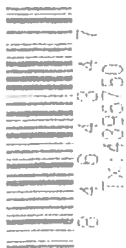


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DECLARATION OF CONDOMINIUM OWNERSHIP

OF

HICKORY TRACE TOWNHOMES CONDOMINIUMS

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Exhibit "B" – Description of the Tract

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Exhibit "G" – Consent and Subordination

**DECLARATION OF CONDOMINIUM OWNERSHIP
OF
HICKORY TRACE TOWNHOMES CONDOMINIUMS**

THIS DECLARATION, made this 26th day of June, 2018, by **HESTIA DEVELOPMENT, LLC**, an Indiana limited liability company (the “**Declarant**”),

RECITALS

A. Declarant is the sole owner of the fee simple title to the real estate located in Vanderburgh County, Indiana, more particularly described in Exhibit “A” attached hereto and incorporated herein (the “**Real Estate**”).

B. Declarant is the sole owner of the fee simple title to that portion of the Real Estate more particularly described in Exhibit “B” attached hereto and incorporated herein (“**Phase I**”), which shall be the first phase of development of the expandable condominium project described herein.

C. Declarant, by execution of this Declaration, desires and intends to subject said Phase I together with the buildings, improvements and other permanent fixtures of any kind thereon, and all rights and privileges belonging to or in any way pertaining to Phase I, to the provisions of the Horizontal Property Law of the State of Indiana and the terms and conditions of this Declaration, and pursuant thereto, establish a condominium so as to enable Declarant and Declarant’s successors in interest to own the same under that type of ownership commonly known as condominium ownership.

D. It is the desire and intention of Declarant to provide, at Declarant’s option, for the subsequent submission of the balance of the Real Estate or any portion or portions thereof, together with the buildings, structures, improvements and other permanent fixtures of any kind thereon, and all rights and privileges belonging or in any way pertaining thereto, to the provisions of the Horizontal Property Law of the State of Indiana and the terms and conditions of this Declaration as a part of the condominium established as to Phase I.

E. Declarant is further desirous of establishing, for Declarant’s own benefit and for the mutual benefit of all future owners or occupants of said condominium or any part thereof, certain easements and rights in, over and upon the Tract and certain mutual beneficial restrictions, reservations and obligations with respect to the proper use, conduct and maintenance of the Property as hereinafter defined.

F. Declarant desires and intends that the owners, mortgagees, occupants and other persons hereafter acquiring any interest in the Property 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 aspects of the ownership of and to facilitate the proper administration of

the Property and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property.

NOW, THEREFORE, Declarant for Declarant and Declarant's grantees, successors and assigns, for the purposes herein set forth, declares as follows:

Article I

Establishment of Condominium

Declarant, for the purpose of establishing a condominium, hereby submits the Property (as hereinafter defined) to the provisions of the Horizontal Property Law of the State of Indiana [I.C. 32-25-1-1 to I.C. 32-25-9-2, both inclusive], all as amended, as of this date to be known and designated as "**Hickory Trace Townhomes Condominiums**," which condominium is sometimes hereinafter referred to as "**Condominium**".

Article II

Definitions

The following words and terms used in this Declaration and its exhibits shall have the meaning stated in the Horizontal Property Law of the State of Indiana, unless the context otherwise requires, as follows:

- a. "**Act**" means the Horizontal Property Law of the State of Indiana, Indiana Code 32-25-1-1, et seq., as amended. The Act is incorporated herein by reference.
- b. "**Applicable Date**" means the earliest of (a) ten (10) years from the date of recording hereof; or, (b) four (4) months after one hundred percent (100%) of the Condominium Units that may be developed on the Real Estate have been conveyed to purchasers, or (c) the date Declarant files of record in the Office of the Recorder of Vanderburgh County, Indiana, an instrument waiving and releasing its reserved rights as set forth in Article XVI of this Declaration, to expand or further expand Hickory Trace Townhomes Condominiums.
- c. "**Association**" means Hickory Trace Townhomes Condominiums Owners Association, Inc., an Indiana nonprofit corporation, being the association of Owners of the Condominium Units in Hickory Trace Townhomes Condominiums more particularly described in Article XII hereof. The word "Association", as used herein, shall be synonymous with the term "association of co-owners" as used in the Act.
- d. "**Board of Directors**" or "**Board**" means the governing body of the Association, being the initial Board of Directors referred to in the By-Laws or any subsequent Board of Directors elected by the Owners in accordance with the By-Laws.

- e. **“Building”** means any structure on the Tract in which one or more Condominium Units are located, including any additional structure containing one or more Condominium Units which may be submitted and subjected to the Act and this Declaration by Supplemental Declarations as herein provided. The initial Buildings are more particularly described and identified on the Plans and in Article III of this Declaration and any additional Buildings will be identified in Supplemental Declarations and on plans that will be filed therewith.
- f. **“By-Laws”** means the by-laws of the Association providing for the administration and management of the Property, a true copy of which is attached to this Declaration as Exhibit “F” and incorporated herein by reference.
- g. **“Constitutional Majority”** means those Owners eligible to cast not less than sixty-six percent (66%) in the aggregate of the Percentage Vote eligible to be cast by the Owners.
- h. **“Common Areas”** means and includes the common areas and facilities defined in Article VI of this Declaration.
- i. **“Common Expenses”** means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Areas (to the extent provided herein) and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the By-Laws.
- j. **“Condominium Unit”** means each one of the living units constituting Hickory Trace Townhomes Condominiums, which living units consist of one (1) or more rooms intended for independent use as a family dwelling, including partially finished and unfinished storage areas, each individual living unit being more particularly described and identified on the Plans and in Article IV and Article V of this Declaration, and each additional living unit that may be submitted and subjected to the Act and this Declaration by Supplemental Declarations as herein provided, together with the undivided interest in the Common Areas and Limited Areas appertaining to each such unit.
- k. **“Declarant”** means Hestia Development, LLC, an Indiana limited liability company, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.
- l. **“Floor Area”** means the total square footage of horizontal space within the boundaries of a Condominium Unit.

- m. **"Formula"** means the method set forth in Article VIII of this Declaration for computing the adjustment to be made to the percentage interest appertaining to each Condominium Unit, if or when additional phases are submitted to the Act and become a part of and included in Hickory Trace Townhomes Condominiums.
- n. **"Hickory Trace Townhomes Condominiums"** means the name by which the Property and Regime shall be known.
- o. **"Limited Areas"** means the limited common areas and facilities defined in Article VII of this Declaration. The term "Limited Areas", as used herein, shall be synonymous with the term **"Limited common areas and facilities"** as used in the Act.
- p. **"Majority of Mortgagees"** means those Mortgagees who hold first mortgages on Condominium Units to which are allocated at least fifty-one percent (51%) of the Percentage Vote allocated to Mortgaged Condominium Units.
- q. **"Majority of Owners"** and **"Majority of the Percentage Vote"** means the Owners with at least fifty-one percent (51%) of the Percentage Votes in accordance with the applicable percentages set forth in this Declaration.
- r. **"Mortgaged Unit"** means a Condominium Unit that is subject to the lien of a mortgage held, insured or guaranteed by a Mortgagee.
- s. **"Mortgagee"** means the holder, insurer or guarantor of a first mortgage lien on a Condominium Unit who has requested notice in accordance with the provisions of Section 12.01 of the By-Laws.
- t. **"Owner"** means an individual, firm, corporation, partnership, association, trust, limited liability company, or other legal entity, or any combination thereof who or which owns the fee simple title to a Condominium Unit, and, as used herein, shall be synonymous with the term "co-owner" as used in the Act.
- u. **"Percentage Interest"** means the percentage of the undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Condominium Unit as determined in accordance with Article VIII of this Declaration.
- v. **"Percentage Vote"** means that percentage of the total vote accruing to all of the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof. The percentage vote which each Owner shall be entitled to upon any matter upon which owners are entitled to vote, except as otherwise expressly provided by the Act, shall be the same percentage as the percentage interest appurtenant to such Owner's Condominium Unit.

- w. **"Phase"** means a part of the Real Estate upon which Condominium Units are constructed and become a part of and included in Hickory Trace Townhomes Condominiums as provided in Article XVII. Each particular phase shall be identified by a Roman numeral designation corresponding to the chronological order of annexation.
- x. **"Plans"** means (a) the floor and building plans and elevations of the initial Buildings and Condominium Units located on the Tract certified by Glen A. Meritt, Jr., P.E., a licensed professional engineer in the State of Indiana, under date of May 4, 2018, and (b) site plans of the Tract and Buildings prepared by Glen A. Meritt, Jr., P.E., a professional engineer licensed in compliance with the laws of the State of Indiana, under date of May 4, 2018, copies of which are attached as Exhibit "C", as the same may be supplemented and amended to reflect the addition of Buildings and Condominium Units as contemplated by Article XVI. Said survey and plans are incorporated herein by reference and made a part hereof and have been filed simultaneously with the recording of this Declaration in the office of the recorder of Vanderburgh County, Indiana.
- y. **"Property"** means the Tract and appurtenant easements, the Condominium Units, the Buildings, and all other improvements, and property of every kind and nature whatsoever, real or personal, located upon the Tract and used in connection with the operation, use and enjoyment of Hickory Trace Townhomes Condominiums (excluding the personal property of Owners) and all replacements thereof now or hereafter located upon the Tract, which have been subjected to the provisions of the Act and this Declaration.
- z. **"Regime"** means Hickory Trace Townhomes Condominiums, a horizontal property regime created by this Declaration pursuant to the Act.
- aa. **"Restoration"** means construction, reconstruction, building, or rebuilding of the Buildings, the Condominium Units, the Common Areas and the Limited Areas to not less than the same condition as they existed immediately prior to any loss, damage or destruction with the same type of architecture and using, when appropriate, new materials of like kind and quality.
- bb. **"Supplemental Declaration"** means any supplement or amendment to this Declaration that may be recorded by Declarant and that extends the provisions of this Declaration to any part of the Real Estate and contains such complementary or supplementary provisions for such part of the Real Estate as are required or permitted by the Act or this Declaration.
- cc. **"Tract"** means the real estate described in Exhibit "B" and referred to above as Phase I, together with such other portions of the Real Estate as have, as of any given time, been subjected to the Act and this Declaration either by this Declaration or by a Supplemental Declaration as herein provided.

Article III **Description of Buildings**

There is to be located on Phase I two (2) single story buildings, consisting of a total of four (4) Condominium Units, as shown on the Plans. The Plans submitted herewith set forth the relation of said Buildings to the property lines of Phase I. Each Building contains two (2) Condominium Units, which Condominium Units are identified on the Plans as Units 1A, 1B, 2A, and 2B. A description of each Building and the Condominium Units contained therein is set forth in Exhibit "C", attached hereto and incorporated herein by this reference. The Buildings, if any, constructed upon the balance of the Real Estate or phases thereof, if and when submitted to the Act and included as a part of Hickory Trace Townhomes Condominiums, shall be likewise identified and referred to with specific Condominium Unit numbers for each unit comprising a Building.

Article IV **Legal Description**

Each Condominium Unit is identified on the Plans by a building number and unit number which identifies the Condominium Unit. The legal description for each Condominium Unit shall consist of the unit number for such Condominium Unit as shown on the Plans, and shall be stated as "Condominium Unit Number (the identifying numbers) in Hickory Trace Townhomes Condominiums Horizontal Property Regime".

Article V **Description of Condominium Units**

A. **Appurtenances.** Each Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including, without limitation, all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Unit wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit or which may be necessary for the safety, support, maintenance, use and operation of any of the Buildings or which are normally designed for common use; provided, however, that all fixtures, equipment (including, but not limited to, heating, ventilation and air conditioning equipment) and appliances designed or intended for the exclusive enjoyment, use and benefit of a Condominium Unit shall constitute a part of such Condominium Unit, whether or not the same are located within or partly within the boundaries of such Condominium Unit. The spaces attached to each Building designated garage and storage space and the driveways leading to such spaces are considered a part of and for the exclusive use of the Condominium Units of such Building and shall be considered as Limited Areas hereinafter defined in Article VII. The interior sides and surfaces of all doors and windows in the perimeter walls of a Condominium Unit, whether or not located within or partly within the boundaries of a Condominium Unit, and all interior walls and all of the floors and ceilings within the boundaries

of a Condominium Unit and all decorated and finished surfaces, including wall coverings and floor coverings, are considered part of the Condominium Unit.

B. **Boundaries.** The boundaries of each Condominium Unit shall be as shown on the Plans without regard to the existing construction. The vertical boundaries shall run from the upper surfaces of the interior, unfinished surfaces of the lowest floors or subfloors to the interior unfinished surfaces of the highest ceilings and the horizontal boundaries shall be the interior, unfinished surfaces of the common exterior and interior load-bearing walls (including windows and doors) of each Condominium Unit. In the event any horizontal, vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Condominium Unit, because of inexactness of construction, settling after construction, restoration, or any other reason, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to such space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor or ceiling surfaces of the Condominium Unit.

Article VI

Common Area and Facilities

“**Common Areas**” means and includes the Property, except those portions thereof located within the boundaries of the Condominium Units which are not defined by the terms and provisions of this Declaration to be part of the general common areas, and shall include, but not be limited to:

- (a) the land portion of the Tract except as otherwise provided herein;
- (b) the foundations, columns, girders, beams, supports, roofs and exterior wall surfaces of the Buildings;
- (c) the yards, gardens, open spaces, landscaping, lakes, woodland areas, sidewalks, roadways, driveways, and parking areas, except to the extent the same are otherwise classified and defined herein as Limited Areas;
- (d) central electricity, telephone, gas, water, sanitary sewer and other pipes, ducts, wiring, conduits, lines, mains or appurtenant facilities serving the Condominium Units, except such as are designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Unit wherein the same are located or to which they are attached;
- (e) exterior lighting fixtures and electrical service lighting the exterior of the Buildings and certain of the other Common Areas unless separately metered to a particular Condominium Unit;

(f) master television antenna or other telecommunication systems with connecting wiring and outlets to each Condominium Unit, if any;

(g) pipes, lines, ducts, insulation, electrical wiring and conduits, and public utility lines and facilities that serve more than one Condominium Unit;

(h) the recreational facilities, including but not limited to any gazebo, club house and pool, located on the Tract;

(i) subfloors, ceilings and interiors of all structural walls, including all exterior perimeter and other load-bearing walls, walls between attached Condominium Units, walls and floors between the garage and the Condominium Unit, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Areas; and

(j) all structures, structural components, facilities and appurtenances located outside of the boundary lines of the Condominium Units.

Excepting from the foregoing, however, those areas and facilities expressly classified and defined herein as "Limited Areas" or as part of the Condominium Unit.

Except as otherwise limited in this Declaration and in the By-Laws incorporated herein by reference, each owner of a Condominium Unit shall have the right to use the Common Areas for all purposes incident to the use and occupancy of any Condominium Unit in the manner permitted by this Declaration and the By-Laws, including the nonexclusive easement, together with other Condominium Unit Owners, to the use and enjoyment of the Common Areas for ingress and egress to and from the respective Condominium Units, which rights shall be appurtenant to and shall run with each Condominium Unit.

No person shall use the Common Areas or any part thereof in any manner contrary to or not in accordance with such rules and regulations pertaining thereto as from time to time may be adopted by the Association and all Owners shall use the Common Areas in such manner as will not restrict, impede or interfere with the use thereof by the other Owners. Without in any manner intending to limit the generality of the foregoing, the Association shall have the right, but not the obligation, to promulgate rules and regulations limiting the use of the general Common Areas to members of the Association and their respective families, guests, invitees and servants.

Article VII

Limited Areas and Facilities

"Limited Areas" means those areas and facilities of the Tract and those portions of the Common Areas described above which are limited in their use and enjoyment to fewer than all of the Owners. Limited Areas are as follows:

(a) The entranceways through which access to a Condominium Unit is obtained shall be limited to the use of the Condominium Unit served by such entranceway.

(b) Balconies, patios, decks and porches, if any, together with any area around such patios, deck or porch or in the garage area specifically shown and designated on the Plans and any railings, fences and gates therein enclosing or surrounding the same (if any), and the driveways and sidewalks serving a particular Condominium Unit to which there is direct access shall be limited to the exclusive use of the Condominium Unit served by such facilities.

(c) The exterior sides and surfaces of doors, windows and frames surrounding the same in the perimeter walls of each Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they appertain.

(d) Crawl spaces shall be limited to the exclusive use of the Condominium Unit to which they are appurtenant, but only for such uses as may be permitted in writing by the Board of Directors.

(e) All utilities lying outside the boundaries of any Condominium Unit as hereinabove defined and exclusively serving a particular Condominium Unit or Condominium Units shall be deemed to be Limited Areas and shall be restricted to the use and enjoyment of the Condominium Unit or Units which they serve; provided however, that air conditioning and heating equipment located outside the boundaries of any Condominium Unit shall be considered as a part of said Condominium Unit for all purposes. Except for the air conditioning and heating unit, however, all utilities lying outside of the boundaries of any Condominium Unit as herein defined which exclusively serve a particular Condominium Unit or Units shall be solely for the use of the Condominium Unit or Units which they serve, and shall be expressly deemed to include, but shall not be limited to, all water, sewer, gas, electrical, TV cable, telephone and heating lines, ducts, improvements and facilities of every type or nature whatsoever. Except as may otherwise be expressly provided, all other utilities lying outside the exterior perimeters of any Building shall be deemed to be and remain Common Areas.

(f) Any other areas designated and shown on the Plans as Limited Areas shall be limited to the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

Article VIII

Ownership of Common Area and Percentage Interest

A. Each Owner shall have an undivided interest in the Common Areas and Limited Areas as tenants in common with all other owners equal to Owner's Condominium Unit's Percentage Interest. The Percentage Interest in the Common Areas and Limited Areas appertaining to each Condominium Unit is set forth in Exhibit "E" attached hereto and made a

part hereof. The Percentage Interest of each Condominium Unit shall be derived by dividing the number one (1) by the aggregate number of all Condominium Units that, from time to time, have been submitted and subjected to the Act and this Declaration as herein provided and that constitute a part of Hickory Trace Townhomes Condominiums. The percentage figure ascertained shall be rounded off to the fourth decimal place with minor adjustments thereof to be made by Declarant so that the resulting total of all Percentage Interests shall always total one hundred percent (100%). Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Areas shall be of a permanent nature and shall not be altered except in compliance with all requirements of the Act.

B. If all or any portion of the balance of the Real Estate is hereafter subjected to the Act and this Declaration and is included and becomes a part of Hickory Trace Townhomes Condominiums as permitted and contemplated by Article XVI of this Declaration upon execution of the applicable Supplemental Declaration, the percentage interest of each Condominium Unit in the phase or phases which are a part of Hickory Trace Townhomes Condominiums prior to such inclusion will automatically be reallocated in accordance with said Article XVI and as designated in the Supplemental Declaration annexing such phase. The Common Areas of each phase of the balance of the Real Estate submitted to the provisions of the Act and this Declaration shall become a part of the Common Areas of Hickory Trace Townhomes Condominiums and the Owners of the Condominium Units shall be granted and shall own a percentage interest therein determined according to the formula and designated in the Supplemental Declaration annexing such phase.

C. The Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote applicable to the Owner thereof in all matters with respect to Hickory Trace Townhomes Condominiums and the Association upon the Owners entitled to vote. For the purposes of voting, Declarant shall be deemed to be the Owner of any Condominium Unit to which Declarant has title to and which has not been transferred to third parties and Declarant shall be permitted to designate one (1) or more representatives to cast the vote appertaining to the Condominium Unit(s) which Declarant holds. In the event any Condominium Unit is subject to a first mortgage, the Mortgagee shall be provided not less than ten (10) days advance written notice of any proposed actions or matters with respect to Hickory Trace Townhomes Condominiums and the Association upon which the Owners are entitled to vote, but only if the Mortgagee has given prior notice of its interest to the Board of Directors in accordance with the provisions of the By-Laws; provided, however, the Mortgagee shall have no right to vote unless it has been granted a proxy or other written authorization from its mortgagor owner.

Article IX

Encroachments and Easements for Common Areas

The Tract is hereby made subject to the following easements, each of which shall be in perpetuity and shall run with the Tract and shall inure to the benefit of and be binding upon Declarant, each Owner, each Mortgagee and any other person having an interest in the Tract or

any part thereof and the respective heirs, devisees, personal representatives, successors and assigns of any of the foregoing persons, to-wit:

A. That certain grant of access and easements given by Darol L. Watson, Jerol W. Watson and Layne T. Watson, as Grantors, and Arbors at Eastland, L.P., as Grantee, their successors and assigns, as more particularly set forth in that certain Grant of Access and Utility Easements by and between said Grantors and Grantee dated November 24, 2003 and recorded December 12, 2003 with the Office of the Recorder of Vanderburgh County, Indiana as Document Number 2003R00056469.

B. If, by reason of the location, construction, restoration, settling or shifting of a Building, any Common Area or Limited Area now encroaches or shall hereafter encroach upon any Condominium Unit, in such event, an easement shall be deemed to exist and run with the Tract and shall inure to the benefit of and be binding upon the Owners and the Association for the maintenance, use and enjoyment of such Common Area or Limited Area.

C. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in the Common Areas, the Limited Areas and in any of the other Condominium Units and serving that Owner's Condominium Unit.

D. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Condominium Unit and any Limited Area designated for use in connection therewith, and shall have the right to the horizontal and lateral support of his Condominium Unit. Such rights shall be appurtenant to and pass with the title to each Condominium Unit.

E. Easements in favor of the Association over the Condominium Units and Limited Areas for access [as may be necessary] for the purpose of maintaining the Common Areas and easements in favor of each Owner over the Common Areas for access to said Owner's Condominium Units.

F. Easements in favor of the Association through the Condominium Units and the Limited Areas for the purpose of installing, laying, maintaining, repairing and replacing any pipes, wires, ducts, conduits, public utility lines or structural components through the walls of the Condominium Units.

G. Easements in favor of Declarant, its successor and assigns, are reserved over the Tract for the benefit of the Real Estate and other real property either now or hereafter owned by Declarant including but not limited to the Real Estate to install, use, maintain, repair and replace pipes, wires, conduits or other utility lines for the purpose of providing water, storm and sanitary sewers, gas, electric, telephone and other utility services and other equipment and improvements necessary or incident to the use and enjoyment of said easements and the real property to which said easements are appurtenant and said easements are to be used and enjoyed, in common, by the Association, Declarant and Declarant's successors and assigns.

H. Easements in favor of Declarant, its successors and assigns, are reserved over the Tract for the benefit of adjoining real property which may at any time be leased, owned or occupied by the Declarant, to install, use, maintain, repair and replace pipes, wires, conduits or other utility lines for the purpose of providing water, storm and sanitary sewers, gas, electric, telephone and other utility services to such adjoining real property.

I. Easements in favor of Declarant and Declarant's successors and assigns reserved over the Tract for the benefit of adjoining real property leased or owned by Declarant for ingress and egress to said adjoining real property and improvements located thereon.

J. Such easements as Declarant or the Association may, from time to time, hereafter grant to others on behalf of the Tract for ingress and egress and utility purposes, including but not being limited to the right to install, lay, maintain, repair and replace water mains and pipes, storm and sanitary sewer lines, gas mains, telephone wires and equipment and electrical conduits and wires over, under and along any portion of the Common Areas, provided that it shall be a condition precedent to the use and enjoyment of any such easements that such easement holders shall, at their expense, restore the Common Areas to the same condition as existed just prior to the installation of any such utility improvements.

Article X

Casualty and Restoration

In the event of damage or destruction of the Property by fire or other cause, the following provisions shall be applicable.

(a) **Partial Destruction.** In the event that less than all of the Buildings are completely destroyed by the occurrence of fire or by other cause, then the Association shall cause the Property to be promptly repaired and restored in accordance with this Declaration and the original Plans and specifications. The proceeds of the insurance carried by the Association shall be applied to the cost of such Restoration. If the insurance proceeds are not adequate to cover the cost of Restoration, or in the event there are no proceeds, the cost for restoring the damage shall be paid by all of the Owners of the Condominium Units based on their Percentage Interest. If any Owner, or Owners, refuses or fails to make the required payments, the other Owners shall (or the Association, if such other Owners fail to do so) complete the Restoration and pay the cost thereof, and the cost attributable to the Owner or Owners who refuse or fail to make such payments at the time required by the Board of Directors shall become a lien on such defaulting Owner's Condominium Unit and may be foreclosed in the same manner as provided for the lien for Common Expense.

(b) **In the Event of Complete Destruction.** In the event of complete loss or destruction of all the Buildings, this Regime shall terminate, the Property shall be deemed owned in common by the Owners and the provisions of Section 32-25-8-10(b) and 32-25-8-12 of the Act shall apply (as amended from time to time). In that event:

- (i) The Property shall be considered to be removed from the Declaration under I.C. 32-25-8-16, unless it is determined by a Constitutional Majority at a special meeting of the Association that the Buildings shall be rebuilt.
- (ii) Sufficient restoration or demolition of all damaged areas shall be effected by the Board of Directors to the extent necessary to avoid unreasonable risk of liability from injuries to persons in or about the premises or in the vicinity of the same. The extent of such restoration and/or demolition required for this purpose shall be determined by the Board.
- (iii) The Property and insurance proceeds, if any, shall be deemed to be owned in common by all Owners and the undivided interest in the Property and the insurance proceeds, if any, which shall appertain to each Owner shall be the Percentage Interest previously owned by such Owner in the Common Areas. Mortgages and any other liens affecting any of the Condominium Units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Owner in the Property and insurance proceeds, if any.
- (iv) The Property may be sold by agreement of all Owners or shall be subject to an action for partition suit of any Condominium Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one (1) fund and shall be divided among all Condominium Unit Owners in a percentage equal to the percentage of the undivided interest owned by each Owner in the Property after first paying out of the respective shares of the Owners, to the extent sufficient for the purpose, all mortgages and other liens on the undivided interest in the Property owned by each Owner.

(c) **Determination of Complete Destruction.** It shall be conclusively presumed that complete destruction of all Buildings did not occur unless it is determined by a Constitutional Majority at a special meeting of the Association held within one hundred twenty (120) days following the date of damage or destruction that all Buildings have been completely destroyed, together with written consents of the Majority of Mortgagees.

(d) **Repair and Reconstruction by the Association.** If repair and reconstruction is required pursuant to the provisions of this Article X, the Board of Directors shall have the right and obligation and shall proceed to negotiate and contract for such repair and reconstruction. If the insurance proceeds are not adequate to cover the cost of reconstruction or in the event there are no insurance proceeds, the cost for the repair and reconstruction shall be assessed by the Association as a Common Expense against all Owners in accordance with each Condominium Unit's Percentage Interest and shall constitute a lien from the time of assessment.

(e) **Plans and Specifications.** Any repair or reconstruction must be substantially in accordance with the original plans and specifications for the Buildings or as the Buildings were last constructed; provided however, that material or substantial changes in the plans and specifications may be made with unanimous approval of all Owners and all holders of mortgages or other liens with respect to said Condominium Units and the approval of the Board of the Association as to the architectural design and style of said buildings.

(f) **Notice to Mortgagees.** In the event any Condominium Unit is subject to a first mortgage, the Association shall provide the Mortgagee written notice of any casualty loss affecting a material portion of the Property or the Condominium Unit securing the Mortgagee's mortgage within fifteen (15) days after such casualty loss event. Further, the Association shall provide the Mortgagee written notice at least fifteen (15) days prior to any lapse, cancellation or material modification of any casualty or liability insurance policy or policies with respect to the Property.

Article XI

Condemnation

If at any time or times during the continuance of this Regime, all or a part of the Property shall be taken or condemned by any person with the power of eminent domain or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall be applicable:

(a) **Representation.** The Association shall represent the Owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority. Each Owner hereby appoints the Association or its designee as attorney-in-fact for the purposes described in this subparagraph. In the event any Condominium Unit is subject to a first mortgage, Mortgagee shall be given written notice of any such condemnation proceedings within fifteen (15) days after Association receives written notice of such condemnation proceedings, but only if the Mortgagee has given prior written notice of its interest to the Association.

(b) **Proceeds.** All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association as trustee for all Owners and their Mortgagees according to their respective interests therein.

(c) **Total Taking.** In the event that the entire Property is taken or condemned, or sold or otherwise disposed of or in lieu of or in avoidance thereof, this Horizontal Property Regime shall terminate. The Condemnation Award shall be apportioned among the Owners in accordance with their respective Percentage Interests and paid into separate accounts, each such account representing one Condominium Unit. Each such account shall remain in the name of the Association and shall be further identified by the legal

description of the Condominium Unit and the name of the Owner. From each separate account the Association shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to the payment of valid tax and special assessment liens on the Condominium Unit in favor of any governmental taxing or assessing authority, next to payment of any assessments made pursuant to this Declaration or the By-Laws, next to other holders of liens or encumbrances on the Condominium Unit in the order of priority of their liens, and the balance remaining, if any, to each respective Owner.

(d) **Partial Taking.** In the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, this Horizontal Property Regime shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows:

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

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

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

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

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

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

(f) **Restoration and Repair.** Anything to the contrary in this Article XI notwithstanding, in the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof and any Condominium Unit, Common Area or Limited Area may reasonably be restored or repaired, as determined by an independent licensed architect or engineer employed by the Board of Directors for making such determination or by the Majority of Mortgagees, the amount, if any, of the Condemnation Award allocable to the taking of or injury to the Common Areas and Limited Areas and to severance damages shall be applied to the cost of Restoration or repair of such Common Area and/or Limited Area, and the amount, if any, allocable to the taking of or injury to a particular Condominium Unit that may be restored or repaired shall be applied to the cost of such Restoration or repair. If any amount of the Condemnation Award then remains, such amount shall be allocated and disbursed in accordance with the provisions of subparagraph (d) above. If the amount of the Condemnation Award is insufficient to cover the cost of any such Restoration or repair, the provisions of Article X subparagraph (a) shall apply.

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

Article XII

Association of Owners

Subject to the rights of Declarant reserved in Article XIX hereof, the maintenance, repair upkeep, replacement, administration, management and operation of the Property shall be the responsibility of the Association and shall be furnished by the Association and charged to all owners as part of the Common Expenses, except as may be otherwise provided in this Declaration and the By-Laws. No Owner shall make any alteration or addition to the Common Areas or Limited Areas without the prior written approval of the Board of Directors. Each Owner shall, automatically upon becoming an Owner of a Condominium Unit, be and become a

member of the Association and shall remain a member until such time as his ownership ceases, but membership shall terminate when such person ceases to be an Owner, and will be transferred to the new Owner.

The Association shall elect a Board of Directors annually (except for the Initial Board as defined in the By-Laws) in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast his Percentage Vote for the election of the Board of Directors, except for the Initial Board who shall serve for the period provided in the By-Laws. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Association and an Owner solely for the purposes of the Statute (as defined in the By-Laws) and of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a member of the Association or an Owner for any other purpose (unless he is actually an Owner and thereby a member of the Association).

An individual designated by an Owner that is not a natural person shall be deemed a member of the Association for the purpose of qualifying for membership on the Board of Directors.

The Board of Directors shall be the governing body of the Association, representing all of the Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Property (exclusive of the Condominium Units except to the extent herein or in the By-Laws otherwise provided). The Board of Directors and officers of the Association shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law by the By-Laws and by this Declaration upon the Association, except as otherwise specifically provided.

The administration of the Property shall be in accordance with the provisions of this Declaration and the By-Laws of the Association which are attached hereto and each Owner, tenant or occupant of a Condominium Unit shall comply with the provisions of this Declaration, the By-Laws and the decisions and resolutions of the Association or its representatives as lawfully amended from time to time, and failure to comply with any such provisions, decisions and resolutions shall be grounds for an action to recover damages or for injunctive relief.

Article XIII

Covenants and Restrictions

The covenants, conditions, reservations and restrictions hereinafter set forth in this Article shall be applicable to the use and enjoyment of the Condominium Units, Common Areas, Limited Areas and the Property of Hickory Trace Townhomes Condominiums and the Owners and occupants of Condominium Units therein. Said covenants, conditions, reservations and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the real property and inure to the benefit of and be enforceable by the Owner or the Association, as hereinafter provided. These covenants, conditions, reservations and restrictions

may be amended from time to time under the same terms and provisions as this Declaration can be amended under Article XIV. Said covenants, conditions, reservations and restrictions shall be as follows:

A. All Condominium Units shall be used exclusively for residential purposes. Each unit shall be used as a residence for a single family and for no other purpose, a single family being defined for the purpose of these restrictions as one (1) or more persons related to each other by blood, marriage or adoption and functioning as a single housekeeping unit. No more than three (3) people may occupy any one (1) unit.

B. Hickory Trace Townhomes Condominiums is intended for occupancy by persons who are at least fifty-five (55) years of age and the Association shall take such actions to qualify as housing for older persons under Indiana Code 22-9.5-3-4(a)(3) by meeting the following provisions:

(i) At least eighty (80%) of the occupied Condominium Units have no less than one (1) person who is at least fifty-five (55) years of age occupying the Condominium Unit;

(ii) The Association shall publish and adhere to policies and procedures that demonstrate an intent to operate housing for persons who are at least fifty-five (55) years of age; and

(iii) The Association shall comply with the rules adopted by the Indiana civil rights commission under Indiana Code 4-22-1-1 *et. seq.* for verification of occupancy that provide for verification by reliable surveys and affidavits, and include examples of the types of policies and procedures relevant to determine compliance with subparagraph (ii) immediately above.

Exceptions shall include temporary instances where the qualifying occupancy ceases due to vacation, death or disability during such temporary period. In accordance with the foregoing, there shall be no children under the age of eighteen (18) years of age in residency at Hickory Trace Townhomes Condominiums.

C. Except as otherwise approved by the Board of Directors in writing, no additional buildings or other improvements, including, but not limited to, yard barns, fences, swimming pools, Jacuzzi tubs, and gazebos, shall be erected or located upon the Property other than the Buildings designated in this Declaration and any Supplemental Declaration and shown on the plans filed with this Declaration or any Supplemental Declaration, and no additions shall be made to the Condominium Units or any existing Buildings or structures. No Buildings or structures shall be moved from other locations onto the Property and no structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any portion of the Property at any time as a residence, either temporarily or permanently. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant to maintain

(during the period of construction and sale of the units upon any portion of the Property as Declarant may choose) such Buildings as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction and sale of the Condominium Units, including but not being limited to a business office, storage area, construction yard, signs, model units and sales office. Such facilities shall be removed by Declarant within a reasonable time after the completion of construction and the sale of all the Condominium Units.

C. There shall be no obstruction of the Common Areas nor shall anything be stored in or about the Common Areas or Limited Areas without the prior consent of the Board of Directors, except as hereinafter expressly provided.

D. Nothing shall be done or kept in any Condominium Unit, the Common Areas or the Limited Areas which will increase the rate of insurance on the Building or contents thereof without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept in said Owner's Condominium Unit, the Common Areas or Limited Areas which will result in the cancellation of insurance on the building or contents thereof or which would be in violation of any law.

E. No nuisance shall be permitted and no waste shall be committed in the Condominium Unit or in the Common Areas, or the Limited Areas.

F. No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside of any Building and no sign, awning, canopy, radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roof or any other parts of any Building or on the Property without the prior written consent of the Board of Directors; provided, however, Owners may install satellite dishes which are no larger than twenty-four (24) inches in diameter provided that each such Owner obtains approval from the Board with respect to the location of the installation of such satellite dish, and Owners may display an American flag not to exceed 3-feet by 5-feet in size on a mounting and at a location approved by the Board of Directors. No billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Property. The use and covering of the interior surface of windows in the Condominium Units [whether by drapes, shades or other items visible from the exterior of the Building] shall be subject to such rules and regulations of the Association, as may be adopted from time to time.

G. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Condominium Unit, the Common Areas or the Limited Areas except that pets such as dogs, cats or other customary household pets, may be kept in a Condominium Unit, provided that in the aggregate they do not exceed two (2) in number and are not kept, bred or maintained for any commercial purpose. Said pets shall not be allowed to run loose over the Common Areas and all pets must be on leashes and in the company of their master or Owner when they are in or on the Common Areas; provided however, that the Board of Directors may dispense with this requirement as to any particular pet which it

finds does not create a nuisance, disturbance, inconvenience or irritation to other Owners of Condominium Units within the Property and does not cause damage or detriment to the Property. Where, however, any pet shall be found to create a nuisance, disturbance, inconvenience or irritation to other owners within the Property or to cause damage or detriment to the Property in being allowed to remain unleashed and unaccompanied upon the premises, then this requirement shall be strictly enforced by the Board of Directors and such pets shall not be allowed outside any Condominium Unit without a leash and without the presence of its master or Owner. Where any pet is the source of repeated complaints to the Board of Directors as a result of allegedly causing or creating a nuisance, unreasonable disturbance, noise or irritation to owners or damage to the Property and the Board of Directors finds such complaints to be justified, the Board of Directors may (in addition to requiring that such pets be permitted outside only on a leash and in the company of its owner) further impose such additional conditions or restraints upon the continued possession of such animal by its owner and/or any party residing within the Property as the Board of Directors shall deem necessary and appropriate to prevent such complaints and to protect the interest of the Owners generally. Where the imposition of conditions or restraints upon the possession of the pet appears, to the Board of Directors, to be incapable of resolving the problems caused by such pet or where such restraints are imposed and found to be ineffective, the Board of Directors may, in its discretion, order any pet permanently removed from the Property upon five (5) days written notice from the Board of Directors to the respective owner of such pet or notice to any party within the Property harboring or responsible for such pet.

H. No obnoxious or offensive activity shall be carried on in any Condominium Unit, the Common Areas or Limited Areas nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other owners or occupants, including, but without limiting the generality of the foregoing, odor, noise or the use of any musical instruments, radios, televisions, loudspeakers or amplifiers.

I. Nothing shall be done on any Condominium Unit or in, on or to the Common Areas or Limited Areas which will impair the structural integrity of any Building or which would structurally change any Building, except as may be otherwise provided in this Declaration or the By-Laws.

J. No industry, trade or any commercial activity designed for profit or otherwise shall be conducted, practiced or permitted on the Property, unless permitted by the Board of Directors. No "For Sale," "For Rent," or "For Lease," or other signs or other window or advertising displays shall be maintained or permitted on any part of the Property or any Condominium Unit without the prior written consent of the Board of Directors; provided however, the foregoing covenant shall not apply to business activities, signs and billboards for the construction, sale and maintenance of Buildings and/or Condominium Units, if any, of Declarant and Declarant's agents and assigns during the construction and sale period and of the Association and Association's successors and assigns in furtherance of its powers and purposes as set forth in this Declaration and the By-Laws. Notwithstanding the foregoing, however, an owner shall be permitted to place no more

than two (2) "For Sale" signs in the windows of the Condominium Unit.

K. No clothing, sheets, blankets, rugs, laundry or other thing shall be hung out or exposed on any part of the Common Areas or Limited Areas. The Common Areas or Limited Areas shall be kept free and clear of rubbish, debris and other unsightly materials.

L. No Owner shall be allowed to plant trees, landscape, or do any gardening in any of the Common Areas and Limited Areas, and no yard ornaments shall be placed in any of the Common Areas and Limited Places, except with express written permission from the Board of Directors.

M. All garbage, trash and refuse shall be stored in appropriate containers inside the Condominium Unit (including the garage) and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. In the event such garbage, trash or refuse is too bulky to place within appropriate containers, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collection as are designated by the Board. All containers shall be removed from trash collection locations no later than sunrise of the morning after scheduled trash collection.

N. Except as otherwise approved by the Board of Directors in writing, no trucks, commercial vehicles, buses, boats, campers, trailers, mobile homes, house trailers, motor-powered recreational vehicles or other trailers or unconventional vehicles of any description shall be permitted, parked or stored in or on the Property [except authorized vehicles of Declarant or the Board of Directors and their respective agents and contractors for construction or maintenance purposes], except as may be permitted from time to time by the Board of Directors. All passenger vehicles of Owners and occupants of the Condominium Units when not in use shall be parked in the garage provided with each Condominium Unit and the garage doors shall remain closed, except when a passenger vehicle is entering or exiting from the garage: provided, however, if the number of passenger vehicles of Owners or occupants of each Condominium Unit exceeds the number of spaces in the garage of the Condominium Unit, the Owners and occupants may park one (1) additional passenger vehicle in the driveway appurtenant to the Owners' Condominium Unit. Street parking shall not be permitted. Guests shall park only in the areas designated as guest parking.

O. No off-road motor bikes, terrain vehicles or other off-road motor-powered recreational vehicles of any kind shall be operated on or within the Property, including any roadway providing access to the Property.

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

Q. All Owners and their family members, guests, invitees and all occupants of any Condominium Unit or other persons entitled to use the same and to use and enjoy the

Common Areas or any part thereof shall observe and be governed by such rules and regulations as may, from time to time, be promulgated and issued by the Board of Directors governing the operation, use and enjoyment of the Common Areas.

Each and all of the covenants, conditions, reservations and restrictions contained in this Article shall run in favor of and inure to the benefit of all Owners and the Association and may be enforced by any of the Owners or by the Board of Directors for and on behalf of the Association in any court of competent jurisdiction by injunction or other appropriate remedy but the Association shall not be liable in damages of any kind to any person for failure either to abide by, enforce or carry out any of the covenants, conditions, reservations and restrictions contained herein. Invalidation of any of the foregoing covenants, conditions, reservations and restrictions by judgment or order of a court shall not affect any of the remaining other covenants, conditions, reservations and restrictions, all of which shall remain in full force and effect.

Notwithstanding anything to the contrary contained herein or in the By-Laws, including but not limited to any covenants and restrictions set forth in the By-Laws, Declarant shall have, until the date described in Article XVI hereof as the date upon which Declarant's right to expand the Property and Hickory Trace Townhomes Condominiums terminates, the right to use and maintain any Condominium Units owned by Declarant, such other portions of the Property (other than individual Condominium Units owned by persons other than Declarant) and any portions of the Real Estate not then part of the Tract, all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction and sale of Condominium Units, or to promote or effect sales of Condominium Units or for the conduct of any business or activity attendant thereto, including, without limitation, model Condominium Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Property at any time.

Article XIV **Amendment of Declaration**

Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) **Notice.** Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.
- (b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by the Owners having in the aggregate at least a majority of the Percentage Vote.

(c) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

(d) **Adoption.** Except as otherwise provided herein, any proposed amendment to this Declaration must be approved by a Majority of Owners.

(e) **Restrictions on Amendments.**

(i) The consent of a Constitutional Majority and the approval of the Majority of Mortgagees holding first mortgages on Condominium Units shall be required to terminate the Regime.

(ii) The consent of a Constitutional Majority and the approval of the Majority of Mortgagees shall be required to amend materially any provisions of the Declaration, By-Laws or equivalent organizational documents of the Regime or to add any material provisions thereto which establish, provide for, govern or regulate any of the following:

(A) voting;

(B) assessments, assessment liens or subordination of such liens;

(C) reserves for maintenance, repair and replacement of the Common Areas;

(D) insurance or fidelity bonds;

(E) rights of use of the Common Areas;

(F) responsibility for maintenance and repair of the several portions of the Property;

(G) expansion or contraction of the Regime or the addition, annexation or withdrawal of property to or from the Regime except as provided for in Article XVI;

(H) boundaries for any Condominium Unit;

(I) the interest in the Common Areas or Limited Areas;

(J) convertibility of Condominium Units into Common Areas or Common Areas into Condominium Units;

(K) leasing of Condominium Units (but excluding overnight leasing or short-term leasing for periods of less than thirty (30) days which are prohibited and may not be approved by the consent of a Constitutional Majority);

(L) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Condominium Unit.

(iii) The consent of a Constitutional Majority and the approval of the Majority of Mortgagees shall be required to amend any provisions included in the Declaration, By-Laws or the equivalent organizational documents of the Regime that are for the express benefit of Mortgagees.

(iv) Notwithstanding anything herein to the contrary, the Declarant's consent to an amendment is required if the Declarant owns one (1) or more Condominium Units and not more than seven (7) years since the date of recording of this Declaration.

(iv) In the event any Condominium Unit is subject to a first mortgage, the Mortgagee shall be given not less than sixty (60) days prior written notice of the meeting and the proposed amendment, but only if the Mortgagee has given prior notice of its interest to the Board of Directors in accordance with the provisions of the By-Laws; provided, however, the Mortgagee shall have the right to give any comments or other response to the Board of Directors relating to such proposed amendment, but the Mortgagee shall have no right to vote unless it has been granted a proxy or other written authorization of its mortgagor owner. Mortgagee's consent must be indicated by a written instrument signed by the Mortgagee. Mortgagee's consent shall be assumed in the event Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the Mortgagee actually receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. The consent of a Majority of Mortgagees shall be required to amend any provisions included in the Declaration.

(f) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association provided that any amendment requiring the consent of Declarant shall contain Declarant's signed consent. All amendments shall be recorded in the office of the Recorder of Vanderburgh County, Indiana, and such amendment shall not become effective until so recorded.

(g) **Amendments by Declarant Only.** Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have the right acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration from time

to time if (i) such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time, (ii) such amendment or supplement is made to implement expansion of the Property and Hickory Trace Townhomes Condominiums pursuant to Declarant's reserved rights to so expand the same as set forth in Article XVI hereof, (iii) such amendment or modification is necessary to conform this Declaration to easements and restrictions of record at the time of recording of this Declaration, or (iv) such amendment or supplement is made to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (v) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages, or (vi) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Article XIV on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage or other instrument affecting a Condominium 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 the Declarant to vote in favor of, make, execute and record any such amendment, but the right of the Declarant to act pursuant to rights reserved or granted under this Article XIV shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

Article XV **Acceptance and Ratification**

All present and future Owners, Mortgagees, tenants and occupants of the Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of Directors as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Condominium Unit shall constitute an agreement that the provisions of this Declaration, the Act, the By-Laws and rules and regulations as each may be amended or supplemented from time to time are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Condominium Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons who may occupy, use, enjoy or control a Condominium Unit or Condominium Units or any part of the Property in any manner shall be subject to the Declaration, the Act, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

Article XVI
Expandable Condominium and Declarant's Reserved Rights

Hickory Trace Townhomes Condominiums is and shall be an "expandable condominium", as defined in the Act, and Declarant expressly reserves the right and option to expand the Property and Hickory Trace Townhomes Condominiums in accordance with the provisions of the Act and the following provisions:

(a) The real property described and defined herein as the Tract and described in Exhibit "B" is the real property being subjected to the Regime by this Declaration and constitutes the first Phase of the general plan of development of the Real Estate. The balance of the Real Estate described in Exhibit "A" is the area into which expansion of Hickory Trace Townhomes Condominiums may be made by Declarant. Exhibit "D" is the general plan of development into which the expansion may be made by Declarant. The maximum number of Condominium Units that may be developed on the Real Estate, including Condominium Units on the Tract as defined in this original Declaration, shall be eighty-eight (88). Subject to said limit as to the maximum number of Condominium Units to be developed on the Real Estate, Hickory Trace Townhomes Condominiums may be expanded by Declarant to include additional portions of the Real Estate described in Exhibit "A" in one (1) or more additional phases by the execution and recording of one (1) or more Supplemental Declarations; but no single exercise of such right and option of expansion as to any part or parts of the Real Estate shall preclude Declarant from thereafter from time to time further expanding Hickory Trace Townhomes Condominiums to include other portions of the Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Real Estate so long as such expansion is done on or before ten (10) years from date of recording hereof. Such expansion is entirely at the discretion of Declarant and nothing contained in this original Declaration or otherwise shall require Declarant to expand Hickory Trace Townhomes Condominiums beyond the Tract (as described in Exhibit "B" to this Declaration) or any other portions of the Real Estate that Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration by Supplemental Declarations as provided above.

(b) Upon the annexation of any Phase, the Percentage Interest appertaining to each Condominium Unit shall be adjusted and shall be a percentage derived by dividing the number (1) by the the aggregate number of all Condominium Units that, from time to time, have been subjected and submitted to this Declaration and which then constitute a portion of Hickory Trace Townhomes Condominiums. The percentage figure ascertained shall be rounded off to the fourth decimal place with minor adjustments thereof to be made by Declarant so that the resulting total of all Percentage Interests shall always total one hundred per cent (100%). Such reallocation of Percentage Interests shall vest when each Supplemental Declaration has been recorded.

(c) As each phase is developed, Declarant shall record a Supplemental Declaration annexing and adding such phase to this Declaration and making it a part of

and including the same in Hickory Trace Townhomes Condominiums. Such Supplemental Declaration shall contain the following:

1. A description of the real property to be annexed.
2. A description of the Buildings and Condominium Units described in a manner consistent with this Declaration.
3. A statement setting forth the percentage interest of each Condominium Unit in Hickory Trace Townhomes Condominiums upon annexation computed in accordance with this Article.
4. Supplemental Plans of the phase annexed by the Supplemental Declaration prepared in substantially the same manner as the Plans filed contemporaneously with this Declaration.

(d) When the Supplemental Declaration incorporating the addition of Condominium Units or expansion of Common Areas and Limited Areas, or both, is recorded, all liens including but not limited to mortgage liens shall be released as to the Percentage Interests in the Common Areas and Limited Areas described in this Declaration and shall attach to the reallocated Percentage Interests in the Common Areas and Limited Areas as though the liens had attached to those Percentage Interests on the date of the recordation of the mortgage or other lien. The Percentage Interests appertaining to additional Condominium Units being added by the Supplemental Declaration are subject to mortgages and liens upon the recordation of the Supplemental Declaration.

(e) In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, as attorney-in-fact, to shift the Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit to the percentages set forth in each Supplemental Declaration recorded pursuant to this Article XVI. Each deed, mortgage or other instrument with respect to a Condominium Unit and the acceptance thereof shall be deemed a consent to and acknowledgment of, and grant of (i) such power to said attorney-in-fact and (ii) the right pursuant to such power to shift and reallocate from time to time the percentages of ownership in the Common Areas and Limited Areas appurtenant to each Condominium Unit to the percentages set forth in each such recorded Supplemental Declaration.

(f) Each Owner of a Condominium Unit by acceptance of a deed thereto, further acknowledges, consents and agrees, as to each recorded Supplemental Declaration, as follows:

- (i) The portion of the Real Estate described in each such Supplemental Declaration shall be governed in all respects by the provisions of this Declaration.

(ii) The Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit shall automatically be shifted and reallocated to the extent set forth in each Supplemental Declaration and upon the recording thereof such Percentage Interest shall thereby be and be deemed to be released and divested from such Owner and reconveyed and reallocated among the other Owners as set forth in each recorded Supplemental Declaration.

(iii) Each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed given subject to the conditional limitation that the Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit shall, upon the recording of each Supplemental Declaration, be divested pro tanto to the reduced percentage set forth in such Supplemental Declaration and vested among the other Owners, mortgagees and others owning an interest in the other Condominium Units in accordance with the terms and percentages of each such recorded Supplemental Declaration.

(iv) A right of revocation is hereby reserved by the grantor in each deed, mortgage or other instrument affecting a Condominium Unit to so amend and reallocate the Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit.

(v) The Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit shall include and be deemed to include any additional Common Areas and Limited Areas included in land to which Hickory Trace Townhomes Condominiums is expanded by a recorded Supplemental Declaration and each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed to include such additional Common Areas and Limited Areas and the ownership of any such Condominium Unit and lien of and such mortgage shall automatically include and attach to such additional Common Areas and Limited Areas as such Supplemental Declarations are recorded.

(vi) Each Owner shall have a perpetual easement appurtenant to his Condominium Unit for the use of any additional Common Areas described in any recorded Supplemental Declaration, for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easements granted in the Limited Areas to the Owners of specific Condominium Units as may be provided in such Supplemental Declaration, and each Owner of a Condominium Unit described in any recorded Supplemental Declaration shall have a perpetual easement appurtenant to his Condominium Unit for the use of all Common Areas (except Limited Areas) described in this Declaration as supplemented or amended prior to the date of such recorded Supplemental Declaration.

(vii) The recording of any Supplemental Declaration shall not alter the amount of the lien for expenses assessed to or against a Condominium Unit prior to such recording.

(viii) Each Owner, by acceptance of the deed conveying his Condominium Unit, agrees for himself and all those claiming under him, including mortgagees, that this Declaration and each Supplemental Declaration are and shall be deemed to be in accordance with the Act and, for the purposes of this Declaration and the Act, any change in the respective Percentage Interests in the Common Areas and Limited Areas as set forth in each Supplemental Declaration shall be deemed to be made by agreement of all Owners.

(ix) Each Owner agrees to execute and deliver such documents necessary or desirable to cause the provisions of this Article XVI to comply with the Act as it may be amended from time to time.

(x) Assessments, method of payment and enforcement thereof on Condominium Units built as an expandable Condominium Unit pursuant to any Supplemental Declaration shall be governed by the same provisions pertaining to Assessments as set forth in the By-Laws.

(xi) Voting rights of an Owner in an expandable Condominium Unit created by Supplemental Declaration shall vest upon becoming a Member of the Association as prescribed by the By-Laws.

(g) In the event Declarant elects to expand the Property and Hickory Trace Townhomes Condominiums, all improvements constructed on that portion of the Real Estate added to the Tract (the "Expansion Parcel") shall be consistent with the improvements then located on the Tract in terms of the quality of construction and all such improvements shall be substantially completed before the Expansion Parcel is added to the Tract. No lien arising in connection with Declarant's ownership of, and construction of improvements on, the Expansion Parcel shall adversely affect the rights of existing Owners or the priority of first mortgages on Condominium Units in the existing Property. All taxes and other assessments relating to the Expansion Parcel covering any period prior to the addition of the Expansion Parcel shall be paid by or otherwise satisfactorily provided for by Declarant.

Article XVII

Granting and Amendment of Easements

After the Applicable Date, the Board of Directors is granted the authority to grant such easements and to amend easements encumbering the Common Areas upon such terms and conditions and for such consideration as they deem appropriate.

Article XVIII
Reservation of Rights to the Use of the Common Areas

A. If, at any time, and from time to time, any portion of the Real Estate has not been subjected and submitted to this Declaration or to the Act by a Supplemental Declaration and such portion or portions of the Real Estate not so subjected to this Declaration or to the Act is/are developed with single or multi-family dwelling units (whether for rent or otherwise), then the owner or owners of such portions of the Real Estate shall have the benefit of the Common Areas or portions thereof, to include the use of all streets, driveways and other roads and utilities for the use of the persons occupying such dwelling units upon the same terms and conditions as the Owners of the Condominium Units, their families, tenants and guests may use the Common Areas. The owner or owners of such portions of the Real Estate shall then pay for the use of such facilities based on the cost of operation and maintenance of such facilities for the year of such usage and based on the number of dwelling units so entitled to use such facilities in the proportion that the number of dwelling units on the Real Estate exclusive of the Tract bears to the sum of (i) such number of dwelling units plus (ii) the number of Condominium Units. The owner or owners of such dwelling units shall make payments for the usage provided herein to the Association at the same time as the Owners of Condominium Units pay their assessments to the Association.

B. Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas, including, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining, repairing, replacing, relocating and otherwise servicing utility and telecommunication equipment, facilities and installations to serve the Property and any portions of the Real Estate that are not part of the Property, to provide access to and ingress and egress to and from the Property and to any such portions of the Real Estate that are not part of the Property, to make improvements to and within the Property and any such portions of the Real Estate that are not part of the Property, and to provide for the rendering of public and quasi-public services to the Property and such portions of the Real Estate that are not part of the Property. The foregoing easement shall be a transferable easement and Declarant may at any time and from time to time grant similar easements, rights or privileges to other Persons for the same purposes. By way of example, but not in limitation of the generality of the foregoing, Declarant, and others to whom Declarant may grant such similar easements, rights or privileges, may so use the Common Areas and, to the extent necessary, the Limited Areas, to supply utility and telecommunication services to the Property and any portions of the Real Estate that are not part of the Property and to permit public and quasi-public vehicles, including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, and their personnel to enter upon and use the drives and streets, the Common Areas and, to the extent necessary, the Limited Areas of Hickory Trace Townhomes Condominiums in the performance of their duties.

Article XIX

Initial Management

As set forth in the By-Laws, the Initial Board of Directors consists and will consist of persons selected by Declarant until the Applicable Date. The Board of Directors has entered, or may hereafter enter, into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term which will expire not later than the Applicable Date, under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Areas and, to the extent the same is not otherwise the responsibility of Owners of individual Condominium Units, the Limited Areas, and, in general, perform all of the duties and obligations of the Association. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) at any time prior to the expiration of its term, in which event the Association shall thereupon and thereafter resume performance of all of its duties and obligations and functions. Notwithstanding anything to the contrary contained herein, so long as such management agreement remains in effect, Declarant (or its affiliate, as appropriate) shall have, and Declarant hereby reserves to and for its benefit (or to its affiliate, as appropriate), the exclusive right to manage the Property and to perform all the functions of the Association.

The Initial Board of Directors may extend the management agreement beyond the Applicable Date providing the contract includes a right of termination without cause that the Association can exercise at any time after the Applicable Date. Such right of termination shall not require the payment of any penalty or an advance notice of more than ninety (90) days. Both the term and termination provisions apply only to professional management contracts and not to any other types of service contracts.

Article XX

Assessments and Limitation on Declarant's Liability for Assessments

Owners are obligated to contribute pro rata in the same percentages as their established Percentage Interest in Common Areas and Limited Areas set forth in Article VIII of this Declaration to the usual and ordinary maintenance and replacement reserve fund to assure continuous and adequate maintenance of Hickory Trace Townhomes Condominiums as prescribed by the Act, and the assessment procedures and the method of collection and enforcement set forth under Article VII of the By-Laws attached to this Declaration. Provided, however, Declarant or its successors in interest, as an Owner, shall be excused from payment of assessments from the date this Declaration is recorded until the first day of the twenty-fourth (24th) calendar month following the month in which the closing of the sale of the first Condominium Unit occurs in the Buildings committed by this Declaration to the Regime; such provision shall also apply to assessments for Condominium Units owned by Declarant in Buildings committed by Supplemental Declarations. Provided, further, that if the expenses incurred during such twenty-four (24) month period under the assessment procedure exceed the amount assessed against the other Owners, then the Declarant or its successor shall pay the excess.

Prior to the Applicable Date, Declarant shall bear all expenses incurred with respect to the Tract arising out of construction or other activities on any portion of the Real Estate not included in the Tract, including but not limited to road damage and clean-up of debris caused by construction traffic, connection to any utility lines or mains located on the Tract and damage to, or deterioration of, grass, trees, fences or other portions of the Property due to construction off site or the state of areas under development.

Article XXI

Common Expenses and Assessments

Expenses for the administration of the Property and the Association for the management, maintenance and repair of the Common Areas, for insurance of the Common Areas and Condominium Units, for all insurance obligations and expenses of Developer arising from construction warranty or construction defect claims, and for such other expenses as may be so designated in the Act, this Declaration and/or the By-Laws shall be deemed and considered Common Expenses and assessments therefor shall be made in the manner provided herein and in the By-Laws. The proportionate share of each Owner in the Common Expenses is the same as such Owner's percentage interest as set forth in Article VIII or as may be changed by the provisions of Article XVI. No Owner of a Condominium Unit may exempt said Owner from liability for said Owner's contribution for the common expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of said Owner's Condominium Unit.

The Association shall have a lien, as provided by the Act, upon the estate or interest in any Condominium Unit of the Owner's thereof and said Owner's percentage interest in the Common Areas for the payment of assessments chargeable against such Condominium Unit which remain unpaid after said assessments have been made by the Association. Such lien may be filed and foreclosed, by suit, by the Board of Directors acting on behalf of the Association in the manner and according to the provisions set forth in the Act. The Board of Directors acting on behalf of the Association shall have the power to bid on the Condominium Unit at the foreclosure sale in the name of the Association and the Association shall hold, lease, mortgage and convey said Condominium Unit as directed and authorized by the shareholders of the Association at a regular or special meeting of the Association. Suit to recover a money judgment for unpaid assessments shall be maintainable by the Board of Directors acting on behalf of the Association without enforcing or waiving the lien securing the same.

When the mortgagee of a first mortgage of record or other purchaser of a Condominium Unit acquires title to the Condominium Unit as the result of foreclosure of the first mortgage or where the mortgagee of a first mortgage of record in lieu of the enforcement of its mortgage acquires title to the Condominium Unit by accepting a deed to the Condominium Unit in full satisfaction of its mortgage, such acquirer of title and such acquirer's successors and assigns shall not be liable for any assessments chargeable to such Condominium Unit which became due prior to the acquisition of title to such Condominium Unit by such acquirer. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Condominium Units, including that of such acquirer, at the time of the first assessment next following the acquisition of title by such mortgagee or other purchaser.

In the event of a voluntary conveyance of a Condominium Unit other than by deed in lieu of foreclosure, the grantees of the Condominium Unit shall be jointly and severally liable with the grantor of said Condominium Unit for all unpaid assessments levied by the Association against the grantor and said grantor's unit up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Board of Directors setting forth the amount of all unpaid assessments against the grantor due the Association and such grantee shall not be liable for nor shall the Condominium Unit conveyed be subject to a lien for any unpaid assessments made by the Association against the grantor in excess of the amount set forth in such statement for the period reflected in such statement.

Article XXII

Real Estate Taxes and Utilities

Taxes, assessments and other charges of the State of Indiana or of any political subdivision or of any special improvement district or of any other taxing or assessing authority shall be separately assessed to each Condominium Unit Owner for said Owner's Condominium Unit and said Owner's corresponding percentage of ownership in the Common Areas, as provided in the Act. In the event that for any year real estate taxes are not separately assessed and taxed to each Condominium Unit but are assessed and taxed on the Property as a whole, then such Owner shall pay said Owner's proportionate share of such taxes based upon the ratio between the percentage interest appertaining to said Owner's Condominium Unit and the total percentage interest appertaining to all Condominium Units on the Property.

Each Condominium Unit Owner shall pay for said Owner's own telephone, electric and other utility services which are separately metered or billed to each Condominium Unit. Utility services, if any, which are not metered or billed separately shall be treated and paid as part of the Common Expenses.

Article XXIII

Sale or Lease of Condominium Unit by Owners

(a) **Lease.** In the event of any lease of a Condominium Unit, such lease shall be made explicitly subject to the terms of this Declaration and the By-Laws. Condominium Units may be leased by the Owner thereof for a term of not less than one (1) year; provided, however, in the event the Board of Directors of the Association sends a notice in writing to the Owner notifying said Owner that the tenant has become a nuisance to the Property, the Owner shall promptly notify such tenant to cease and desist the offensive activities. Should tenant fail to cease such activities and continues to be a nuisance thirty (30) days after the Association sends its first notice to the Owner of such the Unit, the Board of Directors of the Association may send a second notice to the Owner of such Unit that the nuisance is continuing, and thereafter, the Owner shall commence action to evict the tenant immediately. In the event the tenant has not vacated the Unit within thirty (30) days after said second notice is sent to the Owner, Owner

agrees to file an eviction action with the Court of appropriate jurisdiction and to diligently prosecute the same. Any determination of a nuisance shall be made by the members of the Board of Directors of the Association appointed by Owners other than the Owner whose tenant is purporting to cause the nuisance. Notwithstanding the foregoing, Declarant or Declarant's designee who shares at least one principal who is also a principal of Declarant shall have the right to lease any unit owned by Declarant or Declarant's designee for a period less than one (1) year so long as the lease period is at least thirty (30) consecutive days.

(b) **Sale.** The Association shall have no right of first refusal to purchase any Condominium Unit which an Owner wishes to sell and an Owner may sell his Condominium Unit free of any such restriction, except as set forth hereinabove.

Article XXIV **Right of Action**

Subject to the provisions of Article XXXI, the Association and any aggrieved Owner shall have a right of action against any Owner or Owners for failure to comply with the provisions of the Declaration, By-Laws or any decision of the Association or its Board of Directors which are made pursuant to authority granted to the Association or its Board of Directors in such documents. Owners shall have a similar right against the Association.

ARTICLE XXV **Indemnification of Officers and/or Directors of Association**

Each officer and/or Director of the Association shall be indemnified by the Owners against all reasonable expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon him or her, in connection with any proceeding to which he or she may be a party, or in which he may become involved, by reason of his being or having been an officer and/or a Director of the Association, or any settlement thereof, whether or not he is an officer and/or Director of the Association at the time such expenses are incurred, except in such cases wherein the officer and/or Director of the Association is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Association approves such settlement and reimbursement as being for the best interest of the Association.

Article XXVI **Negligence; Limitation of Association's Liability**

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by said Owner's negligence or intentional wrongful acts or the negligence or intentional wrongful acts of said Owner's guests, invitees, licensees, employees and agents to the extent that such expense is not covered by the proceeds of insurance carried by the Association. The amount of any increase in insurance premiums occasioned by the use, misuse, occupancy or

abandonment by an Owner of said Owner's Condominium Unit or its appurtenances or of the Common Areas or Limited Areas shall be paid by such Owner.

Notwithstanding anything herein contained to the contrary, neither an Owner, occupant, the Board of Directors, the Association nor any of the agents, servants or employees of any of the foregoing shall be liable or responsible to any other Owner, occupant, the Board of Directors, the Association or anyone claiming through or under any of them by way of subrogation or otherwise for loss or damage to the Property caused by fire or any other casualty insured by extended coverage insurance regardless of the nature or cause of such fire or other casualty unless caused by the deliberate and intentional act of the person causing such and each Owner, occupant, the Board of Directors and the Association by reason of the provisions of this paragraph shall be deemed to have released the others of and from all liability for such losses or damages unless caused by the deliberate and intentional act of the person causing such.

Further notwithstanding anything herein contained to the contrary, neither an Owner, occupant, the Board of Directors, the Association nor any of the agents, servants or employees of any of the foregoing shall be liable or responsible to any other Owner, occupant, the Board of Directors, the Association or anyone claiming through or under any of them by way of subrogation or otherwise for any failure of water supply or other service to be obtained and paid for by the Association hereunder, or for injury or damage to person or property caused by the elements or by another Owner or person, or resulting from electricity, water, rain, dust, or sand which may leak or flow from outside of any parts of a Condominium Unit, or from any other place. No diminution or abatement of common expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area or from any action taken to comply with the law, ordinance, or orders of a government authority.

Article XXVII

Costs and Attorneys' Fees

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

Article XXVIII

Waiver

No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or by abandonment of his Condominium Unit.

Article XXIX
Severability Clause

The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration or the attached By-Laws.

Article XXX
Rules of Interpretation

Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include the masculine, feminine and neuter genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate. Captions used in this Declaration or in the By-Laws are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the terms and provisions of this Declaration or the By-Laws.

Article XXXI
Floor Plans

The Plans setting forth the layout, location, identification numbers, and dimensions of the initial Condominium Units and the Property are incorporated into this Declaration by reference, and were recorded on June 26, 2018 in the office of the Recorder of Vanderburgh County, Indiana, as Instrument Number 2018R00014258.

Article XXXII
Exculpation

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

ARTICLE XXXIII
Failure of Association to Insist on Strict Performance -- No Waiver

The failure of the Association to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future, or such term, covenant, condition, or restriction but such term, covenant, condition, or restriction shall remain in full force and effect. The receipt by the Association of any assessment from an Owner, with knowledge of the breach of any covenant hereof, shall not be deemed as a waiver of such breach and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors of the Association.

Article XXXIV
Assignment

Declarant may convey and assign all of Declarant's right, title and interest in and to the Property and/or the Real Estate at any time and the terms and provisions hereof shall be binding upon and shall inure to the benefit of the successors and assigns of Declarant.

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

HESTIA DEVELOPMENT, LLC

By: Charles L. Murphy
Name: CHARLES L. MURPHY
Title: MEMBER

"Declarant"

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

Before me, a Notary Public in and for said county and state, personally Charles L. Murphy of **Hestia Development, LLC**, who being first duly sworn by me upon oath, stated that he is the Managing Member of **Hestia Development, LLC**, and they being thereunto duly authorized, acknowledged and affirmed the execution of the foregoing instrument to be the voluntary act and deed of said limited liability company, and their voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal as of the 26 day of JUNE, 2018.

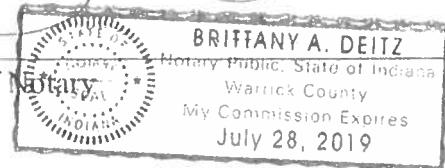
My Commission Expires:

My County of Residence is:

County, Indiana

Brittany A. Deitz
Signature of Notary Public

Printed Name of Notary



THIS INSTRUMENT was prepared by Kahn, Dees, Donovan & Kahn, LLP, Shannon S. Frank and Ashley R. Hollen, Attorneys at Law, 501 Main Street, P.O. Box 3646, Evansville, Indiana 47735-3646, at the specific request of the parties based solely on information supplied by one or more of the parties to this instrument. The drafter assumes no liability for any errors, inaccuracy, or omissions in this instrument resulting from the information provided, the parties hereto signifying their assent to this disclaimer by their execution and acceptance of this instrument.

EXHIBIT "A"
Boundary Description

Overall Boundary Description

Part of the Southwest Quarter of the Northwest Quarter of Fractional Section 18, Township 6 South, Range 9 West in Vanderburgh County, Indiana and being more particularly described as follows:

Commencing at the Southwest Corner of the Southwest Quarter of the Northwest Quarter of said Section 18; thence along the south line of said Quarter Quarter Section, South 89 degrees 22 minutes 01 second East 831.98 feet to the southwest corner of a tract of land conveyed to Hestia Development, LLC in Deed Document 2015R00020614 in the Office of the Recorder of Vanderburgh County, Indiana and being the point of beginning; thence along the west line of said Hestia tract, North 01 degree 14 minutes 29 seconds East 1329.03 feet to a point on the south side of a tract of land conveyed to the Board of Commissioners of Vanderburgh County, Indiana in Document 2003R00056468 in the Office of said Recorder; thence along the south side of said Commissioners tract, North 87 degrees 57 minutes 47 seconds East 27.84 feet to the beginning of a curve to the left having a central angle of 07 degrees 53 minutes 33 seconds, a radius of 457.60 feet and a chord dimension of North 83 degrees 55 minutes 04 seconds East 62.98 feet; thence along the south side of said Commissioners tract and along the arc of said curve 63.03 feet to the south side of a 16.5-foot exception described in said Hestia deed; thence along the south side of said exception and along the north line of said Hestia tract, North 89 degrees 54 minutes 32 seconds East 132.82 feet; thence continue along the south side of said exception and along the north line of said Hestia tract, North 89 degrees 38 minutes 09 seconds East 204.33 feet; thence along the east line of said Hestia tract, South 01 degree 25 minutes 45 seconds West 1342.98 feet to the southeast corner thereof and being a point on the south line of Southwest Quarter of the Northwest Quarter of said Section 18; thence along the south line of said Quarter Quarter Section, North 89 degrees 22 minutes 01 second West 422.92 feet to the point of beginning and containing a gross area of 13.062 Acres, more or less.

Subject to a 60-foot Access and Utility Easement for Arbors Drive recorded in Document 2003R00056469 in the office of said Recorder.

Also, subject to all other easements, rights-of-ways, and restrictions of record.

EXHIBIT "B"
Description of the Tract
(Phase I)

Part of the Southwest Quarter of the Northwest Quarter of Fractional Section 18, Township 6 South, Range 9 West in Vanderburgh County, Indiana and being more particularly described as follows:

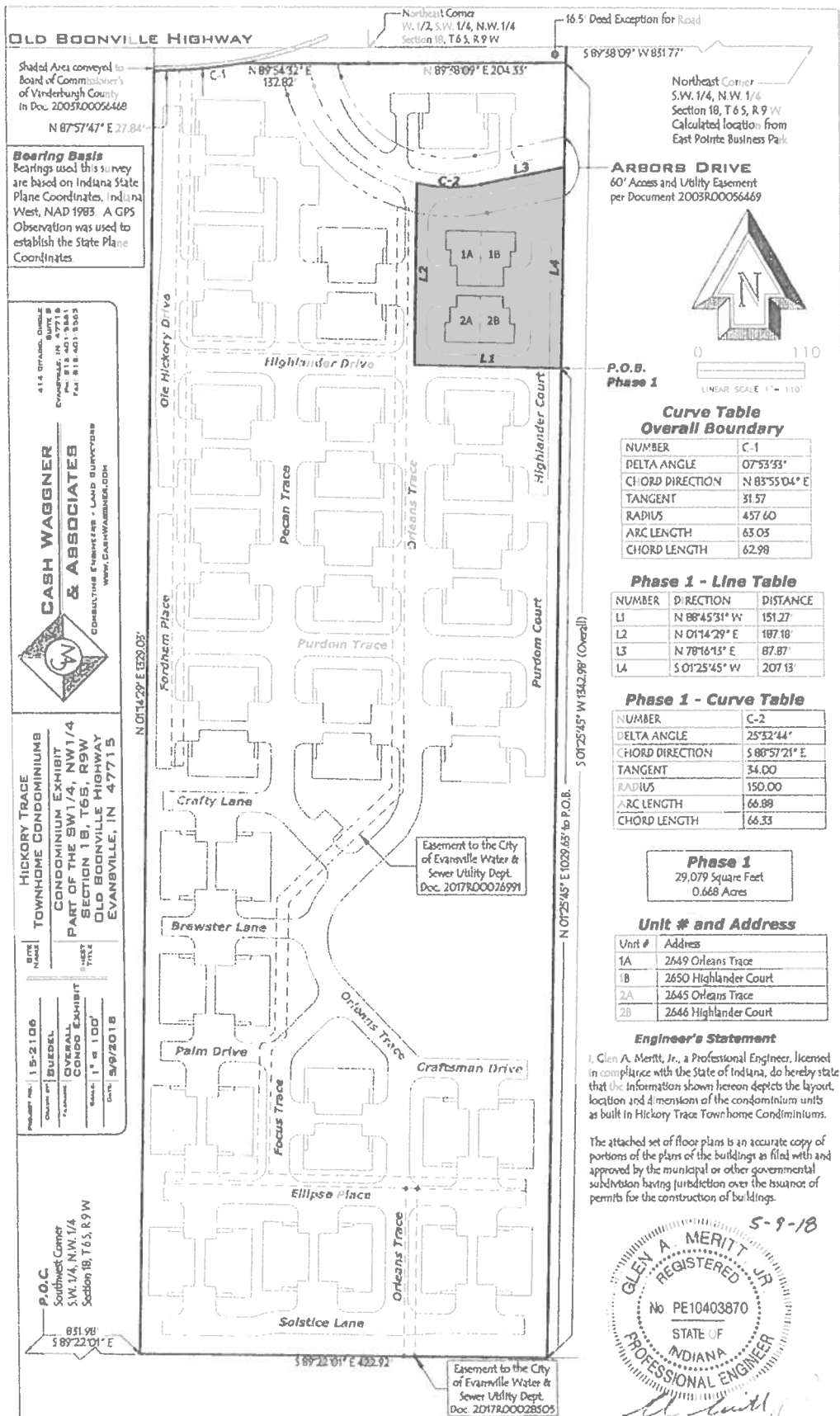
Commencing at the Southwest Corner of the Southwest Quarter of the Northwest Quarter of said Section 18; thence along the south line of said Quarter Quarter Section, South 89 degrees 22 minutes 01 second East 831.98 feet to the southwest corner of a tract of land conveyed to Hestia Development, LLC in Deed Document 2015R00020614 in the Office of the Recorder of Vanderburgh County, Indiana; thence continue along the south line of said Quarter Quarter Section, South 89 degrees 22 minutes 01 second East 422.92 feet to the southeast corner of said Hestia tract; thence along the east line of said Hestia tract, North 01 degree 25 minutes 45 seconds East 1029.63 feet to the point of beginning; thence North 88 degrees 45 minutes 31 seconds West 151.27 feet; thence North 01 degree 14 minutes 29 seconds East 187.18 feet to a point in the center of Arbors Drive and being the beginning of a curve to the left having a central angle of 25 degrees 32 minutes 44 seconds, a radius of 150.00 feet and a chord dimension of South 88 degrees 57 minutes 21 seconds East 66.33 feet; thence along the center of said Arbors Drive and along the arc of said curve 66.88 feet; thence continue along the center of said Arbors Drive, North 78 degrees 16 minutes 13 seconds East 87.87 feet to a point on the east line of said Hestia tract; thence along the east line of said Hestia tract, South 01 degree 25 minutes 45 seconds West 207.13 feet to the point of beginning and containing 29,079 square feet (0.668 Acres), more or less.

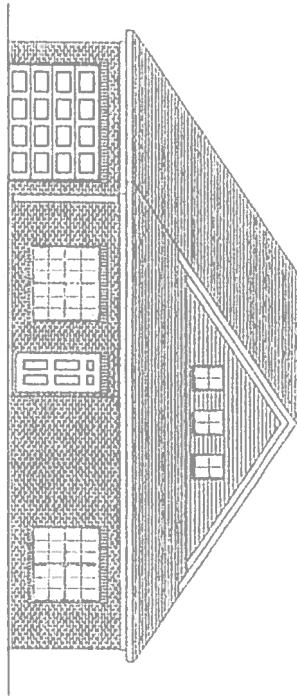
Subject to all easements, rights-of-ways, and restrictions of record.

EXHIBIT "C"

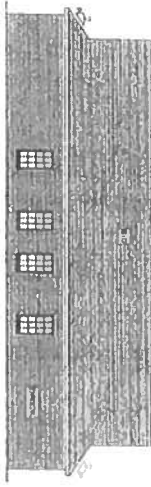
Floor Plans and Elevations of Initial Buildings

As Certified by Project Engineer

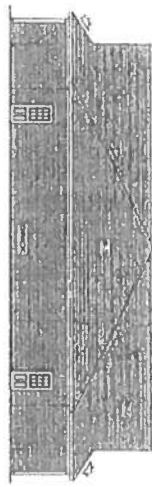




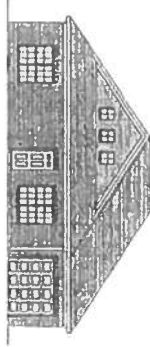
FRONT ELEVATION
SCALE: 1/4" = 1'-0"



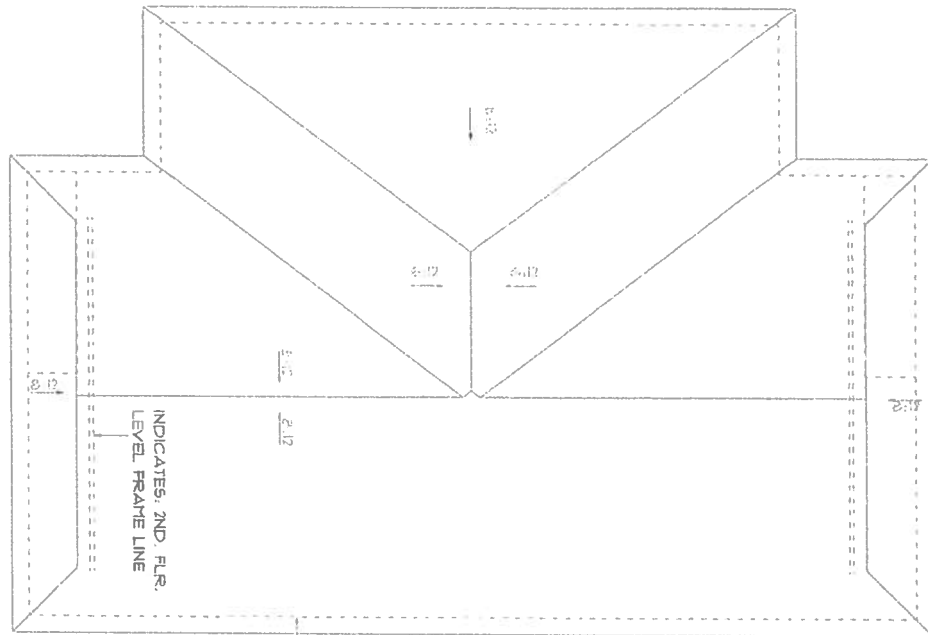
RIGHT-SIDE ELEV.
SCALE: 1/4" = 1'-0"



LEFT-SIDE ELEV.
SCALE: 1/4" = 1'-0"



REAR ELEVATION
SCALE: 1/4" = 1'-0"



FRAME LINE BELOW

ROOF-LINE LAYOUT
SCALE: 1/4" = 1'-0"
NOTES:
TRUSS ROOF

MURPHY HOMES		Kight HOME CENTER		<p>Residential Drafting Department - 604.447.1111</p> <p>11-208</p>	
<p>11-208</p> <p>11-208</p> <p>11-208</p>		<p>11-208</p> <p>11-208</p> <p>11-208</p>		<p>11-208</p> <p>11-208</p> <p>11-208</p>	

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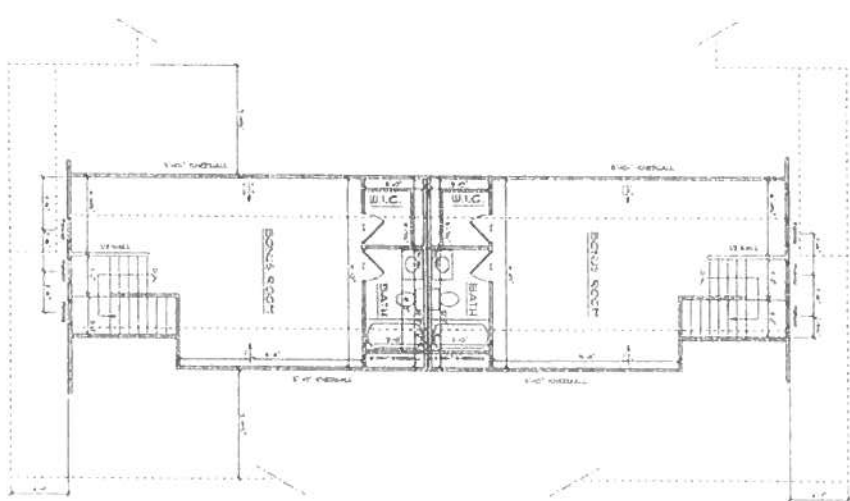
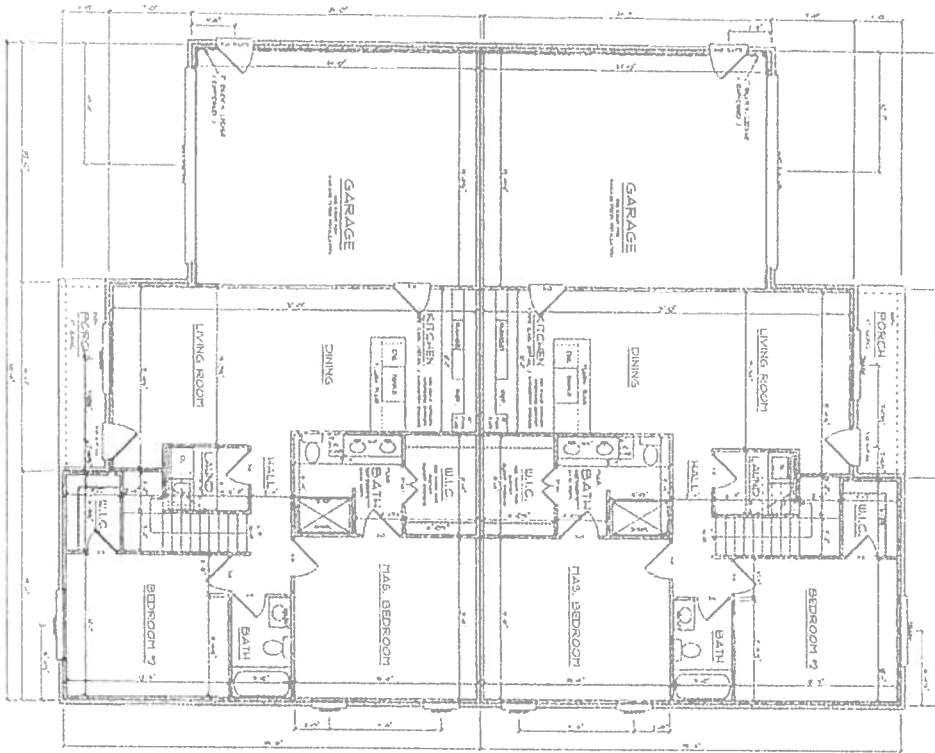


EXHIBIT "D" General Plan of Development for Expansion Of Condominium Into Other Areas

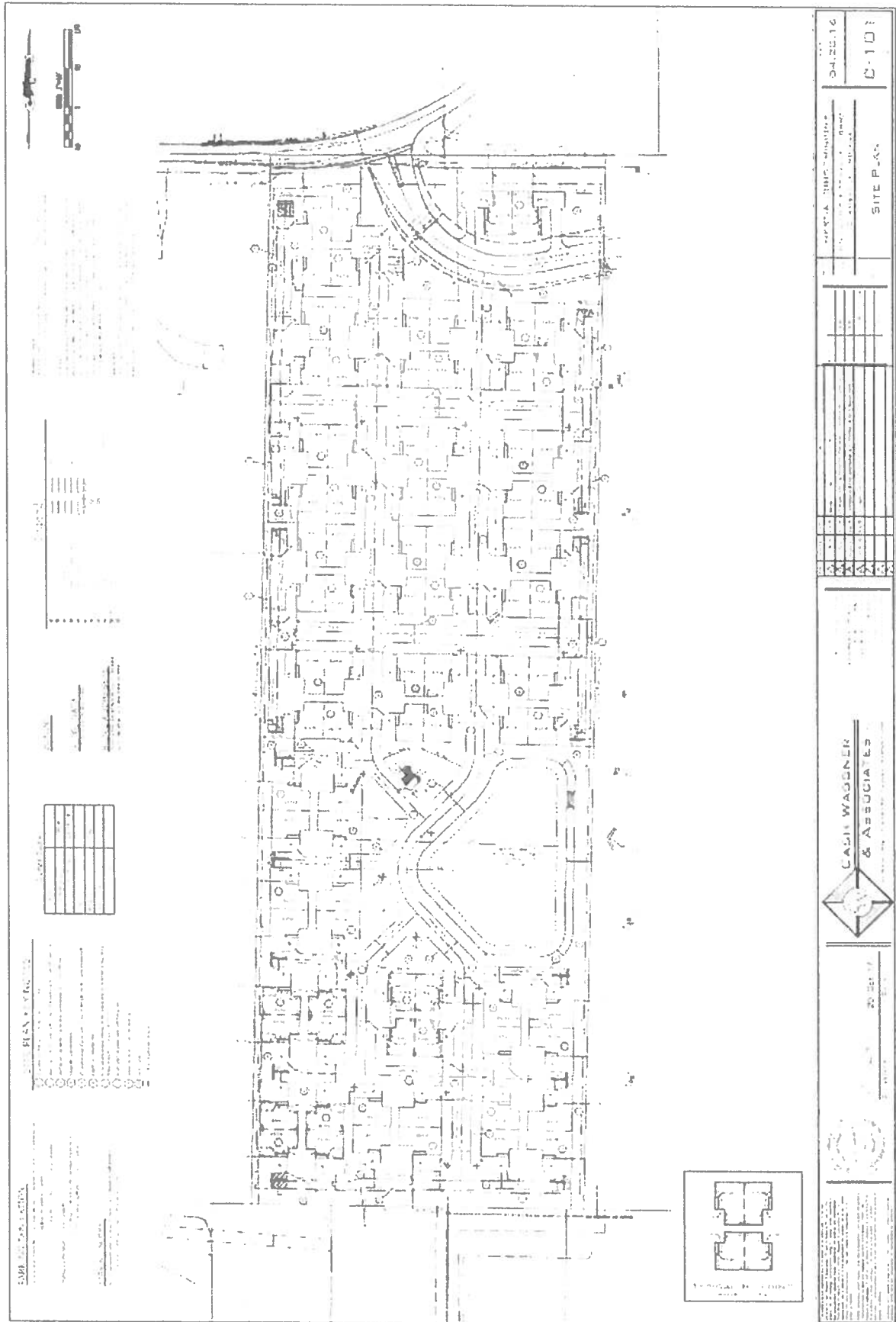


EXHIBIT "E"
Percentage Interest

The Percentage Interest in the Common Areas and Limited Common Areas appertaining to each Condominium Unit in Phase I is as follows:

Unit	Floor Area	Percentage of Interest
2645	1709 sq. ft.	25%
2646	1709 sq. ft.	25%
2649	1709 sq. ft.	25%
2650	1709 sq. ft.	25%

EXHIBIT "F"

[See attached Bylaws of Hickory Trace Townhomes Condominiums Owners Association, Inc.]