

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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OF

STEWART PLACE LOFTS

THIS DECLARATION, made on this 21st day of March, 1996, by STEWART PLACE, LLC, an Indiana Limited Liability Company, ("Declarant"),

034654 MAR 28 1996

RECORDING DIVISION
SUBJECT TO FINAL ACCEPTANCE

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate (the "Property"), located at 320 East St. Joseph Street, Indianapolis, Marion County, Indiana, which is more particularly described in Exhibit "A", attached hereto an by this reference, made a part hereof; and

WHEREAS, Declarant desires to subdivide and develop the property by designating certain portions of the Property as "Common Areas" (as hereinafter defined) to be owned by a homeowners association (the "Association", as hereinafter defined), and by designating certain other portions of the Property into "Dwelling Units", (as hereinafter defined);

NOW, THEREFORE, Declarant hereby declares that all the Property shall be held, sold and conveyed subject to the following easements, restrictions, limitations, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

CHICAGO TITLE
NAME

The subdivision of the Property created by this Declaration shall be known and designated as the Stewart Place Lofts, a subdivision located in Marion County, Indiana.

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ARTICLE II

DEFINITIONS

Section 2.1 "**Articles**" means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.2 "**Association**" means the Stewart Place Lofts Homeowners Association, Inc., a formed or to-be-formed Indiana not-for-profit corporation, its successors and assigns.

Section 2.3 "**Board of Directors**", "Board" or "Directors" means the Board of Directors of the Association.

Section 2.4 "**Common Area**" means those portions of the Property (as hereinafter defined), including improvements thereto, facilities and personal property owned or leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined). Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property upon the Plat (as hereinafter defined) designated as "Common Area". The Common Area is to be conveyed to the Association at the time of conveyance of the first Dwelling Unit to an Owner.

Section 2.5 "**Declarant**" means Stewart Place, LLC, its successors and assigns.

Section 2.6 "**Development Period**" means the period of time commencing with the recording of the Plat and ending when Declarant has completed the development and sale of, and no longer owns, any Dwelling Units in the Property (as hereinafter defined).

Section 2.7 "**Dwelling Unit**" means any single-family resident unit constructed upon the Property (as hereinafter defined), designated as such upon the Plat (as hereinafter defined) or, after construction of a Dwelling Unit, that is conveyed to an Owner (as hereinafter defined) by the Declarant. Declarant is dividing the Property into four (4) Dwelling Units.

Section 2.8 "**Member**" shall mean and refer to every person or entity who holds membership in the Association.

Section 2.9 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Dwelling Unit which is a part of the Property, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term Owner as used herein shall include the Declarant, so long as the Declarant shall own any Dwelling Unit.

Section 2.10 "Parking Garage" Each Dwelling Unit shall have the right to two (2) unassigned parking spaces in the Parking Garage. PROVIDED, HOWEVER, the Owner of Unit No. 1 shall be entitled to six (6) reserved parking spaces in the northernmost portion of the Parking Garage.

Section 2.11 "Plat" means the plat of the Property (as hereinafter defined) identified as:

Section 2.12 "Property" means the real estate described in Exhibit "A".

ARTICLE III

PROPERTY RIGHTS, EASEMENTS AND ENCROACHMENTS

Section 3.1 Dedication of Common Area. Declarant hereby dedicates the Common Area to the common use and enjoyment of the Members, as provided herein, but not for use by the general public. Portions of the Common Area may be limited to the use of certain Dwelling Unit Owners if in the opinion of the Declarant or the Association such areas fairly serve less than all the Dwelling Unit Owners and limiting the use of such Common Area will not discriminate against any other Dwelling Unit Owners.

Section 3.2 Owners' Easements of Enjoyment of Common Area. Every Owner shall have a non-exclusive right and easement of enjoyment, in common with all Owners, in and to the Common Area (except, any limited Common Areas) which shall be appurtenant to and shall pass with title to every Dwelling Unit (including the right to membership in the Association), subject to the following provisions:

- (a) the right of the Association to suspend the voting rights and right to use of any garage by any Owner for any period during which any assessment remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

- (b) the right of the Association to promulgate reasonable rules and regulations governing and limiting the use of the Common Area including, without limitation, parking, improvements, and additions or alterations to the Dwelling Units and the Common Area;
- (c) the rights of Declarant as provided in this Declaration;
- (d) the easements reserved elsewhere in this Declaration and the right of the Association or Declarant to grant further reasonable utility and other easements across and through the Common Area for the benefit of the Owners; and
- (e) all other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 3.3 Delegation of Use. Any Owner may delegate, in accordance with the ByLaws and any reasonable and non-discriminatory rules and regulations promulgated from time to time by the Association and subject to the rights of others as set forth in Section 3.1, his or her of enjoyment of the Common Area, to family members, guests, tenants or contractor purchasers who reside in a Dwelling Unit.

Section 3.4 Certain Obligations and Access Rights to the Common Area.

- (a) Except as otherwise set forth in this Declaration, the Association, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair. The Association shall further maintain and repair the roof of the Dwelling Units.
- (b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder's warranty with respect to any of the Dwelling Units.

Section 3.5 Maintenance - Dwelling Units. Each Owner shall maintain and repair at its sole cost and expense, all fixtures, appliances, equipment, windows, skylights, and other improvements constituting part of its Dwelling Unit. The electrical outlets in the Common

Areas shall be wired to the individual Dwelling Units, the electrical usage cost of which shall be paid by the respective Owners. In the event that any Owner fails or is unable to maintain or repair any condition or defect for which he is responsible and such condition or defect causes or threatens to cause immediate and substantial harm to any person or to any property outside his dwelling Unit, the Association shall have the right to enter such Owner's Dwelling Unit to remedy or repair such condition or defect, and any costs or expenses incurred in connection therewith shall be payable by such Owner upon demand by the Association.

Section 3.6 Drainage, Utility, Sewer and Other Development Easements.

- (a) Declarant hereby reserves unto itself the right to grant easements ("Utility and Drainage Easements") for drainage, utility and sewer purposes in, on and over all of the Common Area and the Dwelling Units, so as to permit Declarant to property install and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Dwelling Unit constructed on the Property. This easement shall be in addition to any easement defined upon a Plat of the property as a drainage, utility, transmission, flowage or similar type easement.
- (b) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Common Area. Any signs shall comply with any applicable zoning requirements unless variances are obtained, and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.
- (c) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:
 - (i) grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property owned by it; and

- (ii) describe more specifically or to change the description of any easement, license or right-of-way now or hereafter existing on the Property owned by it, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Marion County, Indiana.

- (d) The title of the Association (as to the Common Area during the Development Period) and of any Owner of any Dwelling Unit shall be subject to the rights and easements reserved herein. Provided, however, that the rights reserved in this Section 3.5 shall not be exercised after the conveyance of any Dwelling Unit in a manner that unreasonably and adversely affects any Dwelling Unit or the Owner's use or enjoyment thereof, or which unreasonably restricts the right of ingress and egress to such Dwelling Unit. The rights and easements reserved by Declarant in this Section 3.5 shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association upon Declarant's conveyance of the last Dwelling Unit within the Property.

Section 3.7 Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of any emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 3.8 Encroachments and Easements for Buildings. If, by reason of the location, construction, settling or shifting of a Dwelling Unit, (hereinafter referred to as the "Encroaching Unit") now encroaches or shall hereafter encroach upon any minor portion of any other adjacent Dwelling Unit or any Common Area, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use and enjoyment of the Encroaching Unit and all appurtenances thereto.

ARTICLE IV

ASSOCIATION MEMBERSHIP, VOTING RIGHTS, BOARD OF DIRECTORS, ASSOCIATION RESPONSIBILITIES, AND PROFESSIONAL MANAGEMENT

Section 4.1 Membership. The person who serves as incorporator of the Association shall be the "Initial Member". Every Owner of a Dwelling Unit which is subject to assessment shall be a member of the Association. Apart from the Initial Members, membership in the Association shall be appurtenant and may not be separated from ownership of any Dwelling Unit.

Section 4.2 Classes of Membership and Voting Rights. The Association shall have two classes of voting membership:

Class A Class A Members shall be all Owners with the exception of the Declarant. Class A Members shall be entitled to the following voting rights: Unit No. 1 - two (2) votes, Unit No. 2 - one (1) vote, Unit No. 3 - one (1) vote, and Unit No. 4 - two (2) votes. In the event of a deadlock or tie in any vote by the members, the Owner of Unit No. 1 shall be entitled to cast an additional vote to break the deadlock or tie. When more than one person holds an interest in any Dwelling Unit, all such persons shall be members. The vote for such Dwelling Unit shall be exercised as the members holding an interest in such Dwelling Unit determine among themselves, but in not event shall more than one vote be case with respect to any Dwelling Unit.

Class B The Class B Member shall be Declarant. The Declarant shall be entitled to three (3) votes for each Dwelling Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) when the total number of votes outstanding in the Class A membership is equal to the total number of votes outstanding in the Class B membership; or (b) December 31, 1998.

In any instance where a vote of the membership of the Association is required, a two-thirds (2/3) majority of the votes of each class of members entitled to cast votes shall be required to approve any such matter. For example, if only Class A members were voting, there would be a total of six eligible votes, a 2/3's majority would require four votes.

Section 4.3 Percentage Interest. The Owner of each Dwelling Unit shall have the following undivided interest in the Common Area appurtenant to the Owner's respective Dwelling Unit:

Unit No. 1	44.53%
Unit No. 2	15.60%
Unit No. 3	14.25%
Unit No. 4	25.62%

Section 4.4 Board of Directors. The Members shall elect a Board of Directors of the Association as prescribed by the Association's Articles and ByLaws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 4.5 Association Responsibilities. The Association shall maintain and repair the facilities and improvements on the Common Area, and shall keep such areas in a neat, clean and presentable condition at all times. The Association shall procure and maintain such insurance as is required herein or as such other insurance as it deems necessary or advisable. The Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

Section 4.6 Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Declarant shall have the right to contract with Van Rooy Properties, with which John T. Watson, the initial Owner of Unit No. 1, has associated business interests, to manage the Association. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Dwelling Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Regular Assessment and (b) Special Assessment, subject to the provisions of Section 5.6 below.

Section 5.2 Purpose of Regular Assessments. The Regular Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Area, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. A portion of the Regular Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 5.3 Regular Assessments.

- (a) The Regular Assessment shall be paid in one annual lump sum installment unless otherwise determined by the Board of Directors. All assessments collected by Declarant or a co-Declarant shall be kept on behalf of the Association and used for carrying out such responsibilities of the Association as required or appropriate

under these Covenants.

- (b) The Regular Assessment on any Dwelling Unit conveyed to an Owner shall be Seven Hundred Twenty and 00/100 Dollars (\$720.00).
- (c) For the period April 1, 1996 through December 31, 1996, the Regular Assessment shall not exceed Seven Hundred Twenty and 00/100 Dollars (\$720.00). Thereafter, the maximum Regular Assessment may be increased effective January 1 of each calendar year not more than ten percent (10%) above the Regular Assessment for the previous year without a vote of the membership.
- (d) From and after January 1, 1997, the Regular Assessment may be increased each calendar year by more than ten percent (10%) above the Regular Assessment for the previous year, with the approval of a two-thirds (2/3) vote of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose.
- (e) The Board of Directors from time to time may fix the Regular Assessment, without any vote of the membership, at any amount not in excess of such maximum.

Section 5.4 Special Assessment for Capital Improvements and Operating Deficits.

In addition to the Regular Assessments authorized above, the Association may levy a special Assessment applicable to that year only for purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, or for such purpose benefiting the Owners as they may approve, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose. So long as Declarant owns any Dwelling Unit, no special assessment shall be levied without its consent.

Section 5.5 Notice and Quorum for any Action Authorized under Sections 5.3 and

5.4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.3 and 5.4 shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.6 Uniform Rate of Assessment. Regular Assessments must be fixed at a uniform rate for all Dwelling Units, and Special Assessments in accordance with the percentage interests set forth in Section 4.3 herein.

Section 5.7 Date of Commencement of Assessment; Due Dates. The Regular Assessment provided for herein shall commence for each Dwelling Unit on the day of first conveyance of said Dwelling Unit to an Owner. The Board of Directors shall fix any increase in the amount of the assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period (i.e., annual, monthly, lump-sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Dwelling Unit have been paid. A properly executed certificate from the Association regarding the status of assessments for any Dwelling Unit shall be binding upon the Association as of the date of its issuance with respect to any person relying upon such certificate.

Section 5.8 Effect of Nonpayment of Assessment; Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the date established herein, then the entire unpaid assessment, together with the interest thereon, a late fee in the amount of Twenty-Five and 00/100 Dollars (\$25.00), costs and attorneys' fees as hereinafter provided, shall become delinquent and shall constitute a continuing lien on the Dwelling Unit to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the Indiana Statutory interest rate on judgments, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property, or both. In such event, there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the Court. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of its Dwelling Unit.

Section 5.9 Subordination of the Lien to Mortgages; Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Dwelling Unit pursuant to the foreclosure of any first mortgage on such Dwelling Unit (without the necessity of joining the Association in any such foreclosure action)

or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Dwelling Unit (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Dwelling Unit from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

USE RESTRICTIONS AND ARCHITECTURAL CONTROL

Section 6.1 Dwelling Unit Use and Conveyance. All Dwelling Units shall be used exclusively for residential purposes and other purposes permitted in single family dwelling districts under the applicable zoning codes, except that Declarant, during the Development Period reserves: (a) the rights provided in Section 6.13 respecting the Property generally. Except as provided in the Declaration or as reserved to the Declarant, no Dwelling Unit shall be subdivided to form additional units of less area. Each Dwelling Unit shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

Section 6.2 Architectural Control. No building structure, or improvement of any type or kind shall be constructed or placed on any Dwelling Unit, nor shall the exterior of any dwelling or other structure be changed including changes in color (other than by the Declarant or the Association) without the prior written approval of the Association. The Association may require the Owner of the Dwelling Unit requesting approval to submit a written application in a manner and from prescribed from time to time by it. The Association may refuse to grant approval of an improvement when:

- (a) the drawings, specifications and other material submitted with the application are themselves inadequate or incomplete; or show the proposed improvements to be in violation of these covenants; or
- (b) the design or location of the proposed improvements is not in harmony with surrounding improvements or uses; or
- (c) the proposed improvements (or any part thereof) would, in the reasonable judgment of the Association, be contrary to the interests, welfare or rights of any other Owner.

In the event that written approval or disapproval is not received as required hereunder within sixty (60) days after receipt of the written application therefore, approval will not be required and this Section will be deemed to have been fully complied with. This Section 6.2 shall not apply to repair or replacement of existing improvements with materials substantially similar to

materials used in the original construction of the improvements. The Association may delegate its authority under this Section 6.2 to an Architectural Control Committee.

Section 6.3 Signs. During the Development Period, no "for sale" or other advertising signs of any kind (other than interior window signs) shall be displayed on any Dwelling Unit without the prior written approval of Declarant. Thereafter, the placement of "for sale" or advertising or other signs of any nature, kind or description anywhere on the Property shall be subject to such reasonable rules and regulations as may be adopted by the Association.

Section 6.4 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Dwelling Units, except that dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for any commercial purposes.

Section 6.5 Outside Storage. All equipment and garbage cans, shall be kept from view of neighboring Dwelling Units. All rubbish, trash or garbage shall be regularly removed from the premises, and stored in an area designated by the Declarant or the Association, and shall not be allowed to accumulate thereon.

Section 6.6 Parking. The Declarant during the Development Phase, and the Association thereafter, may adopt rules and regulations governing and limiting the right to park vehicles on the Property; including public streets.

Section 6.7 Nuisance. No nuisances shall be permitted to exist or operate upon the Property.

Section 6.8 Service Vehicle Parking. Cars, trucks, and other vehicles shall not be parked on the paved portion of driveways and public streets in a manner which will impede access from or to any Dwelling Unit or public street. Driveways and public streets shall not be used for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of pickups and deliveries to neighboring Dwelling Units, nor for parking of any inoperable vehicles. No bicycles, toys or other private property shall be allowed to obstruct any driveways or public streets, nor shall the same be stored in the open alongside building walls or other locations of public view.

Section 6.9 Antennas and Satellite Dishes. Satellite dishes and other free-standing antennas shall not be permitted.

Section 6.10 Party Walls. Each wall which is built as a part of the original construction of two or more Dwelling Units constructed upon the Property and placed on the dividing lines between two Dwelling Units shall constitute a party wall, and, the general rule of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply hereto.

Section 6.11 Rules and Regulations. The Board of Directors from time to time may promulgate rules and regulations concerning the use of Dwelling Units and the Common Area. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulations adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to the Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and ByLaws, and all rules concerning the Property, as well as, its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers or guarantors of first mortgages, that are available during normal business hours or under other reasonable circumstances.

Section 6.12 Development and Sale Period. Nothing contained in this Article VI shall be construed or interpreted to restrict the activities of Declarant in connection with the development of the Property and sale of Dwelling Units. During the Development Period, Declarant shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant, as in the sole opinion of Declarant may be reasonably required, or convenient or incidental to, the development of the Property and sale of the Dwelling Units; such facilities may include, without limitations, storage areas, signs, parking areas, portable toilets, waste containers, model unit, construction office, and sales office.

ARTICLE VII

INSURANCE

Section 7.1 Casualty Insurance on Insurable Common Area. The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as are customarily covered for similar types of projects, including those covered by the standard "all risk" endorsements. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be

payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the Insurance was carried.

Section 7.2 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association. It shall also cover all Common Areas, public ways and any other areas under the Association's control or supervision.

Section 7.3 Fidelity Bonds. The Association may have blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association bonds shall name the Association as the obligee and the premium shall be paid as a common expense by the Association. Any management agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide comparable coverage to that required above. The fidelity bond shall cover the maximum funds expected to be in the custody of the Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal the sum of three (3) months assessments of all Dwelling Units in the Property, plus the Association's reserve funds. The fidelity bonds must include a provision that calls for ten (10) days' written notice to the Association or insurance trustee before the bond can be cancelled or substantially modified for any reason. The same notice as is required to be given to a Dwelling Unit Owner, must also be given to each servicer that service a FMNA or FHLMC owned mortgage in the Property, if notice to such servicer is required under the applicable FMNA or FHLMC regulation governing such mortgage.

Section 7.4 Miscellaneous Insurance Provisions. The Association shall obtain any other insurance required by law to be maintained and may obtain any other such coverage it deems advisable, including but not limited to, directors and officers liability, workmen's compensation insurance and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance shall inure to the benefit of the Association.

Section 7.5 Casualty and Restoration. Damage to or destruction of any Common Area and the improvements thereon due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same

or a similar type of architecture.

Section 7.6 Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are not insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a special assessment against all Dwelling Units for such deficiency.

Section 7.7 Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property, or, in the discretion of the Board of Directors, may be distributed to the Owners. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

Section 7.8 Insurance Carried by Association. Premiums for all insurance carried by the Association are Common Expenses included in the regular Assessments made by the Association.

ARTICLE VIII

MORTGAGES

Section 8.1 Notice to Mortgagees. The Association, upon request, shall provide to any lender holding a first mortgage upon any Dwelling Unit, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Dwelling Unit, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its ByLaws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in Section 5.7 with respect to any persons relying thereon.

CHICAGO TITLE

Section 8.2 Condemnation and Insurance Awards. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Dwelling Unit pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of property.

Section 8.3 Unpaid Dues or Charges. Any first mortgagee who obtains the title to a Dwelling Unit, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Dwelling Unit's unpaid dues or charges accrued before the acquisition of the title to the Dwelling Unit by the mortgagee. The Owner who owned the Dwelling Unit prior to such foreclosure shall remain personally obligated for such unpaid dues and charges.

Section 8.4 Financial Statements. The Association must provide a financial statement for the preceding fiscal year if the holder, insurer or guarantor of any first mortgage that is secured by a Dwelling Unit in the Property submits a written request for it.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damage, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 9.2 Dispute Between Owners. Notwithstanding the above provisions if any Owner who is involved in a dispute or disagreement between Owners arising under or pursuant to the terms of this Declaration shall submit such matter or dispute to arbitration by the Association, then the Association shall have the exclusive right to determine such matter. The Association shall establish rules for such arbitration and shall appoint an arbitrator or arbitrators. Any award or decision under such arbitration shall be enforceable in a court of proper jurisdiction.

Section 9.3 Severability and Waiver. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person or assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations or the restrictions.

Section 9.4 Amendment. During the initial term of twenty (20) years from the date of the recording of this Declaration, this Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, approved and signed by at least two-thirds (2/3) of the votes of each class of members. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. After the expiration of the initial term, this Declaration may be amended in whole or in part at any time provided such amendment is signed in writing by a majority of the Owners. Except as prohibited below, this Declaration may also be amended by Declarant, if it then has any ownership interest in the Property, at any time within two (2) years after the recordation hereof. Any amendment must be recorded. Neither the Association, the Owners or Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the first mortgagees of the Dwelling Units (based upon one (1) vote for each mortgage owned) and two-thirds (2/3) of the Owners of Dwelling Units (excluding Declarant):

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners of the Dwelling Units. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Dwelling Unit Owners is not a transfer in the meaning of this clause;
- (b) fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in any amount at least one-hundred percent (100%) of the insurable value (based upon current replacement costs);
- (c) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement, or reconstruction of the Common Area;
- (d) change the voting rights, assessments, assessment liens or subordination of assessment liens, except as provided for in this Declaration;
- (e) change the right to the use of the Common area, except as provided for in this Declaration;

- (f) change any requirements for insurance or fidelity bonds set forth in this Declaration;
- (g) change any provision that expressly benefits mortgage holders, insurers or guarantors; or

If an addition or amendment is not considered as a material change such as the correction of a technical error or the clarification of a statement within the Declaration, Association Articles, association ByLaws or other constituent documents, there shall be an implied approval to be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after proposal is made. The covenants, restrictions and all other provisions of this Declaration shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties claiming under them for an initial term of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods of ten (10) years each.

Section 9.5 By Declarant. Declarant hereby reserves the right so long as Declarant, or any successor Declarant, owns any Dwelling Unit within and upon the Property to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, without the approval of any other person or entity, in order to bring Declarant into compliance with the requirements of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof, or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner. Each amendment to the Declaration shall be executed by Declarant only in any case where Declarant has the right to amend this Declaration without any further consent or approval, and otherwise by the Association; provided, Declarant's signed consent. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

Section 9.6 Assignment. Declarant may assign or otherwise transfer any and all of its rights as Declarant by written document recorded in the Office of the Recorder of Marion County, Indiana.

Section 9.7 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Dwelling Unit Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association

for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

IN WITNESS WHEREOF, STEWART PLACE, LLC, an Indiana Limited Liability Company, has caused this Declaration to be executed as of the date first written above.

STEWART PLACE LOFTS, LLC, an Indiana Limited Liability Company

By: Kevin Kuelewitch
Kevin Kuelewitch, Managing Member

"DECLARANT"

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

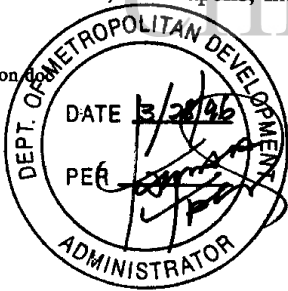
Before me, a Notary Public, in and for said County and State, personally appeared Kevin Kuelewitch the Managing Member of the Declarant, Stewart Place, LLC, an Indiana Limited Liability Company, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of the Stewart Place Lofts on behalf of such company and who first being duly sworn stated upon his oath that he is duly authorized so to act.

My commission expires:

_____ Tina Michelle Halbig Notary Public
 Notary Public County of Residence: _____, Indiana
Residence of Hancock County
Commission Expires May 9, 1999

This document prepared by: Stephen A. Backer, Esq., BACKER & BACKER, P.C., 101 West Ohio Street, Suite 1500, Indianapolis, Indiana, 46204, (317) 684-3000.

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INSTRUMENT APPROVED
BY
CENTER TOWNSHIP ASSESSOR

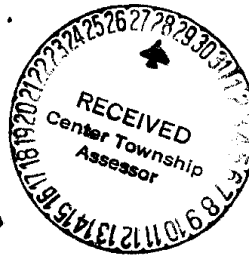


EXHIBIT "A"

Land Description
STEWART PLACE LOFTS

Lots 14 and 15 in Edward Sorin's Subdivision of Out Lots 175 and 176 of the Donation of Lands of the Town, now City of Indianapolis, as per plat thereof, recorded in Plat Book 1, pages 55 and 56 in the Office of the Recorder of Marion County, Indiana.

[Handwritten signature]
and
feets
revision



CHICAGO TITLE

EXHIBIT "A"