

8

12

FOURTH AMENDMENT TO CONDOMINIUM DECLARATION

The undersigned, being more than three-fourth (3/4) of the owners ("Unit Owners") of One West Condominium ("Condominium"), a Condominium in Marion County, Indiana established by a Declaration of Condominium which was recorded as instrument No. 85-46723 in the Office of the Recorder of Marion County, Indiana (the "Declaration"), which Declaration was amended by a Supplemental Declaration of Condominium recorded as Instrument No. 90-38765 in the Office of said Recorder, and further amended by that certain Second Amendment to Condominium Declaration recorded as Instrument No. 93-0192009 in the Office of said Recorder and further amended by that certain Third Amendment to Condominium Declaration recorded as Instrument No. 98-0068872 in the Office of Said Recorder hereby further amend the Declaration as follows:

- The Unit Owners agree that in addition to the assessments provided for under the Declaration, One West Owners Association, Inc. (the "Association"), as remitting agent for the Unit Owners, shall collect monthly from certain Unit Owners those Unit Owners share of the payment on the Purchase Money Mortgage (the "Mortgage"), granted by the Unit Owners to ONB Bloomington (FSB), the successor to First United Savings Bank, F.S.B. in the Sum of ONE HUNDRED SIXTY-SIX AND FIFTY-TWO/100 Dollars (\$ 166.52) unless such sum has changed pursuant to the terms of such Mortgage and the Note Secured thereby. Such sums shall be collected separate from the assessments against each Unit which are due and payable that month. The Unit Owners hereby acknowledge that Urban L. Uebelhoer and Irma C. Uebelhoer, the owners of Unit No. 103, Irwin R. Rose and Jill Rose, the owners of Unit No. #303, Conrad A. Solinger and Patsy M. Solinger, the owners of Unit # 302, and Robert P. Cronin and Bette Cronin, the owners of Unit #204 have prepaid all amounts due with respect to such Unit Owners shares of the Mortgage, and that no further amounts shall be due with respect to the Mortgage from the Uebelhoers, the Roses, the Solingers and the Cronins, or against any future owners of Units 103, 303, 302 and 204 of the Condominium.
- All other terms and conditions of the Declarations, as amended or modified, shall remain unchanged and in full force and effect.

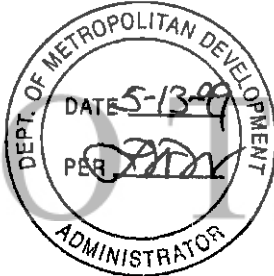
MARION COUNTY RECORDER  
1999-05-13  
OFFICE FOR THE RECORDER

05/13/99 11:54AM MARION COUNTY RECORDER  
Inst # 1999-0093891  
CJP 22.00 PAGES: 12

RECEIVED

MAY 13 1999

WASH. TWP. ASSESSOR



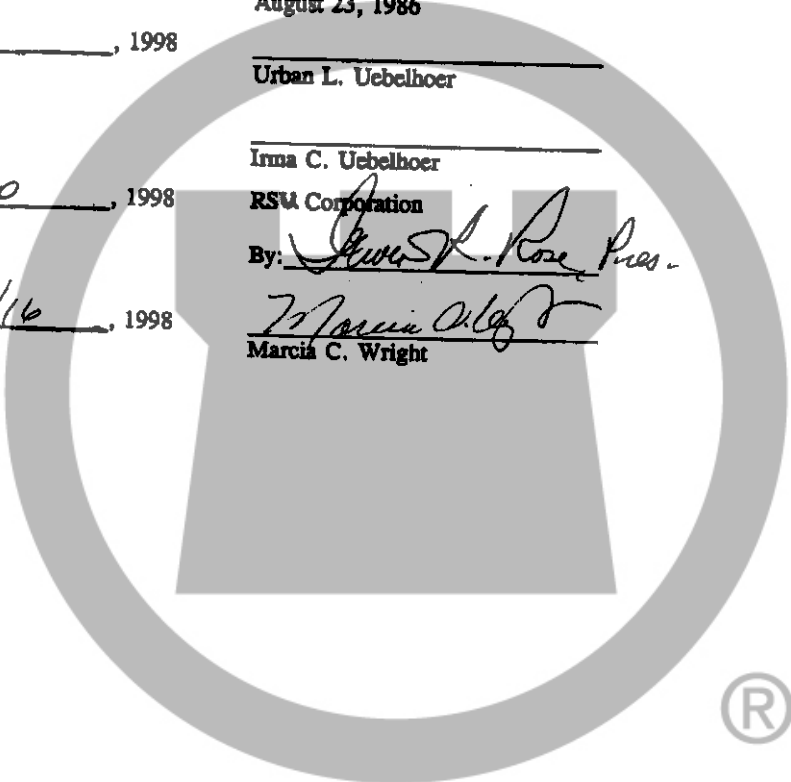
CHICAGO TITLE

IN WITNESS WHEREOF, each of the Unit Owners of Condominium Units in One West Condominium, who are all the Co-Owners of the Annexed Property, have executed this ~~Third~~ <sup>Fourth</sup> Amendment to Condominium Declaration on the date indicated by their names.

UNIT NO.	DATE	UNIT-OWNER(S)
101	<u>9/28</u> , 1998	<u>Ruth M. Shane TFEK</u> Ruth M. Shane, Trustee of the Ruth M. Shane Revocable Inter Vivos Trust dated August 25, 1986
102	_____, 1998	_____ Donna L. Nelson, Successor Trustee of the Alvin L. Cohen Revocable Trust dated August 23, 1986
103	<u>10/9-</u> , 1998	<u>Urban L. Uebelhoer</u> Urban L. Uebelhoer
104	_____, 1998	<u>Irma C. Uebelhoer</u> Irma C. Uebelhoer
201	_____, 1998	RSU Corporation By: _____
202	_____, 1998	<u>Marcia C. Wright</u> Marcia C. Wright
203	<u>10-6-98</u> , 1998	<u>Donald T. Hannin</u> Donald T. Hannin
204	<u>10-6-98</u> , 1998	<u>Nancy H. Hannin</u> Nancy H. Hannin
		<u>Maurice E. Craig</u> Maurice E. Craig
		<u>Dorothy Anne Craig</u> Dorothy Anne Craig
		<u>Robert P. Cronin</u> Robert P. Cronin
		<u>Bette Cronin</u> Bette Cronin

IN WITNESS WHEREOF, each of the Unit Owners of Condominium Units in One West  
Condominium, who are all the Co-Owners of the Annexed Property, have executed this ~~Third~~  
Amendment to Condominium Declaration on the date indicated by their names. <sup>Fourth</sup>

<u>UNIT NO.</u>	<u>DATE</u>	<u>UNIT-OWNER(S)</u>
101	_____, 1998	<u>Ruth M. Shane, Trustee of the Ruth M. Shane Revocable Inter Vivos Trust dated August 25, 1986</u>
102	_____, 1998	<u>Donna L. Nelson, Successor Trustee of the Alvin L. Cohen Revocable Trust dated August 23, 1986</u>
103	_____, 1998	<u>Urban L. Uebelhoer</u>
104	<u>10/20</u> , 1998	<u>Irma C. Uebelhoer</u> <u>RSU Corporation</u> By: <u><i>Steven A. Rose Pres.</i></u>
201	<u>10/16</u> , 1998	<u><i>Marcia C. Wright</i></u> <u>Marcia C. Wright</u>



CHICAGO TITLE

IN WITNESS WHEREOF, each of the Unit Owners of Condominium Units in One West  
 Condominium, who are all the Co-Owners of the Annexed Property, have executed this ~~Third~~  
 Amendment to Condominium Declaration on the date indicated by their names. Fourth

UNIT NO.	DATE	UNIT-OWNER(S)
101	_____ , 1998	Ruth M. Shane, Trustee of the Ruth M. Shane Revocable Inter Vivos Trust dated August 25, 1986
102	_____ , 1998	Donna L. Nelson, Successor Trustee of the Alvin L. Cohen Revocable Trust dated August 23, 1986
103	_____ , 1998	Urban L. Uebelhoer
104	10/20 _____ , 1998	Irma C. Uebelhoer RSM Corporation By: <i>Steven H. Rose, Pres.</i>
201	_____ , 1998	Marcia C. Wright
202	10-12- _____ , 1998	<i>Donald T. Hannin</i> Donald T. Hannin <i>Nancy H. Hannin</i> Nancy H. Hannin
203	_____ , 1998	Maurice E. Craig
204	_____ , 1998	Dorothy Anne Craig Robert P. Cronin Bette Cronin



STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Donna L. Nelson, Successor Trustee of the Alvin L. Cohen Revocable Trust dated August 25, 1986, who acknowledged the execution of the foregoing ~~Third~~ <sup>Fourth</sup> Amendment to Condominium Declaration.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Notary Public

My County of Residence:

\_\_\_\_\_  
Printed Name

STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Urban L. and Irma C. Uebelhoer, husband and wife, who acknowledged the execution of the foregoing ~~Third~~ <sup>Fourth</sup> Amendment to Condominium Declaration.

Witness my hand and Notarial Seal this 9th day of October, 1998

My Commission Expires:

5/31/00

Ethel T. Folger  
Notary Public

Ethel T. Folger

\_\_\_\_\_  
Printed Name

My County of Residence:

Hamilton



STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Irwin Rose, the President of RSM Corporation, who acknowledged the execution of the foregoing ~~Third~~ <sup>Fourth</sup> Amendment to Condominium Declaration on behalf of such Corporation.

Witness my hand and Notarial Seal this 20th day of October, 1998

My Commission Expires:

5/31/00

*Ethel T. Folger*  
Notary Public

Ethel T. Folger  
Printed Name

My County of Residence:

Hamilton

STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Donald T. and Nancy H. Hannin, husband and wife, who acknowledged the execution of the foregoing ~~Third~~ <sup>Fourth</sup> Amendment to Condominium Declaration.

Witness my hand and Notarial Seal this 12th day of October, 1998

My Commission Expires:

5/31/00

*Ethel T. Folger*  
Notary Public

Ethel T. Folger  
Printed Name

My County of Residence:

Hamilton

STATE OF INDIANA )  
 ) SS::  
COUNTY OF MARION )

Before me, a Notary Public in and for the said County and State, personally appeared Marcia C. Wright, who acknowledged the execution of the foregoing Fourth Amendment to Condominium Declaration.

Witness my hand and Notarial Seal this 16th day of October, 1998.

My Commission Expires:  
5/31/00

Ethel T. Folger  
Notary Public

Ethel T. Folger  
Printed Name

My County of Residence:  
Hamilton



CHICAGO TITLE



STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Maurice E. and Dorothy Anne Craig, husband and wife, who acknowledged the execution of the foregoing ~~THIRD~~ Amendment to Condominium Declaration.  
Fourth

Witness my hand and Notarial Seal this 6th day of October, 1998

My Commission Expires:  
5/31/00

Ethel T. Folger  
Notary Public

Ethel T. Folger  
Printed Name

My County of Residence:  
Hamilton

STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Robert P. and Bette Cronin, who acknowledged the execution of the foregoing ~~THIRD~~ Amendment to Condominium Declaration.  
Fourth

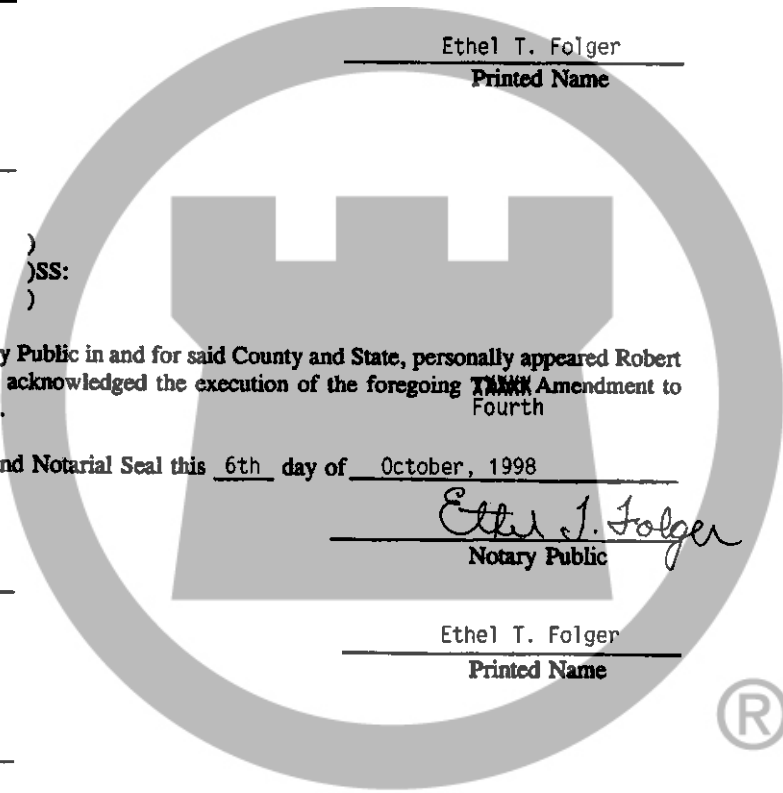
Witness my hand and Notarial Seal this 6th day of October, 1998

My Commission Expires:  
5/31/00

Ethel T. Folger  
Notary Public

Ethel T. Folger  
Printed Name

My County of Residence:  
Hamilton



STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Robert and Susan T. Polack, husband and wife, who acknowledged the execution of the foregoing ~~XXXX~~ Amendment to Condominium Declaration. <sup>Fourth</sup>

Witness my hand and Notarial Seal this 6th day of October, 1998

My Commission Expires:  
5/31/00

Ethel T. Folger  
Notary Public

Ethel T. Folger  
Printed Name

My County of Residence:  
Hamilton

STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Conrad A. and Patsy M. Solinger, husband and wife, who acknowledged the execution of the foregoing ~~XXXX~~ Amendment to Condominium Declaration. <sup>Fourth</sup>

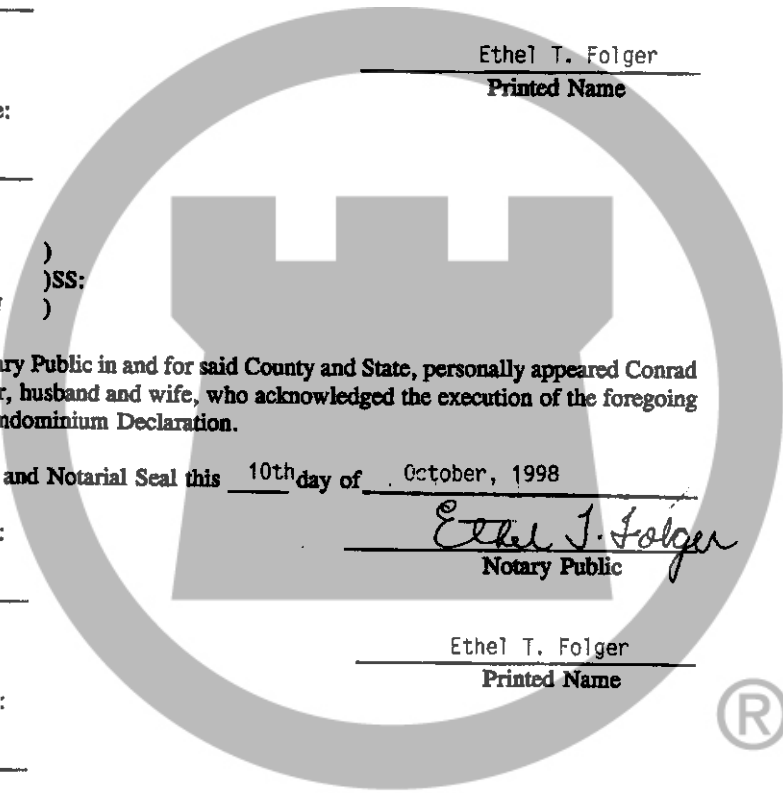
Witness my hand and Notarial Seal this 10th day of October, 1998

My Commission Expires:  
5/31/00

Ethel T. Folger  
Notary Public

Ethel T. Folger  
Printed Name

My County of Residence:  
Hamilton



STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Irwin R. and Jill Rose, husband and wife, who acknowledged the execution of the foregoing ~~XXXX~~ Amendment to Condominium Declaration. <sup>Fourth</sup>

Witness my hand and Notarial Seal this 20th day of October, 1998

My Commission Expires:

5/31/00

Ethel T. Folger  
Notary Public

Ethel T. Folger  
Printed Name

My County of Residence:

Hamilton

STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Gayle C. Crick, who acknowledged the execution of the foregoing ~~XXXX~~ Amendment to Condominium Declaration. <sup>Fourth</sup>

Witness my hand and Notarial Seal this 1st day of October, 1998

My Commission Expires:

5-2-99

Patricia G. Gordon

PATRICIA G. GORDON Public  
MARION COUNTY  
MY COMMISSION EXPIRES  
MAY 2, 1999


Printed Name

My County of Residence:

Marion



One West Owners Association, Inc.  
an Indiana corporation


  
By: Robert Polack  
President

STATE OF INDIANA    )  
                          )SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said the State of Indiana, and a resident of  
Hamilton County, personally appeared Robert Polack, the President of One West  
Owners Association, Inc., an Indiana corporation, who acknowledged the execution of the  
foregoing ~~Third~~ <sup>Fourth</sup> Amendment to Condominium Declaration for and on behalf of said corporation.

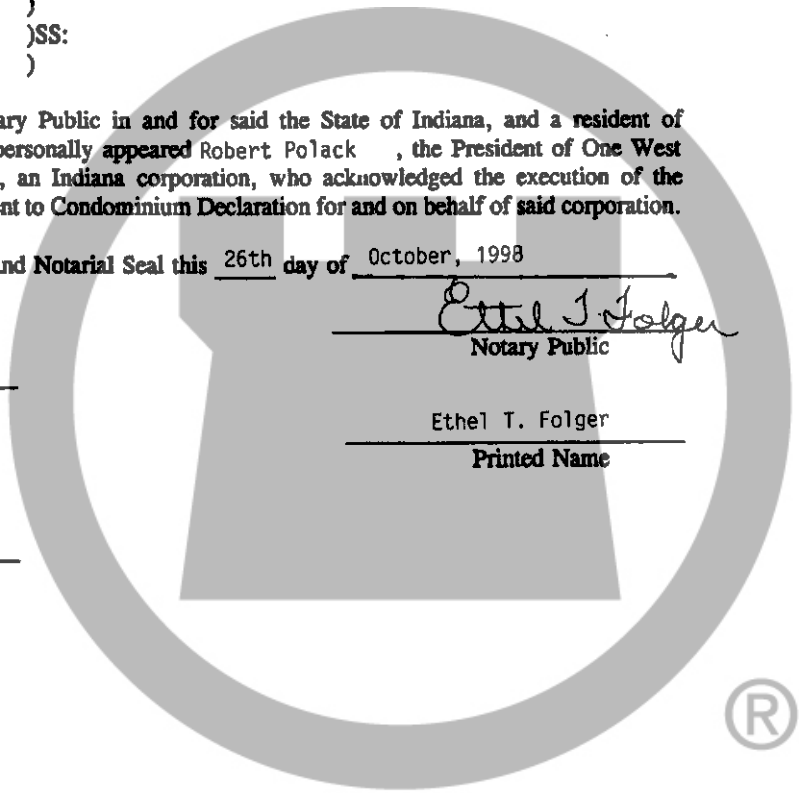
Witness my hand and Notarial Seal this 26th day of October, 1998

My Commission Expires:  
5/31/00

  
Notary Public

Ethel T. Folger  
Printed Name

My County of Residence:  
Hamilton



14

FIFTH AMENDMENT TO CONDOMINIUM DECLARATION

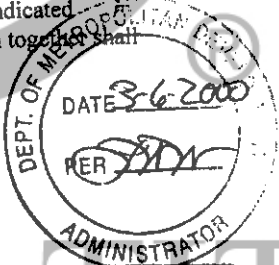
The undersigned, being more than three-fourths (3/4) of the owners ("Unit Owners") of One West Condominium ("Condominium"), a Condominium in Marion County, Indiana established by a Declaration of Condominium which was recorded as Instrument No. 85-46723 in the Office of the Recorder of Marion County, Indiana (the "Declaration") was amended by a Supplemental Declaration of Condominium recorded as Instrument No. 90-38765 in the Office of said Recorder, and further amended by that certain Second Amendment to Condominium Declaration recorded as Instrument No. 93-0192009 in the Office of said Recorder, and further amended by that certain Third Amendment to Condominium Declaration recorded as Instrument No 98-0068872 in the Office of Said Recorder, and further amended by that certain Fourth Amendment to Condominium Declaration recorded as Instrument No. 1999-0093891 in the Office of said Recorder, hereby further amend the Declaration as follows:

1. The Unit Owners agree that in addition to the assessments provided for under the Declaration, One West Owners Association, Inc., (the "Association"), as remitting agent for the Unit Owners, shall collect monthly from certain Unit Owners those Unit Owners share of the payment on the Purchase Money Mortgage (the "Mortgage"), granted by the Unit Owners to the Old National Bank, the successor to First United Savings Bank, F.S.B. in the Sum of One Hundred Sixty-six and fifty-two/100 dollars (\$166.52) unless such sum has changed pursuant to the terms of such Mortgage and the Note Secured thereby. Such sums shall be collected separate from the assessments against each Unit which are due and payable that month. The Unit Owners hereby acknowledge that Lester and Dorothy McKinney, the owners of Unit #101 and R S U Corporation, the owner of Unit #104 have prepaid all amounts due with respect to such Unit Owners share of the Mortgage, and that no further amounts shall be due with respect to the Mortgage from Lester and Dorothy McKinney or against any future owner of Unit #101 and R S U Corporation or against any future owners of Unit #104.

2. All other terms and conditions of the Declaration, as amended or modified, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, each of the Unit Owners of Condominium Units in One West Condominium, who are all Co-Owners of the Annexed Property, have executed this Fifth Amendment to Condominium Declaration on the date indicated opposite their names. This document may be signed in counterparts, which together shall constitute one and the same document..

This document prepared by Steven M Pecar,  
Dann Pecar Newman and Kleiman, Attorney at Law  
One American Square, Suite 2300  
Indianapolis, IN 46282



APPROVED 3/6/2000  
WASHINGTON TOWNSHIP ASSESSOR  
BY: John Board Real Estate Deputy

Inst # 2000-0035348  
03/06/00 03:05PM MARION COUNTY RECORDER  
JUN 36 00 PAGES: 14

MARTHA A WOODRICK  
215 517 713-50

CHICAGO TITLE

Exhibit A

A part of Lots 1 to 8, both inclusive, in McCulloch and Hahn's North Meridian Street Addition to the City of Indianapolis, the plat of which is recorded in Plat Book 19, page 164, in the Office of the Recorder of Marion County, Indiana described as follows:

Beginning at the Southeast corner of said Lot 8; thence South 88°41'51" West 145.38 feet along the South line of said Lot 8; thence North 01°18'09" West 65.00 feet; thence North 43°30'15" West 114.70 feet to the North line of said Lot 7; thence South 88°41'55" West 60.01 feet along said North line; thence North 00°00'00" East 30.00 feet; thence North 27°58'17" East 100.51 feet; thence North 00°00'00" East 141.00 feet; thence North 18°03'38" West 48.38 feet; thence North 00°00'00" East 150.00 feet to the North line of said Lot 1; thence North 88°41'54" East 251.69 feet along said North line to the Northeast corner of said Lot 1; thence South 00°11'24" East 605.00 feet along the East line of said lots to the Point of Beginning and containing 139,390 square feet, (3.200 acres), more or less.



CHICAGO TITLE

One West Owners' Association, Inc.  
an Indiana Corporation

By Susan T. Polack  
Susan T. Polack, President

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

Before me a Notary Public in and for the said County and State, personally appeared Susan T. Polack, the President of One West Owners' Association, Inc., an Indiana Corporation, who acknowledged the execution of the foregoing Fifth Amendment to Condominium Declaration for and on behalf of said Corporation.

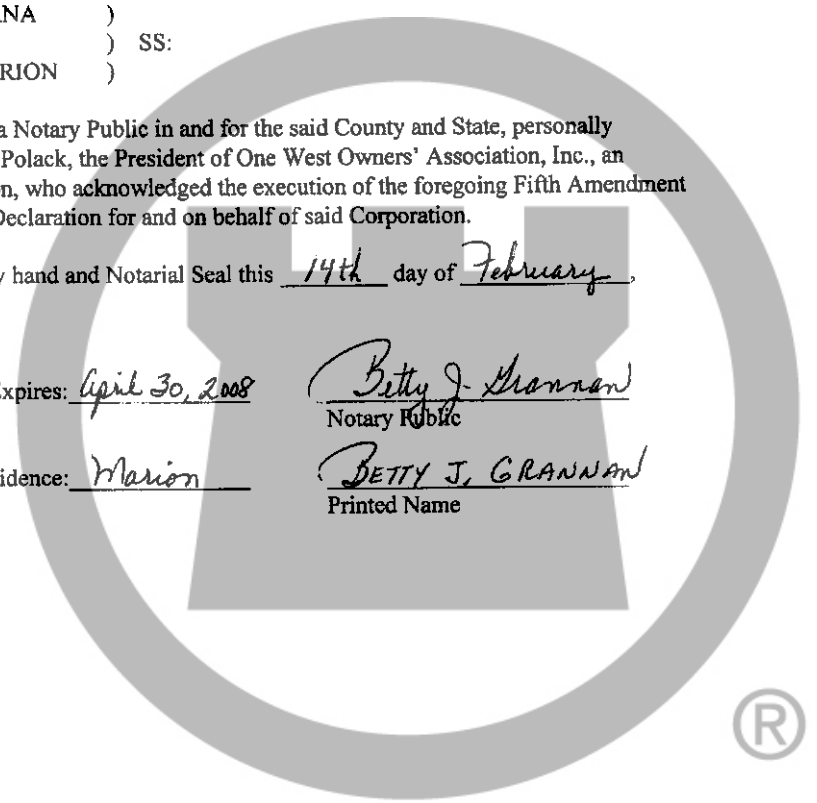
Witness my hand and Notarial Seal this 14th day of February,  
2000.

My Commission Expires: April 30, 2008

Betty J. Grannan  
Notary Public

My County of Residence: Marion

BETTY J. GRANNAN  
Printed Name



CHICAGO TITLE

UNIT NO.

DATE

UNIT OWNER(S)

101

2-22-00

Lester McKinney  
Lester McKinney

Dorothy McKinney  
Dorothy McKinney

STATE OF INDIANA     )  
  ) ss:  
COUNTY OF MARION    )

Before me a Notary Public in and for the said County and State, personally appeared Lester and Dorothy McKinney who acknowledged the execution of the foregoing Fifth Amendment to Condominium Declaration.

Witness my hand and Notarial Seal this 22<sup>nd</sup> day of Feb., 2000.

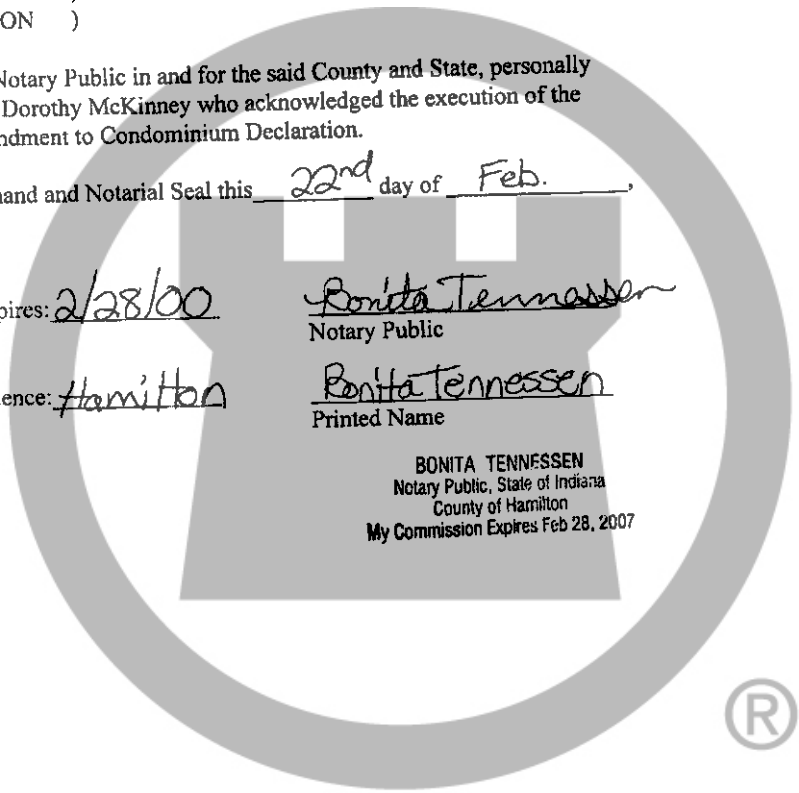
My Commission Expires: 2/28/00

Bonita Tennesen  
Notary Public

My County of Residence: Hamilton

Bonita Tennesen  
Printed Name

BONITA TENNESSEN  
Notary Public, State of Indiana  
County of Hamilton  
My Commission Expires Feb 28, 2007



CHICAGO TITLE



UNIT NO.

DATE

UNIT OWNER(S)

103

2/16/2000

Irma C. Uebelhoer  
Irma C. Uebelhoer

Urban L. Uebelhoer  
Urban L. Uebelhoer

STATE OF INDIANA )

) ss:

County of Marion )

Before me a Notary Public in and for the said County and State, personally appeared Irma C. and Urban L. Uebelhoer who acknowledged the execution of the foregoing Fifth Amendment to Condominium Declaration.

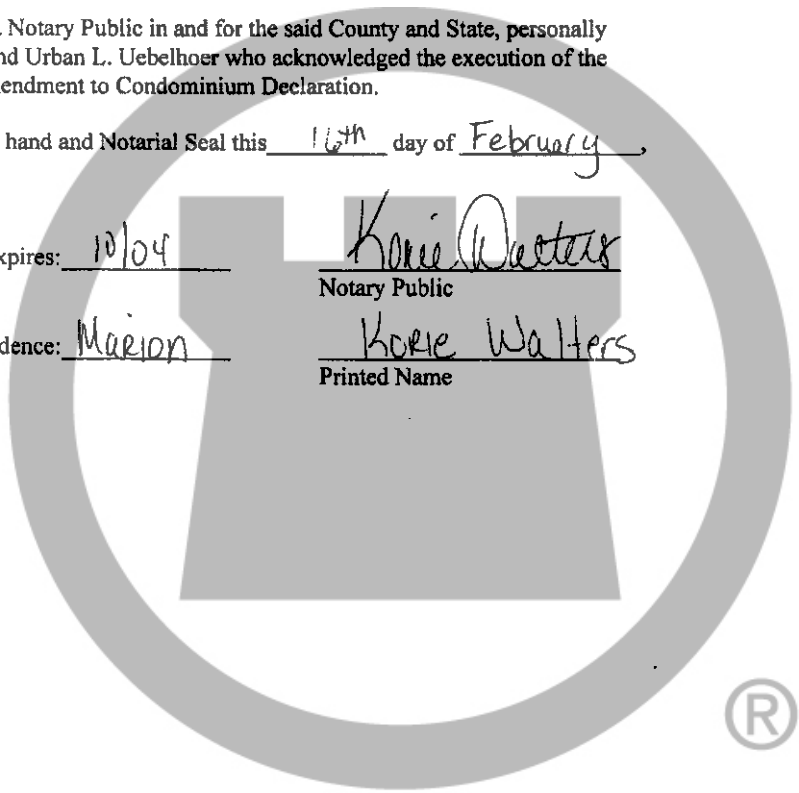
Witness my hand and Notarial Seal this 16<sup>th</sup> day of February, 2000.

My Commission Expires: 10/04

Korie Walters  
Notary Public

My County of Residence: Marion

Korie Walters  
Printed Name



CHICAGO TITLE

UNIT NO.

DATE

UNIT OWNER(S)

104

2/16/2019

RSU CORPORATION  
R S U Corporation

By Urban L. Uebelhoer  
Urban L. Uebelhoer, Treasurer

STATE OF INDIANA     )  
                                  ) ss:  
County of Marion     )

Before me a Notary Public in and for the said County and State, personally appeared Urban L. Uebelhoer who acknowledged the execution of the foregoing Fifth Amendment to Condominium Declaration.

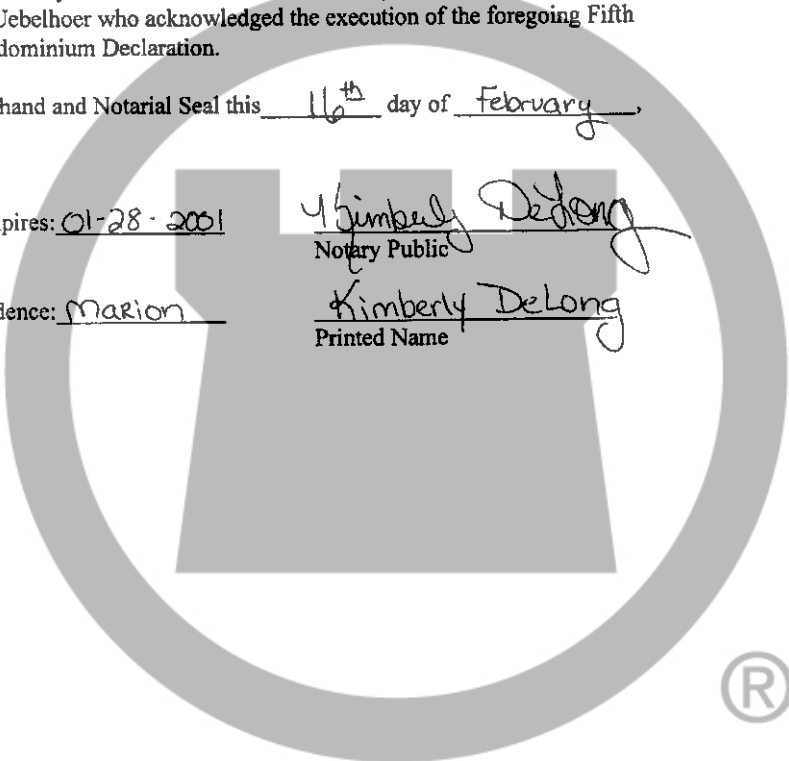
Witness my hand and Notarial Seal this 16<sup>th</sup> day of February, 2000.

My Commission Expires: 01-28-2001

Kimberly DeLong  
Notary Public

My County of Residence: Marion

Kimberly DeLong  
Printed Name



CHICAGO TITLE

UNIT NO.

DATE

UNIT OWNER(S)

201

2/11/00

Marcia C. Wright  
Marcia C. Wright

STATE OF MASSACHUSETTS )

) ss:

County of NORFOLK )

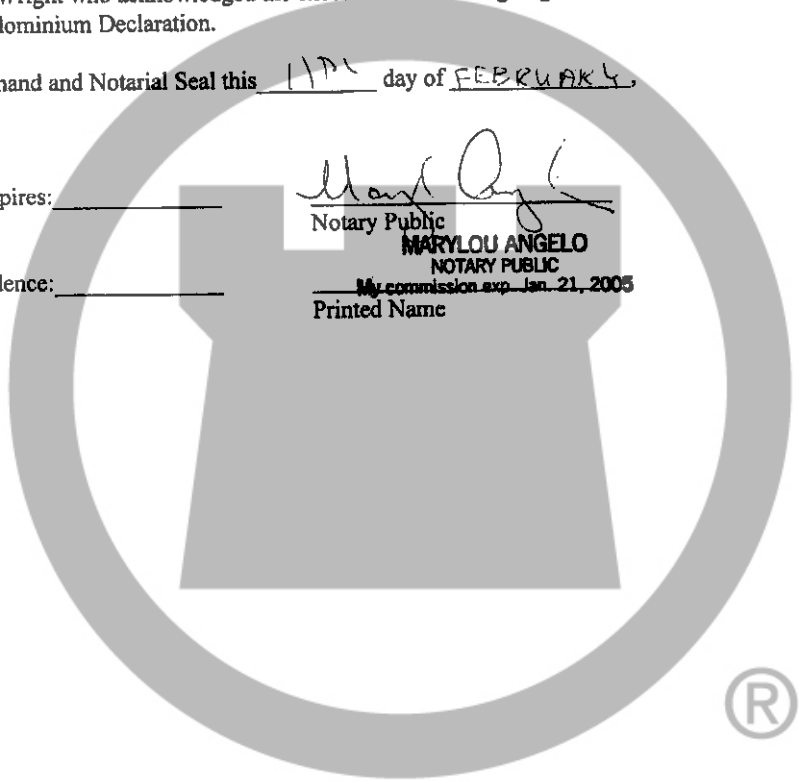
Before me a Notary Public in and for the said County and State, personally appeared Marcia T. Wright who acknowledged the execution of the foregoing Fifth Amendment to Condominium Declaration.

Witness my hand and Notarial Seal this 11<sup>th</sup> day of FEBRUARY, 2000.

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

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

Marylou Angelo  
Notary Public  
**MARYLOU ANGELO**  
NOTARY PUBLIC  
My commission exp. Jan. 21, 2005  
Printed Name



CHICAGO TITLE

UNIT NO.                      DATE  
202      February 15, 2000

UNIT OWNER(S)  
Donald T. Hannin  
Donald T. Hannin

Nancy H. Hannin  
Nancy H. Hannin

STATE OF INDIANA    )  
                                  ) ss:  
County of Marion        )

Before me a Notary Public in and for the said County and State, personally appeared Donald T. and Nancy H. Hannin who acknowledged the execution of the foregoing Fifth Amendment to Condominium Declaration.

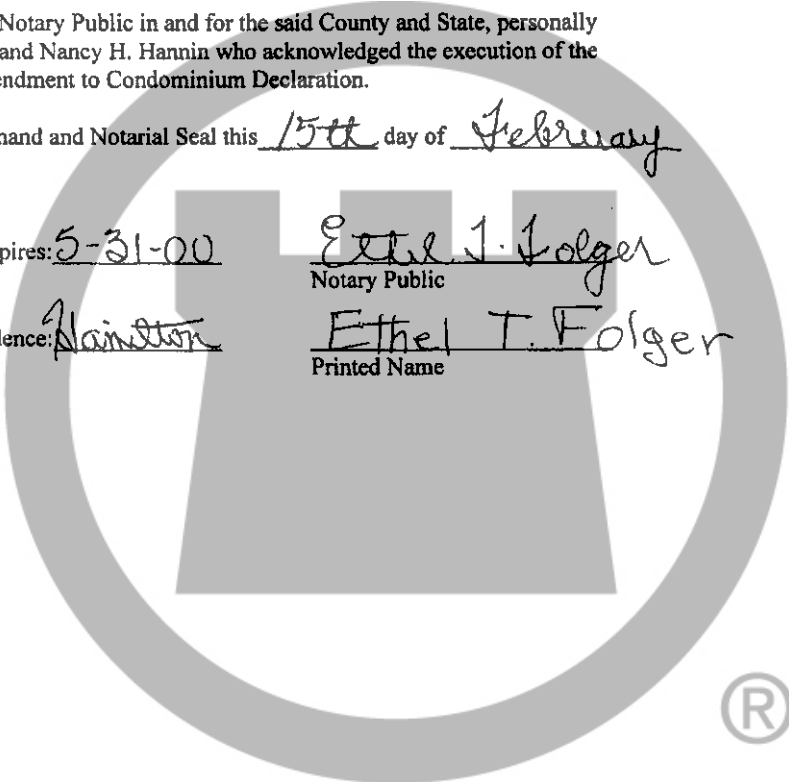
Witness my hand and Notarial Seal this 15th day of February 2000.

My Commission Expires: 5-31-00

Ethel T. Folger  
Notary Public

My County of Residence: Hamilton

Ethel T. Folger  
Printed Name



CHICAGO TITLE

UNIT NO.

DATE

UNIT OWNER(S)

203

2-11-2000

Maurice E. Craig

Dorothy Anne Craig

STATE OF INDIANA )

) ss:

County of Marion )

Before me a Notary Public in and for the said County and State, personally appeared Maurice E. and Dorothy Anne Craig who acknowledged the execution of the foregoing Fifth Amendment to Condominium Declaration.

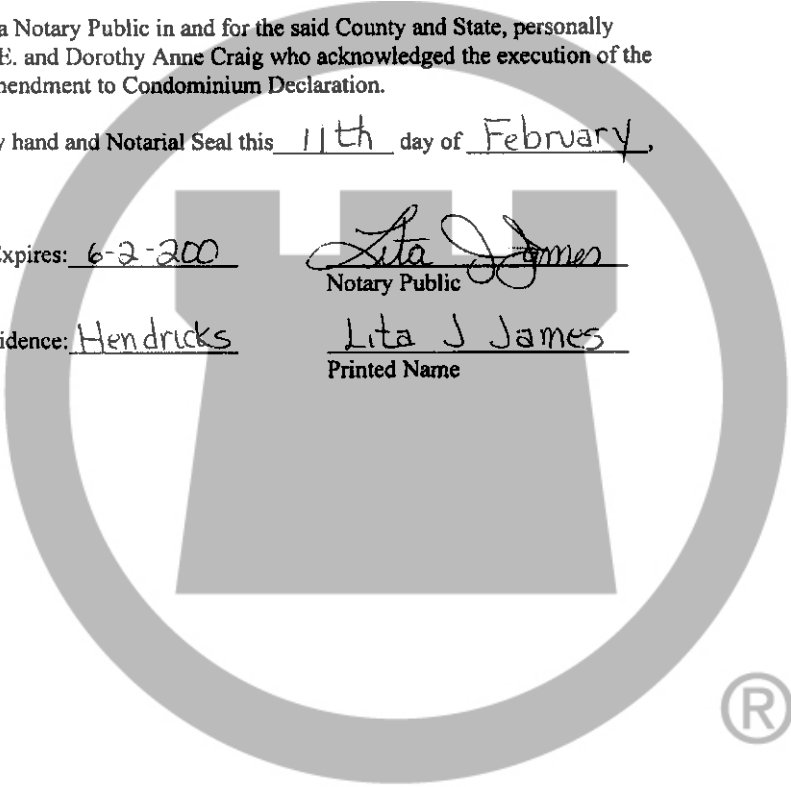
Witness my hand and Notarial Seal this 11th day of February, 2000.

My Commission Expires: 6-2-200

Lita J James  
Notary Public

My County of Residence: Hendricks

Lita J James  
Printed Name



CHICAGO TITLE



UNIT NO.

DATE

UNIT OWNER(S)

301

2/14/00

*Robert Polack*

Robert Polack

*Susan T. Polack*

Susan T. Polack

STATE OF INDIANA )

) ss:

County of Marion )

Before me a Notary Public in and for the said County and State, personally appeared Robert and Susan T. Polack who acknowledged the execution of the foregoing Fifth Amendment to Condominium Declaration.

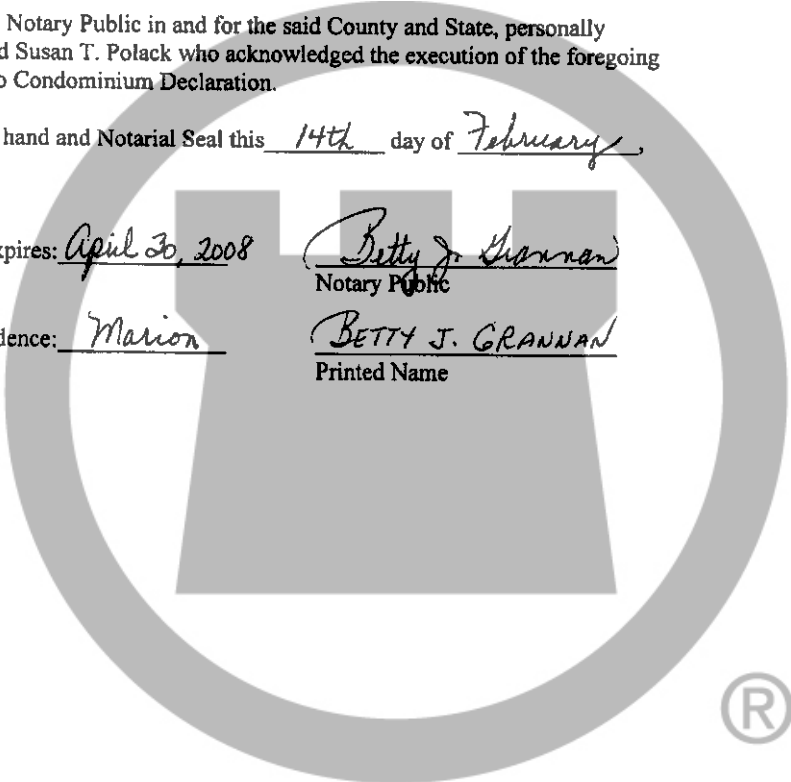
Witness my hand and Notarial Seal this 14th day of February, 2000.

My Commission Expires: April 30, 2008

*Betty J. Grannan*  
Notary Public

My County of Residence: Marion

BETTY J. GRANNAN  
Printed Name



CHICAGO TITLE





UNIT NO.

303

DATE

2/17/00

UNIT OWNER(S)

*Irwin R. Rose*  
Irwin R. Rose

*Jill Rose*  
Jill Rose

STATE OF INDIANA )

) ss:

County of Marion )

Before me a Notary Public in and for the said County and State, personally appeared Irwin R and Jill Rose who acknowledged the execution of the foregoing Fifth Amendment to Condominium Declaration.

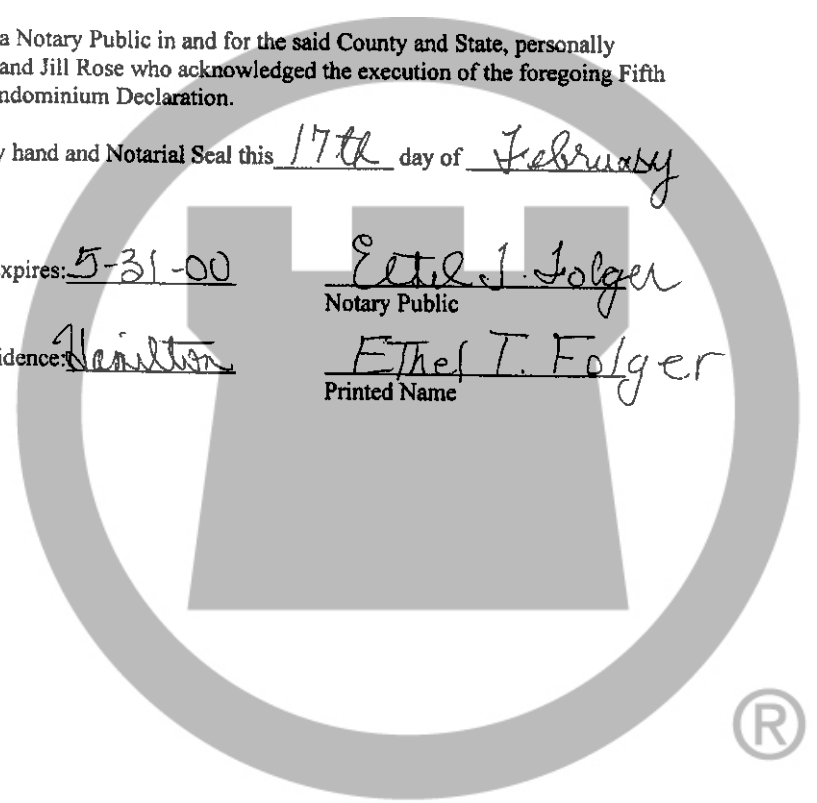
Witness my hand and Notarial Seal this 17th day of February 2000.

My Commission Expires: 5-31-00

*Ethel T. Folger*  
Notary Public

My County of Residence: Hamilton


Ethel T. Folger  
Printed Name



CHICAGO TITLE



14



**SIXTH AMENDMENT TO  
CONDOMINIUM DECLARATION  
AND REMOVAL OF REAL ESTATE FROM  
CONDOMINIUM DECLARATION AND RELATED DOCUMENTS**

One West Unit Owners Association, Inc., (the "Association") as attorney-in-fact of the Unit Owners of One West Condominium ("Condominium"), a condominium in Marion County, Indiana, established by a Declaration of Condominium which was recorded as Instrument No. 85-40722 in the Office of the Recorder of Marion County, Indiana (the "Declaration") was amended by Supplemental Declaration of Condominium recorded as Instrument No. 90-38765 in the office of said Recorder and further amended by a certain Second Amendment to Condominium Declaration recorded as Instrument No. 93-0192009 in the office of said Recorder, being further recorded by a Third Amendment to Condominium Declaration recorded as Instrument No. 98-0068872 in the office of said Recorder, being further amended by a Fourth Amendment to Condominium Declaration recorded as Instrument No. 99-0093891 in the office of said Recorder and being again amended by a Fifth Amendment to Condominium Declaration which was recorded as Instrument No. 2000-0035348 in the office of said Recorder, hereby further amend the Declaration as follows:

1. The Association, for and on behalf of the Unit Owners, hereby removes from the Declaration of Condominium the real estate which is described on Exhibit "A" attached hereto and made a part hereof. Upon the recording of this Sixth Amendment to Condominium Declaration and Removal of Real Estate from Condominium Declaration and Related Documents, the real estate, including all improvements and appurtenances thereto, described in Exhibit "A" shall be free and clear of any and all restrictions imposed by (a) the Declaration, as amended, (b) the Code of By-Laws of One West Horizontal Property Regime recorded as

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Instrument No. 85-40723 in the Office of said Recorder, (c) the Plat for One West Horizontal Property Regime Phase I recorded as Instrument No. 85-40721 in the office of said Recorder, and (d).a certain Co-Owners Declaration recorded as Instrument No. 94-66924 in the office of said Recorder.

2. The Association is hereby authorized to serve as a Member of the Joint One and Two West Owner's Association, Inc. (the "Joint Association"), to permit itself to be assessed for up to twenty five percent of its operating and maintenance costs, and to treat such charges as a common expense which it then can assess the Unit Owners of One West.

3. The Association is hereby authorized to convey that part of the Common Areas of the Condominium which are being removed from the Declaration of Condominium hereunder, and which is described on Exhibit B attached hereto and made a part hereof, to Two West 86<sup>th</sup> Street, LLC, the designee of the Buyer, Eaton Investments Ltd, Inc.

4. The Association is hereby authorized to convey the remaining part of the Common Areas which are being removed from the Declaration. and on which the Common Facilities are located, which is described on Exhibit C attached hereto and made part hereof, to the Joint Association which will then operate and maintain them for the joint benefit of the Unit Owners of One West and the Two West condominiums.

5. All other terms and conditions of the Declaration, as amended and modified, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, One West Unit Owners Association, Inc., as attorney-in-fact of the Unit Owners pursuant to the attached powers of attorney, hereby executes this Sixth Amendment to Condominium Declaration and Removal of Real Estate From Condominium Declaration and Related Documents on this 7<sup>TH</sup> day of APRIL, 2004

ONE WEST UNIT OWNERS ASSOCIATION, INC.

By: *U.L. Uebelhoer*  
U.L. Uebelhoer, President

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said County and State personally appeared U.L. Uebelhoer, President of One West Owners Association, Inc., who personally acknowledged execution of the above and foregoing instrument for and on behalf of said corporation.

Witness my hand and Notarial Seal this 9<sup>th</sup> day of APRIL, 2004.

My Commission Expires:

\_\_\_\_\_

*Cynthia J. Lovejoy*  
(Signature) Notary Public

My County of Residence:

\_\_\_\_\_

 CYNTHIA J. LOVEJOY  
STATE OF INDIANA  
RESIDENT OF MARION COUNTY  
MY COMMISSION EXPIRES: OCT. 15, 2006

This instrument was prepared by Walter E. Wolf, Jr., Dann Pecar Newman & Kleiman, P.C., One American Square, Suite 2300, Box 82008, Indianapolis, Indiana 46282.

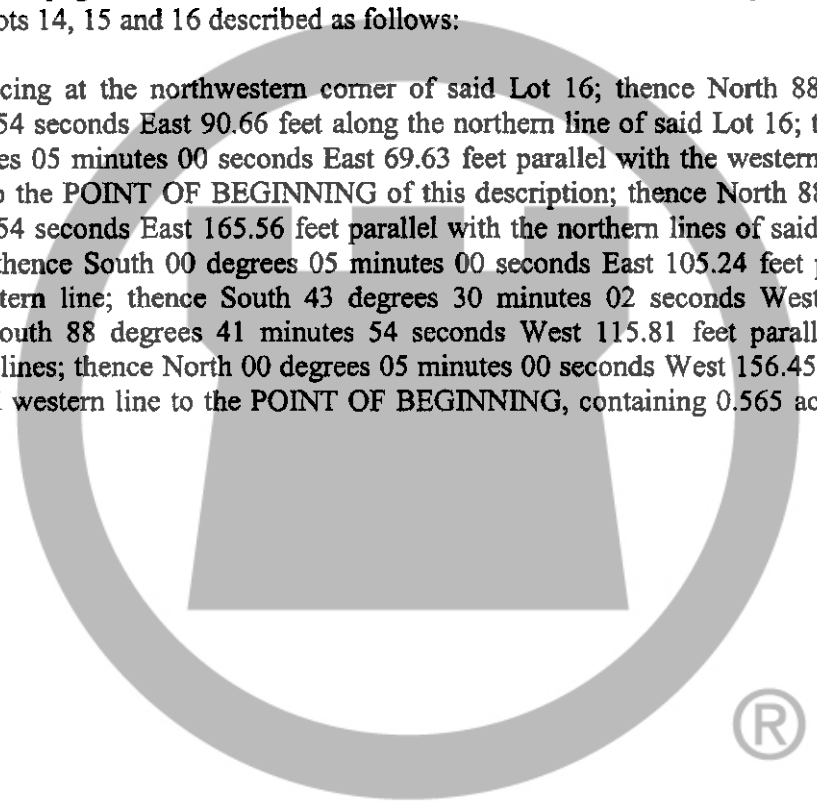
CHICAGO TITLE

**EXHIBIT "A"**

**Legal Description**

Lots 1 through 8 and Lots 11 through 16, all inclusive, of McCulloch and Hahn's North Meridian Street Addition to the City of Indianapolis, the plat of which is recorded in Plat Book 19, at page 164 in the Office of the Recorder of Marion County, Indiana, except part of Lots 14, 15 and 16 described as follows:

Commencing at the northwestern corner of said Lot 16; thence North 88 degrees 41 minutes 54 seconds East 90.66 feet along the northern line of said Lot 16; thence South 00 degrees 05 minutes 00 seconds East 69.63 feet parallel with the western line of said Lot 16 to the POINT OF BEGINNING of this description; thence North 88 degrees 41 minutes 54 seconds East 165.56 feet parallel with the northern lines of said Lots 16, 15 and 14; thence South 00 degrees 05 minutes 00 seconds East 105.24 feet parallel with said western line; thence South 43 degrees 30 minutes 02 seconds West 72.15 feet; thence South 88 degrees 41 minutes 54 seconds West 115.81 feet parallel with said northern lines; thence North 00 degrees 05 minutes 00 seconds West 156.45 feet parallel with said western line to the POINT OF BEGINNING, containing 0.565 acres, more or less.



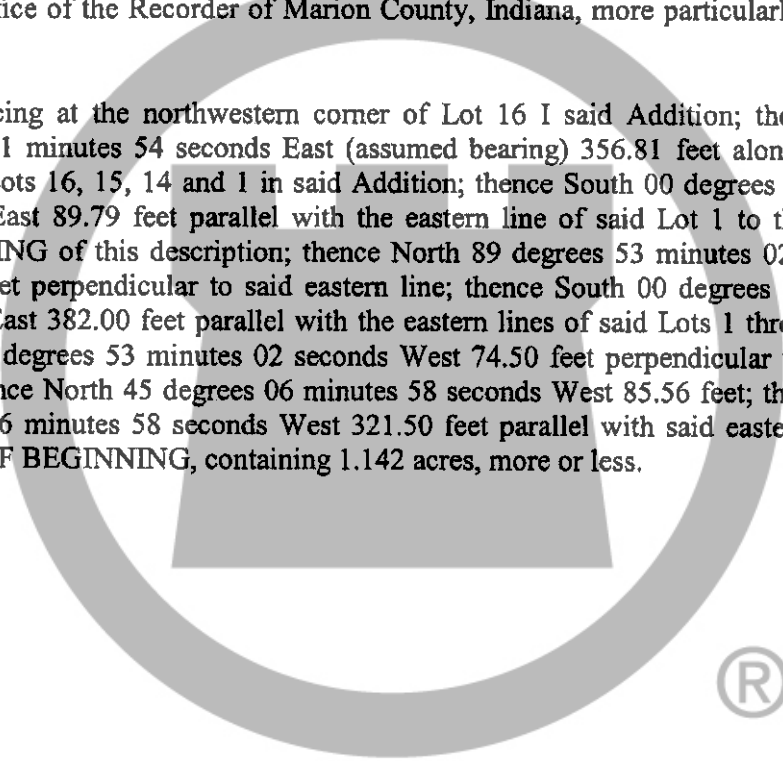
CHICAGO TITLE

**EXHIBIT "B"**

**Legal Description**

A part of the Northwest Quarter of Section 23, Township 17 North, Range 3 East of the Second Principal Meridian, Washington Township, Marion County, Indiana, also being a portion of Lots 2 through 7, inclusive, in McCulloch and Hahn's North Meridian Street Addition to the City of Indianapolis, the plat thereof recorded as Plat Book 19, page 164 in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

Commencing at the northwestern corner of Lot 16 I said Addition; thence North 88 degrees 41 minutes 54 seconds East (assumed bearing) 356.81 feet along the northern lines of Lots 16, 15, 14 and 1 in said Addition; thence South 00 degrees 06 minutes 58 seconds East 89.79 feet parallel with the eastern line of said Lot 1 to the POINT OF BEGINNING of this description; thence North 89 degrees 53 minutes 02 seconds East 135.00 feet perpendicular to said eastern line; thence South 00 degrees 06 minutes 58 seconds East 382.00 feet parallel with the eastern lines of said Lots 1 through 7; thence South 89 degrees 53 minutes 02 seconds West 74.50 feet perpendicular to said eastern lines; thence North 45 degrees 06 minutes 58 seconds West 85.56 feet; thence North 00 degrees 06 minutes 58 seconds West 321.50 feet parallel with said eastern lines to the POINT OF BEGINNING, containing 1.142 acres, more or less.



CHICAGO TITLE

## EXHIBIT "C"

### Legal Description

Lots 1 through 8, and Lots 11 through 16, all inclusive, of McCulloch and Hahn's North Meridian Street Addition to the City of Indianapolis, the plat of which is recorded in Plat Book 19, at page 164 in the Office of the Recorder of Marion County, Indiana, except the following two parcels which are excluded therefrom:

#### Parcel 1

Commencing at the northwestern corner of Lot 16; thence North 88 degrees 41 minutes 54 seconds East (assumed Bearing) 90.66 feet along the northern line of said Lot 16; thence South 00 degrees 05 minutes 00 seconds East 69.63 feet parallel with the western line of said Lot 16 to the POINT OF BEGINNING of this description; thence North 88 degrees 41 minutes 54 seconds East 165.56 feet parallel with the northern lines of said Lots 16, 15 and 14; thence South 00 degrees 05 minutes 00 seconds East 105.24 feet parallel with said western line; thence South 43 degrees 30 minutes 02 seconds West 72.15 feet; thence South 88 degrees 41 minutes 54 seconds West 115.81 feet parallel with said northern lines; thence North 00 degrees 05 minutes 00 seconds West 156.45 feet parallel with said western line to the POINT OF BEGINNING, containing 0.565 acres, more or less.

#### Parcel 2

A part of the Northwest Quarter of Section 23, Township 17 North, Range 3 East of the Second Principal Meridian, Washington Township, Marion County, Indiana, also being a portion of Lots 2 through 7, inclusive, in McCulloch and Hahn's North Meridian Street Addition to the City of Indianapolis, the plat thereof recorded as Plat Book 19, page 164 in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

Commencing at the northwestern corner of Lot 16 in said Addition; thence North 88 degrees 41 minutes 54 seconds East (assumed bearing) 356.81 feet along the northern lines of Lots 16, 15, 14 and 1 in said Addition; thence South 00 degrees 06 minutes 58 seconds East 89.79 feet parallel with the eastern line of said Lot 1 to the POINT OF BEGINNING of this description; thence North 89 degrees 53 minutes 02 seconds East 135.00 feet perpendicular to said eastern line; thence South 00 degrees 06 minutes 58 seconds East 382.00 feet parallel with the eastern lines of said Lots 1 through 7; thence South 89 degrees 53 minutes 02 seconds West 74.50 feet perpendicular to said eastern lines; thence North 45 degrees 06 minutes 58 seconds West 85.56 feet; thence North 00 degrees 06 minutes 58 seconds West 321.50 feet parallel with said eastern lines to the POINT OF BEGINNING, containing 1.142 acres, more or less.



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**JOINT DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR ONE WEST CONDOMINIUM AND TWO WEST CONDOMINIUM**

THIS DECLARATION, dated April 9, 2004, is executed by JOINT ONE AND TWO WEST OWNERS ASSOCIATION, INC., an Indiana nonprofit corporation (the "Joint Association").

**Recitals:**

A. The Joint Association is the owner in fee simple of certain real estate described in Exhibit A attached hereto (the "Shared Land") and facilities thereon. The Shared Land surrounds One West Condominium (as hereinafter defined) and Two West Condominium (as hereinafter defined).

B. The Joint Association desires to subject and impose upon the Shared Land the terms of this Declaration and the mutual and beneficial restrictions, covenants, conditions and charges contained herein (such restrictions, covenants, conditions and charges herein referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of One West Condominium and Two West Condominium (the "Condominiums") and the current and future owners of units in the Condominiums (the "Units").

**Terms:**

NOW, THEREFORE, the Joint Association hereby declares that the Shared Land and facilities are held and shall be held, conveyed, hypothecated or encumbered, used, occupied and improved, subject to the Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of the Units and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Condominiums as a whole and of each of the Units. All of the Restrictions shall run with the land and shall be binding upon the parties which now have or which in the future shall acquire any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to the Restrictions, including but not limited to the Shared Land and facilities and the Units, and shall inure to the benefit of the successors of such parties.

**ARTICLE I**  
**DEFINITIONS**

The following are the definitions of the terms used in this Declaration:

**Section 1.1 "Board"** shall mean the Board of Directors of the Joint Association.

**Section 1.2 "Condominiums"** shall have the meaning set forth in Recital B above.

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**Section 1.3 "Joint Assessment"** shall mean the share of the Joint Common Expenses or other special assessments, as determined and levied on One West and the Two West Declarant pursuant to the provisions of Article IV hereof.

**Section 1.4 "Joint Association"** shall mean the Indiana nonprofit corporation that is executing this Declaration.

**Section 1.5 "Joint Common Areas"** shall mean the Shared Land together with all buildings, structures, improvements, fixtures and property of whatsoever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in anyway pertaining thereto.

**Section 1.6 "Joint Common Expenses"** shall mean the actual and estimated cost to and reserves of the Joint Association for maintenance, repair, replacement, alteration, improvement, administration, management and operation of the Joint Common Areas, and any other cost or expense incurred or expected to be incurred by the Joint Association for the benefit of the Joint Common Areas or for the benefit of the Joint Association or the current or future owners of the Units. Joint Common Expenses include but are not limited to costs and expenses incurred to:

- (a) provide security services for the Condominiums;
- (b) maintain a certain water meter as required under a certain Declaration of Maintenance Obligation recorded on April 5, 2000, as Instrument No. 2000-52029 in the office of the Recorder of Marion County, Indiana, but the costs and expenses described in this subsection (b) shall be Joint Common Expenses only for so long as such meter is used as part of an irrigation system that serves the Joint Common Areas; and
- (c) repair and maintain the sanitary sewer line that is the subject of that certain Private Sanitary Sewer Use Agreement recorded on August 30, 2002, as Instrument No. 2002-164939 in the office of the Recorder of Marion County, Indiana, as amended by Instrument No. 2002-164940 recorded on August 30, 2002, in such office, but the costs and expenses described in this subsection (c) shall be Joint Common Expenses only if Two West Condominium or the Joint Association taps into and uses the sanitary sewer line or any portion thereof.

If and when Two West Condominium or the Joint Association shall begin to use the sewer line that is the subject of that Private Sanitary Sewer Use Agreement recorded on August 30, 2002, as Instrument No. 2002-164939 in the office of the Recorder of Marion County, Indiana, as amended by Instrument No. 2002-164940 also recorded on August 30, 2002, in such office, the Joint Association shall assume One West's obligations under such sewer agreement, and all costs associated with the use, repair or maintenance of such sewer line will be a Joint Common Expense under this Declaration. Until such time, One West shall continue to be obligated under such agreement, as the same has been, or may in the future be, amended.

The costs and expenses referenced in Section 4.9 below are specifically excluded from the definition of Joint Common Expenses. The Joint Association shall employ a bonded

professional manager or management company which may also be the manager of one or both of the Condominium Associations.

**Section 1.7 "One West"** shall mean One West Owners Association, Inc., an Indiana nonprofit corporation.

**Section 1.8 "One West Condominium"** shall mean the condominium created by the Declaration referred to in Section 1.10 below, as amended.

**Section 1.9 "One West Declaration"** shall mean (i) a certain Declaration Establishing a Plan for Condominium Ownership dated April 24, 1985, executed by Wolner Development Corp., as declarant, and recorded on May 22, 1985, as Instrument No. 85-40722 in the office of the Recorder of Marion County, Indiana, as amended by the following instruments: (ii) a certain Supplemental Declaration of Condominium recorded April 24, 1990, as Instrument No. 90-38765, (iii) a certain Second Amendment to Condominium Declaration recorded December 15, 1993, as Instrument No. 93-192009 and corrected by a certain Affidavit of Scrivener's Error recorded April 27, 1994, as Instrument No. 94-66925, (iv) a certain Third Amended Declaration Establishing a Plan for Condominium Ownership recorded April 28, 1998, as Instrument No. 98-68872, (v) a certain Amendment Number One to the Third Amended Declaration Establishing Plan for Condominium Ownership recorded February 18, 1999, as Instrument No. 99-37072, (vi) a certain Fourth Amendment to Condominium Declaration recorded May 13, 1999, as Instrument No. 99-93891, (vii) a certain Fifth Amendment to Condominium Declaration recorded March 6, 2000, as Instrument No. 2000-35348 and (viii) a certain Sixth Amendment to Condominium Declaration and Removal of Real Estate from Condominium Declaration and Related Documents recorded April \_\_, 2004, as Instrument No. 2004-\_\_\_\_\_.

**Section 1.10 "Owner"** shall mean the record owner, whether by one or more persons, of the fee simple title to any Unit, but excluding those persons having such interest merely as security for the performance of an obligation.

**Section 1.11 "Restrictions"** shall have the meaning set forth in Recital B above.

**Section 1.12 "Two West Association"** shall mean Two West Owners Association, Inc., an Indiana nonprofit corporation.

**Section 1.13 "Two West Condominium"** shall mean the condominium created upon the real estate described in Exhibit B attached hereto by the Two West Declaration.

**Section 1.14 "Two West Declarant"** shall mean Two West 86<sup>th</sup> Street, LLC, an Indiana limited liability company; provided, however, from and after the expiration of the Two West Development Period, "Two West Declarant" shall mean the Two West Association.

**Section 1.15 "Two West Declaration"** shall mean a certain declaration of condominium ownership and of easements, restrictions, covenants and by-laws for Two West Condominium dated April 9, 2004, executed by the Two West Declarant to be recorded in the office of the Recorder of Marion County, Indiana.

**Section 1.16 "Two West Development Period"** shall mean the period commencing on the date of this Declaration and ending on April 30, 2006, unless substantial completion of the Two West Condominium building is delayed due to labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipated, unavoidable casualties, causes beyond the control of the Two West Declarant or acts of One West or the Owners, occupants or mortgagees of any of the Units in One West Condominium. In the event of any such delay, the ending date specified in the preceding sentence, and accordingly the Two West Development Period, shall be extended a reasonable length of time to account for the delay.

**Section 1.17 "Units"** shall have the meaning set forth in Recital B above.

## **ARTICLE II** **PROPERTY RIGHTS AND EASEMENTS**

**Section 2.1 General.** The Owner of any Unit in the One West Condominium, or in the Two West Condominium, shall hold title and shall be subject to each and every Restriction and agreement herein contained. Each new Owner of any condominium Unit, their heirs, personal representatives, successors and assigns, shall take their interest subject to the rights and powers of the Joint Association with respect to this Declaration. The ownership of each Unit shall include, and there shall pass with each Unit as an appurtenance thereto, whether or not separately described, a non-exclusive right and easement of enjoyment in and to the Joint Common Areas as established under this Declaration, subject to the Restrictions established hereunder. The Joint Common Areas however shall be owned by the Joint Association and no Unit Owner shall have a lien thereon or the right to place a mortgage thereon.

**Section 2.2 Owners' Easement of Enjoyment.** Every Owner and his or her family and tenants who reside at the Condominiums, and their guests who are accompanied by them, have and shall have a non-exclusive right and easement to use of the Joint Common Areas. Such right and easement are and shall be appurtenant to and shall pass with title to each Unit, subject to the provisions of this Declaration and the rules, regulations, fees and charges from time to time established by the Joint Association.

**Section 2.3 Access Easements.** Without limitation of other general rights and easements declared or granted herein, the Joint Association hereby grants and conveys to (a) the owners, contract purchasers, mortgagees, occupants, tenants and licensees from time to time of One West Condominium and Two West Condominium the same perpetual, non-exclusive easement that is granted to the owners, contract purchasers, mortgagees, occupants, tenants and licensees from time to time of One West Condominium in paragraph 2 of a certain Declaration of Easements recorded on April 24, 1990, as Instrument No. 900038764 in the office of the Recorder of Marion County, Indiana, and (b) to the owners from time to time of individual condominium units in One West Condominium and Two West Condominium the same perpetual, non-exclusive easement that is granted to the owners from time to time of individual condominium units in One West Condominium in a certain Grant of Easement recorded on

December 14, 1992, as Instrument No. 9200165112 in the office of the Recorder of Marion County, Indiana.

**ARTICLE III**  
**ORGANIZATION AND DUTIES OF JOINT ASSOCIATION**

**Section 3.1 Organization of Joint Association.** The Joint Association shall be operated in accordance with (a) the Articles of Incorporation of the Joint Association that were filed with the office of the Secretary of State of Indiana on April 8, 2004, and (b) the Code of By-laws of the Joint Association.

**Section 3.2 Membership.** The membership of the Joint Association shall consist of two (2) members with the following rights:

(a) **Class A Member.** One West shall be the Class A Member and shall be entitled to elect one (1) member of the Board.

(b) **Class B Member.** The Two West Declarant shall be the Class B Member and shall be entitled to elect three (3) members of the Board.

**Section 3.3 General Duties of the Joint Association.** The Joint Association is hereby authorized to act and shall act on behalf of the individual Owners in all matters pertaining to the maintenance, repair, replacement, alteration, improvement, administration, management and operation of the Joint Common Areas, the determination of Joint Common Expenses and the collection from One West and the Two West Declarant of annual and special Joint Assessments. The Joint Association shall also have the right, but not the obligation, to act on behalf of the Owners in seeking enforcement of the Restrictions and the terms, covenants and conditions contained in this Declaration. Neither the Joint Association, the members of the Board nor the officers or authorized agents of the Joint Association shall have any liability whatsoever to One West, the Two West Declarant or any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of One West, the Two West Declarant or the Owners or in the nature of willful, intentional, fraudulent or reckless misconduct. The Joint Association shall maintain and keep the Joint Common Areas in good repair and the driveways and paved areas reasonably free of snow and debris, including but not limited to the lawns, landscaping, fences, streets, entry features, center fountain, signs, driveways, sidewalks, lighting, retention ponds, surface water control facilities, sanitary sewer and other utility lines, parking areas (excluding the underground garages below the One West Condominium and Two West Condominium residential buildings), swimming pool, pool house and tennis court, and such portions of any other real property included within the Joint Common Areas as may be provided in this Declaration. The Joint Association may enter into contracts for such maintenance or other services, including security measures, with one or more other persons or entities, and may adopt reasonable rules governing the use and enjoyment of the Joint Common Areas. Services rendered by the Joint Association shall be available on a basis that does not discriminate in favor of one member over the other or one Unit over another based on whether the Units involved are part of One West Condominium or Two West Condominium.

**Section 3.4 Insurance.** The Joint Association shall maintain in force adequate public liability insurance protecting the Joint Association and the Unit Owners as additional insured parties against liability for property damage and personal injury. The Joint Association may, but need not, maintain in force adequate officers and directors insurance covering the officers and directors of the Joint Association. If appropriate, the Joint Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Joint Common Areas against fire, windstorm, vandalism and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Joint Association, its officers, Board members, One West, the Two West Declarant, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Joint Association may maintain a fidelity bond indemnifying the Joint Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee, agent, or anyone who either handles or is responsible for funds held or administered by the Joint Association, whether or not they receive compensation for their services.

The Joint Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Joint Association before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason. The premium for any insurance coverage maintained under this Declaration shall be a Joint Common Expense.

**Section 3.5 Condemnation or Destruction.** In the event that any of the Joint Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Joint Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements or agreements in connection with such condemnation, damage or destruction. Any sums recovered by the Joint Association shall be applied, first, to the restoration and repair of any Joint Common Areas condemned, damaged or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Joint Common Areas or turned over to One West and the Two West Declarant in one-fourth (1/4) and three-fourths (3/4) proportions, respectively, whichever may be determined by the Joint Association. Each Owner shall be responsible for pursuing his or her own action for damages to his or her Unit, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Joint Common Areas.

#### **ARTICLE IV** **JOINT ASSESSMENTS**

**Section 4.1 Purpose of Joint Assessments.** The Joint Assessments shall be approved by

the members of the Joint Association, shall be levied by the Joint Association and shall be used exclusively for the Joint Association's obligations relating to the maintenance, repair, replacement, alteration, improvement (alterations and improvements being subject to the provisions of Sections 4.9 and 4.10 hereof), administration, management and operation of the Joint Common Areas, including but not limited to the payment of taxes and insurance thereon, enforcement of the Restrictions and the cost of labor, equipment, material and management furnished with respect to the Joint Common Areas; provided, however, the Joint Association shall not be responsible for the maintenance, repair, replacement, alteration, improvement, administration, management and operation of any Joint Common Areas which are or hereafter may be dedicated to the public. The Joint Assessments shall also provide and pay for security services to the Shared Land and for the two Condominiums.

**Section 4.2 Liability for Joint Assessments.** One West hereby covenants and agrees to pay to the Joint Association one-fourth (1/4) of (a) the annual Joint Assessments fixed, established and levied from time to time, as hereinafter provided and (b) any special Joint Assessments fixed, established and levied from time to time, as hereinafter provided. The Two West Declarant hereby covenants and agrees to pay to the Joint Association three-fourths (3/4) of (a) the annual Joint Assessments fixed, established and determined from time to time, as hereinafter provided and (b) of any special Joint Assessments fixed, established and determined from time to time, as hereinafter provided, subject to the provisions of Sections 4.9 and 4.10 hereof.

**Section 4.3 Basis of Annual Joint Assessments.** The Joint Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Joint Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Joint Association. A copy of this budget shall be mailed or delivered to One West, the Two West Declarant and each Owner not fewer than thirty (30) days prior to the beginning of each fiscal year of the Joint Association. Such budget shall serve as the basis for establishing the annual Joint Assessments levied against One West and the Two West Declarant. If no such budget is established for a particular year, the budget for the preceding year shall be in effect for such particular year.

**Section 4.4 Basis of Special Joint Assessments.** Should the Joint Association at any time during the fiscal year determine that the Joint Assessments levied with respect to such year are insufficient to pay the Joint Common Expenses for such year, the Joint Association may, at any time and from time to time, levy against One West and the Two West Declarant such special Joint Assessments as it may deem necessary for meeting the Joint Common Expenses. In addition, the Joint Association shall have the right to levy against One West and the Two West Declarant at any time, and from time to time, one or more special Joint Assessments for the purpose of defraying, in whole, or in part, any unanticipated Joint Common Expenses not provided for by the annual Joint Assessments.

**Section 4.5 Fiscal Year; Date of Commencement of Assessments; Due Dates.** The fiscal year of the Joint Association shall be established by the Joint Association and may be changed from time to time by action of the Joint Association. The liability of One West and the Two West Declarant for Joint Assessments under this Article IV shall commence as of the date of this Declaration. The first annual Joint Assessment shall be made for the balance of the Joint

Association's fiscal year in which such Joint Assessment is made and shall become due and payable commencing on any date fixed by the Joint Association. The annual Joint Assessment for each year after the first assessment year shall be due and payable in twelve (12) equal monthly installments on the first day of each calendar month.

**Section 4.6 Duties of the Joint Association Regarding Joint Assessments.** The Joint Association shall keep proper books and records of the levy and collection of each annual and special Joint Assessment, which books and records shall be kept by the Joint Association and shall be available for inspection and copying by One West, the Two West Declarant and each Owner (or duly authorized representative thereof ) at all reasonable times during regular business hours of the Joint Association. The Joint Association shall cause written notice of all Joint Assessments levied by the Joint Association to be mailed or delivered to One West, the Two West Declarant and the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Joint Assessment or any installment thereof. In the event such notice is mailed or delivered fewer than thirty (30) days prior to the due date of the Joint Assessment to which such notice pertains, payment of such Joint Assessment shall not be deemed past due for any purpose if paid by within thirty (30) days after the date of actual mailing or delivery of such notice.

**Section 4.7 Non-payment of Joint Assessments; Remedies of Joint Association.** If any Joint Assessment is not paid when due, such Joint Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest at the rate of twelve percent (12%) per annum until paid in full. In addition to such interest, the Joint Association may assess a late fee, as from time to time determined by the Joint Association. The Joint Association may bring an action in any court having jurisdiction to enforce payment of the same, and there shall be added to the amount of such Joint Assessment all costs of such action, including the Joint Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, and may include late fees, costs and attorneys' fees.

**Section 4.8 Adjustments.** In the event that the amounts actually expended by the Joint Association for Joint Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Joint Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Joint Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Joint Assessments or by the making of one or more special Joint Assessments for such purpose, at the option of the Joint Association. In the event that the amounts budgeted and assessed for Joint Common Expenses in any fiscal year exceed the amount actually expended by the Joint Association for Joint Common Expenses for that fiscal year, such excess shall be either (i) taken into account in establishing the budget for the ensuing fiscal year or (ii) credited against the Joint Assessment(s) due for the ensuing fiscal year(s).

**Section 4.9 The Two West Declarant's Sole Obligations.** Notwithstanding any provision of this Declaration to the contrary, the costs and expenses of the following items to the extent provided in plans submitted by the Two West Declarant for review by One West shall be solely the obligation of the Two West Declarant, and they are not Common Expenses:



- (a) Design and construction costs related to changing the surface water drainage and control system for the Joint Common Areas and One West Condominium to accommodate the Two West Condominium building.
- (b) Construction of a pool changing room if the Two West Declarant, in its sole discretion, elects to construct one.
- (c) Construction of new lawns, landscaping, fences, streets, signs, driveways, sidewalks, lighting, sanitary sewer and other utility lines and parking areas on the Joint Common Areas;
- (d) Repair costs for any damages to existing improvements on the Joint Common Areas which are damaged as a result of the construction of the Two West Condominium building or the improvements referenced in subsection (c) above. Any such damaged improvements shall be restored at the Two West Declarant's expense to the same or better condition as they are in as of the commencement of construction.
- (e) Installation of an entry gate at the existing entrance to the Joint Common Areas and new outside lighting, electric meters and wiring, if and to the extent the Two West Declarant, in its sole discretion, elects to install such improvements on or before January 1, 2007. If the Two West Declarant does install such entry gate on or before such date, it shall at its expense provide each Owner in One West Condominium with two remote gate openers and electronic means of opening the gate from inside each unit of One West Condominium.
- (f) Cost of operating and separately metering all electrical services serving the Joint Common Areas, including lighting, from the electrical services serving One West, and causing such service to be billed to the Joint Association.
- (g) The cost of installing sanitary sewer facilities to serve the Two West Condominium.

**Section 4.10 Limitation on Capitalized Cost Assessments.** Capitalized costs for new improvements to be constructed on the Joint Common Areas or alterations of existing improvements (as opposed to repairs or replacements of existing improvements) and which are not covered in Section 4.9 hereof shall not, without the written consent of both One West and the Two West Declarant, exceed a base amount per fiscal year. The base amount is \$30,000 in the Joint Association's first fiscal year (of which one-fourth, or \$7,500, would be the obligation of One West, and three-fourths, or \$22,500, would be the obligation of the Two West Declarant) and is subject to adjustment at the beginning of the sixth fiscal year and every five years thereafter, as follows:

- (i) Divide the \$30,000 base amount (or the base amount as previously adjusted, as the case may be) by the index number for the consumer price index for urban consumers ("CPI-U") published monthly by the Bureau of Labor Statistics of the United States Department of Labor for the calendar

month in which this Declaration is executed (or the calendar month used in computing the previous adjustment, as the case may be), and then multiply the result by the CPI-U index number for the calendar month preceding the month in which the adjustment will be effective.

(ii) If the CPI-U is discontinued, the Joint Association shall select comparable statistics on the purchasing power of the consumer dollar which are then available and published in some responsible financial periodical or recognized authority.

Neither the Two West Declarant nor the Joint Association shall be obligated to incur capitalized costs in any fiscal year in excess of the applicable base amount for new improvements or the alteration of existing improvements. This Section 4.10 does not apply to construction or any other costs which are the sole obligation of the Two West Declarant under Section 4.9 of this Joint Declaration.

## ARTICLE V DEVELOPMENT PERIOD RESTRICTIONS

**Section 5.1 General.** In order to minimize interruption or interference with the use of One West Condominium and access thereto, the Two West Declarant shall control construction and marketing traffic by means of the temporary directional signage, traffic cones, traffic flow and location of the temporary construction and sales office as set forth in Exhibit C attached hereto.

**Section 5.2 Hours.** Construction of such building and other improvements normally shall be restricted to between the hours of 7:00 a.m. and 4:00 p.m., when daylight begins earlier, and from the hours of 8:00 a.m. to 5:00 p.m. in the winter months. Work on Saturdays and Sundays will be restricted. The Two West Declarant will notify the designated representative of One West in advance if and when any work will be performed at any other times. All construction traffic will be routed in accordance with the traffic flow pattern set forth on Exhibit C, and except as provided on such exhibit, drivers of construction vehicles will be instructed to park off of the established driveways and away from established parking areas. Construction workers will be instructed to park to the extent possible in the basement parking area of the building to be constructed.

**Section 5.3 Completion.** The Two West Declarant will use its best efforts to substantially complete construction of such building and other improvements prior to the expiration of the Two West Development Period.

**Section 5.4 Landscaping and Trees.** The Two West Declarant will cause its construction of the other improvements to conform to the final landscaping and tree preservation plan approved by One West on July 10, 2003.

**Section 5.5 Lighting.** The Two West Declarant will install only low intensity lighting on the exterior of such building and other improvements, consistent with the lighting levels which exist on the exterior of the One West Condominium building and the improvements currently constructed on the Joint Common Areas.

**Section 5.6 Signage.** Exterior signage installed by the Two West Declarant on the Joint Common Areas shall be subject to the approval of One West.

**ARTICLE VI**  
**USE RESTRICTIONS**

**Section 6.1 General.** The Joint Association shall have the authority to make and to enforce reasonable and non-discriminatory rules and regulations governing and restricting the use of the Joint Common Areas, in addition to those contained herein. Such rules and regulations shall be binding upon all Owners and occupants until and unless overruled, canceled or modified by the Joint Association.

**Section 6.2 Drainage, Sewers and Water Flow.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No one other than the Joint Association may change, obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers or storm drains. No sanitary sewage shall be discharged into the storm drainage system.

**Section 6.3 Traffic Regulation.** The Joint Association is hereby authorized to promulgate, administer and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including modifications of those in force on public streets, within the Condominiums. The Joint Association shall be entitled to enforce the same by establishing such enforcement procedures, as it deems necessary, including levying fines for the violation thereof. Only drivers licensed to operate motor vehicles by the State of Indiana or by any other state in the United States may operate any type of motor vehicle on the Joint Common Areas. All vehicles of any kind and nature which are operated on the streets in the Joint Common Areas shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Condominiums.

**Section 6.4 Drainage Areas, Ponds and Water Bodies.** All drainage areas, lakes, retention or other ponds and streams within the Joint Common Areas, if any, shall be aesthetic amenities only, and no other use thereof, including without limitation fishing, swimming, boating, playing, ice skating, use of personal flotation devices or other recreational activities shall be permitted. The Joint Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of wetlands, lakes, retention or other ponds or streams within the Joint Common Areas.

**Section 6.5 Laws and Ordinances.** Every Owner and occupant of any Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Joint Common Areas, and any violation thereof may be

considered a violation of this Declaration; provided, however, the Joint Association shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

**Section 6.6 Occupants Bound.** All provisions of this Declaration and of any rules and regulations or use restrictions promulgated pursuant hereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit and their guests to comply with this Declaration and the rules and regulations adopted pursuant hereto and shall be responsible for all violations and losses to the Joint Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of this Declaration and rules and regulations adopted pursuant hereto.

## ARTICLE VII RULEMAKING AND REMEDIES FOR ENFORCEMENT

**Section 7.1 Rules and Regulations.** Subject to the provisions hereof, the Joint Association may establish reasonable and non-discriminatory rules and regulations concerning the use of the Joint Common Areas, and the same and any amendments thereto shall be furnished by the Joint Association to One West, the Two West Declarant and the Owners at least thirty (30) days prior to the effective date thereof.

### **Section 7.2 Authority and Enforcement.**

(a) Upon the violation of this Declaration or any rules and regulations duly adopted hereunder, the Joint Association shall have the power, after fifteen (15) days' written notice to the Owner or the occupant of said violation, and failure by said Owner or occupant to cure the violation: (i) to cause the Joint Association to correct the violation at its own cost and expense, which said cost and expense shall be reimbursed to the Joint Association by the Owner or the occupant who is guilty of such violation (with any amount not so reimbursed to be deemed a Joint Common Expense) and (ii) to suspend such Owner's or occupant's right (and the right of his or her family, guests and tenants) to use any of the Joint Common Areas other than to access his or her Unit.

The Joint Association shall have the power to impose all or any combination of these sanctions. An Owner or occupant shall be subject to the foregoing sanctions in the event of such a violation by him or her, his or her family, guests or tenants. Any such suspension of rights may be for the duration of the infraction and or any additional period thereafter, such additional period not to exceed thirty (30) days per violation.

(b) Notwithstanding subsection (a) above, a violation or threatened violation of any of the Restrictions or the terms, covenants and conditions contained in this Declaration or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by the Joint Association or any Owner against any person violating or threatening to violate the Restrictions or any such terms, covenants, conditions, rules or regulations. Available relief in any such action shall include the recovery of damages; injunctive relief, either to restrain the violation or threatened violation or to compel

compliance with such Restrictions, terms, covenants, conditions, rules or regulations; declaratory relief; and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such Restrictions, terms, covenants, conditions, rules or regulations. Failure by the Joint Association or any Owner to enforce any Restrictions, terms, covenants, conditions, rules or regulations shall in no event be deemed a waiver of the right to do so thereafter; provided, however, no action shall be brought against the Joint Association for failing to enforce or carry out any such Restrictions, terms, covenants, conditions, rules or regulations.

**Section 7.3 Nondiscrimination.** In establishing or enforcing any such Restrictions, terms, covenants, conditions, rules or regulations, the Joint Association shall not discriminate on the basis of whether the Units involved are a part of One West Condominium or Two West Condominium.

## ARTICLE VIII GENERAL PROVISIONS

**Section 8.1 Term.** The Restrictions and the terms, covenants and conditions of this Declaration and any rules and regulations adopted hereunder, shall run with and bind the Condominiums, including but not limited to the Units, and the Joint Common Areas, and shall inure to the benefit of and shall be enforceable by the Joint Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

**Section 8.2 Amendment.** The Joint Association may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rules or regulations, or judicial determination, or to otherwise comply with any other governmental order or request; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or the Department of Housing and Urban Development, to enable such lender or purchaser to acquire or purchase mortgage loans on the Units; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; (e) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, any amendment permitted under subsections (a) through (e) of this Section 8.2 shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing, nor affect the governing of the One West Condominium or of the Two West Condominium.

Otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of at least seventy-five percent (75%) of the Owners, and at least fifty-one percent (51%) of the Owners of Units in One West (who may also be counted in the seventy-five percent (75%) vote). Any amendment to be effective must be recorded in the public records of the County in which this Declaration was recorded.

If an Owner consents to any amendment to this Declaration, it will be conclusively presumed that such Owner has the authority so to consent and, unless otherwise required by law, no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment unless the Joint Association shall have prior knowledge of such restrictions.

**Section 8.3 Indemnification.** The Joint Association shall indemnify every officer, director and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Joint Association) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Joint Association, and the Joint Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member or former officer, director or committee member may be entitled.

**Section 8.4 Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Joint Association will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes that are less restrictive. The effective date of this Declaration shall be the date of its filing in the public records. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for convenience of reference and not for the purpose of limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Indiana.

**Section 8.5 Right of Entry.** The Joint Association shall have the right, but only along with a representative of the applicable Condominium Association, but not the obligation, to enter any Unit for emergency, security and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration and the Joint Association rules and regulations, which right may be exercised by the Joint Association's Board, officers, agents, employees, managers and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or occupant directly affected thereby. This right of entry shall include the right of the Joint Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Joint Association.

**Section 8.6 Perpetuities.** If any of the Restrictions or terms, covenants, conditions or other provisions of this Declaration would be unlawful, void or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by Indiana Code 32-17-8-1, et seq., as amended from time to time.

**Section 8.7 Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and vice-versa, and the necessary grammatical changes required to make the provision hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**Section 8.8 Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

**Section 8.9 Rights of Third Parties.** This Declaration shall be recorded for the benefit of One West, the Two West Declarant, the Joint Association and the Owners and their mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Condominiums, except as provided for herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and the Joint Association and the Owners, as provided herein, shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

**Section 8.10 Borrowing on Common Areas.** The Joint Association shall not borrow money, mortgage, destroy or abandon any material part of the Common Areas and Facilities without the prior written consent of both Condominium Associations.

IN WITNESS WHEREOF, the Joint Association has caused this Declaration to be executed by its duly authorized officer of each as of the day and year first above written.

JOINT ONE AND TWO WEST OWNERS  
ASSOCIATION, INC.

By: Jason S. Chelland  
Its: President

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

Before me, a Notary Public in and for said County and State, personally appeared Jason S. Chalvard the PRESIDENT of Joint One and Two West Owners Association, Inc., an Indiana nonprofit corporation, who acknowledged the execution of the foregoing Declaration for and on behalf of such corporation.

Witness my hand and Notarial Seal this 9<sup>th</sup> day of April, 2004.



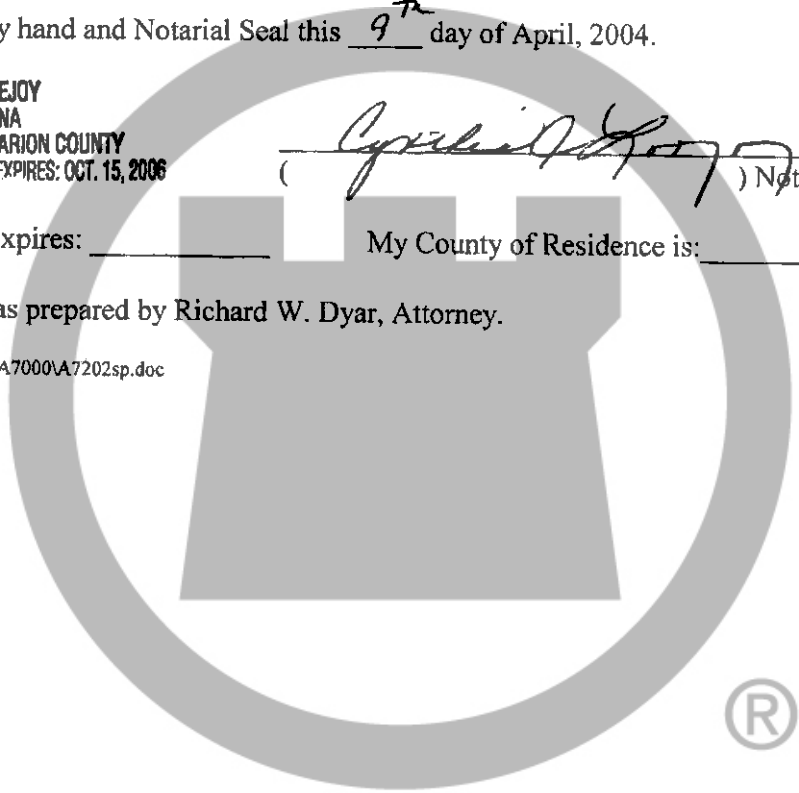
CYNTHIA J. LOVEJOY  
STATE OF INDIANA  
RESIDENT OF MARION COUNTY  
MY COMMISSION EXPIRES: OCT. 15, 2006

( Cynthia J. Lovejoy ) Notary Public

My Commission Expires: \_\_\_\_\_ My County of Residence is: \_\_\_\_\_

This Instrument was prepared by Richard W. Dyar, Attorney.

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# CHICAGO TITLE



**Exhibit A**

Lots 1 through 8, and Lots 11 through 16 all inclusive in McCulloch and Hahn's North Meridian Street Addition to the City of Indianapolis, the plat of which is recorded in Plat Book 19, at page 164 in the Office of the Recorder of Marion County, Indiana, except the following two parcels which are excluded therefrom:

**Parcel 1**

Commencing at the northwestern corner of said Lot 16; thence North 88 degrees 41 minutes 54 seconds East (assumed bearing) 90.66 feet along the northern line of said Lot 16; thence South 00 degrees 05 minutes 00 seconds East 69.63 feet parallel with the western line of said Lot 16 to the POINT OF BEGINNING of this description; thence North 88 degrees 41 minutes 54 seconds East 165.56 feet parallel with the northern lines of said Lots 16, 15 and 14; thence South 00 degrees 05 minutes 00 seconds East 105.24 feet parallel with said western line; thence South 43 degrees 30 minutes 02 seconds West 72.15 feet; thence South 88 degrees 41 minutes 54 seconds West 115.81 feet parallel with said northern lines; thence North 00 degrees 05 minutes 00 seconds West 156.45 feet parallel with said western line to the POINT OF BEGINNING, containing 0.565 acres, more or less.

**Parcel 2**

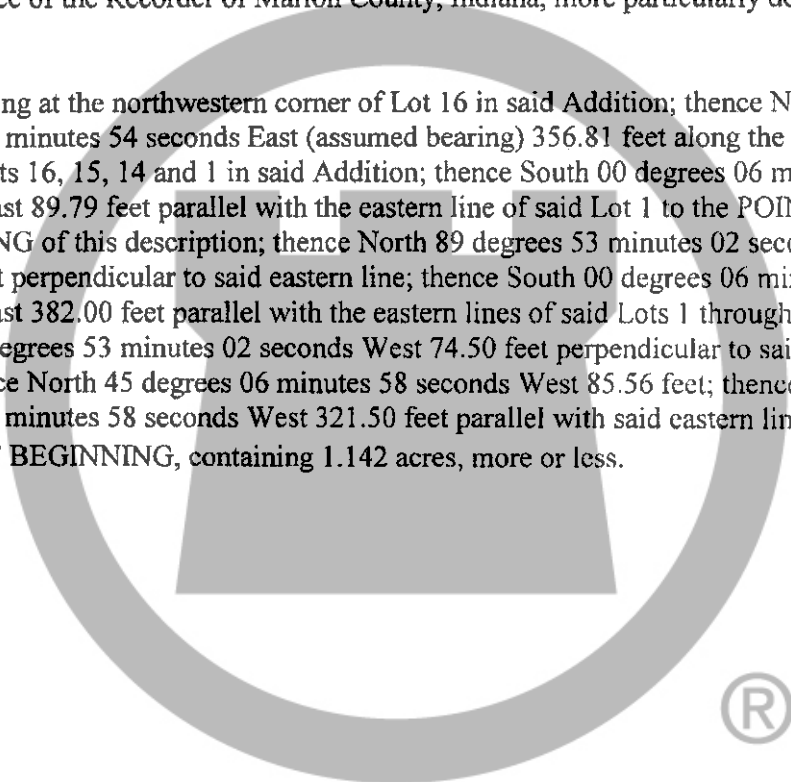
A part of the Northwest Quarter of Section 23, Township 17 North, Range 3 East of the Second Principal Meridian, Washington Township, Marion County, Indiana, also being a portion of Lots 2 through 7, inclusive, in McCulloch and Hahn's North Meridian Street Addition to the City of Indianapolis, the plat thereof recorded as Plat Book 19, page 164 in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

Commencing at the northwestern corner of Lot 16 in said Addition; thence North 88 degrees 41 minutes 54 seconds East (assumed bearing) 356.81 feet along the northern lines of Lots 16, 15, 14 and 1 in said Addition; thence South 00 degrees 06 minutes 58 seconds East 89.79 feet parallel with the eastern line of said Lot 1 to the POINT OF BEGINNING of this description; thence North 89 degrees 53 minutes 02 seconds East 135.00 feet perpendicular to said eastern line; thence South 00 degrees 06 minutes 58 seconds East 382.00 feet parallel with the eastern lines of said Lots 1 through 7; thence South 89 degrees 53 minutes 02 seconds West 74.50 feet perpendicular to said eastern lines; thence North 45 degrees 06 minutes 58 seconds West 85.56 feet; thence North 00 degrees 06 minutes 58 seconds West 321.50 feet parallel with said eastern lines to the POINT OF BEGINNING, containing 1.142 acres, more or less.

**Exhibit B**

A part of the Northwest Quarter of Section 23, Township 17 North, Range 3 East of the Second Principal Meridian, Washington Township, Marion County, Indiana, also being a portion of Lots 2 through 7, inclusive, in McCulloch and Hahn's North Meridian Street Addition to the City of Indianapolis, the plat thereof recorded as Plat Book 19, page 164 in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

Commencing at the northwestern corner of Lot 16 in said Addition; thence North 88 degrees 41 minutes 54 seconds East (assumed bearing) 356.81 feet along the northern lines of Lots 16, 15, 14 and 1 in said Addition; thence South 00 degrees 06 minutes 58 seconds East 89.79 feet parallel with the eastern line of said Lot 1 to the POINT OF BEGINNING of this description; thence North 89 degrees 53 minutes 02 seconds East 135.00 feet perpendicular to said eastern line; thence South 00 degrees 06 minutes 58 seconds East 382.00 feet parallel with the eastern lines of said Lots 1 through 7; thence South 89 degrees 53 minutes 02 seconds West 74.50 feet perpendicular to said eastern lines; thence North 45 degrees 06 minutes 58 seconds West 85.56 feet; thence North 00 degrees 06 minutes 58 seconds West 321.50 feet parallel with said eastern lines to the POINT OF BEGINNING, containing 1.142 acres, more or less.



CHICAGO TITLE

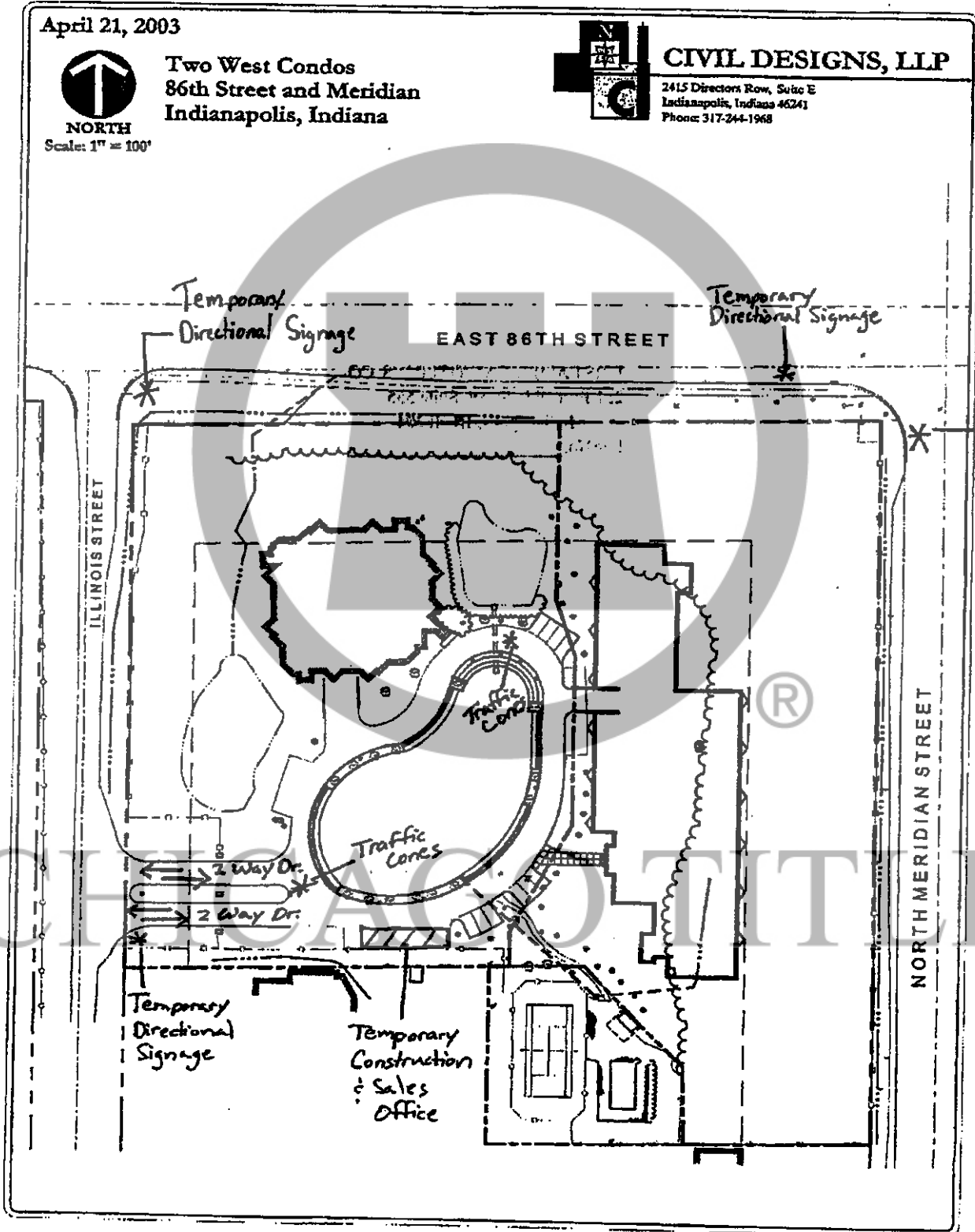
Exhibit C

Apr 21 03 03:43p

Jason S. Challand

317-575-7989

P.5



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February 10, 2012 3:07 PM  
Julie L. Voorhies,  
Marion County Recorder



Pages: 28

Fee: \$98.50  
By: MLW

28  
MLW

Cross-References: 2004-00088276  
2004-00088294

AGREEMENT TO  
MODIFY JOINT DECLARATION

THIS AGREEMENT TO MODIFY JOINT DECLARATION (hereinafter referred to as "the Agreement" or "this Agreement" where appropriate) made the 7<sup>th</sup> day of February, 2012, by the owners of the condominium units in ONE WEST OWNERS ASSOCIATION, INC. an Indiana non-profit corporation (hereinafter referred to as "One West Condominium" or its full corporate name where appropriate), TWO WEST CONDOMINIUM OWNERS' ASSOCIATION, INC. an Indiana non-profit corporation (hereinafter referred to as "Two West Condominium" or its full corporate name where appropriate); DIAMOND INVESTMENT GROUP I, LLC, an Indiana Limited Liability Company (hereinafter referred to as "DIG" or its full corporate name where appropriate); and the JOINT ONE AND TWO WEST OWNERS ASSOCIATION, INC., an Indiana non-profit corporation, (hereinafter referred to as the "Joint Association" or its full corporate name where appropriate),

WITNESSETH:

WHEREAS, on the 3<sup>rd</sup> day of April, 2004, the Joint Association was incorporated as an Indiana non-profit corporation;

WHEREAS, on the 9<sup>th</sup> day of April, 2004, the Joint Association adopted a "Code of By-Laws" to establish the rights and responsibilities of its members and board of directors;

WHEREAS, on the 9<sup>th</sup> day of April, 2004, the One West Owners Association, Inc., as attorney-in-fact for the owners of condominium units in One West Condominium, conveyed by Special Warranty Deed to the Joint Association certain real estate mutually shared by the owners of condominium units in One West Condominium and Two West Condominium (hereinafter referred to as "Shared Land"), said Special Warranty Deed being recorded in the Office of the Recorder of Marion County, Indiana as Instrument No. 2004-00088276;

WHEREAS, on the 3<sup>rd</sup> day of May, 2004, the Joint Association recorded its "Joint Declaration of Covenants, Conditions and Restrictions for One West Condominium and Two West Condominium" (herein referred to as the "Joint Declaration") in the office of the Recorder of Marion County, Indiana as Instrument No. 2004-0088294, concerning the ownership, use and management of the Shared Land described in the attached Exhibit "A;"

CHICAGO TITLE

WHEREAS, the Shared Land is owned in fee simple by the Joint Association;

WHEREAS, on the 10<sup>th</sup> day of March, 2010, subsequent to the recording of the Joint Declaration by the Joint Association, the developer of Two West Condominium changed;

WHEREAS, on the 10<sup>th</sup> day of March, 2010, DIG acquired the remaining fee simple interest held by Two West 86<sup>th</sup> Street, LLC, in Two West Condominium and a Warranty Deed was recorded on the 16<sup>th</sup> day of March 2010, as Instrument No. A201000023049, in the Office of the Recorder of Marion County, Indiana, to effectuate such transfer;

WHEREAS, as of the 10<sup>th</sup> day of March, 2010, DIG held a controlling interest in Two West Condominium;

WHEREAS, in a meeting held on the 25<sup>th</sup> day of May, 2011, 2011, DIG proposed to make substantial repairs/improvements to the pool and tennis court areas of the Shared Land and provided proposed plans to the unit owners of One West Condominium and Two West Condominium, as well as cost estimates; however, no specific financial data was provided;

WHEREAS, a majority of Unit Owners in Two West Condominium approved the plans, but a majority of Unit owners in One West Condominium did not;

WHEREAS, prior to the 2<sup>nd</sup> day of June, 2011, without follow-up notice or meeting DIG, undertook to and did commence demolition and construction activities on the Shared Land;

WHEREAS, such construction activities on the Shared Land were commenced without the knowledge or consent of the Unit owners of One West Condominium;

WHEREAS, by letter dated June 2, 2011, DIG billed the owners of units in One West Condominium for the disputed improvements on the Shared Land;

WHEREAS, the Joint Declaration expressly limits the liability of the owners of units in One West Condominium for "Capital Improvements," relating to the Shared Land to Thirty Thousand and no/100 Dollars (\$30,000.00) per year, for which unit owners in One West Condominium are liable up to twenty-five percent (25%) of such "Capital Improvements" or a Seven Thousand Five Hundred and no/100 Dollars (\$7,500.00) per year maximum;

WHEREAS, without agreement or commitment DIG completed the disputed improvements to the pool and tennis court areas of the Shared Land;

WHEREAS, a dispute arose between the owners of units in One West Condominium and DIG regarding, the classification of the improvements made, the alleged failure to follow the procedural process set forth in the Joint Declaration and corresponding documents, and the alleged improper billing for such improvements in contravention of the Joint Declaration;

WHEREAS, DIG prevented the owners of units in One West Condominium from gaining access to the pool and tennis court areas of the Shared Land;

CHICAGO TITLE

WHEREAS, the parties hereto desire to resolve and settle their dispute without the expense and uncertainty of litigation; and

WHEREAS, the parties hereto warrant that (a) they are executing this Agreement upon the advice and with the consent of their own counsel, without reliance upon any statement or representation by the person or parties or their representatives or counsel concerning the nature and extent of the claims and liability; (b) they (and/or their agents signing this Release) are of legal age and legally competent to execute this Agreement; (c) they each accept full responsibility therefore; (d) this Agreement represents the entire understanding between the parties; and (e) no other statements, promises or inducements made by either party, or any agent of the parties that are not contained in this instrument shall be valid or binding.

NOW, THEREFORE, for and in consideration of the obligations and promises recited below, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties represent and agree as follows:

1. Each of the foregoing recital paragraphs is incorporated herein by reference and the same are made a part hereof as set forth herein verbatim.

2. Each and every term and condition of the Joint Declaration shall remain in full force and effect unless otherwise amended by this Agreement.

3. The liability of the owners of units in One West Condominium will continue to be limited to twenty-five percent (25%) of a maximum Thirty Thousand and No/100 Dollars (\$30,000.00) per year on Capital Improvements (as defined by the Joint Declaration), representing a maximum of Seven Thousand Five Hundred Dollars (\$7,500.00), or Six Hundred Twenty-Five and No/100 Dollars (\$625.00) per unit for the twelve (12) units in One West Condominium.

4. It is acknowledged and understood that there is a process identified in the Joint Declaration for providing notice to Unit Owners in One West and Two West Condominiums regarding proposed capital improvements and/or maintenance repairs. The unit owners of One West Condominiums do not believe the process was adhered to regarding the 2011 pool/tennis court project. The parties hereto acknowledge the process identified in the Joint Declaration and commit that the process will be strictly adhered to on future projects involving capital improvements and/or maintenance repairs.

5. The owners of units in One West Condominium, for and in consideration of the improvements made and maintenance expenses incurred by DIG for the maintenance and improvements to the pool and tennis court within the Shared Land of the Joint Association agree to, and shall pay, to the Joint Association the sum of Two Thousand One Hundred and no/100 Dollars (\$2,100.00) on or before February 15, 2012.

6. The obligations of the owners of units in One West Condominium for the disputed improvements made and maintenance expenses incurred for the Joint Land of the Joint

CHICAGO TITLE

Association in the calendar year 2011 are strictly limited to the foregoing sum and expenses of any type related to the maintenance and/or improvement of the Joint Land, including but not limited to cost overruns, extras and changes, shall be borne by DIG. The Joint Association shall not, under any circumstances, arbitrarily increase the Joint Association dues of the owners of units in One West Condominium for the purpose of recovering fees associated with the pool and tennis court project in 2011. Any increase in dues of the Joint Association must be justified and be based on actual anticipated expenses and not past expenses.

7. It is expressly acknowledged and understood that this Agreement is not a waiver and that none of the rights of the owners of units in One West Condominium as set forth in the Joint Declaration shall be affected or otherwise impacted by this Agreement. DIG acknowledges and agrees that on all future Capital Improvements and maintenance expenses, that the Joint Declaration, including the Articles of Incorporation and By-Laws must be strictly adhered to and that any deviation related thereto will result in no financial liability to the owners of units in One West Condominium for such Capital Improvement and/or maintenance expenses.

8. The forbearance by the condominium unit owners in One West Condominium to strictly enforce the provisions of the Joint Declaration relating to the approval of proposed Capital Improvements or maintenance expenses on the pool and tennis court project in 2011 or the payment noted herein or in exercising any right or remedy under said Joint Declaration, or otherwise forego the enforcement of any applicable law, shall not be a waiver of, or preclude the exercise of, any such future right or remedy as it relates to the Joint Declaration or this Agreement.

9. The Board of the Joint Association shall, at least ninety (90) days in advance of undertaking any planned capital improvement project(s) and/or maintenance repair(s), shall provide the owners of condominium units in One West Condominium and Two West Condominium with proposed, detailed plans identifying the proposed improvement(s) and/or repair(s), as well as a detailed outline of the costs of such improvement(s) and/or repair(s). A meeting of the Joint Association shall be held a minimum of forty-five (45) days in advance of undertaking the proposed capital improvement(s) and/or repair (s) at which time the planned improvement(s) and/or repair(s) and the costs thereof will be discussed in detail. Within fifteen (15) days of the meeting a final set of plans and budget, as well as a final meeting notice, will be submitted to said unit owners and at said final meeting said unit owners will vote on the proposal as provided in the Joint Declaration. No capital improvement(s) and/or repair(s) of any type shall be undertaken by the Joint Association, its Board or any agent acting on behalf of the Joint Association or its Board without first following the guidelines and procedures established by the Joint Declaration and this Agreement.

10. On or before the 1<sup>st</sup> day of January in each calendar year, the Board of the Joint Association shall undertake to and provide the One West and Two West Condominium Owners with a proposed budget. The annual budget shall separate general operating expenses from any planned future capital improvements and/or maintenance costs regarding any asset which is owned and controlled by the Joint Association. Quarterly financial reports will continue to be provided to One and Two West Condominium Owners for their review and consideration.

CHICAGO TITLE

11. As of the date of this Agreement all unit owners in One West Condominium and Two West condominium are current on their dues for the Joint Association.

12. It is acknowledged and understood that no person or entity has the right to limit access to any portion of the Shared Land under any circumstance. If there is a violation of this Agreement or the Joint Declaration, any person or entity permitted to enforce a violation of the same shall be permitted to seek a Court Order to limit such access, but under no circumstance shall "self help" be permitted for the purpose of restricting the right of any owner of a condominium unit in One West Condominium or Two West Condominium.

13. The covenants and agreements contained in this Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors, legal representatives and assigns. It is acknowledged and understood by the parties that the purpose of the Joint Declaration and this Agreement is to protect the owners of condominium units in One West Condominium and Two West Condominium.

14. This Agreement shall be governed according to the laws of the State of Indiana.

15. This Agreement shall be subject to the additional provisions set forth in the Joint Declaration, as well as the Articles of Incorporation and By-Laws of the Joint Association. The parties hereto acknowledge the existence of said documents as binding, legal documents affecting the use and ownership of the Joint Land and further acknowledge that they each possess copies of said documents, they have read such documents, and they understand such documents. Such documents shall remain controlling in all respects and it is acknowledged and understood that no party shall have the right to unilaterally take any action of any type concerning the Joint Land without first properly and timely notifying all unit owners of One West Condominium and Two West Condominium of the proposed action; holding a meeting concerning the proposed action; voting on the proposed action; and gaining approval of the unit owners as set forth in the Joint Declaration and corresponding documents.

16. Each term and each provision of this Agreement to be performed by the parties hereto shall be construed to be both an independent covenant and a condition.

17. If any term or provision of this Agreement shall be deemed to be prohibited, invalid or unenforceable in any jurisdiction, such a provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, or effecting the validity or enforceability of such provisions in any jurisdiction, and all such remaining terms and provisions shall remain in full force and effect.

18. The parties agree that neither shall commence any litigation or any other type of proceedings against the other party over a dispute arising out of this Agreement or any party's rights or obligations hereunder, except in a state court located in Marion County, Indiana. Each party consents to and subjects itself to the exclusive jurisdiction of such courts for any dispute arising out of this Agreement, or in any manner related to the Agreement or the Joint Declaration, and each party agrees that such jurisdiction and venue are reasonable and just under the circumstances. Each party expressly waives the right to a jury trial as to any issues arising



CHICAGO TITLE



out of any such dispute.

19. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and any of the parties may execute this Release by signing any such counterpart. Facsimile signature shall constitute execution as though it were an original.

20. The numerical sections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

21. This Agreement is the result of negotiations between the parties and no party shall be deemed to be the drafter of this Agreement. Each of the parties expressly agrees and acknowledges that by signing this Agreement, each of them represents and warrants that: (a) they are authorized to enter into and execute this Agreement; (b) the information furnished in this Agreement is true and accurate; (c) they have read this entire Agreement; (d) they understand the terms and conditions of this Agreement, as well as the consequences of entering into this Agreement; (e) they have knowingly and voluntarily entered into this Agreement; (f) they have been represented by an attorney in connection with entering into this Agreement, or have been given the opportunity to seek the advice of legal counsel before signing this Agreement and have been advised to employ their own attorneys in connection with reviewing and entering into this Agreement; and (g) this Agreement shall inure to the benefit of and be binding upon the parties, their related entities and affiliates, officers, directors, members, agents, employees, heirs, successors and assigns.

22. This Agreement shall be recorded at the cost of the unit owners of One West Condominium.


23. This Agreement, together with the Joint Declaration, contains the entire agreement of the parties and may not be modified except by an instrument in writing which is signed by all parties.

IN WITNESS WHEREOF, the undersigned parties have caused this document to be executed as of the day and year first above written.

"One West Condominium"

ONE WEST OWNERS ASSOCIATION, INC.  
an Indiana non-profit corporation

By:

  
Robert W. Carter, President



CHICAGO TITLE

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Robert W. Carter, who represented himself/herself/themselves to be the President of One West Owners Association, Inc., and attorney-in-act for the unit owners of One West Condominium and who acknowledged execution of the foregoing Agreement, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 7<sup>th</sup> day of February, 2012.

MY COMMISSION EXPIRES:  
10-29-2015

Cheryl A. Croghan  
Notary Public

COUNTY OF RESIDENCE:  
Marion

Cheryl G. Croghan  
Printed

(TWO WEST CONDOMINIUM)

By: Francois Mercho  
Francois Mercho President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Francois Mercho, who represented himself/herself/themselves to be the President of Two West Homeowner's Association, Inc., and attorney-in-act for the unit owners of Two West Condominium and who acknowledged execution of the foregoing Agreement, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 30<sup>th</sup> day of January, 2012.

MY COMMISSION EXPIRES:  
June 15, 2015

Tarek E. Mercho  
Notary Public



COUNTY OF RESIDENCE:  
Marion

Tarek E. Mercho

TAREK E. MERCHO  
NOTARY PUBLIC  
SEAL  
STATE OF INDIANA  
MY COMMISSION EXPIRES June 11, 2015

CHICAGO TITLE

DIAMOND INVESTMENT GROUP I,  
LLC  
an Indiana Limited Liability Company

By: Francois Mercho  
Francois Mercho      President

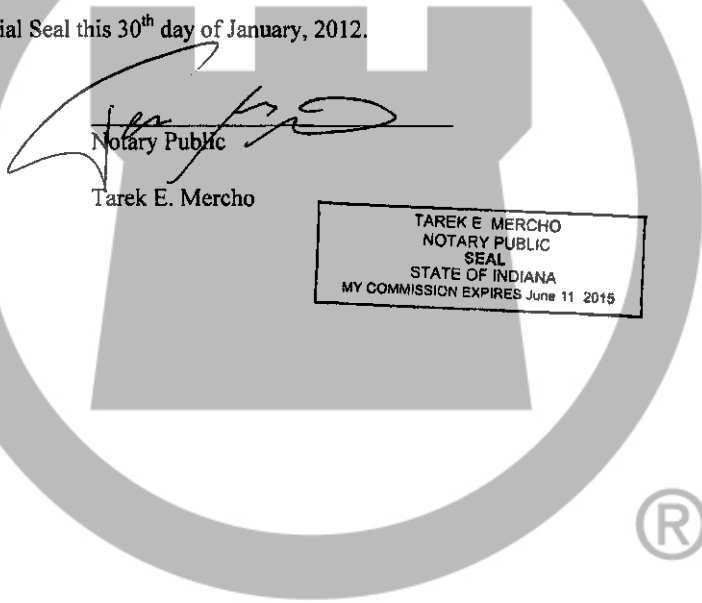
STATE OF INDIANA      )  
                                  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said County and State, personally appeared Francois Mercho, who represented himself/herself/themselves to be the President of Diamond Investment Group, I, LLC, and attorney-in-act for the unit owners of Diamond Investment Group I, LLC and who acknowledged execution of the foregoing Agreement, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 30<sup>th</sup> day of January, 2012.

MY COMMISSION EXPIRES:  
June 15, 2015

COUNTY OF RESIDENCE:  
Marion

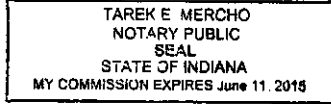


CHICAGO TITLE

JOINT ONE AND TWO WEST OWNERS  
ASSOCIATION, INC.  
an Indiana Non-Profit Corporation

By: Francois Mercho  
Francois Mercho President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )



Before me, a Notary Public in and for said County and State, personally appeared Francois Mercho, who represented himself/herself/themselves to be the President of Joint One and Two West Owners Association, Inc., and attorney-in-act for the unit owners of Joint One and Two West Owners Association, Inc., an Indiana Non-Profit Corporation and who acknowledged execution of the foregoing Agreement, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 30<sup>th</sup> day of January, 2012.

MY COMMISSION EXPIRES:  
June 15, 2015

COUNTY OF RESIDENCE:  
Marion

Tarek E. Mercho  
Notary Public  
Tarek E. Mercho

This Document Prepared by Russell L. Jones, Esq., COHEN, GARELICK & GLAZIER, 8888  
Keystone Crossing Boulevard, Suite 800, Indianapolis, Indiana 46240.

I AFFIRM under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Russell L. Jones  
(Print Name)



CHICAGO TITLE

A

**JOINT DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR ONE WEST CONDOMINIUM AND TWO WEST CONDOMINIUM**

THIS DECLARATION, dated April 9, 2004, is executed by JOINT ONE AND TWO WEST OWNERS ASSOCIATION, INC., an Indiana nonprofit corporation (the "Joint Association").

**Recitals:**

A. The Joint Association is the owner in fee simple of certain real estate described in Exhibit A attached hereto (the "Shared Land") and facilities thereon. The Shared Land surrounds One West Condominium (as hereinafter defined) and Two West Condominium (as hereinafter defined).

B. The Joint Association desires to subject and impose upon the Shared Land the terms of this Declaration and the mutual and beneficial restrictions, covenants, conditions and charges contained herein (such restrictions, covenants, conditions and charges herein referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of One West Condominium and Two West Condominium (the "Condominiums") and the current and future owners of units in the Condominiums (the "Units").

**Terms:**

NOW, THEREFORE, the Joint Association hereby declares that the Shared Land and facilities are held and shall be held, conveyed, hypothecated or encumbered, used, occupied and improved, subject to the Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of the Units and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Condominiums as a whole and of each of the Units. All of the Restrictions shall run with the land and shall be binding upon the parties which now have or which in the future shall acquire any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to the Restrictions, including but not limited to the Shared Land and facilities and the Units, and shall inure to the benefit of the successors of such parties.

**ARTICLE I  
DEFINITIONS**

The following are the definitions of the terms used in this Declaration:

Section 1.1 "Board" shall mean the Board of Directors of the Joint Association.

Section 1.2 "Condominiums" shall have the meaning set forth in Recital B above.

Inst # 2004-0088294

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EXHIBIT "A"

CHICAGO TITLE

Section 1.3 "Joint Assessment" shall mean the share of the Joint Common Expenses or other special assessments, as determined and levied on One West and the Two West Declarant pursuant to the provisions of Article IV hereof.

Section 1.4 "Joint Association" shall mean the Indiana nonprofit corporation that is executing this Declaration.

Section 1.5 "Joint Common Areas" shall mean the Shared Land together with all buildings, structures, improvements, fixtures and property of whatsoever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in anyway pertaining thereto.

Section 1.6 "Joint Common Expenses" shall mean the actual and estimated cost to and reserves of the Joint Association for maintenance, repair, replacement, alteration, improvement, administration, management and operation of the Joint Common Areas, and any other cost or expense incurred or expected to be incurred by the Joint Association for the benefit of the Joint Common Areas or for the benefit of the Joint Association or the current or future owners of the Units. Joint Common Expenses include but are not limited to costs and expenses incurred to:

- (a) provide security services for the Condominiums;
- (b) maintain a certain water meter as required under a certain Declaration of Maintenance Obligation recorded on April 5, 2000, as Instrument No. 2000-52029 in the office of the Recorder of Marion County, Indiana, but the costs and expenses described in this subsection (b) shall be Joint Common Expenses only for so long as such meter is used as part of an irrigation system that serves the Joint Common Areas; and
- (c) repair and maintain the sanitary sewer line that is the subject of that certain Private Sanitary Sewer Use Agreement recorded on August 30, 2002, as Instrument No. 2002-164939 in the office of the Recorder of Marion County, Indiana, as amended by Instrument No. 2002-164940 recorded on August 30, 2002, in such office, but the costs and expenses described in this subsection (c) shall be Joint Common Expenses only if Two West Condominium or the Joint Association taps into and uses the sanitary sewer line or any portion thereof.

If and when Two West Condominium or the Joint Association shall begin to use the sewer line that is the subject of that Private Sanitary Sewer Use Agreement recorded on August 30, 2002, as Instrument No. 2002-164939 in the office of the Recorder of Marion County, Indiana, as amended by Instrument No. 2002-164940 also recorded on August 30, 2002, in such office, the Joint Association shall assume One West's obligations under such sewer agreement, and all costs associated with the use, repair or maintenance of such sewer line will be a Joint Common Expense under this Declaration. Until such time, One West shall continue to be obligated under such agreement, as the same has been, or may in the future be, amended.

The costs and expenses referenced in Section 4.9 below are specifically excluded from the definition of Joint Common Expenses. The Joint Association shall employ a bonded

professional manager or management company which may also be the manager of one or both of the Condominium Associations.

**Section 1.7 "One West"** shall mean One West Owners Association, Inc., an Indiana nonprofit corporation.

**Section 1.8 "One West Condominium"** shall mean the condominium created by the Declaration referred to in Section 1.10 below, as amended.

**Section 1.9 "One West Declaration"** shall mean (i) a certain Declaration Establishing a Plan for Condominium Ownership dated April 24, 1985, executed by Wolner Development Corp., as declarant, and recorded on May 22, 1985, as Instrument No. 85-40722 in the office of the Recorder of Marion County, Indiana, as amended by the following instruments: (ii) a certain Supplemental Declaration of Condominium recorded April 24, 1990, as Instrument No. 90-38765, (iii) a certain Second Amendment to Condominium Declaration recorded December 15, 1993, as Instrument No. 93-192009 and corrected by a certain Affidavit of Scrivener's Error recorded April 27, 1994, as Instrument No. 94-66925, (iv) a certain Third Amended Declaration Establishing a Plan for Condominium Ownership recorded April 28, 1998, as Instrument No. 98-68872, (v) a certain Amendment Number One to the Third Amended Declaration Establishing Plan for Condominium Ownership recorded February 18, 1999, as Instrument No. 99-37072, (vi) a certain Fourth Amendment to Condominium Declaration recorded May 13, 1999, as Instrument No. 99-93891, (vii) a certain Fifth Amendment to Condominium Declaration recorded March 6, 2000, as Instrument No. 2000-35348 and (viii) a certain Sixth Amendment to Condominium Declaration and Removal of Real Estate from Condominium Declaration and Related Documents recorded April \_\_, 2004, as Instrument No. 2004-\_\_\_\_\_.

**Section 1.10 "Owner"** shall mean the record owner, whether by one or more persons, of the fee simple title to any Unit, but excluding those persons having such interest merely as security for the performance of an obligation.

**Section 1.11 "Restrictions"** shall have the meaning set forth in Recital B above.

**Section 1.12 "Two West Association"** shall mean Two West Owners Association, Inc., an Indiana nonprofit corporation.

**Section 1.13 "Two West Condominium"** shall mean the condominium created upon the real estate described in Exhibit B attached hereto by the Two West Declaration.

**Section 1.14 "Two West Declarant"** shall mean Two West 86<sup>th</sup> Street, LLC, an Indiana limited liability company; provided, however, from and after the expiration of the Two West Development Period, "Two West Declarant" shall mean the Two West Association.

**Section 1.15 "Two West Declaration"** shall mean a certain declaration of condominium ownership and of easements, restrictions, covenants and by-laws for Two West Condominium dated April 9, 2004, executed by the Two West Declarant to be recorded in the office of the Recorder of Marion County, Indiana.

Section 1.16 "Two West Development Period" shall mean the period commencing on the date of this Declaration and ending on April 30, 2006, unless substantial completion of the Two West Condominium building is delayed due to labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipated, unavoidable casualties, causes beyond the control of the Two West Declarant or acts of One West or the Owners, occupants or mortgagees of any of the Units in One West Condominium. In the event of any such delay, the ending date specified in the preceding sentence, and accordingly the Two West Development Period, shall be extended a reasonable length of time to account for the delay.

Section 1.17 "Units" shall have the meaning set forth in Recital B above.

**ARTICLE II**  
**PROPERTY RIGHTS AND EASEMENTS**

Section 2.1 **General.** The Owner of any Unit in the One West Condominium, or in the Two West Condominium, shall hold title and shall be subject to each and every Restriction and agreement herein contained. Each new Owner of any condominium Unit, their heirs, personal representatives, successors and assigns, shall take their interest subject to the rights and powers of the Joint Association with respect to this Declaration. The ownership of each Unit shall include, and there shall pass with each Unit as an appurtenance thereto, whether or not separately described, a non-exclusive right and easement of enjoyment in and to the Joint Common Areas as established under this Declaration, subject to the Restrictions established hereunder. The Joint Common Areas however shall be owned by the Joint Association and no Unit Owner shall have a lien thereon or the right to place a mortgage thereon.

Section 2.2 **Owners' Easement of Enjoyment.** Every Owner and his or her family and tenants who reside at the Condominiums, and their guests who are accompanied by them, have and shall have a non-exclusive right and easement to use of the Joint Common Areas. Such right and easement are and shall be appurtenant to and shall pass with title to each Unit, subject to the provisions of this Declaration and the rules, regulations, fees and charges from time to time established by the Joint Association.

Section 2.3 **Access Easements.** Without limitation of other general rights and easements declared or granted herein, the Joint Association hereby grants and conveys to (a) the owners, contract purchasers, mortgagees, occupants, tenants and licensees from time to time of One West Condominium and Two West Condominium the same perpetual, non-exclusive easement that is granted to the owners, contract purchasers, mortgagees, occupants, tenants and licensees from time to time of One West Condominium in paragraph 2 of a certain Declaration of Easements recorded on April 24, 1990, as Instrument No. 900038764 in the office of the Recorder of Marion County, Indiana, and (b) to the owners from time to time of individual condominium units in One West Condominium and Two West Condominium the same perpetual, non-exclusive easement that is granted to the owners from time to time of individual condominium units in One West Condominium in a certain Grant of Easement recorded on



December 14, 1992, as Instrument No. 9200165112 in the office of the Recorder of Marion County, Indiana.

**ARTICLE III**  
**ORGANIZATION AND DUTIES OF JOINT ASSOCIATION**

**Section 3.1 Organization of Joint Association.** The Joint Association shall be operated in accordance with (a) the Articles of Incorporation of the Joint Association that were filed with the office of the Secretary of State of Indiana on April 8, 2004, and (b) the Code of By-laws of the Joint Association.

**Section 3.2 Membership.** The membership of the Joint Association shall consist of two (2) members with the following rights:

- (a) Class A Member. One West shall be the Class A Member and shall be entitled to elect one (1) member of the Board.
- (b) Class B Member. The Two West Declarant shall be the Class B Member and shall be entitled to elect three (3) members of the Board.

**Section 3.3 General Duties of the Joint Association.** The Joint Association is hereby authorized to act and shall act on behalf of the individual Owners in all matters pertaining to the maintenance, repair, replacement, alteration, improvement, administration, management and operation of the Joint Common Areas, the determination of Joint Common Expenses and the collection from One West and the Two West Declarant of annual and special Joint Assessments.

The Joint Association shall also have the right, but not the obligation, to act on behalf of the Owners in seeking enforcement of the Restrictions and the terms, covenants and conditions contained in this Declaration. Neither the Joint Association, the members of the Board nor the officers or authorized agents of the Joint Association shall have any liability whatsoever to One West, the Two West Declarant or any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of One West, the Two West Declarant or the Owners or in the nature of willful, intentional, fraudulent or reckless misconduct. The Joint Association shall maintain and keep the Joint Common Areas in good repair and the driveways and paved areas reasonably free of snow and debris, including but not limited to the lawns, landscaping, fences, streets, entry features, center fountain, signs, driveways, sidewalks, lighting, retention ponds, surface water control facilities, sanitary sewer and other utility lines, parking areas (excluding the underground garages below the One West Condominium and Two West Condominium residential buildings), swimming pool, pool house and tennis court, and such portions of any other real property included within the Joint Common Areas as may be provided in this Declaration. The Joint Association may enter into contracts for such maintenance or other services, including security measures, with one or more other persons or entities, and may adopt reasonable rules governing the use and enjoyment of the Joint Common Areas. Services rendered by the Joint Association shall be available on a basis that does not discriminate in favor of one member over the other or one Unit over another based on whether the Units involved are part of One West Condominium or Two West Condominium.

**Section 3.4 Insurance.** The Joint Association shall maintain in force adequate public liability insurance protecting the Joint Association and the Unit Owners as additional insured parties against liability for property damage and personal injury. The Joint Association may, but need not, maintain in force adequate officers and directors insurance covering the officers and directors of the Joint Association. If appropriate, the Joint Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Joint Common Areas against fire, windstorm, vandalism and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Joint Association, its officers, Board members, One West, the Two West Declarant, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Joint Association may maintain a fidelity bond indemnifying the Joint Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee, agent, or anyone who either handles or is responsible for funds held or administered by the Joint Association, whether or not they receive compensation for their services.

The Joint Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Joint Association before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason. The premium for any insurance coverage maintained under this Declaration shall be a Joint Common Expense.

**Section 3.5 Condemnation or Destruction.** In the event that any of the Joint Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Joint Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements or agreements in connection with such condemnation, damage or destruction. Any sums recovered by the Joint Association shall be applied, first, to the restoration and repair of any Joint Common Areas condemned, damaged or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Joint Common Areas or turned over to One West and the Two West Declarant in one-fourth (1/4) and three-fourths (3/4) proportions, respectively, whichever may be determined by the Joint Association. Each Owner shall be responsible for pursuing his or her own action for damages to his or her Unit, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Joint Common Areas.

**ARTICLE IV**  
**JOINT ASSESSMENTS**

**Section 4.1 Purpose of Joint Assessments.** The Joint Assessments shall be approved by

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CHICAGO TITLE

the members of the Joint Association, shall be levied by the Joint Association and shall be used exclusively for the Joint Association's obligations relating to the maintenance, repair, replacement, alteration, improvement (alterations and improvements being subject to the provisions of Sections 4.9 and 4.10 hereof), administration, management and operation of the Joint Common Areas, including but not limited to the payment of taxes and insurance thereon, enforcement of the Restrictions and the cost of labor, equipment, material and management furnished with respect to the Joint Common Areas; provided, however, the Joint Association shall not be responsible for the maintenance, repair, replacement, alteration, improvement, administration, management and operation of any Joint Common Areas which are or hereafter may be dedicated to the public. The Joint Assessments shall also provide and pay for security services to the Shared Land and for the two Condominiums.

**Section 4.2 Liability for Joint Assessments.** One West hereby covenants and agrees to pay to the Joint Association one-fourth (¼) of (a) the annual Joint Assessments fixed, established and levied from time to time, as hereinafter provided and (b) any special Joint Assessments fixed, established and levied from time to time, as hereinafter provided. The Two West Declarant hereby covenants and agrees to pay to the Joint Association three-fourths (¾) of (a) the annual Joint Assessments fixed, established and determined from time to time, as hereinafter provided and (b) of any special Joint Assessments fixed, established and determined from time to time, as hereinafter provided, subject to the provisions of Sections 4.9 and 4.10 hereof.

**Section 4.3 Basis of Annual Joint Assessments.** The Joint Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Joint Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Joint Association. A copy of this budget shall be mailed or delivered to One West, the Two West Declarant and each Owner not fewer than thirty (30) days prior to the beginning of each fiscal year of the Joint Association. Such budget shall serve as the basis for establishing the annual Joint Assessments levied against One West and the Two West Declarant. If no such budget is established for a particular year, the budget for the preceding year shall be in effect for such particular year.

**Section 4.4 Basis of Special Joint Assessments.** Should the Joint Association at any time during the fiscal year determine that the Joint Assessments levied with respect to such year are insufficient to pay the Joint Common Expenses for such year, the Joint Association may, at any time and from time to time, levy against One West and the Two West Declarant such special Joint Assessments as it may deem necessary for meeting the Joint Common Expenses. In addition, the Joint Association shall have the right to levy against One West and the Two West Declarant at any time, and from time to time, one or more special Joint Assessments for the purpose of defraying, in whole, or in part, any unanticipated Joint Common Expenses not provided for by the annual Joint Assessments.

**Section 4.5 Fiscal Year; Date of Commencement of Assessments; Due Dates.** The fiscal year of the Joint Association shall be established by the Joint Association and may be changed from time to time by action of the Joint Association. The liability of One West and the Two West Declarant for Joint Assessments under this Article IV shall commence as of the date of this Declaration. The first annual Joint Assessment shall be made for the balance of the Joint

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CHICAGO TITLE

Association's fiscal year in which such Joint Assessment is made and shall become due and payable commencing on any date fixed by the Joint Association. The annual Joint Assessment for each year after the first assessment year shall be due and payable in twelve (12) equal monthly installments on the first day of each calendar month.

**Section 4.6 Duties of the Joint Association Regarding Joint Assessments.** The Joint Association shall keep proper books and records of the levy and collection of each annual and special Joint Assessment, which books and records shall be kept by the Joint Association and shall be available for inspection and copying by One West, the Two West Declarant and each Owner (or duly authorized representative thereof) at all reasonable times during regular business hours of the Joint Association. The Joint Association shall cause written notice of all Joint Assessments levied by the Joint Association to be mailed or delivered to One West, the Two West Declarant and the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Joint Assessment or any installment thereof. In the event such notice is mailed or delivered fewer than thirty (30) days prior to the due date of the Joint Assessment to which such notice pertains, payment of such Joint Assessment shall not be deemed past due for any purpose if paid by within thirty (30) days after the date of actual mailing or delivery of such notice.

**Section 4.7 Non-payment of Joint Assessments; Remedies of Joint Association.** If any Joint Assessment is not paid when due, such Joint Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest at the rate of twelve percent (12%) per annum until paid in full. In addition to such interest, the Joint Association may assess a late fee, as from time-to-time determined by the Joint Association. The Joint Association may bring an action in any court having jurisdiction to enforce payment of the same, and there shall be added to the amount of such Joint Assessment all costs of such action, including the Joint Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, and may include late fees, costs and attorneys' fees.

**Section 4.8 Adjustments.** In the event that the amounts actually expended by the Joint Association for Joint Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Joint Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Joint Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Joint Assessments or by the making of one or more special Joint Assessments for such purpose, at the option of the Joint Association. In the event that the amounts budgeted and assessed for Joint Common Expenses in any fiscal year exceed the amount actually expended by the Joint Association for Joint Common Expenses for that fiscal year, such excess shall be either (i) taken into account in establishing the budget for the ensuing fiscal year or (ii) credited against the Joint Assessment(s) due for the ensuing fiscal year(s).

**Section 4.9 The Two West Declarant's Sole Obligations.** Notwithstanding any provision of this Declaration to the contrary, the costs and expenses of the following items to the extent provided in plans submitted by the Two West Declarant for review by One West shall be solely the obligation of the Two West Declarant, and they are not Common Expenses:

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(a) Design and construction costs related to changing the surface water drainage and control system for the Joint Common Areas and One West Condominium to accommodate the Two West Condominium building.

(b) Construction of a pool changing room if the Two West Declarant, in its sole discretion, elects to construct one.

(c) Construction of new lawns, landscaping, fences, streets, signs, driveways, sidewalks, lighting, sanitary sewer and other utility lines and parking areas on the Joint Common Areas;

(d) Repair costs for any damages to existing improvements on the Joint Common Areas which are damaged as a result of the construction of the Two West Condominium building or the improvements referenced in subsection (c) above. Any such damaged improvements shall be restored at the Two West Declarant's expense to the same or better condition as they are in as of the commencement of construction.

(e) Installation of an entry gate at the existing entrance to the Joint Common Areas and new outside lighting, electric meters and wiring, if and to the extent the Two West Declarant, in its sole discretion, elects to install such improvements on or before January 1, 2007. If the Two West Declarant does install such entry gate on or before such date, it shall at its expense provide each Owner in One West Condominium with two remote gate openers and electronic means of opening the gate from inside each unit of One West Condominium.

(f) Cost of operating and separately metering all electrical services serving the Joint Common Areas, including lighting, from the electrical services serving One West, and causing such service to be billed to the Joint Association.

(g) The cost of installing sanitary sewer facilities to serve the Two West Condominium.

**Section 4.10 Limitation on Capitalized Cost Assessments.** Capitalized costs for new improvements to be constructed on the Joint Common Areas or alterations of existing improvements (as opposed to repairs or replacements of existing improvements) and which are not covered in Section 4.9 hereof shall not, without the written consent of both One West and the Two West Declarant, exceed a base amount per fiscal year. The base amount is \$30,000 in the Joint Association's first fiscal year (of which one-fourth, or \$7,500, would be the obligation of One West, and three-fourths, or \$22,500, would be the obligation of the Two West Declarant) and is subject to adjustment at the beginning of the sixth fiscal year and every five years thereafter, as follows:

(i) Divide the \$30,000 base amount (or the base amount as previously adjusted, as the case may be) by the index number for the consumer price index for urban consumers ("CPI-U") published monthly by the Bureau of Labor Statistics of the United States Department of Labor for the calendar

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month in which this Declaration is executed (or the calendar month used in computing the previous adjustment, as the case may be), and then multiply the result by the CPI-U index number for the calendar month preceding the month in which the adjustment will be effective.

(ii) If the CPI-U is discontinued, the Joint Association shall select comparable statistics on the purchasing power of the consumer dollar which are then available and published in some responsible financial periodical or recognized authority.

Neither the Two West Declarant nor the Joint Association shall be obligated to incur capitalized costs in any fiscal year in excess of the applicable base amount for new improvements or the alteration of existing improvements. This Section 4.10 does not apply to construction or any other costs which are the sole obligation of the Two West Declarant under Section 4.9 of this Joint Declaration.

#### ARTICLE V DEVELOPMENT PERIOD RESTRICTIONS

**Section 5.1 General.** In order to minimize interruption or interference with the use of One West Condominium and access thereto, the Two West Declarant shall control construction and marketing traffic by means of the temporary directional signage, traffic cones, traffic flow and location of the temporary construction and sales office as set forth in Exhibit C attached hereto.

**Section 5.2 Hours.** Construction of such building and other improvements normally shall be restricted to between the hours of 7:00 a.m. and 4:00 p.m., when daylight begins earlier, and from the hours of 8:00 a.m. to 5:00 p.m. in the winter months. Work on Saturdays and Sundays will be restricted. The Two West Declarant will notify the designated representative of One West in advance if and when any work will be performed at any other times. All construction traffic will be routed in accordance with the traffic flow pattern set forth on Exhibit C, and except as provided on such exhibit, drivers of construction vehicles will be instructed to park off of the established driveways and away from established parking areas. Construction workers will be instructed to park to the extent possible in the basement parking area of the building to be constructed.

**Section 5.3 Completion.** The Two West Declarant will use its best efforts to substantially complete construction of such building and other improvements prior to the expiration of the Two West Development Period.

**Section 5.4 Landscaping and Trees.** The Two West Declarant will cause its construction of the other improvements to conform to the final landscaping and tree preservation plan approved by One West on July 10, 2003.

**Section 5.5 Lighting.** The Two West Declarant will install only low intensity lighting on the exterior of such building and other improvements, consistent with the lighting levels which exist on the exterior of the One West Condominium building and the improvements currently constructed on the Joint Common Areas.

**Section 5.6 Signage.** Exterior signage installed by the Two West Declarant on the Joint Common Areas shall be subject to the approval of One West.

**ARTICLE VI**  
**USE RESTRICTIONS**

**Section 6.1 General.** The Joint Association shall have the authority to make and to enforce reasonable and non-discriminatory rules and regulations governing and restricting the use of the Joint Common Areas, in addition to those contained herein. Such rules and regulations shall be binding upon all Owners and occupants until and unless overruled, canceled or modified by the Joint Association.

**Section 6.2 Drainage, Sewers and Water Flow.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No one other than the Joint Association may change, obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers or storm drains. No sanitary sewage shall be discharged into the storm drainage system.

**Section 6.3 Traffic Regulation.** The Joint Association is hereby authorized to promulgate, administer and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including modifications of those in force on public streets, within the Condominiums. The Joint Association shall be entitled to enforce the same by establishing such enforcement procedures, as it deems necessary, including levying fines for the violation thereof. Only drivers licensed to operate motor vehicles by the State of Indiana or by any other state in the United States may operate any type of motor vehicle on the Joint Common Areas. All vehicles of any kind and nature which are operated on the streets in the Joint Common Areas shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Condominiums.

**Section 6.4 Drainage Areas, Ponds and Water Bodies.** All drainage areas, lakes, retention or other ponds and streams within the Joint Common Areas, if any, shall be aesthetic amenities only, and no other use thereof, including without limitation fishing, swimming, boating, playing, ice skating, use of personal flotation devices or other recreational activities shall be permitted. The Joint Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of wetlands, lakes, retention or other ponds or streams within the Joint Common Areas.

**Section 6.5 Laws and Ordinances.** Every Owner and occupant of any Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Joint Common Areas, and any violation thereof may be

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considered a violation of this Declaration; provided, however, the Joint Association shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

**Section 6.6 Occupants Bound.** All provisions of this Declaration and of any rules and regulations or use restrictions promulgated pursuant hereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit and their guests to comply with this Declaration and the rules and regulations adopted pursuant hereto and shall be responsible for all violations and losses to the Joint Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of this Declaration and rules and regulations adopted pursuant hereto.

**ARTICLE VII**  
**RULEMAKING AND REMEDIES FOR ENFORCEMENT**

**Section 7.1 Rules and Regulations.** Subject to the provisions hereof, the Joint Association may establish reasonable and non-discriminatory rules and regulations concerning the use of the Joint Common Areas, and the same and any amendments thereto shall be furnished by the Joint Association to One West, the Two West Declarant and the Owners at least thirty (30) days prior to the effective date thereof.

**Section 7.2 Authority and Enforcement.**

(a) Upon the violation of this Declaration or any rules and regulations duly adopted hereunder, the Joint Association shall have the power, after fifteen (15) days' written notice to the Owner or the occupant of said violation, and failure by said Owner or occupant to cure the violation: (i) to cause the Joint Association to correct the violation at its own cost and expense, which said cost and expense shall be reimbursed to the Joint Association by the Owner or the occupant who is guilty of such violation (with any amount not so reimbursed to be deemed a Joint Common Expense) and (ii) to suspend such Owner's or occupant's right (and the right of his or her family, guests and tenants) to use any of the Joint Common Areas other than to access his or her Unit.

The Joint Association shall have the power to impose all or any combination of these sanctions. An Owner or occupant shall be subject to the foregoing sanctions in the event of such a violation by him or her, his or her family, guests or tenants. Any such suspension of rights may be for the duration of the infraction and or any additional period thereafter, such additional period not to exceed thirty (30) days per violation.

(b) Notwithstanding subsection (a) above, a violation or threatened violation of any of the Restrictions or the terms, covenants and conditions contained in this Declaration or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by the Joint Association or any Owner against any person violating or threatening to violate the Restrictions or any such terms, covenants, conditions, rules or regulations. Available relief in any such action shall include the recovery of damages; injunctive relief, either to restrain the violation or threatened violation or to compel



compliance with such Restrictions, terms, covenants, conditions, rules or regulations; declaratory relief; and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such Restrictions, terms, covenants, conditions, rules or regulations. Failure by the Joint Association or any Owner to enforce any Restrictions, terms, covenants, conditions, rules or regulations shall in no event be deemed a waiver of the right to do so thereafter; provided, however, no action shall be brought against the Joint Association for failing to enforce or carry out any such Restrictions, terms, covenants, conditions, rules or regulations.

**Section 7.3 Nondiscrimination.** In establishing or enforcing any such Restrictions, terms, covenants, conditions, rules or regulations, the Joint Association shall not discriminate on the basis of whether the Units involved are a part of One West Condominium or Two West Condominium.

#### **ARTICLE VIII** **GENERAL PROVISIONS**

**Section 8.1 Term.** The Restrictions and the terms, covenants and conditions of this Declaration and any rules and regulations adopted hereunder, shall run with and bind the Condominiums, including but not limited to the Units, and the Joint Common Areas, and shall inure to the benefit of and shall be enforceable by the Joint Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

**Section 8.2 Amendment.** The Joint Association may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rules or regulations, or judicial determination, or to otherwise comply with any other governmental order or request; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or the Department of Housing and Urban Development, to enable such lender or purchaser to acquire or purchase mortgage loans on the Units; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; (e) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, any amendment permitted under subsections (a) through (e) of this Section 8.2 shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing, nor affect the governing of the One West Condominium or of the Two West Condominium.

Otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of at least seventy-five percent (75%) of the Owners, and at least fifty-one percent (51%) of the Owners of Units in One West (who may also be counted in the seventy-five percent (75%) vote). Any amendment to be effective must be recorded in the public records of the County in which this Declaration was recorded.

If an Owner consents to any amendment to this Declaration, it will be conclusively presumed that such Owner has the authority so to consent and, unless otherwise required by law, no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment unless the Joint Association shall have prior knowledge of such restrictions.

**Section 8.3 Indemnification.** The Joint Association shall indemnify every officer, director and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Joint Association) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Joint Association, and the Joint Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member or former officer, director or committee member may be entitled.

**Section 8.4 Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Joint Association will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes that are less restrictive. The effective date of this Declaration shall be the date of its filing in the public records. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for convenience of reference and not for the purpose of limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Indiana.

**Section 8.5 Right of Entry.** The Joint Association shall have the right, but only along with a representative of the applicable Condominium Association, but not the obligation, to enter any Unit for emergency, security and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration and the Joint Association rules and regulations, which right may be exercised by the Joint Association's Board, officers, agents, employees, managers and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or occupant directly affected thereby. This right of entry shall include the right of the Joint Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Joint Association.

**Section 8.6 Perpetuities.** If any of the Restrictions or terms, covenants, conditions or other provisions of this Declaration would be unlawful, void or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by Indiana Code 32-17-8-1, et seq., as amended from time to time.

**Section 8.7 Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and vice-versa, and the necessary grammatical changes required to make the provision hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**Section 8.8 Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

**Section 8.9 Rights of Third Parties.** This Declaration shall be recorded for the benefit of One West, the Two West Declarant, the Joint Association and the Owners and their mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Condominiums, except as provided for herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and the Joint Association and the Owners, as provided herein, shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

**Section 8.10 Borrowing on Common Areas.** The Joint Association shall not borrow money, mortgage, destroy or abandon any material part of the Common Areas and Facilities without the prior written consent of both Condominium Associations.

IN WITNESS WHEREOF, the Joint Association has caused this Declaration to be executed by its duly authorized officer of each as of the day and year first above written.

JOINT ONE AND TWO WEST OWNERS  
ASSOCIATION, INC.

By: Jason S. Chelland  
Its: President



STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Jason S. Chalupke PRESIDENT of Joint One and Two West Owners Association, Inc., an Indiana nonprofit corporation, who acknowledged the execution of the foregoing Declaration for and on behalf of such corporation.

Witness my hand and Notarial Seal this 9<sup>th</sup> day of April, 2004.



CYNTHIA J. LOVEJOY  
STATE OF INDIANA  
RESIDENT OF MARION COUNTY  
MY COMMISSION EXPIRES: OCT. 15, 2006

[Signature] ) Notary Public

My Commission Expires: \_\_\_\_\_ My County of Residence is: \_\_\_\_\_

This Instrument was prepared by Richard W. Dyar, Attorney.

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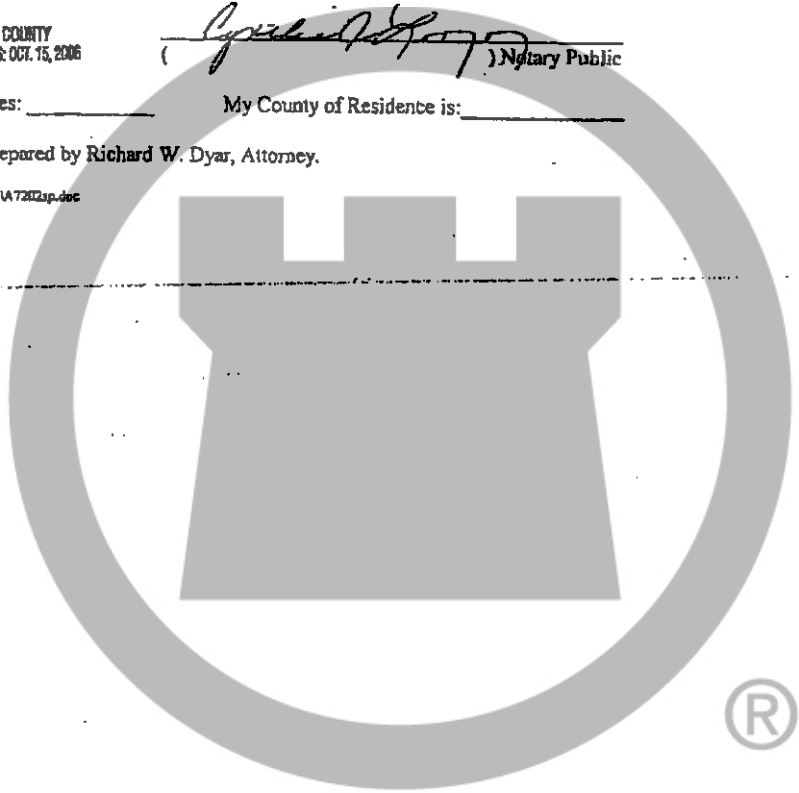


Exhibit A

Lots 1 through 8, and Lots 11 through 16 all inclusive in McCulloch and Hahn's North Meridian Street Addition to the City of Indianapolis, the plat of which is recorded in Plat Book 19, at page 164 in the Office of the Recorder of Marion County, Indiana, except the following two parcels which are excluded therefrom:

Parcel 1

Commencing at the northwestern corner of said Lot 16; thence North 88 degrees 41 minutes 54 seconds East (assumed bearing) 90.66 feet along the northern line of said Lot 16; thence South 00 degrees 05 minutes 00 seconds East 69.63 feet parallel with the western line of said Lot 16 to the POINT OF BEGINNING of this description; thence North 88 degrees 41 minutes 54 seconds East 165.56 feet parallel with the northern lines of said Lots 16, 15 and 14; thence South 00 degrees 05 minutes 00 seconds East 105.24 feet parallel with said western line; thence South 43 degrees 30 minutes 02 seconds West 72.15 feet; thence South 88 degrees 41 minutes 54 seconds West 115.81 feet parallel with said northern lines; thence North 00 degrees 05 minutes 00 seconds West 156.45 feet parallel with said western line to the POINT OF BEGINNING, containing 0.565 acres, more or less.

Parcel 2

A part of the Northwest Quarter of Section 23, Township 17 North, Range 3 East of the Second Principal Meridian, Washington Township, Marion County, Indiana, also being a portion of Lots 2 through 7, inclusive, in McCulloch and Hahn's North Meridian Street Addition to the City of Indianapolis, the plat thereof recorded as Plat Book 19, page 164 in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

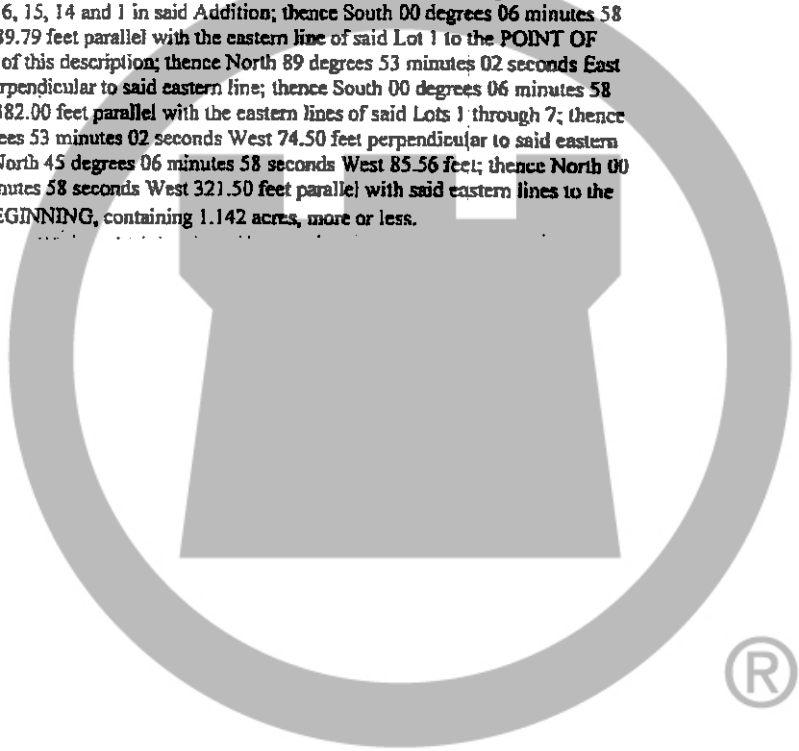
Commencing at the northwestern corner of Lot 16 in said Addition; thence North 88 degrees 41 minutes 54 seconds East (assumed bearing) 356.81 feet along the northern lines of Lots 16, 15, 14 and 1 in said Addition; thence South 00 degrees 06 minutes 58 seconds East 89.79 feet parallel with the eastern line of said Lot 1 to the POINT OF BEGINNING of this description; thence North 89 degrees 53 minutes 02 seconds East 135.00 feet perpendicular to said eastern line; thence South 00 degrees 06 minutes 58 seconds East 382.00 feet parallel with the eastern lines of said Lots 1 through 7; thence South 89 degrees 53 minutes 02 seconds West 74.50 feet perpendicular to said eastern lines; thence North 45 degrees 06 minutes 58 seconds West 85.56 feet; thence North 00 degrees 06 minutes 58 seconds West 321.50 feet parallel with said eastern lines to the POINT OF BEGINNING, containing 1.142 acres, more or less.

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**Exhibit B**

A part of the Northwest Quarter of Section 23, Township 17 North, Range 3 East of the Second Principal Meridian, Washington Township, Marion County, Indiana, also being a portion of Lots 2 through 7, inclusive, in McCulloch and Hahn's North Meridian Street Addition to the City of Indianapolis, the plat thereof recorded as Plat Book 19, page 164 in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

Commencing at the northwestern corner of Lot 16 in said Addition; thence North 88 degrees 41 minutes 54 seconds East (assumed bearing) 356.81 feet along the northern lines of Lots 16, 15, 14 and 1 in said Addition; thence South 00 degrees 06 minutes 58 seconds East 89.79 feet parallel with the eastern line of said Lot 1 to the POINT OF BEGINNING of this description; thence North 89 degrees 53 minutes 02 seconds East 135.00 feet perpendicular to said eastern line; thence South 00 degrees 06 minutes 58 seconds East 382.00 feet parallel with the eastern lines of said Lots 1 through 7; thence South 89 degrees 53 minutes 02 seconds West 74.50 feet perpendicular to said eastern lines; thence North 45 degrees 06 minutes 58 seconds West 85.56 feet; thence North 00 degrees 06 minutes 58 seconds West 321.50 feet parallel with said eastern lines to the POINT OF BEGINNING, containing 1.142 acres, more or less.



CHICAGO TITLE

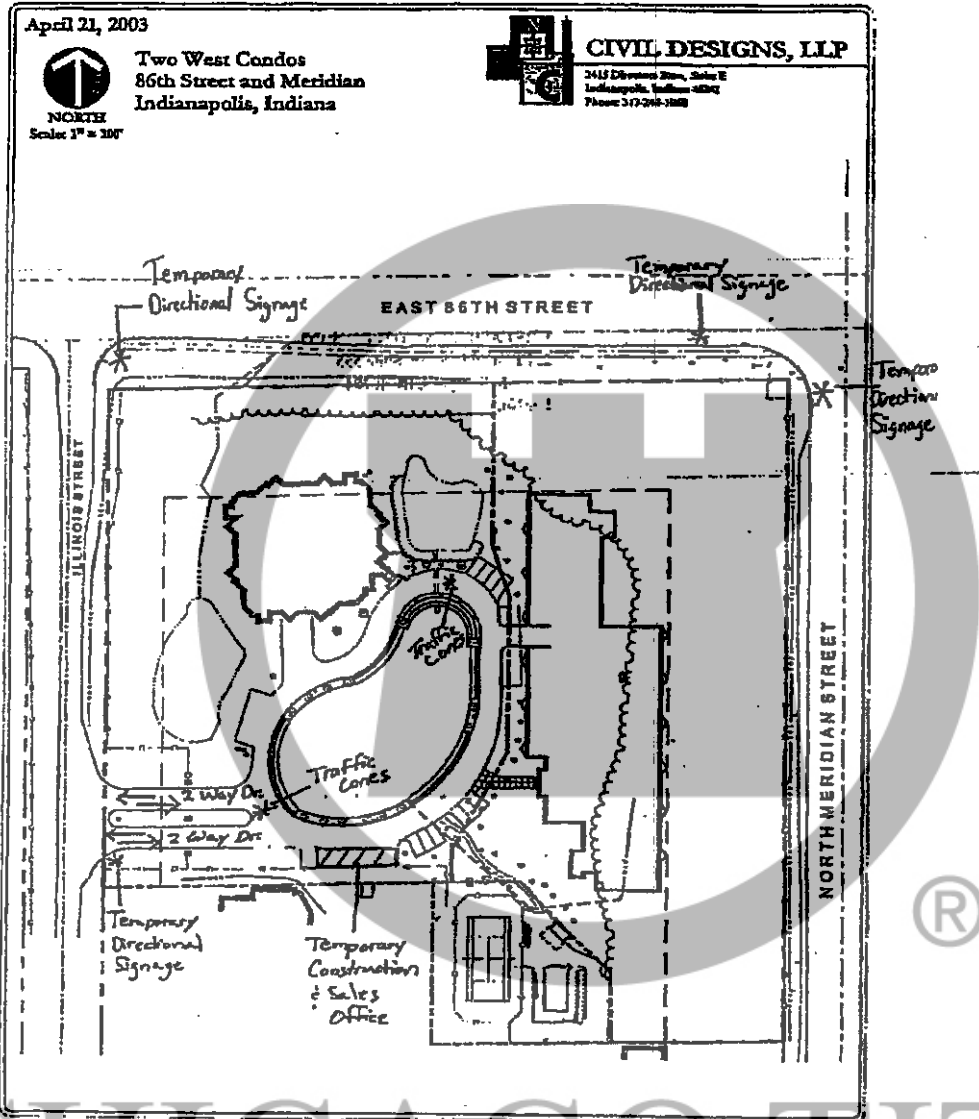
Exhibit C

Apr 21 03 03:43p

Jason S. Challand

317-575-7989

p.5



A201200018252

February 24, 2012 2:48 PM  
Julie L. Voorhies,  
Marion County Recorder



Pages: 11

Fee: \$45.50  
By: MLW

Cross-References: 2004-00088276  
2004-00088294

AGREEMENT TO  
MODIFY JOINT DECLARATION

THIS AGREEMENT TO MODIFY JOINT DECLARATION (hereinafter referred to as "the Agreement" or "this Agreement" where appropriate) made the 7<sup>th</sup> day of February, 2012, by the owners of the condominium units in ONE WEST OWNERS ASSOCIATION, INC. an Indiana non-profit corporation (hereinafter referred to as "One West Condominium" or its full corporate name where appropriate), TWO WEST CONDOMINIUM OWNERS' ASSOCIATION, INC. an Indiana non-profit corporation (hereinafter referred to as "Two West Condominium" or its full corporate name where appropriate); DIAMOND INVESTMENT GROUP I, LLC, an Indiana Limited Liability Company (hereinafter referred to as "DIG" or its full corporate name where appropriate); and the JOINT ONE AND TWO WEST OWNERS ASSOCIATION, INC., an Indiana non-profit corporation, (hereinafter referred to as the "Joint Association" or its full corporate name where appropriate),

WITNESSETH:

WHEREAS, on the 3<sup>rd</sup> day of April, 2004, the Joint Association was incorporated as an Indiana non-profit corporation;

WHEREAS, on the 9<sup>th</sup> day of April, 2004, the Joint Association adopted a "Code of By-Laws" to establish the rights and responsibilities of its members and board of directors;

WHEREAS, on the 9<sup>th</sup> day of April, 2004, the One West Owners Association, Inc., as attorney-in-fact for the owners of condominium units in One West Condominium, conveyed by Special Warranty Deed to the Joint Association certain real estate mutually shared by the owners of condominium units in One West Condominium and Two West Condominium (hereinafter referred to as "Shared Land"), said Special Warranty Deed being recorded in the Office of the Recorder of Marion County, Indiana as Instrument No. 2004-00088276;

WHEREAS, on the 3<sup>rd</sup> day of May, 2004, the Joint Association recorded its "Joint Declaration of Covenants, Conditions and Restrictions for One West Condominium and Two West Condominium" (herein referred to as the "Joint Declaration") in the office of the Recorder of Marion County, Indiana as Instrument No. 2004-0088294, concerning the ownership, use and management of the Shared Land described in the attached Exhibit "A;"

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WHEREAS, the Shared Land is owned in fee simple by the Joint Association;

WHEREAS, on the 10<sup>th</sup> day of March, 2010, subsequent to the recording of the Joint Declaration by the Joint Association, the developer of Two West Condominium changed;

WHEREAS, on the 10<sup>th</sup> day of March, 2010, DIG acquired the remaining fee simple interest held by Two West 86<sup>th</sup> Street, LLC, in Two West Condominium and a Warranty Deed was recorded on the 16<sup>th</sup> day of March 2010, as Instrument No. A201000023049, in the Office of the Recorder of Marion County, Indiana, to effectuate such transfer;

WHEREAS, as of the 10<sup>th</sup> day of March, 2010, DIG held a controlling interest in Two West Condominium;

WHEREAS, in a meeting held on the 25<sup>th</sup> day of May, 2011, 2011, DIG proposed to make substantial repairs/improvements to the pool and tennis court areas of the Shared Land and provided proposed plans to the unit owners of One West Condominium and Two West Condominium, as well as cost estimates; however, no specific financial data was provided;

WHEREAS, a majority of Unit Owners in Two West Condominium approved the plans, but a majority of Unit owners in One West Condominium did not;

WHEREAS, prior to the 2<sup>nd</sup> day of June, 2011, without follow-up notice or meeting DIG, undertook to and did commence demolition and construction activities on the Shared Land;

WHEREAS, such construction activities on the Shared Land were commenced without the knowledge or consent of the Unit owners of One West Condominium;

WHEREAS, by letter dated June 2, 2011, DIG billed the owners of units in One West Condominium for the disputed improvements on the Shared Land;

WHEREAS, the Joint Declaration expressly limits the liability of the owners of units in One West Condominium for "Capital Improvements," relating to the Shared Land to Thirty Thousand and no/100 Dollars (\$30,000.00) per year, for which unit owners in One West Condominium are liable up to twenty-five percent (25%) of such "Capital Improvements" or a Seven Thousand Five Hundred and no/100 Dollars (\$7,500.00) per year maximum;

WHEREAS, without agreement or commitment DIG completed the disputed improvements to the pool and tennis court areas of the Shared Land;

WHEREAS, a dispute arose between the owners of units in One West Condominium and DIG regarding, the classification of the improvements made, the alleged failure to follow the procedural process set forth in the Joint Declaration and corresponding documents, and the alleged improper billing for such improvements in contravention of the Joint Declaration;

WHEREAS, DIG prevented the owners of units in One West Condominium from gaining access to the pool and tennis court areas of the Shared Land;

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WHEREAS, the parties hereto desire to resolve and settle their dispute without the expense and uncertainty of litigation; and

WHEREAS, the parties hereto warrant that (a) they are executing this Agreement upon the advice and with the consent of their own counsel, without reliance upon any statement or representation by the person or parties or their representatives or counsel concerning the nature and extent of the claims and liability; (b) they (and/or their agents signing this Release) are of legal age and legally competent to execute this Agreement; (c) they each accept full responsibility therefore; (d) this Agreement represents the entire understanding between the parties; and (e) no other statements, promises or inducements made by either party, or any agent of the parties that are not contained in this instrument shall be valid or binding.

NOW, THEREFORE, for and in consideration of the obligations and promises recited below, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties represent and agree as follows:

1. Each of the foregoing recital paragraphs is incorporated herein by reference and the same are made a part hereof as set forth herein verbatim.

2. Each and every term and condition of the Joint Declaration shall remain in full force and effect unless otherwise amended by this Agreement.

3. The liability of the owners of units in One West Condominium will continue to be limited to twenty-five percent (25%) of a maximum Thirty Thousand and No/100 Dollars (\$30,000.00) per year on Capital Improvements (as defined by the Joint Declaration), representing a maximum of Seven Thousand Five Hundred Dollars (\$7,500.00), or Six Hundred Twenty-Five and No/100 Dollars (\$625.00) per unit for the twelve (12) units in One West Condominium.

4. It is acknowledged and understood that there is a process identified in the Joint Declaration for providing notice to Unit Owners in One West and Two West Condominiums regarding proposed capital improvements and/or maintenance repairs. The unit owners of One West Condominiums do not believe the process was adhered to regarding the 2011 pool/tennis court project. The parties hereto acknowledge the process identified in the Joint Declaration and commit that the process will be strictly adhered to on future projects involving capital improvements and/or maintenance repairs.

5. The owners of units in One West Condominium, for and in consideration of the improvements made and maintenance expenses incurred by DIG for the maintenance and improvements to the pool and tennis court within the Shared Land of the Joint Association agree to, and shall pay, to the Joint Association the sum of Two Thousand One Hundred and no/100 Dollars (\$2,100.00) on or before February 15, 2012.

6. The obligations of the owners of units in One West Condominium for the disputed improvements made and maintenance expenses incurred for the Joint Land of the Joint

CHICAGO TITLE

Association in the calendar year 2011 are strictly limited to the foregoing sum and expenses of any type related to the maintenance and/or improvement of the Joint Land, including but not limited to cost overruns, extras and changes, shall be borne by DIG. The Joint Association shall not, under any circumstances, arbitrarily increase the Joint Association dues of the owners of units in One West Condominium for the purpose of recovering fees associated with the pool and tennis court project in 2011. Any increase in dues of the Joint Association must be justified and be based on actual anticipated expenses and not past expenses.

7. It is expressly acknowledged and understood that this Agreement is not a waiver and that none of the rights of the owners of units in One West Condominium as set forth in the Joint Declaration shall be affected or otherwise impacted by this Agreement. DIG acknowledges and agrees that on all future Capital Improvements and maintenance expenses, that the Joint Declaration, including the Articles of Incorporation and By-Laws must be strictly adhered to and that any deviation related thereto will result in no financial liability to the owners of units in One West Condominium for such Capital Improvement and/or maintenance expenses.

8. The forbearance by the condominium unit owners in One West Condominium to strictly enforce the provisions of the Joint Declaration relating to the approval of proposed Capital Improvements or maintenance expenses on the pool and tennis court project in 2011 or the payment noted herein or in exercising any right or remedy under said Joint Declaration, or otherwise forego the enforcement of any applicable law, shall not be a waiver of, or preclude the exercise of, any such future right or remedy as it relates to the Joint Declaration or this Agreement.

9. The Board of the Joint Association shall, at least ninety (90) days in advance of undertaking any planned capital improvement project(s) and/or maintenance repair(s), shall provide the owners of condominium units in One West Condominium and Two West Condominium with proposed, detailed plans identifying the proposed improvement(s) and/or repair(s), as well as a detailed outline of the costs of such improvement(s) and/or repair(s). A meeting of the Joint Association shall be held a minimum of forty-five (45) days in advance of undertaking the proposed capital improvement(s) and/or repair (s) at which time the planned improvement(s) and/or repair(s) and the costs thereof will be discussed in detail. Within fifteen (15) days of the meeting a final set of plans and budget, as well as a final meeting notice, will be submitted to said unit owners and at said final meeting said unit owners will vote on the proposal as provided in the Joint Declaration. No capital improvement(s) and/or repair(s) of any type shall be undertaken by the Joint Association, its Board or any agent acting on behalf of the Joint Association or its Board without first following the guidelines and procedures established by the Joint Declaration and this Agreement.

10. On or before the 1<sup>st</sup> day of January in each calendar year, the Board of the Joint Association shall undertake to and provide the One West and Two West Condominium Owners with a proposed budget. The annual budget shall separate general operating expenses from any planned future capital improvements and/or maintenance costs regarding any asset which is owned and controlled by the Joint Association. Quarterly financial reports will continue to be provided to One and Two West Condominium Owners for their review and consideration.

CHICAGO TITLE

11. As of the date of this Agreement all unit owners in One West Condominium and Two West condominium are current on their dues for the Joint Association.

12. It is acknowledged and understood that no person or entity has the right to limit access to any portion of the Shared Land under any circumstance. If there is a violation of this Agreement or the Joint Declaration, any person or entity permitted to enforce a violation of the same shall be permitted to seek a Court Order to limit such access, but under no circumstance shall "self help" be permitted for the purpose of restricting the right of any owner of a condominium unit in One West Condominium or Two West Condominium.

13. The covenants and agreements contained in this Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors, legal representatives and assigns. It is acknowledged and understood by the parties that the purpose of the Joint Declaration and this Agreement is to protect the owners of condominium units in One West Condominium and Two West Condominium.

14. This Agreement shall be governed according to the laws of the State of Indiana.

15. This Agreement shall be subject to the additional provisions set forth in the Joint Declaration, as well as the Articles of Incorporation and By-Laws of the Joint Association. The parties hereto acknowledge the existence of said documents as binding, legal documents affecting the use and ownership of the Joint Land and further acknowledge that they each possess copies of said documents, they have read such documents, and they understand such documents. Such documents shall remain controlling in all respects and it is acknowledged and understood that no party shall have the right to unilaterally take any action of any type concerning the Joint Land without first properly and timely notifying all unit owners of One West Condominium and Two West Condominium of the proposed action; holding a meeting concerning the proposed action; voting on the proposed action; and gaining approval of the unit owners as set forth in the Joint Declaration and corresponding documents.

16. Each term and each provision of this Agreement to be performed by the parties hereto shall be construed to be both an independent covenant and a condition.

17. If any term or provision of this Agreement shall be deemed to be prohibited, invalid or unenforceable in any jurisdiction, such a provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, or effecting the validity or enforceability of such provisions in any jurisdiction, and all such remaining terms and provisions shall remain in full force and effect.

18. The parties agree that neither shall commence any litigation or any other type of proceedings against the other party over a dispute arising out of this Agreement or any party's rights or obligations hereunder, except in a state court located in Marion County, Indiana. Each party consents to and subjects itself to the exclusive jurisdiction of such courts for any dispute arising out of this Agreement, or in any manner related to the Agreement or the Joint Declaration, and each party agrees that such jurisdiction and venue are reasonable and just under the circumstances. Each party expressly waives the right to a jury trial as to any issues arising

CHICAGO TITLE

out of any such dispute.

19. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and any of the parties may execute this Release by signing any such counterpart. Facsimile signature shall constitute execution as though it were an original.

20. The numerical sections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

21. This Agreement is the result of negotiations between the parties and no party shall be deemed to be the drafter of this Agreement. Each of the parties expressly agrees and acknowledges that by signing this Agreement, each of them represents and warrants that: (a) they are authorized to enter into and execute this Agreement; (b) the information furnished in this Agreement is true and accurate; (c) they have read this entire Agreement; (d) they understand the terms and conditions of this Agreement, as well as the consequences of entering into this Agreement; (e) they have knowingly and voluntarily entered into this Agreement; (f) they have been represented by an attorney in connection with entering into this Agreement, or have been given the opportunity to seek the advice of legal counsel before signing this Agreement and have been advised to employ their own attorneys in connection with reviewing and entering into this Agreement; and (g) this Agreement shall inure to the benefit of and be binding upon the parties, their related entities and affiliates, officers, directors, members, agents, employees, heirs, successors and assigns.

22. This Agreement shall be recorded at the cost of the unit owners of One West Condominium.

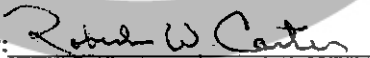
23. This Agreement, together with the Joint Declaration, contains the entire agreement of the parties and may not be modified except by an instrument in writing which is signed by all parties.

IN WITNESS WHEREOF, the undersigned parties have caused this document to be executed as of the day and year first above written.

"One West Condominium"

ONE WEST OWNERS ASSOCIATION, INC.  
an Indiana non-profit corporation

By:



Robert W. Carter, President



CHICAGO TITLE

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Robert W. Carter who represented himself/herself/themselves to be the President of One West Owners Association, Inc. and attorney-in-act for the unit owners of One West Condominium and who acknowledged execution of the foregoing Agreement, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 7<sup>th</sup> day of February, 2012.

MY COMMISSION EXPIRES:  
10-29-2015

Cheryl A. Croghan  
Notary Public

COUNTY OF RESIDENCE:  
Marion

Cheryl G. Croghan  
Printed

(TWO WEST CONDOMINIUM)

By: Francois Mercho  
Francois Mercho President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Francois Mercho, who represented himself/herself/themselves to be the President of Two West Homeowner's Association, Inc., and attorney-in-act for the unit owners of Two West Condominium and who acknowledged execution of the foregoing Agreement, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 30<sup>th</sup> day of January, 2012.

MY COMMISSION EXPIRES:  
June 15, 2015

Tarek E. Mercho  
Notary Public



COUNTY OF RESIDENCE:  
Marion

Tarek E. Mercho



CHICAGO TITLE

DIAMOND INVESTMENT GROUP I,  
LLC  
an Indiana Limited Liability Company

By: Francois Mercho  
Francois Mercho      President

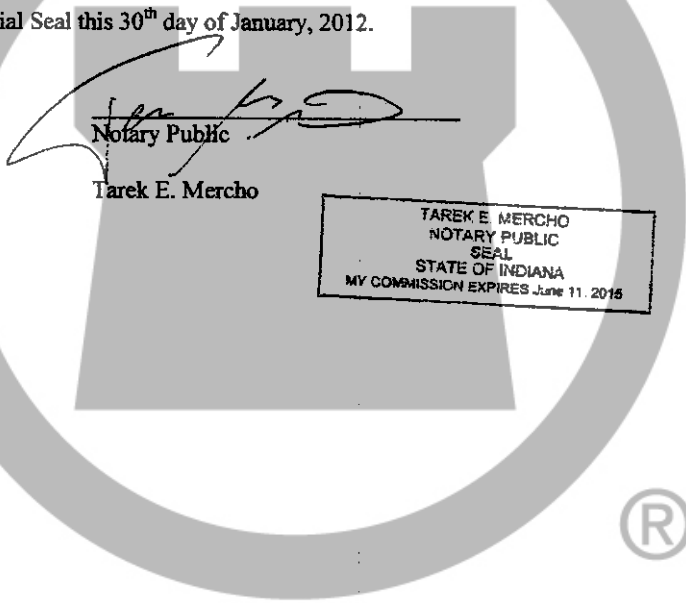
STATE OF INDIANA      )  
                                  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said County and State, personally appeared Francois Mercho, who represented himself/herself/themselves to be the President of Diamond Investment Group, I, LLC, and attorney-in-act for the unit owners of Diamond Investment Group I, LLC and who acknowledged execution of the foregoing Agreement, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 30<sup>th</sup> day of January, 2012.

MY COMMISSION EXPIRES:  
June 15, 2015

COUNTY OF RESIDENCE:  
Marion

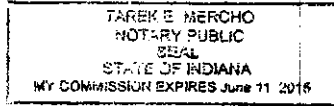


CHICAGO TITLE

JOINT ONE AND TWO WEST OWNERS  
ASSOCIATION, INC.  
an Indiana Non-Profit Corporation

By: Francois Mercho  
Francois Mercho President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )



Before me, a Notary Public in and for said County and State, personally appeared Francois Mercho, who represented himself/herself/themselves to be the President of Joint One and Two West Owners Association, Inc., and attorney-in-act for the unit owners of Joint One and Two West Owners Association, Inc., an Indiana Non-Profit Corporation and who acknowledged execution of the foregoing Agreement, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 30<sup>th</sup> day of January, 2012.

MY COMMISSION EXPIRES:  
June 15, 2015

COUNTY OF RESIDENCE:  
Marion

Tarek E. Mercho  
Notary Public  
Tarek E. Mercho

This Document Prepared by Russell L. Jones, Esq., COHEN, GARELICK & GLAZIER, 8888  
Keystone Crossing Boulevard, Suite 800, Indianapolis, Indiana 46240.

I AFFIRM under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Russell L. Jones  
(Print Name)



CHICAGO TITLE



Exhibit A

Lots 1 through 8, and Lots 11 through 16 all inclusive in McCulloch and Hahn's North Meridian Street Addition to the City of Indianapolis, the plat of which is recorded in Plat Book 19, at page 164 in the Office of the Recorder of Marion County, Indiana, except the following two parcels which are excluded therefrom:

Parcel 1

Commencing at the northwestern corner of said Lot 16; thence North 88 degrees 41 minutes 54 seconds East (assumed bearing) 90.66 feet along the northern line of said Lot 16; thence South 00 degrees 05 minutes 00 seconds East 69.63 feet parallel with the western line of said Lot 16 to the POINT OF BEGINNING of this description; thence North 88 degrees 41 minutes 54 seconds East 165.56 feet parallel with the northern lines of said Lots 16, 15 and 14; thence South 00 degrees 05 minutes 00 seconds East 105.24 feet parallel with said western line; thence South 43 degrees 30 minutes 02 seconds West 72.15 feet; thence South 88 degrees 41 minutes 54 seconds West 115.81 feet parallel with said northern lines; thence North 00 degrees 05 minutes 00 seconds West 156.45 feet parallel with said western line to the POINT OF BEGINNING, containing 0.565 acres, more or less.

Parcel 2

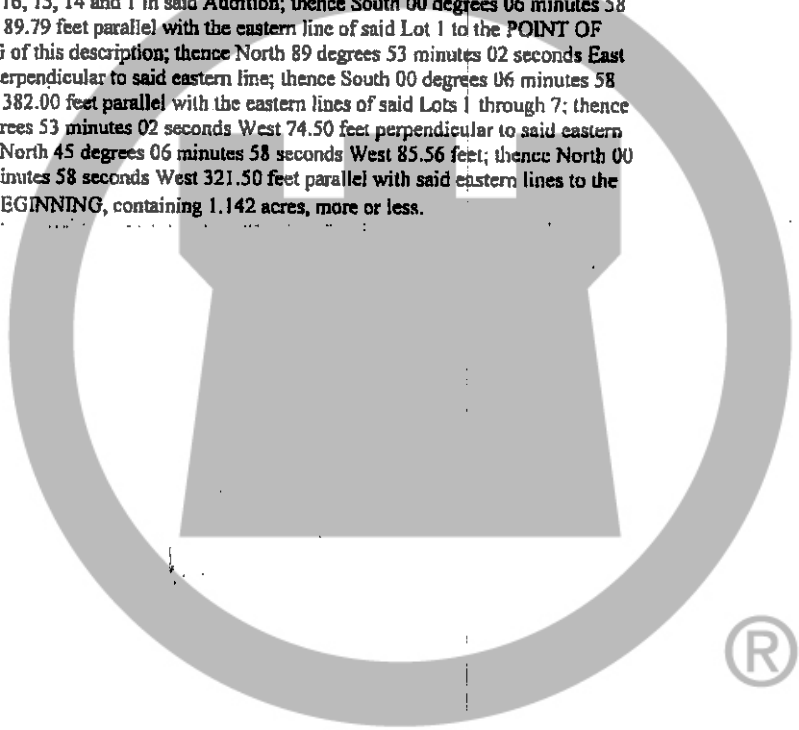
A part of the Northwest Quarter of Section 23, Township 17 North, Range 3 East of the Second Principal Meridian, Washington Township, Marion County, Indiana, also being a portion of Lots 2 through 7, inclusive, in McCulloch and Hahn's North Meridian Street Addition to the City of Indianapolis, the plat thereof recorded as Plat Book 19, page 164 in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

Commencing at the northwestern corner of Lot 16 in said Addition; thence North 88 degrees 41 minutes 54 seconds East (assumed bearing) 356.81 feet along the northern lines of Lots 16, 15, 14 and 1 in said Addition; thence South 00 degrees 06 minutes 58 seconds East 89.79 feet parallel with the eastern line of said Lot 1 to the POINT OF BEGINNING of this description; thence North 89 degrees 53 minutes 02 seconds East 135.00 feet perpendicular to said eastern line; thence South 00 degrees 06 minutes 58 seconds East 382.00 feet parallel with the eastern lines of said Lots 1 through 7; thence South 89 degrees 53 minutes 02 seconds West 74.50 feet perpendicular to said eastern lines; thence North 45 degrees 06 minutes 58 seconds West 85.56 feet; thence North 00 degrees 06 minutes 58 seconds West 321.50 feet parallel with said eastern lines to the POINT OF BEGINNING, containing 1.142 acres, more or less.

CHICAGO TITLE

A part of the Northwest Quarter of Section 23, Township 17 North, Range 3 East of the Second Principal Meridian, Washington Township, Marion County, Indiana, also being a portion of Lots 2 through 7, inclusive, in McCulloch and Halm's North Meridian Street Addition to the City of Indianapolis, the plat thereof recorded as Plat Book 19, page 164 in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

Commencing at the northwestern corner of Lot 16 in said Addition; thence North 88 degrees 41 minutes 54 seconds East (assumed bearing) 356.81 feet along the northern lines of Lots 16, 15, 14 and 1 in said Addition; thence South 00 degrees 06 minutes 58 seconds East 89.79 feet parallel with the eastern line of said Lot 1 to the POINT OF BEGINNING of this description; thence North 89 degrees 53 minutes 02 seconds East 135.00 feet perpendicular to said eastern line; thence South 00 degrees 06 minutes 58 seconds East 382.00 feet parallel with the eastern lines of said Lots 1 through 7; thence South 89 degrees 53 minutes 02 seconds West 74.50 feet perpendicular to said eastern lines; thence North 45 degrees 06 minutes 58 seconds West 85.56 feet; thence North 00 degrees 06 minutes 58 seconds West 321.50 feet parallel with said eastern lines to the POINT OF BEGINNING, containing 1.142 acres, more or less.



CHICAGO TITLE

A201200030710



March 30, 2012 2:53 PM  
Julie L. Voorhies,  
Marion County Recorder

Pages: 1  
Fee: \$17.50  
By: MJM

Cross-References: 2004-00088276  
2004-00088294  
2012-00013855  
2012-00018252

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

SCRIVENER'S AFFIDAVIT

Comes now Russell L. Jones, being first duly sworn upon his oath, and alleges and says:

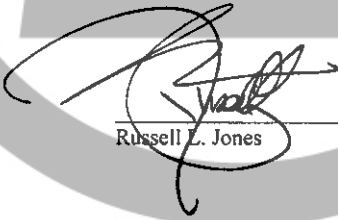
1. That the undersigned drafted a certain "Agreement to Modify Joint Declaration" (the "Agreement") which was recorded on February 10, 2012, as Instrument No. A201200013855, in the Office of the Recorder of Marion County, Indiana. Said Agreement referenced two (2) previously recorded documents, namely Instruments Numbered 2004-00088276 and 2004-00088294, and the same were cross-referenced therein.

2. That Exhibit "A" to the document recorded as Instrument No. 2012-00013855 was incorrect. Exhibit "A" was to be a legal description only; however, without the knowledge of the undersigned, an entire document was attached as Exhibit "A" and recorded in error.

3. That Exhibit "A" was corrected in the second recording of said Agreement on February 24, 2012, under Instrument No. A201200018252.

4. That the terms and conditions of the Agreement remained the same and the sole purpose of the re-recording of the Agreement on February 24, 2012, was to correct Exhibit "A."

Further your Affiant sayeth naught.

  
\_\_\_\_\_  
Russell L. Jones



STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 29<sup>th</sup> day of March 2012.

CHICAGO TITLE

  
Cheryl G. Croghan, Notary Public  
A resident of Marion County



My Commission Expires: October 27, 2015

This instrument prepared by Russell L. Jones, Esq., COHEN GARELICK & GLAZIER, 8888 Keystone Crossing Boulevard, Suite 800, Indianapolis, Indiana 46240.

Mail to:

Russell L. Jones, COHEN GARELICK & GLAZIER, P.C., 8888 Keystone Crossing Blvd., Suite 800, Indianapolis, Indiana 46240

"I AFFIRM UNDER THE PENALTIES FOR PERJURY, THAT I HAVE TAKEN REASONABLE CARE TO REDACT EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW."  
R. Jones