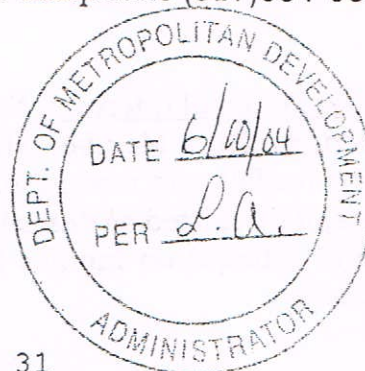
Robert P. Hurler
Notary Public - Signature

ROBERT P. HURLER
Notary Public - Printed

My County of Residence:

MARION

This instrument was prepared by C. Jefferson Cragen, Attorney at Law, 244 North College Avenue, Indianapolis, IN 46202. Telephone (317)634-6555.



INSTRUMENT APPROVED
BY
CENTER TOWNSHIP ASSOCIATES