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DECLARATION FOR SIX OVER MERIDIAN HORIZONTAL PROPERTY REGIME

This Declaration made as of the 28th day of March, 2005, by **SOUTH MERIDIAN CONDOS, LLC**, an Indiana limited company, doing business as Six Over Meridian ("**Declarant**" and/or "**Owner**");

WITNESSETH:

WHEREAS, Owner is the developer and owner in fee simple of certain real estate, hereinafter described, in the City of Indianapolis, County of Marion, State of Indiana, which real estate is more particularly described on **Exhibit A**, attached hereto and made a part hereof by this reference (the "**Parcel**"); and

WHEREAS, Owner intends to, and does hereby submit such real estate, together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any wise pertaining thereto (collectively, the "**Property**"), to the provisions of the Horizontal Property Law of the State of Indiana; and

WHEREAS, Owner desires to establish certain rights and easements in, over and upon said real estate for the benefit of itself and all future owners of any part of said real estate, and any unit or units thereof or therein contained, and to provide for the harmonious, beneficial and proper use and conduct of the real estate and all units; and

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

NOW, THEREFORE, Owner declares as follows:

1. **Definitions.** Certain words and terms used in this Declaration are defined as follows:
 - 1.1 **Act.** Indiana Code § 32-25 *et seq.*, as amended from time-to-time. The Act is incorporated herein by reference.
 - 1.2 **Annual Budget.** The budget prepared in the manner set forth in the Bylaws.
 - 1.3 **Association.** The Association of all the Unit Owners acting pursuant to the Bylaws, as amended, through its duly elected Board.
 - 1.4 **Board.** The Board of Directors of the Association as constituted at any time and from time-to-time in accordance with the Bylaws.
 - 1.5 **Building.** The six- (6-) story residential and commercial structure, with basement, located upon the Parcel as of the date of this Declaration, together with its basement.

- 1.6 Bylaws. The Bylaws of the Association which are attached hereto as **Exhibit C**, and made a part hereof by this reference.
- 1.7 Commercial Units. Units 101, 102, 200, and 300.
- 1.8 Common Area Elements. All portions of the Property, except the Units, including, without limiting the generality of the foregoing, the Parcel and the roof, exterior walls and structural components of the Building and all other improvements on the Parcel, wherever located.
- 1.9 Common Expenses. The proposed or actual expenses affecting the Property, including Reserves, if any, lawfully assessed by the Board.
- 1.10 Common Facilities. The facilities described in Paragraph 7.
- 1.11 Condominium. The Six Over Meridian Horizontal Property Regime created pursuant to this Declaration and in accordance with the requirements of the Act and other applicable law.
- 1.12 Condominium Instruments. All documents and authorized amendments thereto Recorded pursuant to the provisions of the Act, including the Declaration and Bylaws.
- 1.13 Declaration. This Declaration of Horizontal Property Regime.
- 1.14 Eligible First Mortgage. A mortgage as defined in Paragraph 21.2.
- 1.15 First Mortgagee. The holder of a note secured by a *bona fide* first mortgage or first trust deed encumbering a Unit.
- 1.16 Floor Plans³¹. The floor plans, architectural plans, and the site plans for the Condominium recorded in the Office of the Recorder of Marion County, Indiana, on March ~~29~~, 2005, as Instrument Number 2005-004899, as the same may be amended from time to time.
- 1.17 Limited Common Area Elements. That part of the Common Area Elements serving a single Unit exclusively as an inseparable appurtenance thereto, including specifically the Parking Space(s), such portions of the perimeter walls, floors and ceilings, windows in perimeter walls, doors in perimeter walls, and all fixtures and structures therein which lie outside the Unit boundaries, perimeter doors, windows in perimeter walls, pipes, ducts, flues, shafts, electrical wiring or conduits or other system or component part thereof which serve a Unit exclusively, to the extent such system or component part is located outside the boundaries of a Unit, and private balconies and roof decks which have been designated on the Floor Plans as Limited Common Area Elements.
- 1.18 Maintenance Fund. All monies collected or received by the Association pursuant to the provisions of the Condominium Instruments.

- 1.19 Majority of Unit Owners. The Unit Owners holding fifty-one percent (51%) or more of the undivided ownership of the Common Area Elements.
 - 1.20 Occupant. A person or persons, other than a Unit Owner, in possession of a Unit.
 - 1.21 Parcel. The real estate described on **Exhibit A**, attached hereto and made a part hereof by this reference.
 - 1.22 Parking Area. That portion of the Common Area Elements located in the basement of the Building which contains Parking Spaces (as defined herein) 1-43 designated for the parking of motor vehicles subject to such rules and regulations as the Association shall determine.
 - 1.23 Parking Space. A space in the Parking Area designated for the parking of motor vehicles and submitted to the Act, but not a Residential Unit. Each Residential Unit shall include the Parking Space(s) deeded to the initial Unit Owner of such Residential Unit, which shall be transferable by sale only together with the Residential Unit.
 - 1.24 Person. A natural individual, corporation, limited liability company, partnership, trustee or other legal entity capable of holding title to real property.
 - 1.25 Record. To record in the Office of the Recorder of Marion County, Indiana.
 - 1.26 Reserves. Those sums paid by Unit Owners which are separately maintained by the Board for purposes specified by the Board or the Condominium Instruments.
 - 1.27 Residential Unit. A part of the Building containing one or more rooms, occupying one or more floors or a part or parts thereof, designed and intended for independent use as a single-family dwelling, together with the Parking Space(s).
 - 1.28 Unit. Any part of the Property designed and intended for any type of independent use and which is designated on the Floor Plans as a Unit including, without limitation, the Commercial Units and the Residential Units. The boundaries of the Units are indicated on the Floor Plans.
 - 1.29 Unit Owner. A "Co-owner" as such term is defined in the Act. Specifically, the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit.
2. Submission of the Property to the Act. The Property is hereby submitted to the provisions of the Act. The Property, as a horizontal property regime shall consist of the Common Area Elements, the Limited Common Area Elements and twenty-four (24) Units. The Units are comprised of (i) four (4) Commercial Units, and (ii) twenty (20) Residential Units.
 3. Grant of Easements. In the event Owner, in its sole discretion, acquires real estate adjacent to the Building (the "Adjacent Real Estate") and desires to connect any improvements on the Adjacent Real Estate to the Building, the Unit Owners shall grant to Owner such rights, licenses, and easements as may be necessary to allow Owner to

make such connection and to allow the occupants thereof all rights of ingress, egress, and use with respect to the Building as Owner may desire, including without limitation, easements for the non-exclusive use of the Common Area Elements.

4. Use and Ownership of the Common Area Elements.

4.1 The use of the Common Area Elements and the right of the Unit Owners with respect thereto shall be subject to and governed by the Act, the Condominium Instruments and the rules and regulations of the Board.

4.2 Each Unit Owner shall own an undivided interest in the Common Area Elements, in the percentage set forth in **Exhibit B** attached hereto and made a part hereof, as a tenant in common with all the other Unit Owners. The percentage interests in the Common Area Elements appurtenant to each Unit have been established based on the relative square footage of each such Unit in relation to the square footage of all other Units in the Condominium. Except for the Limited Common Area Elements, each Unit Owner, his/her agents, permitted Occupants, family members and invitees shall have the right to use the Common Area Elements for all purposes incident to the use and occupancy of his/her Unit as a place of residence and such other incidental uses permitted by the Condominium Instruments, which right shall be appurtenant to, and run with, his/her Unit. Each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Area Elements contiguous to and serving only his Unit and the Limited Common Area Elements access to which is available only through his/her Unit. The right to the exclusive use and possession of the Limited Common Area Elements as aforesaid shall be appurtenant to and run with the Unit of such Unit Owner. Limited Common Area Elements may not be transferred between or among Unit Owners.

5. Owner's Easements. Such rights to use and possess the Common Area Elements shall be subject to a blanket easement over the Common Area Elements in favor of Owner and its representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns, over, under and through said Common Area Elements, or any part thereof, for purposes of access and ingress to and egress from said Common Area Elements, and for purposes of marketing, sales, brokerage, construction, installation, repair, replacement and restoration of utilities, driveways, buildings, landscaping and any other improvements on said Common Area Elements until Owner is no longer a Unit Owner.

6. Common Facilities.

6.1 Declarant may, in its sole discretion, but shall have no obligation to, construct facilities for use by the Unit Owners (e.g., exercise facility, storage room) (collectively, the "**Common Facilities**"), which shall be part of the Common Area Elements.

6.2 Each Unit Owner shall have the right to use the Common Facilities (subject to easements, leases or concessions made by or assigned to the Board or the Association) in common with all other Unit Owners; provided, however, that such use shall be subject to and governed by the provisions of the Act, the Declaration and the Bylaws and the rules and regulations of the Association. Such right to

use the Common Facilities shall extend not only to each Unit Owner but also to his or her agents, tenants, servants, family members, invitees and licensees.

6.3 Notwithstanding the right of all Unit Owners to utilize the Common Facilities as described in Section 6.1, Declarant may promulgate reasonable restrictions and limitations for the use of certain Common Facilities.

7. Encroachments and Easements.

7.1 If any part of the Common Area Elements encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Area Elements, or any portion of any Unit encroaches upon any part of any other Unit as a result of the construction, repair, reconstruction, settlement or shifting of the Building, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit or Common Area Elements so encroaching so long as all or any part of the Building containing such Unit or Common Area Elements so encroaching shall remain standing; provided, however, that after the date this Declaration is Recorded, a valid easement for an encroachment shall in no event be created in favor of any owner of a Unit other than Owner or in favor of the owners of the Common Area Elements if such encroachment occurred due to the willful conduct of said owner or owners.

7.2 Easements are hereby declared and granted for utility purposes, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits, wires and equipment over, under, along and on any part of the Common Area Elements, as they exist on the date any Parcel is submitted to the Act.

7.3 All public and private utilities serving the Parcel and the Property are hereby granted a blanket easement over the Common Area Elements, granting such utilities the right to install, lay, operate, construct, maintain, repair and replace any conduits, cables, pipes, wires, ducts, transformers, public utility lines, structural components and other equipment, into, over, under, along and through the Common Area Elements for the purpose of providing utility services to the Property, and, together with the reasonable right of ingress to and egress from the Property for such purpose, and granting such utilities the right to install, lay, operate, construct, maintain, repair and replace any conduits, cables, pipes, wires, ducts, transformers, public utility lines, structural components and other equipment running through the walls of a Unit, whether or not such walls lie in whole or in part within the Unit boundaries. The Board may hereafter grant other or additional easements for utility purposes for the benefit of the Property, over, under, along and on any portion of said Common Area Elements, and each Unit Owner hereby grants the Board an irrevocable power of attorney to execute, acknowledge and record for and in the name of such Unit Owner, such instruments as may be necessary or appropriate to effectuate the foregoing.

7.4 The City of Indianapolis and any other governmental agency or authority which has jurisdiction over the Property or which undertakes to provide services (including, without limitation, emergency services) to the Property are hereby

declared, granted and reserved access easements for ingress and egress to, over and across the Property for the purpose of providing any such services.

- 7.5 Upon approval by Unit Owners owning at least sixty-seven percent (67%) of the undivided ownership of the Common Area Elements, portions of the Common Area Elements may be dedicated to a public body for purposes of streets. Where such a dedication is made, nothing in the Act or any other law shall be construed to require that the real property taxes of every Unit must be paid prior to the recording of the instrument evidencing the dedication. Upon approval by a Majority of the Unit Owners, an easement may be granted to a governmental body for construction, maintenance, repair or for protection against water damage or erosion. Any action pursuant to this Paragraph 7.5 must be taken at a meeting of Unit Owners duly called for that purpose.
- 7.6 In addition to the easements provided for herein, the Board, on behalf of all of the Unit Owners, shall have the right and power: (i) to grant such easements with respect to the Common Area Elements (except the Limited Common Area Elements) as the Board deems necessary and proper for the benefit of any portion of the Property, including, without limitation, access easements for emergency and service vehicles operated by any governmental authority or private enterprise and/or easements related to the installation and operation of a cable or satellite television system or other communication systems; and/or (ii) to cancel, alter, change or modify any easement which affects the Property and does not benefit solely a Unit Owner, as the Board shall, in its discretion, determine.
- 7.7 All easements and rights described herein are easements appurtenant, running with the Parcel, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in the Parcel, or any part or portion thereof.
- 7.8 Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.
8. Pipes, etc. All pipes, wires, ducts, flues, chutes, conduits, public utility lines (to the outlets), and structural components located in or running through a Unit and serving more than one Unit or another Unit or serving, or extending into, the Common Area Elements, or any part thereof, shall be deemed part of the Common Area Elements but shall not be deemed to be Limited Common Area Elements. No Unit Owner may take any action which would interfere with the ability of the Association to repair, replace or maintain said Common Area Elements as provided herein.
9. Lease of Units or Sublease or Assignment of Lease Thereof. Any Unit Owner shall have the right to lease, or permit a subsequent sublease or assignment of all (but not less than all) of his/her Unit upon such terms and conditions as the Unit Owner may deem acceptable, except that no Unit shall be leased, subleased or assigned for transient or hotel purposes, which are hereby defined as being for a period of less than one hundred

eighty (180) days or for a period of more than one hundred eighty (180) days where hotel services normally furnished by a hotel (such as room service and maid service) are furnished. Any such lease, sublease or assignment shall be in writing, a copy of which must be delivered to the Association no later than the date of occupancy or ten (10) days after the lease is signed, whichever occurs first, and shall provide that the lease, sublease or assignment shall be subject to the terms of this Declaration and that any failure of the lessee, sublessee or assignee to comply with the terms of this Declaration shall be a default under the lease, sublease or assignment. The Unit Owner making any such lease, or permitting such sublease or assignment shall not be relieved thereby from any of his/her obligations under the Declaration. In addition to any other remedies, by filing an action jointly against the Unit Owner and the lessee, sublessee or assignee, the Association may seek to enjoin a lessee, sublessee or assignee from occupying a Unit or may seek to evict a lessee, sublessee or assignee, in the manner provided by applicable law, for failure of the lessor-Unit Owner to comply with the leasing requirements prescribed by this Paragraph or by the Declaration, the Bylaws, and the rules and regulations established by the Board.

10. Association.

10.1 Owner, prior to the first annual meeting of Unit Owners, or the Association, thereafter, may cause the formation of an Indiana nonprofit corporation for the purpose of facilitating the administration and operation of the Property and to act as the Association.

10.2 Whether or not the Association is incorporated:

10.2-1 each Unit Owner shall be a member of such Association, which membership shall terminate upon the sale or other disposition by such member of his/her Unit, at which time the new Unit Owner shall automatically become a member therein;

10.2-2 the provisions of **Exhibit C** of this Declaration shall be adopted as the initial Bylaws of such Association; and

10.2-3 the name of such Association shall be Six Over Meridian Property Owners Association, Inc., or a similar name.

11. Insurance, Repair and Reconstruction.

11.1 The Association shall acquire and pay for out of the Maintenance Fund herein provided for, the following:

11.1-1 such insurance as the Association is required to obtain under the provisions of the Act, other applicable law or the provisions hereof and such other insurance as the Association deems advisable in the operation, and for the protection, of the Common Area Elements and the Units. The Association shall also comply with the insurance requirements of the Federal Home Loan Mortgage Corporation ("**FHLMC**"), the Federal National Mortgage Association ("**FNMA**"), the U.S. Department of Housing and Urban Development ("**HUD**"), the Federal Housing Authority ("**FHA**") or the Veteran's Administration ("**VA**") to the extent that: (i) such

agency is a mortgagee, assignee of a mortgagee or an insurer or guarantor of a first mortgage with respect to any Unit and the Association is so notified thereof; and (ii) such agency's requirements do not conflict with those contained in the Act. Any losses under such policies of insurance shall be payable, and all insurance proceeds recovered thereunder shall be applied and disbursed, in accordance with the provisions of this Declaration, the Act and other applicable law.

The Association may engage the services of any bank or trust company authorized to do business in Indiana to act as trustee or agent on behalf of the Association for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, upon such terms as the Association shall determine consistent with the provisions of this Declaration. In the event of any loss resulting in the destruction of the major portion of one or more Units, occurring after the first annual meeting of the Unit Owners is held pursuant to the provisions of the Bylaws, the Association shall engage a corporate trustee as aforesaid upon the written demand of the mortgagee or owner of any Unit so destroyed. The fees of such corporate trustee shall be Common Expenses.

Each Unit Owner, other than Owner, shall notify the Association in writing of any additions, alterations or improvements to his/her Unit and he/she shall be responsible for any deficiency in any insurance loss recovery resulting from his/her failure so to notify the Association. The Association shall use its reasonable efforts to obtain insurance on any such additions, alterations or improvements if such Unit Owner requests it to do so and if such Unit Owner shall make arrangements satisfactory to the Association to reimburse it for any additional premiums attributable thereto; and in the absence of insurance on such additions, alterations or improvements, the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. All such policies of insurance shall contain standard mortgage clause endorsements in favor of the mortgagee of each Unit and shall provide that such policies shall not be terminated, canceled or substantially modified without at least thirty (30) days' prior written notice to the mortgagee of each Unit.

- 11.1-2 Comprehensive public liability and property damage insurance in such limits as the Association shall deem desirable, provided that such limit shall not be less than \$2,000,000.00 per occurrence, for personal injury and/or property damage, insuring the Association, the members of the Board, the managing agent, if any, and their respective agents and employees, and the Unit Owners from any liability in connection with the Property. Such policy shall provide that the insurance coverage shall not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

- 11.1-3 Such other forms of insurance as the Association shall elect to effect, including such worker's compensation insurance as may be necessary to comply with applicable laws.
- 11.1-4 Fiduciary insurance coverage to protect against dishonest acts on the part of all officers, employees or other persons who either handle or are responsible for funds held or administered by the Association, if such insurance is mandated by law or if the Association shall elect to effect it. Such insurance coverage shall name the Association as an insured or obligee and shall be in an amount at least equal to the maximum amount of funds that will be in the custody of the Association plus Reserves.
- 11.1-5 In the event FHLMC, FNMA, HUD, FHA or VA is a mortgagee, an assignee of a mortgagee, or an insurer or guarantor of a first mortgage with respect to any Unit and the Association is so notified, a fidelity bond or bonds (or insurance coverage if acceptable to such of FHLMC, FNMA, HUD, FHA or VA as are then a mortgagee or an assignee of a mortgagee) to protect against dishonest acts on the part of the officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association. Such bond or bonds shall name the Association as an obligee and shall be in an amount at least equal to one hundred fifty percent (150%) of the estimated annual Common Expenses including Reserves, unless a higher amount is required by the FHLMC, FNMA, HUD, FHA or VA, in which case the bond or bonds shall be in the higher amount. Such bond or bonds shall contain a waiver of defense based upon the exclusion of persons who serve without compensation from the definition of "employee".
- 11.2 Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Association, and the cost of any appraisal which the Association deems advisable in connection with any insurance, shall be Common Expenses.
- 11.3 The Association shall secure insurance policies that will provide for the following:
- 11.3-1 with respect to the insurance provided for in Paragraph 11.1-2, for coverage of cross liability claims of one insured against another and to preclude the insurer's denial of a Unit Owner's claim because of negligent acts of the Association or of other Unit Owners; and
- 11.3-2 a waiver of any rights to subrogation by the insuring company against any named insured.
- 11.4 The Association may, but shall not be required to, secure policies providing:
- 11.4-1 with respect to the insurance provided for in Paragraph 11.1-1, that the policy cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual Unit Owners; and

- 11.4-2 with respect to the insurance provided for in Paragraph 11.1-1, that the insurer shall not have the option to restore the Property, if the Property is sold or removed from the provisions of the Act.
- 11.5 Each Unit Owner shall be responsible for insurance coverage on the furnishings and other items of personal property belonging to a Unit Owner which are contained in a Unit and not a part of the Unit, and not insured pursuant to Paragraph 11.1-1, and insurance for his/her personal liability to the extent not covered by insurance maintained by the Association, including appropriate insurance for collateral damage caused to other Units or Common Area Elements stemming from Unit Owner's Unit.
- 11.6 Upon the cancellation of any policy of insurance which the Association is required to obtain hereunder, the Association shall notify each party insured thereunder of such cancellation.
- 11.7 In the event of a complete destruction of the Building by fire or other event of casualty, the Building shall not be reconstructed, except as provided by this Paragraph 11.7, and any insurance proceeds shall be divided among the Unit Owners according to the percentage interests in the Common Area Elements appurtenant to their respective Units, and the Property shall be considered withdrawn from the Act as a condominium. Notwithstanding the forgoing, if two-thirds (2/3) of all of the Unit Owners vote to reconstruct the Building at a special meeting of the Unit Owners called in conformance with the Bylaws for such purpose, the Building shall be reconstructed and all applicable insurance proceeds shall be applied to such reconstruction. In performing such reconstruction, the Building shall be rebuilt to substantially the same condition in which it existed prior to the fire or other event of casualty, with each Unit and the Common Area Elements having substantially the same vertical and horizontal boundaries as before the subject event of casualty.
- 11.8 If all applicable insurance proceeds are insufficient to reconstruct the Building as set forth in the preceding subparagraph, then the Board shall levy a special assessment in the amount of the deficiency in the cost of reconstruction in conformance with the Act.
- 11.9 If the Unit Owners do not vote to restore the Building under the provisions of Paragraph 11.7, and the Property is considered withdrawn from the Act, then the Property shall be deemed to be owned in common by the Unit Owners. The undivided interest in the Property owned in common by each Unit Owner shall be the percentage interest in the Common Area Elements appurtenant to his or her Unit. Liens encumbering each Unit Owner's Unit shall be deemed transferred to such Unit Owner's undivided interest in the Property as withdrawn from the Act. Thereafter, the Property withdrawn from the Act shall be subject to an action for partition and sale at the suit of any Unit Owner, in which event the net proceeds of the resulting sale, together with any net insurance proceeds payable as a result of the event of casualty, shall be considered as one (1) fund and shall be distributed by the Board among all of the Unit Owners in the form of payments equal to the undivided interest in the Common Area Elements appurtenant to each Unit Owner's Unit. Liens transferred to any Unit Owner's interest in the Property withdrawn from the Act shall be satisfied out of such Unit Owner's share

of the fund and such Unit Owner shall receive a distribution of any balance remaining after the satisfaction of such liens.

- 11.10 Any insurance or other proceeds available in connection with the withdrawal of any portion of the Common Area Elements, not necessarily including the Limited Common Area Elements, shall be allocated on the basis of each Unit Owner's percentage interest in the Common Area Elements. Any such proceeds available from the withdrawal of Limited Common Area Elements shall be distributed in accordance with the percentage interests of those Unit Owners entitled to their use.
12. Separate Real Estate Taxes. It is understood that real estate taxes are to be separately taxed to each Unit Owner for his/her Unit and its corresponding percentage of ownership of the Common Area Elements, as provided in the Act. In the event that for any year such taxes are not separately taxed to each Unit Owner, then the Association shall collect from each Unit Owner of a Unit not separately taxed, the proportionate share of the tax bill attributable to his/her Unit, based on the relative percentages of ownership of the Common Area Elements of each such Unit not separately taxed in proportion to the total percentage of ownership of the Common Area Elements of all of the Units located on the Property affected by such tax bill. Such taxes shall be considered a Common Expense of each such Unit.
13. Use and Occupancy of Units and Common Area Elements. The Units and Common Area Elements shall be occupied and used as follows:
- 13.1 No Residential Unit shall be used for other than housing and the related common purposes for which the Property was designed. Each Residential Unit or any two or more adjoining Units used together shall be used as a residence for a single family, or such other uses permitted by this Declaration and for no other purposes. That part of the Common Area Elements separating any two or more adjoining Residential Units used together may be altered to afford ingress and egress to and from such adjoining Units in accordance with the rules and regulations of the Association and upon such conditions as shall reasonably be determined by the Association, provided that a Unit Owner intending to so alter the Common Area Elements as aforesaid shall notify the Association at least twenty-one (21) days prior to the commencement of any such alteration.
- 13.2 No industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Property, except the Commercial Units. No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Property except at such location and in such form as shall be determined by the Association. The right is reserved by Owner or its agent or agents, to place "For Sale" or "For Rent" signs on any unsold or unoccupied Units, and on any part of the Common Area Elements, and the right is hereby given to any First Mortgagee, who may become the owner of any Unit, to place such signs on any Unit owned by such First Mortgagee. Until all the Units are sold and conveyed, Owner shall be entitled to access, ingress and egress to the Property as it shall deem necessary in connection with the sale of, or work in, the Building or any Unit. Owner shall have the right to use any unsold Residential Units or the

Commercial Units as sales models or for any other marketing or display purposes, and to relocate the same from time-to-time, and to maintain on the Property, all models, sales offices and advertising signs or banners, if any, and lighting in connection therewith. In addition to the foregoing, Owner, or its agents or designees, shall have access to, and ingress and egress over, the Property for purposes of photographing or drawing the Property, or any part thereof, and to use such photographs or drawings in any marketing or other materials as Owner shall choose; and such rights shall continue for a period of five (5) years from the date hereof. This Paragraph 13.2 shall not be construed to prevent or prohibit a Residential Unit Owner from maintaining a personal professional library, keeping personal business or professional records or accounts, handling personal business or professional telephone calls, or conferring with business or professional associates, clients or customers, in his/her Residential Unit.

- 13.3 There shall be no obstruction of the Common Area Elements nor shall anything be stored in the Common Area Elements without the prior consent of the Association except as herein expressly provided. Each Unit Owner shall be obligated to maintain and keep his/her own Unit in good, clean order and repair. The use and the covering of the interior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the Building, shall be subject to the rules and regulations of the Association.
- 13.4 Nothing shall be done or kept in any Unit or in the Common Area Elements which will increase the rate of insurance on the Property, or contents thereof, applicable for residential use, without the prior written consent of the Association. No Unit Owner shall permit anything to be done or kept in his/her Unit or in the Common Area Elements which will result in the cancellation of any insurance maintained by the Association, or which would be in violation of any law. No waste shall be committed in the Common Area Elements.
- 13.5 Unit Owners shall not cause or permit anything to be hung or displayed on the outside or inside of windows or placed on the outside walls of the Building or upon the Limited Common Area Elements and no sign, awning, canopy, shutter, radio or television antenna (except as installed as of the date this Declaration is Recorded or except as thereafter installed by Owner or the Association) shall be affixed to or placed upon the exterior walls or roof or any part thereof or on the Common Area Elements, or Limited Common Area Elements, without the prior written consent of the Association. No air conditioning unit of whatever type, other than those installed as of the date this Declaration is Recorded or those thereafter installed by Owner or the Association, may be installed without the prior written permission of the Association. All window treatments shall be lined such that the sides of such window treatments which are visible from the outside of the Building are "off-white" in color. Declarant and thereafter the Board, shall have the right to determine whether window treatments are in conformance with the preceding sentence and to require that non-conforming window treatments be removed from within the Units. Declarant, and thereafter the Board, shall also be entitled to enter into a Unit Owner's Unit and to remove any non-conforming window treatments if, within ten (10) days after serving written notice of the non-conformance upon the subject Unit Owner, such non-conforming window treatments are not removed.

- 13.6 No animals, livestock, fowl or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Area Elements, except that household pets, including dogs and cats, may be kept in the Units, subject to rules and regulations adopted by the Association.
- 13.7 No noxious or offensive activity shall be carried on in any Unit or in the Common Area Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants.
- 13.8 Except as constructed or altered by or with the permission of Owner or the Association, or as permitted by the rules of the Association, nothing shall be done in any Unit or in, on or to the Common Area Elements or Limited Common Area Elements which would impair the structural integrity, safety or soundness of the Building or which would structurally change the Building.
- 13.9 No clothes, sheets, blankets, laundry or other articles of any kind shall be hung out or exposed on any part of the Common Area Elements. The Common Area Elements shall be kept free and clear of rubbish, debris and other unsightly materials.
- 13.10 No benches, chairs or other personal property shall be left on, nor shall any playing, lounging, parking of baby carriages, playpens, bicycles, wagons, toys or vehicles be permitted on, any part of the Common Area Elements without the prior consent of, and subject to any rules and regulations of, the Association.
- 13.11 Nothing shall be altered or constructed in or removed from the Common Area Elements or Limited Common Area Elements, except as constructed or altered by or with the permission of Owner at any time prior to the first annual meeting of the Unit Owners, without the written consent of the Association.
- 13.12 Each Unit Owner and the Association hereby waive and release any and all claims which he/she or it may have against any other Unit Owner, the Association, members of the Board, Owner and their respective employees and agents, for damage to the Common Area Elements, the Units, or to any personal property located in the Units or Common Area Elements, caused by fire or other casualty or any act or omission referred to in Paragraph 13.13, to the extent that such damage is covered by fire or other form of hazard insurance.
- 13.13 If the act or omission of a Unit Owner, or of a member of his/her family, a household pet, guest, Occupant or visitor of such Unit Owner, shall cause damage to the Common Area Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, to the extent such payment is not waived or released under the provisions of Paragraph 13.12.
- 13.14 Any release or waiver referred to in Paragraphs 13.12 and 13.13 hereof shall be valid only if such release or waiver does not affect the right of the insured under the applicable insurance policy to recover thereunder.

- 13.15 No Unit Owner shall overload the electric wiring in the Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Association, an unreasonable disturbance to others.
- 13.16 The Board or its agents, upon reasonable notice or, in the case of an emergency, without notice, shall have the right to enter any Unit, including any of the Limited Common Area Elements appurtenant thereto, when necessary in exercise of its authority hereunder, or in connection with any maintenance, repair and replacement for which the Board is responsible. Such entry shall be made with as little inconvenience to the Unit Owners as practicable, and any damage caused thereby shall be repaired by the Board, as a Common Expense.
- 13.17 Notwithstanding any other provision herein to the contrary, Owner may operate the Parking Area as a for-profit enterprise by leasing or licensing the use of unallocated Parking Spaces to members of the public.
14. Decorating.
- 14.1 Each owner of a Residential Unit at his or her own expense shall furnish and be responsible for all decorating within his or her own Residential Unit and Limited Common Area Elements serving his or her Residential Unit, as may be required from time-to-time, including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lighting and other furnishings and decorating. Each owner of a Residential Unit shall be entitled to the exclusive use of the interior surfaces subject to the rules and regulations of the Association, but each such owner of a Residential Unit shall have the right to decorate such interior surfaces from time-to-time as he or she may see fit and at his or her sole expense.
- 14.2 Decorating of the Common Area Elements (other than interior surfaces within the Residential Units as above provided and other than Limited Common Area Elements) and any redecorating of Residential Units, to the extent such redecorating is made necessary by damage to Units caused by maintenance or the lack thereof, repair or replacement of the Common Area Elements by the Association, shall be furnished by the Association as part of the Common Expenses. The interior surfaces of all windows forming part of a perimeter wall of a Residential Unit shall be cleaned or washed at the expense of the owner of that Residential Unit. The exterior surfaces of all windows shall be cleaned by the Association and the cost thereof treated as a Common Expense.
15. Violation of Declaration.
- 15.1 The violation of any rule or regulation adopted by the Association or the breach of any covenant or provision contained herein or in the Bylaws by any Unit Owner, shall, in addition to any other rights provided for in this Declaration or the Bylaws, give the Association the right: (i) to enter upon the Unit, or any portion of the Property upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and neither the Association nor the officers,

employees or agents thereof shall thereby be deemed guilty in any manner of trespass except, however, that judicial proceedings must be instituted prior to alteration or demolition of any items of construction; or (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or (iii) to take possession of such Unit Owner's interest in the Property and to maintain an action for possession of such Unit in the manner provided by law.

- 15.2 Provided, however, that except in cases of emergency where damage to persons or property is threatened, the Association shall not take any such action unless: (i) it has first given the Unit Owner alleged to have violated any restriction, condition or regulation adopted by the Association or to be in breach of any covenant or provision herein or in the Bylaws contained, a hearing on such allegations pursuant to rules and regulations adopted by the Association; (ii) the Association shall have determined such allegations to be true; and (iii) the Unit Owner shall not have desisted from such violation or breach or shall not have taken such steps as shall be necessary to correct such violation or breach within such reasonable period of time as determined by the Association and communicated to the Unit Owner. Any and all costs and expenses incurred by the Association in the exercise of its authority as granted in this paragraph, including but not limited to court costs, reasonable attorneys' fees as determined by a court of competent jurisdiction, and cost of labor and materials shall be paid by the Unit Owner in violation, and, until paid by such Unit Owner, shall constitute a lien on the interest of such Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in Section 32-25-6-3 of the Act with respect to liens for failure to pay a share of the Common Expenses. Any such lien shall be junior and subordinate to the lien of a First Mortgagee with respect to such Unit.
- 15.3 Furthermore, if after hearing and finding as aforesaid and failure of the Unit Owner to desist from such violation or to take such corrective action as may be required, the Association shall have the power to issue to the defaulting Unit Owner a ten- (10-) day notice in writing to terminate the rights of the said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use or control his/her Unit, and thereupon an action in equity may be filed by the Association against the defaulting Unit Owner for a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by him/her on account of the violation of a rule or breach of covenant or provision as aforesaid and ordering that all the right, title and interest of the Unit Owner in the Property shall be sold at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Unit Owner from reacquiring his/her interest at such judicial sale or by virtue of the exercise of any right of redemption which may be established, and except that the court shall direct that any existing first mortgage be retired out of the proceeds of such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Unit Owner in said decree. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the Unit Owner. Upon the confirmation of such sale, the purchaser thereof shall thereupon be entitled to a deed to the Unit and to

immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the Property sold subject to this Declaration.

- 15.4 Any Unit Owner in default hereunder or under the provisions of the Bylaws or any rule or regulation adopted by the Association shall pay to the Association, as an agreed Common Expense with respect to his/her Unit, all interest, late charges, reasonable attorneys' fees, costs of collection and amount of any fine by the Association in enforcing the provisions of the Bylaws, this Declaration or the rules and regulations of the Association as to which the Unit Owner is in default. Until such amounts are paid by the Unit Owner, the total amount thereof shall constitute a lien on the interest of the Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in Section 32-25-6-3 of the Act with respect to liens for failure to pay a share of the Common Expenses. Any such liens shall be junior and subordinate to the lien of a First Mortgagee with respect to such Unit.
16. Entry by the Association. The Association or its officers, agents or employees may enter any Unit when necessary in connection with any painting, maintenance, repair or reconstruction for which the Association is responsible, or which the Association has the right or duty to do. Such entry shall be made with as little inconvenience to the Unit Owner as practicable, and except in the event of emergency shall be done upon reasonable notice to the Unit Owner. Any damage caused thereby shall be repaired by the Association as a Common Expense.
17. Grantees. Each grantee of Owner, each purchaser under Articles of Agreement for Deed and each tenant, subtenant or assignee under a lease, sublease or assignment accepts the same subject to all easements, restrictions, conditions, covenants, reservations, liens and charges, the Bylaws, the rules and regulations of the Association, and the jurisdiction, rights and powers created or reserved by this Declaration, and the provisions of the Act, as at any time amended, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of each grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.
18. Failure to Enforce. No terms, obligations, covenants, conditions, restrictions or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce the same, no matter how many violations or breaches may occur.
19. Notices. Whenever any notice is required to be given under the provisions of this Declaration or the Bylaws, a waiver thereof in writing by the person or persons entitled to such notice, whether before or at the time stated therein, shall be deemed equivalent to the giving of such notice, provided such waiver or the time of giving same is not contrary to the provisions of the Act. Notices required to be given to any devisee or personal representative of a deceased Unit Owner shall be delivered by mail to such party at his/her or its address appearing in the records of the court wherein the estate of such deceased owner is being administered.

Other notices required or permitted to be given shall be in writing and shall be given in the manner set forth in the Condominium Instruments.

20. Amendments.

20.1 Except as hereinafter otherwise provided, the provisions of Paragraphs 1, 2, 3, 4, 5, 6, 23, 24, 26, and this paragraph of this Declaration, may be amended, changed or modified by an instrument in writing setting forth such amendment, change or modification, signed and acknowledged by all members of the Board, all of the Unit Owners and each mortgagee having a *bona fide* lien of record against any Unit. Except as herein otherwise provided, other provisions of this Declaration may be amended, changed or modified, upon approval of the Unit Owners owning a percentage interest of at least sixty-seven percent (67%) in the Common Area Elements, by an instrument in writing setting forth such amendment, change or modification, signed and acknowledged by the President or Vice-President and the Secretary or Assistant Secretary of the Association and containing an affidavit by an officer of the Association certifying that: (i) the Unit Owners owning a percentage interest of at least sixty-seven percent (67%) in the Common Area Elements have approved such amendment, change or modification; and (ii) a copy of the amendment, change or modification has been mailed by certified mail to all mortgagees having *bona fide* liens of record against any Unit, not less than ten (10) days prior to the date of such affidavit.

20.2 Except as provided in Paragraph 27 of this Declaration, the approval of First Mortgagees of Units who have requested that the Association notify them on any proposed action that requires the consent of a specified percentage of such mortgagees ("**Eligible First Mortgagees**") and which represent at least fifty-one percent (51%) of the Units subject to mortgages or trust deeds held by Eligible First Mortgagees in order, shall be required in order to materially amend any provisions of the Declaration or Bylaws or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

20.2-1 Voting:

- 20.2.1-1 assessments, assessment liens or subordination of such liens;
- 20.2.1-2 Reserves for maintenance, repair and replacement of the Common Area Elements;
- 20.2.1-3 insurance or fidelity bonds;
- 20.2.1-4 rights to use of the Common Area Elements;
- 20.2.1-5 responsibility for maintenance and repair of the Common Area Elements;
- 20.2.1-6 the addition, annexation or withdrawal of Property to or from the Act;
- 20.2.1-7 boundaries of any Unit;
- 20.2.1-8 interests in the Common Area Elements or Limited Common Area Elements;
- 20.2.1-9 convertibility of Units into Common Area Elements or of Common Area Elements into Units;
- 20.2.1-10 leasing of Units;

- 20.2.1-11 imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his/her Unit in the condominium;
- 20.2.1-12 establishment of self-management by the Association where professional management has been required by FHLMC, FNMA, HUD, FHA or VA; or
- 20.2.1-13 any provisions that expressly benefit First Mortgagees, insurers or guarantors or FHLMC, FNMA, HUD, FHA or VA.

The approval of an Eligible First Mortgagee shall be implied when such a mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, delivered by certified or registered mail, with a "return receipt" requested. Any amendment, change or modification shall conform to the provisions of the Act and shall be effective upon Recordation thereof.

- 20.3 No change, modification or amendment which affects the rights, privileges or obligations of Owner shall be effective without the prior written consent of Owner.
- 20.4 The Bylaws may be amended in accordance with the provisions of Article XII thereof.
- 20.5 No amendment to this Declaration which is permitted under this paragraph shall be effective or enforceable until such amendment is: (i) Recorded in the Office of the Recorder for Marion County, Indiana; and (ii) distributed to the Unit Owners and all First Mortgagees.

21. Mediation and Arbitration.

- 21.1 Any controversy between Unit Owners or any claim by a Unit Owner against the Association or another Unit Owner arising out of or relating to the Declaration, Bylaws, or rules and regulations of the Association shall be settled by submitting the dispute to mediation. Controversies, or portions of controversies, not resolved by mediation shall be settled through binding arbitration with the American Arbitration Association at its office nearest to the Parcel, and judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The Association may require the disputants to bear the costs of the arbitration or mediation.

22. Condemnation.

- 22.1 In the case of a taking or condemnation by competent authority of any part of the Property other than as provided in Paragraph 22.2, the Association shall, if necessary, restore the improvements in the remaining portion of the Property to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking or condemnation. Any proceeds or awards paid to the Association shall be applied first to the cost of any restoration and any remaining portion of such proceeds or awards shall be, in the discretion of the Board, either: (i) applied to pay the

Common Expenses; or (ii) distributed to the remaining Unit Owners and their respective First Mortgagees, as their interests may appear, based on their percentage interests in the Common Area Elements. Each Unit Owner appoints the Association as his/her attorney-in-fact for the purpose of representing him/her in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area Elements or any part thereof.

- 22.2 In the event that part or all of one or more Units is taken or condemned, then the portions so taken or condemned shall be deemed to have been removed from the provisions of the Act and the percentage of ownership interest in the Common Area Elements allocated to such Unit or portion thereof (as determined by the Board on the basis of diminution in market value of the Unit) shall be reallocated among the remaining Units on the basis of the relative percentage of ownership interests in the Common Area Elements of the remaining Units. In such cases, this Declaration and the Floor Plans shall be amended accordingly by an instrument executed by the President or Vice President and the Secretary or Assistant Secretary of the Association, which the Board shall Record. The allocation of any condemnation award, or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest in the Common Area Elements. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Area Elements, not necessarily including the Limited Common Area Elements, shall be allocated on the basis of each Unit Owner's percentage interest in the Common Area Elements. Any such proceeds available from the withdrawal of Limited Common Area Elements shall be distributed, in accordance with the interests of those entitled to their use, to each Unit Owner and his or her First Mortgagee, as their interests may appear. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof so withdrawn shall cease or shall be equitably reduced.
23. Violations of Certain Rules. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision; (b) the rule restricting restraints on alienation; or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the date of death of the last surviving member of the Indiana Pacers professional basketball team as of March 7, 2005, as shown on Exhibit "D" attached hereto and incorporated herein.
24. Severability. The invalidity of any restriction hereby imposed, or of any provision hereof, or of any part of such restriction or provision, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration and all of the terms hereof are hereby declared to be severable.
25. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first-class condominium development.
26. Changes or Modifications by Owner. Until the first annual meeting of Unit Owners is called, Owner, or its successors or assigns, shall have the right from time-to-time to change or modify the Condominium Instruments, which change or modification shall be

effective upon the Recording thereof; provided, however, that the provisions of Paragraph 27 of this Declaration shall not be amended, modified or changed without the consent of any First Mortgagee affected thereby, and provided further that such right shall only be exercised: (i) to bring the Declaration into compliance with the Act or to conform the Declaration to the requirements of FHLMC, FNMA, HUD, FHA or VA; or (ii) to correct clerical or typographical errors in the Declaration; or (iii) to modify the Floor Plans to include in any Unit the portion of a hallway servicing only such Unit and other Units owned by the same Unit Owner, provided such change complies with all applicable laws, codes and ordinances. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Owner, to make any change or modification as authorized hereunder on behalf of each Unit Owner, as attorney-in-fact for such Unit Owner. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to Owner as aforesaid.

27. Rights of First Mortgagees.

27.1 Any mortgage or trust deed owned or held by a First Mortgagee and Recorded prior to the Recording or mailing of a notice by the Association of the amount owing by a Unit Owner who has refused or failed to pay his/her share of the monthly assessment when due shall be superior to the lien of such unpaid Common Expenses set forth in said notice and to all assessments for Common Expenses which become due and are unpaid subsequent to the date of Recording of such first mortgage or first trust deed. Any First Mortgagee who comes into possession of a Unit pursuant to the remedies provided in the mortgage or trust deed, foreclosure of the mortgage or trust deed or deed (or assignment) in lieu of foreclosure shall not be liable for, and shall take the Unit and its proportionate interest in the Common Area Elements free from claims for unpaid common or special assessments levied by the Association which accrue prior to the date of possession as aforesaid.

27.2 A First Mortgagee, or an insurer or guarantor of the note held by a First Mortgagee, upon written request to the Association (such request to state the name and address of such First Mortgagee, insurer or guarantor and the Unit number), shall be entitled to timely written notice of:

27.2-1 Any proposed action that requires the consent of a specified percentage of Eligible First Mortgagees;

27.2-2 Any proposed termination of Condominium as a condominium project;

27.2-3 Any condemnation loss or any casualty loss which affects a portion of the Common Area Elements, which loss exceeds \$10,000.00, or which affects any Unit, which loss exceeds \$1,000.00, on which there is a first mortgage held, insured or guaranteed by such eligible holder;

27.2-4 Any delinquency in the payment of assessments or charges owed by a Unit Owner subject to the mortgage of a First Mortgagee, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days; and

27.2-5 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

28. Notice To First Mortgagees. Each Unit Owner shall notify the Association of the name and address of his or her First Mortgagee or its servicing agent, if any, and shall promptly notify the Association of any change in such information. The Association shall maintain a record of such information with respect to all Units. Upon written request, each First Mortgagee shall have the right to examine the books and records of the Association at any reasonable time and to have an audited statement of the Association's operations prepared for a fiscal year at such First Mortgagee's expense. Upon the specific written request of a First Mortgagee to the Board, the First Mortgagee shall receive some or all of the following as designated in the request:
- 28.1 Copies of budgets, notices of assessment or any other notices or statements provided under this Declaration by the Association to the Unit Owner of the Unit covered by the First Mortgagee's first mortgage;
 - 28.2 Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Unit Owners;
 - 28.3 Copies of notices of meetings of the Unit Owners and the right to be represented at any such meetings by a designated representative;
 - 28.4 Notice of any proposed action which would require the consent of a specified percentage of First Mortgagees pursuant to Paragraph 20;
 - 28.5 Notice of the decision of the Unit Owners to make any material amendment to this Declaration, except as permitted by Paragraph 26, the Bylaws, or the Articles of Incorporation of the Association;
 - 28.6 Notice of substantial damage to or destruction of any Unit which is subject to such First Mortgagee's first mortgage, in excess of Two Thousand Five Hundred Dollars (\$2,500.00) or any part of the Common Area Elements in excess of Ten Thousand Dollars (\$10,000.00);
 - 28.7 Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Property;
 - 28.8 Notice of any default of the Unit Owner of the Unit which is subject to the First Mortgagee's first mortgage, where such default is not cured by the Unit Owner within thirty (30) days after the giving of notice by the Association to such Unit Owner of the existence of the default;
 - 28.9 Copies of notices received by the Association of the cancellation or substantial modification of any insurance policy carried by the Association; and
 - 28.10 The right to be treated as an Eligible First Mortgagee for purposes of Paragraph 20.

The request of a First Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a First Mortgagee hereunder and in the event of multiple requests from purported First Mortgagees of the same Unit Owner, the Association shall honor the most recent request received.

29. Consent of First Mortgagees.

29.1 In addition to any requirements or prerequisites provided for elsewhere in this Declaration, the consent of First Mortgagees holding, in the aggregate, first mortgages on at least fifty-one percent (51%) of the Units (by number) that are subject to mortgages held by Eligible First Mortgagees will be required for the Association to do or permit to be done any of the following:

29.1-1 Except as specifically provided herein, adoption of an amendment to this Declaration which changes or adds provisions to this Declaration, relating to: (i) voting rights; (ii) assessments, assessment liens or priority of assessment liens; (iii) reserves for maintenance, repair and replacement of Common Area Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Area Elements or rights to their use; (vi) redefinition of the boundaries of any Units; (vii) the convertibility of Units into Common Area Elements or *vice versa*; (viii) expansion or contraction of the Property or the addition, annexation or withdrawal of real estate to or from the Property; (ix) insurance or fidelity bonds; (x) the leasing of Units; (xi) restrictions on a Unit Owner's right to sell or transfer a Unit; (xii) a decision by the Association to establish self-management; (xiii) restoration or repair of the Property or Building (after casualty or partial condemnation) in a manner other than that specified in the Condominium Instruments; (xiv) any action to terminate the legal status of the Property after substantial destruction or condemnation occurs; or (xv) any provisions which expressly benefit First Mortgagees or guarantors or insurers of first mortgages;

29.1-2 The abandonment or termination of the Condominium for reasons other than substantial destruction or condemnation of the Property (except that this action shall require the consent of First Mortgagees holding first mortgages on at least two-thirds (2/3) of the Units (by number) which are subject to first mortgages held by Eligible First Mortgagees);

29.1-3 The partition or subdivision of a Unit;

29.1-4 The abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Area Elements (except for the granting of easements for public utilities or for other purposes consistent with the intended use of the Property and the Condominium Instruments and except for the encumbrance, sale or transfer of an interest in the Common Area Elements in connection with the encumbrance, sale or transfer of a Unit or leasing of Common Area Elements as permitted hereby);

- 29.1-5 The sale of the Property;
- 29.1-6 The removal of all or a portion of the Property from the provisions of the Act and this Declaration; or
- 29.1-7 The use of hazard insurance proceeds from casualty losses to the Property (whether to Units or to the Common Area Elements) for other than the repair, replacement, or reconstruction of such Units or Common Area Elements; provided, that, such consent of First Mortgagees will not be required with respect to any action under Paragraphs 29.1-1 through 29.1-2 above which occurs as a result of: (a) a taking of a portion or all of the Property by condemnation or eminent domain (including, without limitation, action taken pursuant to Paragraph 22.2; or (b) changes in the percentage interests as permitted under this Paragraph.
- 29.2 Whenever required, the consent of a First Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary in writing by the First Mortgagee within thirty (30) days after making the request for consent.
30. Insurance Proceeds/Condemnation Awards. In the event of: (i) any distribution of any insurance proceeds hereunder as a result of substantial damage to, or destruction of, any part of the Property; or (ii) any distribution of the proceeds of any award or settlement as a result of condemnation or eminent domain proceedings with respect to any part of the Property, any such distribution shall be made to the Unit Owners and their respective First Mortgagees, as their interests may appear, and no Unit Owner or other party shall be entitled to priority over the First Mortgagee of a Unit with respect to any such distribution to or with respect to such Unit; provided, that, nothing in this Paragraph shall be construed to deny to the Association the right to apply any such proceeds to repair or replace damaged portions of the Property or to restore what remains of the Property after condemnation or taking by eminent domain of a part of the Property.
31. Trustees. In the event title to any Unit should be conveyed to a land title holding trust, under which all powers of management, operation and control of the premises remain vested in the trust beneficiary or beneficiaries, then the trust estate under such trust and the beneficiaries thereunder from time-to-time shall be liable for payment of any obligation, lien, or indebtedness chargeable or created under this Declaration against such Unit. No claim shall be made against any such title holding trustee personally for payment of any claim, lien, or obligation hereby created, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or obligation, but the amount thereof shall continue to be a charge or lien upon the premises, notwithstanding any transfer of beneficial interest or the title of such premises.
32. Payment of Assessments by Owner.
- 32.1 Pursuant to the Act, and for the period of time described in Paragraph 32.2, Owner shall be exempt from the obligation to contribute toward the payment of Common Expenses with respect to those unsold and unoccupied Units which it owns and offers for initial sale to the public (the "**Exemption**").

- 32.2 The Exemption shall commence on the date that this Declaration is Recorded in the office of the Recorder for Marion County, Indiana and shall expire on the first day of the twenty fourth (24th) calendar month following the month in which the closing of the sale of the first Unit occurs (the "**Exemption Period**").
- 32.3 Notwithstanding the Exemption described in Paragraph 32.1, Owner agrees that, in the event the total of Common Expenses incurred during the Exemption Period exceeds the total amount assessed against all Unit Owners other than Owner, Owner shall pay the amount of such excess to the Association, or to the vendors of the Association, as appropriate.

IN WITNESS WHEREOF, Owner has executed this Declaration as of the date first above written.

SOUTH MERIDIAN CONDOS, LLC, an Indiana limited liability company, doing business as **SIX OVER MERIDIAN**

By: **ALEXTESS, LLC**, an Indiana limited liability company, Managing Member


By: 
Todd J. Maurer, Managing Member

EXHIBIT "C"

BYLAWS

SIX OVER MERIDIAN PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I
General Provisions

- 1.0 The Association is responsible for the overall administration of the Property through its duly elected Board. The Association shall have the powers and responsibilities specified in Indiana Code § 32-25 (the "Act") and the Condominium Instruments. The Association shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized and to do every other act not inconsistent with law which may be appropriate to promote and attain the purposes set forth in the Act or the Condominium Instruments.

ARTICLE II
Members

- 2.0 Classes of Members, Membership, and Termination Thereof. The Association shall have one class of members. The designation of such class and the qualifications of the members of such class shall be as follows:

Each Unit Owner shall be a member of the Association, which membership shall terminate upon the sale or other disposition of such member's Unit, at which time the new Unit Owner shall automatically become a member of the Association. Such termination shall not relieve or release any such former Unit Owner from any liability or obligation incurred under or in any way connected with the Condominium or the Association, during the period of such ownership and membership in the Association. Furthermore, such termination shall not impair any rights or remedies which the Board or others may have against such former Unit Owner arising from, or in any way connected with, such ownership and membership and the covenants and obligations incident thereto. No certificates of stock or other certificates evidencing membership shall be issued by the Association.

- 2.1 Votes and Voting Rights.

2.1-1 Until the date of the first annual meeting of the members, as provided in Article III, Section 3.0 hereof, no member of the Association shall have the right to elect the Board and all such members of the Board shall be appointed and shall hold office as provided in Article IV, Section 4.1 of these Bylaws.

2.1-2 Commencing with the date of the said first annual meeting of the members, the total number of votes of all members shall be one hundred (100). Each member shall be entitled to the number of votes equal to his/her percentage ownership interest in the Common Area Elements (as defined in the Declaration) at the time any matter is submitted to a vote of the members.

- 2.1-3 If a Unit is owned by more than one person, the voting rights with respect to such Unit shall not be divided, but shall be exercised as if the Unit Owner consisted of only one person in accordance with the proxy or other designation made by the persons constituting such Unit Owner. Any proxy must be executed in writing by the Unit Owner or his duly authorized attorney-in-fact, must bear the date of execution, and shall be invalid after eleven (11) months from the date of its execution. If only one of the multiple owners of a Unit is present at a meeting, he/she is entitled to cast all the votes allocated to that Unit. If more than one of the multiple owners are present, and if any one of the multiple owners cast the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit, there is deemed to be majority agreement among the multiple owners of such Unit.
- 2.1-4 Any specified percentage of the members, whether majority or otherwise, for purposes of voting or for any other purpose, wherever provided in these Bylaws, shall mean such percentage of the total number of votes hereinabove set forth.
- 2.2 Transfer of Membership. Membership in this Association is not transferable or assignable, except as provided in Article II, Section 2.0 hereof.
- 2.3 Installment Contracts. Anything herein to the contrary notwithstanding, in the event of a sale of a Unit, the purchaser of such Unit from a seller other than Owner pursuant to an installment contract for purchase shall, during such times as he or she resides in the Unit, be counted toward a quorum for purpose of election of members of the Board at any meeting of the Unit Owners called for the purposes of electing members of the Board, shall have the right to vote for the election of members of the Board and to be elected to and serve on the Board, unless the seller expressly retains in writing any or all of such rights. In no event may the seller and purchaser both be counted toward a quorum, be permitted to vote for a particular office or be elected and serve on the Board. Satisfactory evidence of the installment contract shall be made available to the Association or its agents.

ARTICLE III Meetings of Members

- 3.0 Annual Meeting. The first annual meeting of the members shall be held on such date as is fixed by Owner, which date shall in no event be later than the earlier of: (a) three (3) years from the date the Declaration is Recorded in the Office of the Recorder of Marion County, Indiana; (b) sixty (60) days from the date when the last of the Units have been conveyed by Owner; or (c) such earlier time as selected by Owner. Thereafter, an annual meeting of the members for the purpose of electing Board members and for the transaction of such other business as may come before the meeting shall be held on the third Wednesday of September each year or such other date as is selected by the Board which date is within sixty (60) days before or after the third Wednesday of September; provided, however, that no such meeting need be held less than one (1) year after the first annual meeting of the members. If the election of members of the Board shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the members called as soon thereafter as conveniently may be.

- 3.1 Special Meetings. Special meetings of the members may be called by the Board, the President, or not less than twenty percent (20%) of the members. All matters to be considered at special meetings of the members called by not less than twenty percent (20%) of the members shall first be submitted in writing to the Board not less than ten (10) days prior to the date of the special meeting of the members called to consider such matters.
- 3.2 Place and Time of Meeting. All meetings of the members shall take place at a time and in some section of the Property designated by the person or persons calling the meeting, or at such other reasonable place or time designated by the Board or the person or persons calling the meeting.
- 3.3 Notice of Meetings. Written or printed notice stating the purpose, place, day and hour of any meeting of members shall be mailed or delivered to each member entitled to vote at such meeting, not less than ten (10) nor more than thirty (30) days before the date of such meeting, by or at the direction of the President or the Secretary, or the officer or persons calling the meeting, provided that notice of the first annual meeting of the members shall be mailed or delivered not less than twenty-one (21) nor more than thirty (30) days before the date of such meeting. The notice of a meeting shall be deemed mailed when deposited in the United States mail addressed to the member at his address as it appears on the records of the Association, with proper postage thereon prepaid.
- 3.4 Quorum. The members present at a meeting in person or by proxy, holding fifty-one percent (51%) of the votes which may be cast at any meeting, shall constitute a quorum at such meeting. If a quorum is not present at the commencement of any meeting of members, the meeting shall be adjourned and may only be called again in accordance with the provisions of these Bylaws.
- 3.5 Proxies. At any meeting of members, a member entitled to vote may vote either in person or by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution. Any proxy distributed for election of members of the Board shall give Unit Owners the opportunity to designate any person as the proxy holder and shall give the Unit Owner the opportunity to express a preference for any of the known candidates for the Board or to write in a name.
- 3.6 Manner of Acting. Except as set forth below and except as otherwise required by the Declaration or the Act, any action to be taken at any meeting of the members at which a quorum is present shall be upon the affirmative vote of more than fifty percent (50%) of the votes represented at such meeting. The following matters shall require the affirmative vote of not less than sixty-seven percent (67%) of all the votes represented at a meeting duly called for that purpose:
- 2.1-1 Merger or consolidation of the Association; or
 - 2.1-2 Sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, of the property and assets of the Association.

ARTICLE IV
Board

- 4.0 In General. The affairs of the Association shall be managed by its Board which shall act as the Board of Managers of the Condominium as provided in the Act and the Declaration.
- 4.1 Number, Tenure and Qualifications. The number of members of the Board shall initially be three (3). Until the date of the first annual meeting of the members as hereinabove provided, members of the Board shall be appointed by Owner. Such members of the Board shall hold office until the first annual meeting of the members. Commencing with the date of the first annual meeting of the members, the number of members of the Board shall be increased to five (5) and shall be elected solely by, from and among, the members until their respective successors shall have been elected and qualified. All members of the Board shall be elected at large. Each member of the Board shall hold office without compensation. In the event that a member of the Association is a corporation, limited liability company, partnership, trust or other legal entity other than a natural person or persons, then any shareholder, officer or director of such corporation, member of such limited liability company, partner of such partnership, beneficiary or individual trustee of such trust, or manager of such other legal entity, may be eligible to serve as a member of the Board. If there are multiple owners of a single Unit, only one of the multiple owners shall be eligible to serve as a member of the Board at any one time. A member of the Board may succeed himself/herself in office.
- 4.2 Election. At each annual meeting of the members, the members shall, on a non-cumulative basis and by vote of a plurality of the members present at such meeting, elect Directors to fill the vacancies created by any expiring term of office. At the first annual meeting of the members, the five candidates receiving the highest total of votes shall be elected. The two receiving the highest total of votes shall serve terms of three (3) years; the two with the next highest totals shall serve terms of two (2) years and the candidate receiving the lowest number of votes shall serve a term of one (1) year. Thereafter, at each annual meeting of the members, the members shall elect Directors for terms of two (2) years. A candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of the ballots at such election. The Board may disseminate to Unit Owners biographical and background information about candidates for election to the Board if: (a) no preference is expressed in favor of any candidate; and (b) reasonable efforts to identify all candidates are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated.
- 4.3 Regular Meetings. A regular annual meeting of the Board shall be held immediately after, and at the same place as, the annual meeting of members. The Board shall, by regulations which the Board may, from time-to-time adopt, provide the time and place for the holding of additional regular meetings of the Board, provided that the Board shall meet at least four (4) times per year.
- 4.4 Special Meetings. Special meetings of the Board may be called by or at the request of the President or twenty-five percent (25%) of the members of the Board. The person or persons permitted to call special meetings of the Board may fix the time and place for holding any special meeting of the Board called by them.

- 4.5 Notice. Written notice of any special meeting of the Board shall be mailed or delivered to all members of the Association and all members of the Board not calling the meeting at least forty-eight (48) hours prior to the date of such special meeting. Written notice of regular meetings of the Board shall be mailed or delivered to all members of the Association at least forty-eight (48) hours prior to the date of such meeting. All such notices shall be deemed to be mailed when deposited in the United States mail addressed to each member at his address as it appears on the records of the Association, with proper postage thereon paid. The business to be transacted at, or the purpose of any regular or special meeting of the Board, shall be specified in the notice. Notices of a regular meeting of the Board need not be served on members of the Board. However, copies of said notices of meetings of the Board shall be posted in entrance ways or other conspicuous places in the Condominium designated by the Board at least forty-eight (48) hours prior to the meeting.
- 4.6 Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a majority of the members of the Board are present at the commencement of said meeting, the meeting shall be adjourned and may only be called again in accordance with the provisions of these Bylaws.
- 4.7 Manner of Acting. The act of a majority of the members of the Board present at a meeting at which a quorum is present at the commencement of the meeting shall be the act of the Board, except where otherwise provided by law or in the Condominium Instruments.
- 4.8 Vacancies. Any vacancy occurring in the Board by reason of death, removal or resignation of a member of the Board shall be filled by a two thirds (2/3) vote of the remaining members of the Board. A member elected to fill a vacancy shall be elected until the next annual meeting of the members of the Association; provided, that if a petition signed by members of the Association holding twenty percent (20%) of the votes in the Association requesting a meeting of the members to fill the vacancy for the balance of the unexpired term of his predecessor, the term of the member so elected by the Board shall terminate thirty (30) days after the filing of the petition and a meeting of the members for the purpose of filling such vacancy for such unexpired term shall be called no later than thirty (30) days following the filing of such petition. Members of the Board, including those appointed by Owner, may resign at any time by written resignation delivered or mailed to any officer of the Association, which resignation shall be effective upon receipt of said resignation. If as the result of the death, removal or resignation of a member of the Board, no member of the Board remains in office, a special meeting of members of the Association may be called to fill all vacancies for the unexpired terms of the members of the Board.
- 4.9 Removal. From and after the date of the first annual meeting of the members, any member of the Board may be removed from office by the affirmative vote of 66-2/3% of all the members of the Association at a special meeting called for such purpose.
- 4.10 Adoption of Rules and Regulations. All rules and regulations, or amendments thereto, shall be adopted by the Board after a meeting of the members called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations. No rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States or the

Indiana Constitution, nor may any rules or regulations conflict with the provisions of the Act or the Condominium Instruments. Such rules and regulations shall be effective sixty (60) days after their adoption, provided that the members may veto any rule or regulation at a special meeting of the members called for such purpose, and held before the effective date of the rule or regulation, by a vote of 66-2/3% of all the members of the Association.

4.11 Open Meetings. All meetings of the Board, whether regular or special, shall be open to the members of the Association, except for meetings:

4.11-1 To discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent;

4.11-2 To consider information regarding appointment, employment or dismissal of an employee; or

4.11-3 To discuss violations of rules and regulations of the Association or a Unit Owner's unpaid share of Common Expenses.

Any vote on the above matters shall be taken at a meeting or portion thereof open to any member. Any member may record the proceedings at meetings required to be open by the Act or these Bylaws by tape, film, or other means, subject to reasonable rules and regulations prescribed by the Board to govern the right to make such recordings.

4.12 Contracts. The Board may not enter into a contract with a current board member or with a corporation or partnership in which a board member has a twenty-five percent (25%) or more interest, unless notice of intent to enter the contract is given to Unit Owners within twenty (20) days after a decision is made to enter into the contract and the Unit Owners are afforded an opportunity by filing a petition, signed by twenty percent (20%) of the Unit Owners, for an election to approve or disapprove the contract. Such petition shall be filed within twenty (20) days after such notice and such election shall be held within thirty (30) days after filing the petition.

4.13 Powers and Duties. The powers and duties of the Board shall include, but not be limited to, the operation, care, upkeep, maintenance, replacement and improvement of the Common Area Elements.

ARTICLE V Officers

5.0 Officers. The officers of the Association shall be a President, one or more Vice Presidents (the number thereof to be determined by the Board), a Treasurer, a Secretary and such other officers as may be determined by the Board to be reasonable and necessary.

5.1 Election and Term of Office. The officers of the Association shall be elected annually by the Board at the regular annual meeting of the Board, from and among the members of the Board. If the election of officer shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be possible. Vacancies may be filled or new offices created and filled at any meeting of the Board. Each officer shall hold office

until his successor shall have been duly elected and shall have qualified. An officer may succeed himself in office. Officers shall serve without compensation.

- 5.2 Removal. Any officer elected by the Board may be removed by a majority vote of the members of the Board.
- 5.3 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board for the unexpired portion of the term.
- 5.4 President. The President shall be the principal executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. He shall preside at all meetings of the members of the Board. The President may sign, with the Secretary or any other proper officer of the Association authorized by the Board, any deeds, mortgages, contracts, or other instruments which the Board has authorized to be executed and any amendment to the Declaration or Floor Plans as provided in the Act, and, in general, shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time-to-time.
- 5.5 Vice President. In the absence of the President or in the event of his inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents, in the order of their election) shall perform the duties of the President, and when so acting, shall have all the power of, and be subject to all the restrictions upon, the President. Any Vice President shall perform such other duties as from time-to-time may be assigned to him by the President or by the Board.
- 5.6 Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article VII of these Bylaws; and in general perform all the duties incident to the office of Treasurer and such other duties as from time-to-time may be assigned to him by the President or by the Board.
- 5.7 Secretary. The Secretary shall keep the minutes of the meetings (which shall include proposed and adopted resolutions) of the members and of the Board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; receive all notices on behalf of the Association and, together with the President, execute on behalf of the Association amendments to Condominium Instruments and other documents as required or permitted by the Declaration, these Bylaws or the Act; be custodian of the records of the Association; and in general perform all duties incident to the office of Secretary and such other duties as from time-to-time may be assigned to him by the President or by the Board.

ARTICLE VI Powers and Duties of the Association and Board

- 6.0 General Duties, Powers, Etc. of the Board. In the performance of their duties, the officers and members of the Board, whether appointed by Owner or elected by the members, shall exercise the care required of a fiduciary of the members. The Board

shall exercise for the Association all powers, duties and authority vested in the Association by the Act and the Condominium Instruments, including but not limited to the following:

- 6.0-1 Operation, care, upkeep, maintenance, replacement, and improvement of the Common Area Elements and the Limited Common Area Elements.
- 6.0-2 Preparation, adoption and distribution of the annual budget for the Property.
- 6.0-3 Levying of assessments.
- 6.0-4 Collection of assessments from Unit Owners.
- 6.0-5 Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Area Elements.
- 6.0-6 Obtaining adequate and appropriate kinds of insurance.
- 6.0-7 Owning, conveying, encumbering, leasing, and otherwise dealing with Units conveyed to or purchased by it.
- 6.0-8 Adoption and amendment of rules and regulations covering the details of the operation and use of the Property.
- 6.0-9 Keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property.
- 6.0-10 Having access to each Unit, from time-to-time, as may be necessary for the maintenance, repair or replacement of any Common Area Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Area Elements or to another Unit or Units.
- 6.0-11 Paying real property taxes, special assessments, any other special taxes or charges of the State of Indiana or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the real property of the Condominium.
- 6.0-12 Imposing charges for late payments of a Unit Owner's assessments, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levy reasonable fines for violation of the Declaration, Bylaws, and rules and regulations of the Association.
- 6.0-13 Assigning its right to future income, including the right to receive assessments.
- 6.0-14 Recording the dedication of a portion of the Common Area Elements to a public body for use as, or in connection with, a street or utility where authorized by the Unit Owners under the provisions of Paragraphs 8.3 or 8.7 of the Declaration.
- 6.0-15 Recording the granting of an easement for the laying, maintenance, and repair of cable television cable or for construction, maintenance, and repair of a project for

protection against water damage of erosion, where authorized by the Unit Owners under the provisions of Paragraph 8.5 of the Declaration.

- 6.0-16 Borrowing money at such rates of interest as it may determine; to issue its notes, bonds and other obligations to evidence such borrowing; and to secure any of its obligations by assigning its right to future income, including the right to receive assessments for common expenses, and/or by making a mortgage or giving a security interest in all or any of its property or income; provided, if such mortgage or security interest encumbers all or substantially all of the assets of the Association, the approval of the members shall first be obtained pursuant to Article III, Section 7.0, of these Bylaws.
- 6.1 Specific Powers and Duties. Anything herein contained to the contrary notwithstanding, the Association shall have the power:
- 6.1-1 To engage the services of a manager or managing agent, who may be any person, firm or corporation, upon such terms and compensation as the Association deems fit, and to remove such manager or managing agent at any time, provided any agreement with such manager or managing agent shall extend for not more than three (3) years and must be terminable by either party to such agreement without cause and without payment of a termination fee, upon ninety (90) days or less prior written notice.
 - 6.1-2 To engage the services of any persons (including, but not limited to, accountants and attorneys) deemed necessary by the Association, at such compensation as is deemed reasonable by the Association, in the operation, repair, maintenance and management of the Property, or in connection with any duty, responsibility or right of the Association and to remove, at any time, any such personnel.
 - 6.1-3 To establish or maintain one or more bank accounts, or functionally similar accounts such as money market fund accounts, for the deposit of any funds paid to, or received by, the Association.
 - 6.1-4 To invest any funds of the Association in certificates of deposits, money market funds, or comparable investments.
 - 6.1-5 Upon authorization of a two thirds vote of the members of the Board or by affirmative vote of not less than a majority of the Unit Owners at a meeting duly called for such purpose, the Board acting on behalf of all Unit Owners shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments or charges of the State of Indiana or any political subdivision thereof or of any lawful taxing or assessing body, and to charge and collect all expenses incurred in connection therewith as Common Expenses.
- Nothing herein shall be construed to give the Association authority to conduct an active business for profit on behalf of all the Unit Owners or any of them.
- 6.2 Authorized Expenditures. The Association shall acquire and make arrangements for, and pay for out of the Maintenance Fund, in addition to the manager, managing agent or other personnel above provided for, the following:

- 6.2-1 Water, waste removal, heating, electricity, telephone and other necessary utility services for the Common Area Elements and such services to the Units as are not separately metered or charged to the owners thereof.
- 6.2-2 Such insurance as the Association is required or permitted to obtain as provided in the Declaration.
- 6.2-3 Landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintenance, decorating, repair and replacement of the Common Area Elements (but not including the Limited Common Area Elements which are not visible from the exterior of the Building and which the Unit Owners enjoying the use thereof shall paint, clean, decorate, maintain and repair) and such furnishings and equipment for the Common Area Elements as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the Common Area Elements. Anything in the foregoing to the contrary notwithstanding, the Association shall be responsible for the repair and replacement of all windows and doors; provided, that where the need for repair or replacement is due to the act or omission of a Unit Owner, guest, occupant, family member or pet, the Association shall charge the Unit Owner for the cost of such repair or replacement.
- 6.2-4 Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or assessments which the Association deems necessary or proper for the maintenance and operation of the Property or for the enforcement of any restrictions or provisions contained herein.
- 6.2-5 Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Property or any part thereof which may, in the opinion of the Association, constitute a lien against the Property or against the Common Area Elements, rather than merely against the interest therein of particular Unit Owners. Where one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens, including, but not limited to, any interest, late charges, reasonable attorneys' fees, costs of collections and the amount of any unpaid fine, shall be specially assessed to said Unit Owners and shall, until paid by such Unit Owners, constitute a lien on the interest of such Unit Owners in the Property, which lien may be perfected and foreclosed in the manner provided in the Act with respect to liens for failure to pay a share of the Common Expenses.
- 6.2-6 Maintenance and repair of any Unit or any other portion of the Property which a Unit Owner is obligated to maintain or repair under the terms hereof, if such maintenance or repair is necessary, in the discretion of the Association, to protect the Common Area Elements, or any other portion of the Property, and the owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered by the Association to said Unit Owner; provided, that the Association shall levy a special assessment against such Unit for the cost of said maintenance or repair and the amount of such special assessment shall constitute a lien on the interest of such Unit Owner in the Property, which lien

may be perfected and foreclosed in the manner provided in the Act with respect to liens for failure to pay a share of the Common Expenses.

All expenses, charges and costs of the maintenance, repair or replacement of the Common Area Elements, and any other expenses, charges or costs which the Association may incur or expend pursuant hereto, shall be approved by the Association, and a written memorandum thereof prepared and signed by the Treasurer. Nothing contained herein shall invalidate any provision in the Condominium Instruments placing limits on expenditures for the Common Area Elements, provided, that such limits shall not be applicable to expenditures for repair, replacement or restoration of existing portions of the Common Area Elements. The term "repair, replacement or restoration" means expenditures to deteriorated or damaged portions of the Property related to the existing decorating, facilities, or structural or mechanical components, interior or exterior surfaces, or energy systems and equipment with the functional equivalent of the original portions of such areas. Replacement of the Common Area Elements may result in an improvement over the original quality of such Common Area Elements or facilities; provided, that, if the improvement results in a proposed expenditure exceeding five percent (5%) of the Annual Budget (defined below), the Board upon written petition by Unit Owners with twenty percent (20%) of the votes of the Association delivered to the Board within fourteen (14) days after the Board action to approve the expenditure, shall call a meeting of the Unit Owners within thirty (30) days of the date of delivery of the petition to consider the expenditure. Unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the expenditure, it is ratified; upon such a majority of votes it shall be repealed.

6.3 Annual Budget.

- 6.3-1 Each year on or before November 1st, the Board shall estimate the annual budget of Common Expenses (the "**Annual Budget**") including: the total amount required for the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements (as hereinafter specified), all anticipated regular and separate (special) assessments and income and each Unit Owner's proposed Common Expense assessment, together with an indication of which portions of the Annual Budget are intended for capital expenditures or repairs or payment of real estate taxes. The Board shall deliver a copy of the proposed Annual Budget to each Unit Owner at least thirty (30) days prior to the adoption thereof. The Association shall give Unit Owners notice as provided in Section 4.3, Article III of the Bylaws of the meeting of the Board at which the Board proposes to adopt the Annual Budget, or at which any increase or establishment of any assessment, regular or special, is proposed to be adopted.
- 6.3-2 Other than as provided for in Section 6.2 hereof, if an adopted Annual Budget and regular assessments pursuant thereto or any separate assessment adopted by the Board would result in the sum of all regular and special assessments against Unit Owners payable in the current fiscal year exceeding one hundred fifteen percent (115%) of the sum of all regular and special assessments for the preceding fiscal year, then upon written petition by Unit Owners representing twenty percent (20%) of the votes of the Association given within fourteen (14)

days of the Board action, the Board shall call a meeting of the Unit Owners within thirty (30) days of the date of delivery of the petition to consider the Annual Budget or separate assessment. Unless more than fifty percent (50%) of the votes of the Association are cast at a meeting to reject the Annual Budget or separate assessment, it is ratified; upon such a majority vote it shall be repealed.

- 6.3-3 The Annual Budget shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Area Elements. Each Unit Owner shall be obligated to pay to the Association, or as it may direct, the portion of the Annual Budget assessed to such Unit Owner, in equal monthly installments (subject to acceleration as hereinafter provided) on or before January 1st of the ensuing year, and the 1st day of each and every month of said year. Notwithstanding the foregoing, assessments will not begin until such time as Owner elects to stop paying all Association expenses; provided, however, that the Board will begin assessing all Unit Owners if and when a request is made therefor by FHLMC, FNMA, HUD, FHA or VA.
- 6.3-4 The failure or delay of the Association to prepare or serve the Annual Budget on the Unit Owners shall not constitute a waiver or release in any manner of each Unit Owner's obligation to pay the maintenance and other costs and necessary Reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual or adjusted budget, the Unit Owners shall continue to pay the monthly assessment charges at the then existing monthly rate established for the previous period until the monthly assessment payment which is due more than ten (10) days after such new Annual Budget shall have been mailed.
- 6.3-5 Anything herein or in the Declaration to the contrary notwithstanding, the Board may charge to fewer than all Unit Owners such portion of the insurance premium for insurance the Association is required or permitted to obtain which reflects increased charges for coverage on the Units owned by such Unit Owners, on such reasonable basis as the Board shall determine. Such charge shall be considered a common expense with respect to the Units owned by such Unit Owners for all purposes herein and under the Declaration.
- 6.3-6 All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such special adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in their relative percentages of ownership interest in the Common Area Elements.

6.4 Annual Accounting.

- 6.4-1 On or before the 1st day of April of each calendar year commencing 2005, the Association shall supply to all Unit Owners an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid, together with an indication of which portions of the Annual Budget were for capital expenditures or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus Reserves.

Any amount accumulated in excess of the amount required for actual expenses and Reserves shall be credited, according to each Unit Owner's percentage of ownership in the Common Area Elements, to the next monthly installments due from Unit Owners under the current year's Annual Budget, until exhausted, and any net shortage shall be added, according to each Unit Owner's percentage of ownership in the Common Area Elements, to the installments due in the succeeding six months after rendering of the accounting.

- 6.4-2 The Association shall allow any First Mortgagee to examine the books and records of the Association during reasonable business hours and to receive, on request, annual reports and other financial data prepared by the Association or at its direction.
- 6.4-3 The Association must provide an audited financial statement for the preceding fiscal year upon submission of a written request by any holder, insurer or guarantor of a first mortgage secured by a Unit.

6.5 Reserves.

- 6.5-1 The Association may build up and maintain a reasonable Reserve for operations, contingencies and replacement. To establish such Reserve, Owner shall collect from each Unit Owner, upon conveyance by Owner of a Unit to such Unit Owner, an amount equal to one sixth of the Annual Budget as initially established by Owner for the first year following the first annual meeting of the members and allocable to such Unit, and shall remit such amount to the Association. Extraordinary expenditures not originally included in the Annual Budget which may become necessary during the year shall be charged first against such Reserve. In addition, the Association or the Board shall have the right to segregate all or any portion of the Reserve for any specific replacement or contingency upon such conditions as the Association or the Board deems appropriate. On or before the day of the first annual meeting of members, Owner shall pay for each Unit then owned by Owner, such Unit's percentage interest multiplied by one sixth of the Annual Budget as initially established by Owner for the first year following the first annual meeting of the members. When such Units are later sold, Owner may collect from such purchaser sufficient funds to reimburse itself for the funds paid at the time of the first annual meeting of the members.
- 6.5-2 The Annual Budget shall provide for reasonable reserves for capital expenditures and deferred maintenance for repair or replacement of the Common Area Elements. To determine the amount of Reserves appropriate for the Association, the Board of Managers shall take into consideration the following: (i) the repair and replacement cost, and the estimated useful life, of the property which the Association is obligated to maintain, including but not limited to structural and mechanical components, surfaces of the Building and Common Area Elements, and energy systems and equipment; (ii) the current and anticipated return on investment of Association funds; (iii) any independent professional reserve study which the Association may obtain; (iv) the financial impact on Unit Owners, and the market value of the Units, of any assessment increase needed to fund Reserves; and (v) the ability of the Association to obtain financing or refinancing.

Anything to the contrary in the foregoing notwithstanding, the Association may elect to waive in whole or in part the Reserve requirements of this section by a vote of not less than sixty-seven percent (67%) of the total votes of the Association. In the event the Association elects to waive all or part of the Reserve requirements of this section, such fact must be disclosed after the meeting at which such waiver occurs by the Association in the financial statements of the Association and, highlighted in bold print, in the response to any request of a prospective purchaser for the information prescribed under the Act; and no member of the Board or the managing agent of the Association shall be liable, and no cause of action may be brought for damages against these parties, for the lack or inadequacy of Reserve funds in the Annual Budget. If the Association elects to waive all or part of such Reserve requirements, the Association may, by a vote of not less than sixty-seven percent (67%) of the total votes of the Association, elect to again be governed by the Reserve requirements of this section. The Reserve may be built up by special assessment or out of the annual assessment as provided in the Annual Budget.

Each Annual Budget shall disclose that percentage of the Annual Assessment or which shall be added to the Reserve and shall also disclose: (i) which portion thereof is for capital expenditures with respect to the Common Area Elements; and (ii) which portion thereof is for capital expenditures with respect to property owned or to be owned by the Association. Special accounts set up for portions of the Reserve to be used to make capital expenditures with respect to property owned or to be owned by the Association. Special accounts may be set up for portions of the Reserve to be used to make capital expenditures with respect to the Common Area Elements shall be held by the Association as agent and trustee for the Unit Owners and such accounts shall be deemed to have been funded by capital contributions to the Association by the Unit Owners.

6.6 Special Assessments.

- 6.6-1 If said Annual Budget proves inadequate for any reason, including nonpayment of any Unit Owner's assessment, or any non recurring Common Expense or any Common Expense not set forth in the Annual Budget as adopted, the Board may at any time levy a further assessment, which shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Area Elements, and which may be payable in one lump sum or such installments as the Board may determine. The Board may adopt separate assessments payable over more than one year and the entire amount of any such multi-year assessment (except those adopted pursuant to Subsections 6.6-2 and 6.6-3 of this Section 6.6) shall be deemed considered and authorized in the first fiscal year in which the assessment is approved.
- 6.6-2 Assessments for additions and alterations to the Common Area Elements or to property owned by the Association shall be subject to approval of sixty-seven percent (67%) of the total votes of all Unit Owners. The Board shall serve notice of such assessment on all Unit Owners (as provided in Section 3.3, Article III of the Bylaws) by a statement in writing giving the amount and reasons therefor. Such further assessment shall not be effective until approved by 66-2/3% of the total votes of all Unit Owners at a meeting of Unit Owners duly called for such purpose. All Unit Owners shall be obligated to pay the further assessment.

6.6-3 Separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board without Unit Owner approval. As used herein, the term "emergency" means an immediate danger to the structural integrity of the Common Area Elements or to the life, health, safety or property of the Unit Owners.

6.7 Default in Payment.

6.7-1 If a Unit Owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the Association may assess a service charge of \$50.00, to be increased from time-to-time by the Board, for each month, or part thereof, that said balance, or any part thereof, remains unpaid. The Association may bring suit for and on behalf of itself and as representative of all Unit Owners, to enforce collection thereof or to foreclose the lien therefor as provided by law; and there shall be added to the amount due, the costs of said suit, together with legal interest and reasonable attorneys fees to be fixed by the Court. In addition, the Association may also take possession of such defaulting Unit Owner's interest in the Property and maintain an action for possession of the Unit in the manner provided by law. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non use of the Common Area Elements or abandonment of his Unit.

6.7-2 Each such assessment, together with interest, court costs, late charges and reasonable attorneys' fees and costs of collections or the amount of any unpaid fine shall also be the personal obligation of the person who was the Unit Owner at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law.

6.8 Unit Owner Accounts. Upon ten (10) days' notice to the Association, and the payment of a reasonable fee fixed by the Association not to exceed Fifteen Dollars (\$15.00), any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

6.9 Rules and Regulations. The Association may, pursuant to the provisions of Section 4.10 of Article IV and Section 6.0-8 of Article VI of these Bylaws, from time-to-time, adopt or amend such rules and regulations governing the operation, maintenance, beautification and use of the Common Area Elements and the Units, not inconsistent with the terms of the Declaration, as it sees fit, and the Unit Owners shall conform to, and abide by, such rules and regulations. Written notice of such rules and regulations shall be delivered to all Unit Owners and occupants. A violation of such rules or regulations shall be deemed a violation of the terms of the Declaration.

ARTICLE VII
Contracts, Checks, Deposits and Funds

7.0 Contracts. The Board may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances.

- 7.1 Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time-to-time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Treasurer and countersigned by the President of the Association.
- 7.2 Deposits. All funds of the Association shall be deposited from time-to-time to the credit of the Association in such banks, trust companies or other depositories as the Board may elect.
- 7.3 Gifts. The Board may accept on behalf of the Association any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Association.

ARTICLE VIII
Books and Records

- 8.0 Maintaining Books and Records. The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, the Board and committees having any of the authority of the Board.
- 8.1 Availability for Examination. The Association shall maintain the following records of the Association, and make such records available for examination and copying at convenient hours of weekdays by the Unit Owners, holders, insurers and guarantors of first mortgages that are secured by Units and their duly authorized agents or attorneys:
- 8.1-1 Copies of the Recorded Declaration, Bylaws, other Condominium Instruments and any amendments, Articles of Incorporation of the Association, if incorporated, annual reports, if incorporated, and any rules and regulations adopted by the Board. Prior to the organization of the Association, Owner shall maintain and make available the records set forth in this Subsection 8.1-1 for examination and copying.
- 8.1-2 Detailed accurate records in chronological order of the receipts and expenditures affecting the Common Area Elements, specifying and itemizing the maintenance and repair expenses of the Common Area Elements and any other expenses incurred, and copies of all contracts, leases or other agreements entered into by the Association.
- 8.1-3 The minutes of all meetings of the Association and the Board. The Association shall maintain these minutes for a period of not less than seven (7) years.
- 8.1-4 A record giving the names and addresses of the members entitled to vote.
- 8.1-5 Ballots and proxies related thereto for all elections to the Board and for any other matters voted on by the Unit Owners. The Association shall maintain these ballots and proxies for a period of not less than one (1) year.

8.1-6 Such other records of the Association as are available for inspection by members of a not for profit corporation pursuant to the laws of the State of Indiana.

A reasonable fee covering the direct out of pocket cost of providing such information and copying may be charged by the Association or the Board for the cost of providing such information and copying.

ARTICLE IX
Fiscal Year

9.0 The fiscal year of the Association begin on the first day of January and end on the last day of December.

ARTICLE X
Construction

10.0 Nothing hereinabove contained shall in any way be construed as altering, amending or modifying the Declaration. Said Declaration and these Bylaws shall always be construed to further the harmonious, beneficial, cooperative and proper use and conduct of the Property. If there is any inconsistency or conflict between these Bylaws and the aforesaid Declaration, the provisions of the Declaration shall control.

10.1 All words and terms used herein which are also used in the Declaration shall have the same meanings as provided for such words and terms in the Declaration.

10.2 In the event the Association is incorporated, the words, "Board of Directors" and "Director" shall be substituted for the words "Board" and "Member of the Board," respectively, wherever they appear herein.

ARTICLE XI
Waiver of Notice

11.0 Whenever any notice whatever is required to be given under the provisions of the Act, any law of the State of Indiana, or under the provisions of the articles of incorporation or Bylaws of the Association, or the Declaration, a waiver thereof (subject to all the provisions of such instruments) in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII
Amendments to Bylaws

12.0 These Bylaws may be altered, amended or repealed and new Bylaws may be adopted upon the affirmative vote of not less than sixty-seven percent (67%) of all of the members at a regular meeting or at any special meeting called for such purpose, by recording an instrument in writing setting forth such alteration, amendment or repeal, which is signed and acknowledged by the President or Vice President and the

Secretary or Assistant Secretary of the Association and which contains an affidavit by an officer of the Board certifying that the necessary affirmative vote of the members of the Association has been obtained.

ARTICLE XIII
Indemnification

- 13.0 The Association shall procure appropriate liability insurance in order to indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a member of the Board or officer of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

The Association may indemnify any person who was or is a party, or is threatened to be made a part to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a member of the Board or an officer of the Association against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless, and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

To the extent that a member of the Board or officer of the Association has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in the foregoing two paragraphs, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under the first two paragraphs of this Article shall be made by the Association only as authorized in the specific case, upon a determination that indemnification of the member of the Board or officer of the Association is proper in the circumstances because he has met the applicable standard of conduct set forth in either of the first two paragraphs of this Article. Such determination shall be made (1) by the

Board by a majority vote of a quorum consisting of members of the Board who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by a majority of the members of the Association.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized by the Board in the specific case, upon receipt of an undertaking by or on behalf of the members of the Board or the officer of the Association to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article.

The sums necessary to discharge the obligations of the Association under this Article XIII shall be Common Expenses.

The indemnification provided by this Article XIII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Board, or otherwise, both as to action in his official capacity and as to action in any other capacity while holding such office, and shall continue as to a person who has ceased to be a member of the Board or an officer of the Association.

EXHIBIT "D"

INDIANA PACERS ROSTER AS OF MARCH 7, 2005

Pacers Roster							
2004-05 Roster							
NUM	PLAYER	POS	HT	WT	DOB	FROM	YRS
24	Jonathan Bender*	F	7-0	219	01/30/1981	Picayune HS (MS)	5
44	Austin Croshere	F	6-10	242	05/01/1975	Providence '97	7
32	Dale Davis	C-F	6-11	252	03/25/1969	Clemson '91	13
54	John Edwards*	C	7-0	275	07/31/1981	Kent State '04	R
10	Jeff Foster	C-F	6-11	242	01/18/1977	Southwest Texas State '99	5
4	Eddie Gill	G	6-0	190	08/16/1978	Weber State '00	3
13	David Harrison	C	7-0	280	08/15/1982	Colorado	R
1	Stephen Jackson	G-F	6-8	218	04/05/1978	Oak Hill (VA)	4
8	Anthony Johnson	G	6-3	190	10/02/1974	Charleston (SC) '97	7
20	Frad Jones	G	6-2	218	03/11/1979	Oregon '02	2
33	James Jones	F	6-8	215	10/04/1980	Miami (Fla.) '03	1
31	Reggie Miller	G	6-7	195	08/24/1965	UCLA '87	17
7	Jermaine O'Neal*	F-C	6-11	242	10/13/1978	Eau Claire HS (SC)	8
62	Scott Pollard	C-F	6-11	285	02/12/1975	Kansas '97	7
11	Jamaal Tinsley	G	6-3	195	02/28/1978	Iowa State '01	3



MARTHA A WOMACKS
MARION COUNTY ALDITOR

641731 JUL 19 08

DULY EXAMINED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

**CORRECTIVE AMENDMENT TO
DECLARATION FOR SIX OVER MERIDIAN
HORIZONTAL PROPERTY REGIME**

This Corrective Amendment made as of the 18th day of July, 2006, by **SOUTH MERIDIAN CONDOS, LLC**, an Indiana limited liability company, doing business as Six Over Meridian (**Owner**)

RECITALS

WHEREAS, that certain Declaration for Six Over Meridian Horizontal Property Regime (the **Project**) made as of the 28th day of March, 2005, was recorded in the Office of the Recorder of Marion County, Indiana, on the 31st day of March, 2005, as Instrument No 2005 0048600 (the **Declaration**),

WHEREAS, the floorplans for the Project were recorded in the Office of the Recorder of Marion County, Indiana, on the 31st day of March, 2005, as Instrument No 2005 0048599 (the **Floorplans**), which Floorplans, due to a scrivener s error, failed to reflect the Project as it was built,

WHEREAS, the Floorplans have now been revised and corrected to reflect the Project as it was built (the **Corrected Floorplans**),

WHEREAS, the Corrected Floorplans were recorded in the Office of the Recorder of Marion County, Indiana, on the 19 day of July, 2006, as Instrument No 2005-0048599, and

WHEREAS, this Corrective Amendment shall amend and correct the Declaration in order to reflect the percentage interests of the units as shown on the Corrected Floorplans

CORRECTIVE AMENDMENT


NOW, THEREFORE, Owner declares as follows

- 1 The attached Six Over Meridian Schedule for Exhibit B hereby supplants and replaces Exhibit B of the Declaration, and
- 2 The Declaration, as amended by this Corrective Amendment, is and remains in full force and effect

IN WITNESS WHEREOF, Owner has executed this Corrective Amendment as of the date first above written

SOUTH MERIDIAN CONDOS, LLC, an
Indiana limited liability company, doing
business as **SIX OVER MERIDIAN**

By **ALEXTESS, LLC,** an
Indiana limited liability
company, Managing
Member

By 

Todd J Maurer, Managing
Member

STATE OF INDIANA)
) SS
COUNTY OF MARION)

I, DELANA BRADBURY, a Notary Public in and for said County and State, do hereby certify that TODD J MAURER, as Managing Member of ALEXTESS, LLC, as Managing Member of SOUTH MERIDIAN CONDOS LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed said instrument as his free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth

GIVEN under my hand and Notarial Seal this 18 day of July, 2006

Delana Bradbury
Notary Public

My Commission Expires

January 24 2013

My County of Residence

Marion

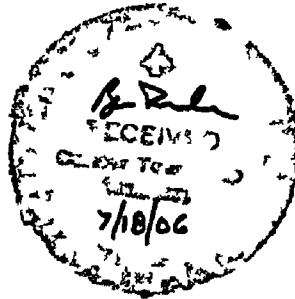
This instrument prepared by Robert B Kirsh Esq Katz & Korin PC The Emelie Building 334
North Senate Avenue Indianapolis IN 46204 1708

~~BY INSTRUMENT ATTESTED~~

~~CERTIFICATE OF ADOPTION~~

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

Alyson Fulmer



**SIX OVER MERIDIAN
SCHEDULE FOR EXHIBIT B**

Unit #	Square Footage	Percentage Interest
Commercial Units		
101	7484	8 00%
102	6401	6 84%
200	17289	18 47%
300	17289	18 47%
Residential Units		
401	2212	2 36%
402	2506	2 68%
403	2905	3 10%
404	2966	3 17%
405	2171	2 32%
406	2269	2 42%
501	1874	2 00%
502	2055	2 20%
503	2340	2 50%
504	2382	2 54%
505	2034	2 17%
506	2137	2 28%
507	2056	2 20%
601	1891	2 02%
602	2107	2 25%
603	2428	2 59%
604	2411	2 58%
605	2055	2 20%
606	2285	2 44%
607	2056	2 20%
TOTAL SQ FT	93603	100 00%

TABLE OF CONTENTS

FIFTH FLOOR PLAN
SIXTH FLOOR PLAN

MARTHA A. WOHAKS
MARION COUNTY ATTORNEY
641732 JUL 19 88
DAILY 12:00 FOR TAXATION
SEARCHED & INDEXED
FOR THE STATE

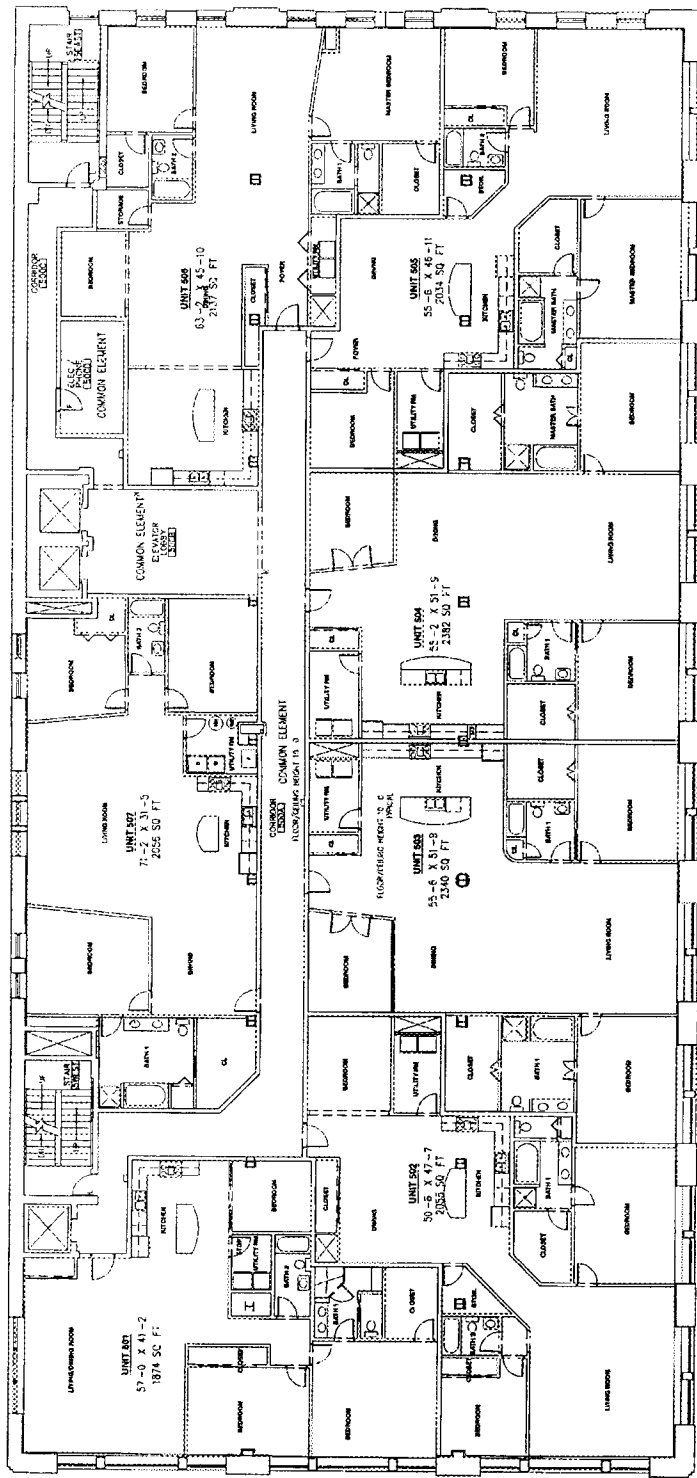
I affirm under the penalties for perjury that the information furnished herein is true and correct and that the number in this document, unless required by law, is the true and correct number of the document.

John K. Line, J. Clerk



141 SOUTH MERIDIAN STREET
INDIANAPOLIS, IN 46204

SIX OVER MERIDIAN



RATIO

SIX OVER MERIDIAN

INDIANAPOLIS, IN

FIFTH FLOOR

FIFTH FLOOR PLAN

Scale 3/32" = 1'-0"

JUNE 26, 2006

STATE OF INDIANA)
) ss.
COUNTY OF MARION)

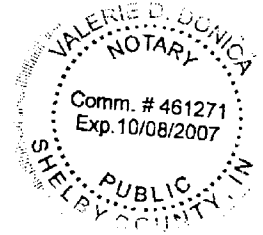
I, Valerie D. Donica, a Notary Public in and for said County and State, do hereby certify that TODD J. MAURER, as Managing Member of ALEXTESS, LLC, as Managing Member of SOUTH MERIDIAN CONDOS, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed said instrument as his free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of March, 2005.

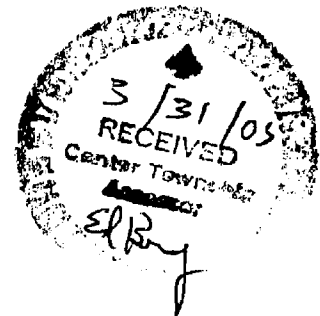
Valerie D. Donica
Notary Public

My Commission Expires:

My County of Residence:



MARTHA A. POMACKS
MARION COUNTY PLANNING
72009 MAR 31 10
DEPT. OF METROPOLITAN DEVELOPMENT
SUBJECT TO FINANCIAL ASSISTANCE
FOR HOMELESS



INSTRUMENT APPROVED
BY
[signature]

CONSENT OF MORTGAGEE

NATIONAL CITY BANK OF INDIANA, N.A., a national banking association, holder of a note secured by a mortgage on the Property dated December 15, 2004, and recorded with the Recorder of Marion County, Indiana, on December 22, 2004, as Instrument No. 2004-0236737, hereby consents to the execution of and recording of the above and foregoing Declaration of Horizontal Property Regime, and hereby subordinates said mortgage to the provisions of the foregoing Declaration of Horizontal Property Regime and the Horizontal Property Law of the State of Indiana.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be signed by its duly authorized officers on its behalf on this 28 day of March, 2005.

NATIONAL CITY BANK OF INDIANA, N.A.
By: [Signature]
Its: SENIOR VICE PRESIDENT
JOHN R. JEWETT, JR.

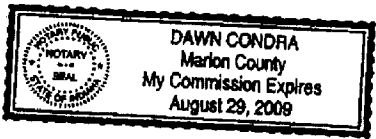
STATE OF INDIANA)
COUNTY OF Marion) ss.

I, Dawn Condra, a Notary Public in and for said County and State, do hereby certify that John R. Jewett, Jr., the SVP of NATIONAL CITY BANK OF INDIANA, N.A., personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed said instrument as his free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of March, 2005.

Dawn Condra
Notary Public

My Commission Expires:



My County of Residence:

EXHIBIT "A"

Legal Description of the Parcel

30.04 feet by parallel lines off the entire south side of Lot 11 and all of Lot 12 in Square 76 of the Donation Land of the City of Indianapolis, Marion County, Indiana.

Legal Description of each Unit

[Residential or Commercial] Unit No. _____ within the Six Over Meridian Horizontal Property Regime, as established and created under a certain Declaration and as depicted upon plans thereof, recorded March ____, 2005, as Instrument Nos. 2005-_____ and 2005-_____, respectively, in the Office of the Recorder of Marion County, Indiana, together with an undivided percentage interest in the Common Element and Limited Common Element, including Parking Space(s) _____.

EXHIBIT "B"

PERCENTAGE OWNERSHIP INTEREST IN COMMON ELEMENTS

[See Attached]

**SIX OVER MERIDIAN
SECTION 10 BEFORE EXHIBIT B**

Unit #	Square Footage	Percentage Interest
Commercial Units		
101	7484	8.00%
102	6401	6.84%
200	17289	18.47%
300	17289	18.47%
Residential Units		
401	2212	2.36%
402	2506	2.68%
403	2905	3.10%
404	2966	3.17%
405	2171	2.32%
406	2269	2.42%
501	1874	2.00%
502	2055	2.20%
503	2340	2.50%
504	2382	2.54%
505	2034	2.17%
506	2137	2.28%
507	2046	2.19%
508	2068	2.21%
601	1891	2.02%
602	2107	2.25%
603	2428	2.59%
604	2411	2.58%
605	2055	2.20%
606	2285	2.44%
TOTAL SQ.FT.	93605	100.00%