

**SECOND**  
**AMENDED AND RESTATED**  
**DECLARATION OF CONDOMINIUMS**  
  
**FOR**  
  
**THE BRIDGEVIEW CONDOMINIUMS**

## TABLE OF CONTENTS

|               |   |
|---------------|---|
| PREAMBLE..... | 1   |
| ARTICLE I     | Name of Condominiums.....2                                |
| ARTICLE II    | Definitions .....2-4                                      |
| ARTICLE III   | Units.....4-8   |
| Section 3.01  | Number and Location of Units.....4                        |
| Section 3.02  | Designations and Plans of Units.....5                     |
| Section 3.03  | Increases and Decreases in Size and Number of Units.....5 |
| Section 3.04  | Dimensions of Units.....5                                 |
| Section 3.05  | Ownership of Units.....5                                  |
| Section 3.06  | Use of Units.....6  |
| Section 3.07  | Maintenance and Repair of Units.....6                     |
| Section 3.08  | Alteration or Improvement of Units.....7                  |
| Section 3.09  | Real Estate Taxes.....8                                   |
| ARTICLE IV    | Common Areas and Limited Common Areas.....8-10            |
| Section 4.01  | Interest in Common Areas.....8                            |
| Section 4.02  | Common Areas to Remain Undivided.....8                    |
| Section 4.03  | Use of Common Areas.....8                                 |
| Section 4.04  | Alteration and Improvement of Common Areas.....9          |
| Section 4.05  | Use of Limited Common Areas.....9                         |
| Section 4.06  | Disclaimer of Bailee Liability.....10                     |
| ARTICLE V     | Easements.....10-11                                       |
| Section 5.01  | Utilities, Pipes and Conduits.....10                      |
| Section 5.02  | Access of Board of Directors.....10                       |
| Section 5.03  | Declarant’s Easement for Marketing Purposes.....11        |
| Section 5.04  | Declarant’s Easement for Completion of Units.....11       |
| Section 5.05  | Easements for Encroachments.....11                        |
| Section 5.06  | Notice; Confidentiality.....11                            |
| ARTICLE VI    | Association Membership and Voting Rights.....12           |
| ARTICLE VII   | Board of<br>Directors.....11-13                           |

|               |   |       |
|---------------|---|-------|
| ARTICLE VIII  | Insurance and Casualty Losses.....  | 13-16 |
| Section 8.01  | Insurance Coverage.....   | 13    |
| Section 8.02  | Payment of Insurance Premiums.....  | 13    |
| Section 8.03  | Policy Standards.....   | 14    |
| Section 8.04  | Adjustment of Losses.....   | 14    |
| Section 8.05  | Individual Insurance by Unit Owners.....  | 14    |
| Section 8.06  | Handling of Casualty Insurance Proceeds.....  | 14    |
| Section 8.07  | Damages and Destruction.....  | 15    |
| Section 8.08  | Non-Liability and Indemnity.....  | 16    |
| ARTICLE IX    | Common Expenses.....  | 16-18 |
| Section 9.01  | Common Expenses in Accordance with Percentage Interest.....                             | 16    |
| Section 9.02  | Unpaid Common Expense – Personal Obligation of Unit Owner<br>And Lien on Unit.....      | 17    |
| Section 9.03  | Foreclosure of Lien for Common Expenses.....  | 17    |
| Section 9.04  | No Exemption or Waiver of Common Expenses.....  | 17    |
| Section 9.05  | Unit Services and Utilities Through Common Expenses.....                                | 17    |
| ARTICLE X     | Liability for Common Expenses.....  | 18    |
| ARTICLE XI    | Obligations, Responsibilities and Liabilities of Unit Owners.....                       | 18-19 |
| Section 11.01 | All Owners and Tenants Subject to Condominium Documents<br>Which Run With the Land..... | 18    |
| Section 11.02 | Remedies for Non-Compliance.....  | 18    |
| Section 11.03 | Recovery of Legal Fees and Costs.....   | 18    |
| Section 11.04 | Unit Owner Liable for Negligence.....   | 18    |
| Section 11.05 | Rights are Cumulative.....  | 19    |
| ARTICLE XII   | Additional Covenants and Restrictions.....  | 19    |
| ARTICLE XIII  | Amendments.....   | 19-20 |
| ARTICLE XIV   | General.....  | 20    |

## **SCHEDULES**

|            |  |
|------------|--|
| Schedule A | Legal Description of the Subdivision Real Estate |
| Schedule B | Legal Description of the Property                |
| Schedule C | Percentage Interests of the Units                |
| Schedule D | Bylaws of the Association                        |

**SECOND AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUMS  
FOR  
THE BRIDGEVIEW CONDOMINIUMS**

---

THIS SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUMS FOR THE BRIDGEVIEW CONDOMINIUMS (this "Declaration") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2011, by Twin Lakes Investment LLC, an Indiana limited liability company (the "Declarant") for itself, and on behalf of its successors, grantees, and assigns.

**WITNESSETH THAT:**

WHEREAS, Declarant is the owner of the real estate described on Schedule A (the "Project Real Estate"); and

WHEREAS, Declarant created a planned community comprised of condominiums and single family lots to be known and designated as "Bridgeview" (the "Project"), as per the plat thereof recorded on the 5th day of June, 2006, under Instrument No. 2006-2128, Plat Cabinet D, Slide 187-188, in the records of the office of the Recorder of Carroll County, Indiana, and by reference made a part hereof.

WHEREAS, Declarant has submitted a portion of the Project Real Estate, as described in Schedule B (the "Property") to the provisions of the Indiana Condominium Law, IND. CODE § 32-25-1-1 et seq. and declared that the Building to be located and constructed on the Property shall be a "Condominium" pursuant to the Act.

WHEREAS, Declarant previously recorded the Declaration of Condominiums for The Bridgeview Condominiums on June 16, 2006, under Instrument No. 2006-2286, OR Book 59, Page 785-809 and now desires to amend and restate in full the Declaration of Condominiums for The Bridgeview Condominiums.

WHEREAS, Declarant previously recorded an Amended and Restated Declaration of Condominiums for The Bridgeview Condominiums on November 14, 2006, under Instrument No. 2006-4460, OR Book 62, Page 1190-1229.

WHEREAS, Declarant previously recorded a First Amendment to Amended and Restated Declaration of Condominiums for The Bridgeview Condominiums on January 24, 2007, under Instrument No. 2007-0308.

WHEREAS, Declarant previously recorded the Plan of the Building and Units on November 14, 2006, under Instrument Number 2006-4459, OR Book 62, Page 1185-1189, which Plans were amended on January 24, 2007, under Instrument No. 2007-309, OR Book 63, Page 1896.

WHEREAS, Declarant desires to amend and restate in full the Amended Declaration and the First Amendment to the Amended Declaration and, in particular, Exhibit B an Exhibit C to reduce the number of Lots included in The Bridgeview Condominiums and, the Unit Designations and the Percentage Interests of Common Areas to increase each respective Unit's percentage interest in the Common Areas applicable to its Lot.

WHEREAS, the Unit Owners of The Bridgeview Condominiums by the required vote, must consent to any amendments of the Declaration and, the Board of Directors of The Bridgeview Condominium Owners Association, Inc. must certify that all necessary consents have been obtained.

WHEREAS, Declarant must obtain the prior approval of the Area Plan Commission of Carroll County and the Monticello City Council to the modifications contained herein.

WHEREAS, the Declarant desires that this Second Amended and Restated Declaration of Condominiums replace and supersede any and all prior Declarations and amendments regarding The Bridgeview Condominiums.

NOW, THEREFORE, Declarant makes this Declaration as follows:

#### **ARTICLE I: NAME OF CONDOMINIUMS**

**Section 1.01. Name.** The Condominiums shall be known as "The Bridgeview Condominiums."

#### **ARTICLE II: DEFINITIONS**

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

**Section 2.01.** "Act" shall mean the Indiana Condominium Law, IND. CODE § 32-25-1-1 et seq., as amended.

**Section 2.02.** "Articles" shall mean the Articles of Incorporation of the Association filed, or to be filed, with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended and/or restated from time to time.

**Section 2.03.** "Association" shall mean The Bridgeview Condominium Owners Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

**Section 2.04.** "Board of Directors" shall mean the governing body of the Association, being either the Initial Board referred to in the Bylaws or any subsequent Board of Directors elected by the Unit Owners from time-to-time in accordance with the Bylaws.

**Section 2.05.** “Building” shall mean each two-story (with basement) residential building constructed on a Lot. The Unit Owners of Units in each building will be members of The Bridgeview Condominium Owners Association, Inc. The use and occupancy of the Units, Common Areas, and Limited Common Areas in each building will be subject to the Articles, Bylaws, rules and regulations, as they are adopted and amended from time to time, of The Bridgeview Condominium Owners Association, Inc., and Bridgeview, Inc.

**Section 2.06.** “Bylaws” shall mean the Bylaws adopted by the Board of Directors of the Association and all amendments as the same are or hereafter may be amended and/or restated from time to time.

**Section 2.07.** “Common Areas and Facilities” or “Common Areas” shall mean (a) the Property, (b) the foundations, columns, girders, beams, supports and exterior surfaces of roofs of the Buildings, (c) halls, corridors, fire exits, lobbies, vestibules, trash chutes, HVAC and mechanical rooms, elevators, stairs, stairways, entrances and exits of the Building, if any, (except those located within the interior of Units), (d) sidewalks, (e) central electricity, gas, water, air conditioning and sanitary sewer serving the Building (including those located in the interior of the Building), if any, (f) exterior lighting fixtures and electrical service lighting the exterior of the Building unless separately metered to a particular Unit, (g) pipes, ducts, electrical wiring and conduits and public utility lines not located within any Unit or which serve more than one Unit, (h) floors, roofs and exterior perimeter walls of the Buildings, except to the extent the same are otherwise classified and defined herein as part of the Unit, (i) all improvements, facilities and appurtenances located outside of the boundary lines of the Units, and (j) Limited Common Areas, except those areas and facilities expressly classified and defined herein as part of any Unit. Unless expressly stated to the contrary, the term Common Areas as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat and Plans as a “Common Area”, or such other areas within the Property that are not otherwise identified on the Plat, and which are the maintenance responsibility of Declarant.

**Section 2.08.** “Common Expenses” shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Areas and all sums lawfully assessed against the Unit Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses. Common Expenses shall not include the maintenance, repair, or replacement of sewage pumps and grinders or any other utilities specifically metered to a particular Unit.

**Section 2.09.** “Declarant” shall mean Twin Lakes Investment LLC, an Indiana limited liability company, and its successors or assigns.

**Section 2.10.** “Declaration” shall mean this Second Amended and Restated Declaration of Condominiums for The Bridgeview Condominiums, as amended and/or restated from time to time. Any reference to the Declaration in the Articles and Bylaws of the Association shall mean this Declaration and any amendments or restatements thereto.

**Section 2.11.** “Limited Common Areas” shall mean those Common Areas, the use and enjoyment of which are limited to certain Units, which are depicted and/or described as such in the Plans or otherwise defined as such in Section 4.05.

**Section 2.12.** “Lot” shall mean the individual Lots, as shown on the Plat, upon which a Building shall be built.

**Section 2.13.** “Mortgagee” shall mean the holder of a first mortgage lien on a Unit.

**Section 2.14.** “Percentage Interests” shall mean the percentage of undivided interest in the fee simple title to the Common Areas and Limited Common Areas appertaining to each Unit as specifically expressed in Section 3.05 and Section 4.01.

**Section 2.15.** “Plans” shall mean the floor plans as amended from time to time of the Building and Units prepared by Philip C. Grounds, Professional Engineers, certified by Philip C. Grounds, Professional Engineer, on the 14th day of November, 2006, and recorded with the Office of the Recorder of Carroll County in Book 62, Page 1185-1189, Instrument Number 2006-4459, as amended and recorded with the Office of the Recorder of Carroll County on January 24, 2007, in OR Book 63, Page 1896, Instrument No. 2007-309.

**Section 2.16.** “Plat” shall mean the final plat of the Property, recorded with the Recorder of Carroll County, Indiana, on the 5th day of June, 2006, as Document Number 2006-2128, as the same may be hereafter amended or supplemented pursuant to this Declaration, as amended from time to time.

**Section 2.17.** “Property” shall mean the real property described in Schedule B, as presently or hereafter improved.

**Section 2.18.** “Unit” shall mean any three-dimensional parcel of real property within the Building, which is more particularly shown on the Plans. A Unit shall include any and all improvements situate therein, but shall not include any portion of the Common Areas which may be located therein.

**Section 2.19.** “Unit Owner(s)” shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Unit which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term “Unit Owner” shall include the Declarant.

### **ARTICLE III: UNITS**

**Section 3.01. Number and Location of Units.** One Building shall be constructed on each Lot. The Buildings on Lots 37, 38, and 39 shall be 6 Units.

**Section 3.02. Designations and Plans of Units.** Schedule C is a list of all Units in each Building, their Unit designations, identification numbers, and Percentage Interest in the Common Areas, based upon an equal division to each Unit.

**Section 3.03. Increases and Decreases in Size and Number of Units.** Any Unit Owner or Unit Owners shall have the right to divide or combine Units owned by such Unit Owner or Unit Owners so long as the Percentage Interest appurtenant to such Units after such division or combination shall equal in total the Percentage Interest applicable to the Unit or Units divided or combined prior to such division or combination. Any such division or combination shall require the written consent of a majority of the Board of Directors and shall be in compliance with all governmental laws, codes, ordinances and regulations including Article XIII, Amendments of this Declaration. The cost of any such division or combination shall be the responsibility of the Unit Owner or Unit Owners being divided or combined. Any such division or combination shall become effective upon the recording in the Carroll County Recorder's Office of an amendment to this Declaration executed by the Unit Owner or Unit Owners so divided or combined together with the filing of floor plans of the Unit or Units as divided or combined with the certification by tax authorities of tax lot numbers conforming to the new Unit or Units.

**Section 3.04. Dimensions of Units.** Each Unit consists of the area measured horizontally from the exterior surface of the sheetrock of all opposite walls to the exterior surface of the sheetrock of all opposite walls (except that walls between Units are measured to and from the center line of such wall) and vertically from the exterior surface of the concrete forming the floor of the Unit up to the exterior surface of the finished surface of the ceiling of the Unit, subject to such encroachments as now exist or may be caused or created by the construction, settlement or movement of the Building in which the Unit is located or by permissible repairs, construction or alterations. The water heater and the heating, ventilating and air conditioning equipment servicing the Unit and all pipes, ducts, wires and conduits connecting such equipment to the Unit, as well as electric service lines originating at the individual meter measuring the consumption of electricity for the Unit, and branch water lines exclusively servicing the Unit, are part of the Unit.

**Section 3.05. Ownership of Units.**

- (a) Each Unit is identified on the Plans, by a Unit number. The legal description for each Unit shall consist of the Unit number as shown on the Plans, and shall now be stated as: "Unit Number \_\_\_\_\_ of The Bridgeview Condominiums created by the Second Amended and Restated Declaration of Condominiums for The Bridgeview Condominiums, as amended and/or restated from time to time, recorded as Document Number \_\_\_\_\_, under the date of \_\_\_\_\_, \_\_\_\_\_, in the records of Carroll County, Indiana." The Percentage Interest of each Unit Owner in the Common Areas and Limited Common Areas, shall be that Percentage Interest as set forth on Schedule C. Except as otherwise provided or permitted in "Article XIV, Expandable Condominium and Declarant's Reserved Rights," or elsewhere herein, the Percentage Interest appertaining to each separate Unit in the Common Areas and Limited Common Areas shall be of a permanent nature and shall not be altered without the unanimous

consent of all the Unit Owners and Mortgagees and then only if in compliance with all requirements of the Act.

- (b) When each Unit is sold, such Unit Owner shall obtain fee simple ownership in the Unit acquired and the appurtenant undivided interest in the Common Areas, and Limited Common Areas, as set forth in Schedule C.

**Section 3.06. Use of Units.**

- (a) Primary Use for the Building. The Units of the Building shall be primarily used for single family residential dwellings.
- (b) Procedure for Obtaining Approval of Board of Directors. Any Unit Owner, or prospective Unit Owner, lessee or prospective lessee of a Unit, seeking approval from the Board of Directors to use a Unit for a purpose not specifically permitted in subsection (a), shall request such approval by written notice to the Board of Directors. Such notice shall clearly specify the use for which approval is sought as well as such other information as the Board of Directors may reasonably require.

The party seeking such approval shall use the form, if any, supplied by the Association in order to supply such information. The Board of Directors shall respond to the request in writing within twenty (20) days after receipt of such request or receipt of such further information as the Board of Directors shall reasonably require. The failure of the Board of Directors to act within such twenty (20)-day period shall be deemed to constitute approval of such use as the case may be. The party obtaining such approval may demand and shall be entitled to receive such approval from the Board of Directors in recordable form. Any approval or deemed approval shall be subject to all governmental laws, codes, ordinances and regulations.

- (c) Discretionary Approval. The approval or disapproval of any request submitted to the Board of Directors pursuant to this Section shall be made by the Board of Directors in its sole discretion.
- (d) Model Units. Notwithstanding anything to the contrary contained in this Declaration, Declarant may designate any Unit as a unit "model," or sales and/or management office. Any Unit designated by Declarant for use as a model, and/or sales and/or management office, may, at Declarant's option, either be owned by Declarant, or sold and leased back by Declarant for such purpose. Declarant's right to so designate and use Unit shall continue so long as Declarant owns or may construct any Units, and no action of the Association or any Unit Owner shall impair such right.

**Section 3.07. Maintenance and Repair of Units.**

- (a) Responsibility of the Board of Directors. It shall be the responsibility of the Board of Directors to oversee the maintenance, repair or replacement of:

- (1) All portions of the Unit which contribute to the support of the Building, including main bearing walls, but excluding painting, wall papering, decorating or other work on the interior surfaces of walls, ceilings and floors within the Unit.
  - (2) All portions of the Unit which constitute a part of the exterior of the Building.
  - (3) All Common Areas.
  - (4) All incidental damage caused by the work done at the direction of the Board of Directors.
  - (5) All areas of the Property that are outside of the Units therein in addition to the items listed in Sections 3.07(a)(1) through 3.07(a)(4).
- (b) In the event that the Board of Directors fails to perform its duties listed in Section 3.07(a), after reasonable notice from any Unit Owner, such Unit Owner may make the repairs required to ensure the Building is maintained. Moreover, any Unit Owner may take action to repair, maintain, or replace any item listed in Section 4.07(a) in an emergency situation. If any Unit Owner fulfills the duties to repair and maintain the Building in accordance with Section 3.07(a), the Board of Directors shall reimburse the Unit Owner for all actual money expended by the Unit Owner.
- (c) Responsibility of Unit Owner. It shall be the responsibility of the Unit Owner:
- (1) To maintain, repair, or replace at his own expense all portions of the Unit which may cause injury or damage to the other Units or to the Common Areas.
  - (2) To paint, wallpaper, decorate and maintain the interior surfaces of all walls, ceilings and floors within the Unit.
  - (3) To perform his responsibilities in such a manner and at such reasonable hours so as not to unreasonably disturb other Unit Owners.
  - (4) Subject to Section 3.07(b), to refrain from repairing, altering, replacing, painting, decorating or changing the exterior of the Unit or any exterior appendages, whether exclusively used by the Unit Owner or otherwise, without obtaining the consent of the Board of Directors.

**Section 3.08. Alteration or Improvement of Units.** No alteration or improvement to the Unit which would alter or affect the Common Areas may be made by any Unit Owner without the unanimous written consent of the Board of Directors.

No application shall be filed with any governmental authority for a permit covering an addition, alteration or improvement to be made in a Unit which alters or affects the Common Areas, unless approved and executed by the Board of Directors. Such approval and execution shall not, however, create any liability on the part of the Association, Board of Directors, or its individual

members, to any contractor, subcontractor, materialman, architect or engineer, or to any person having any claim for injury to person or damage to property arising from such addition, alteration or improvement.

Consent shall be requested in writing to the respective Board of Directors. The Board of Directors shall have the obligation to answer within twenty (20) days and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration. The Board of Directors may require that the Unit Owner making such improvement, alteration or addition obtain appropriate insurance coverages in such amounts as the Board of Directors deems proper.

**Section 3.09. Real Estate Taxes.** Real estate taxes are to be separately assessed, taxed and paid by Unit Owner, including the Unit Owner's pro-rata share of the real estate tax imposed on the Common Areas. In the event that for any year real estate taxes are not separately assessed and taxed to each Unit Owner, but are assessed and taxed on the Property (or the Property and any other portions thereof) as a whole, then each Unit Owner shall pay his proportionate share of such taxes to the extent attributable to the Property in accordance with his respective Percentage Interest or as determined by the Board of Directors.

#### **ARTICLE IV: COMMON AREA AND LIMITED COMMON AREAS**

**Section 4.01. Interest in Common Areas.** Each Unit Owner shall have an undivided interest in the Common Areas, as tenants in common with all other Unit Owners.

Each Unit Owner shall have such Percentage Interest in the Common Areas as is set forth on Schedule C or as may result pursuant to a division or combination of a Unit or Units in accordance with Section 3.03, and shall bear such percentage of the Common Expenses. The Percentage Interest of each initial Unit in the Common Areas has been determined and fixed by the Declarant by taking the approximate proportion of the area in square feet which each Unit bears to the total area in square feet of all Units.

The undivided interest in the Common Areas shall not be separated from the Unit to which it appertains and shall be deemed conveyed or encumbered with the Unit even though such interest may not be expressly mentioned or described in the conveyance or other instrument.

**Section 4.02. Common Areas to Remain Undivided.** The Common Areas shall remain undivided (except for a division or combination pursuant to Section 3.03 of this Declaration) and no Unit Owner shall bring any action for partition, division, or other like action, unless by unanimous agreement of the Board of Directors and the Unit Owners of the Building.

**Section 4.03. Use of Common Areas.** The Common Areas shall be used for the benefit of the Unit Owners. Each Unit Owner may use the Common Areas in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other Unit Owners. This shall not be deemed to prevent some Unit Owners from enjoying substantially

exclusive rights or advantages in a part or parts of the Common Areas by reason of their ownership of a particular Unit or Units.

If any question arises, the Board of Directors shall determine the purpose for which a Common Area is intended to be used. The Board of Directors shall have the right to promulgate rules and regulations limiting the use of the Common Areas to Unit Owners, their clients, guests, invitees and employees as well as to provide for the exclusive use by a Unit Owner and his guests for special occasions of any facility. Such use may be conditioned, among other things, upon the payment by the Unit Owner seeking such use, of such assessment as may be established by the Board of Directors for the purpose of defraying the costs thereof.

**Section 4.04. Alteration and Improvement of Common Areas.** The Board of Directors shall have the right to make or cause to be made such alterations and improvements to the Common Areas as in its opinion may be beneficial and necessary or which is requested in writing by a Unit Owner or Unit Owners and the holders of first mortgages thereon, subject however, to the requirements that if such alteration or improvement shall cost more than fifteen percent (15%) of the then current estimated annual budget (including reserves), such alteration or improvement must be approved by more than fifty percent (50%) in Percentage Interest of the Unit Owners in the subject Building, voting at a meeting duly called pursuant to the Bylaws of the Association.

Alterations or improvements costing less than fifteen percent (15%) of the Association's then current estimated annual budget may be made by the Board of Directors and the cost thereof shall constitute a part of the Common Expenses for Unit Owners in the Building. Before undertaking such work, the Board of Directors may require the consent in writing of such Unit Owners and the holders of first mortgages thereon, whose rights, in the sole opinion of the Board of Directors, may be prejudiced by such alteration or improvement. When in the sole opinion of the Board of Directors, the alteration or improvement is general in character, the costs therefor shall be assessed as Common Expenses Unit Owners in the Building. When in the sole opinion of the Board of Directors, as evidenced by a majority vote, an improvement shall be exclusively or substantially exclusively for the benefit of one or more Unit Owners that requested it, the cost shall be assessed against such Unit Owner or Unit Owners in such proportion as the Board of Directors shall determine is fair and equitable. Nothing herein contained shall prevent the Unit Owners affected by such alteration or improvement from agreeing in writing, either before or after the assessment is made, to be assessed in different proportions.

**Section 4.05. Use of Limited Common Areas.** Each Unit Owner and other occupant shall have the right to (a) the exclusive use and possession of the Limited Common Areas serving exclusively the Unit of such Unit Owner or other occupant, which right shall be appurtenant to and shall run with the title to such Unit, and except as otherwise expressly permitted by this Declaration, shall not be separated from such Unit, and (b) the use and possession of the Limited Common Areas serving the Unit or such Unit Owner or other occupant in common with one or more (but not all) other Units, which use and possession shall be to the exclusion of all other persons except the Unit Owner or other occupant of any such other Unit to which such Limited Common Areas shall respectively appertain.

The Limited Common Areas and those Units to which use thereof is limited are as follows:

- (a) Terraces attached or adjacent to a particular Unit and designated on the Plans or other agreement between the Unit Owner and the Declarant or the Association shall constitute Limited Common Areas and be limited to the exclusive use of the Unit to which they are attached or adjacent.
- (b) The exterior sides and surfaces of doors, windows and frames surrounding the same in the perimeter walls in each Unit shall constitute Limited Common Areas and be limited to the exclusive use of the Unit to which they appertain.
- (c) The boat slip designated for the exclusive use of each Unit by the Board of Directors of the Association.
- (d) Any other areas designated and shown on the Plans or Plat as Limited Common Areas shall constitute Limited Common Areas and be limited to the Unit or Units to which they appertain as shown on the Plans or as provided in an agreement between the Unit Owner of the Unit and the Declarant or the Association.

**Section 4.06. Disclaimer of Bailee Liability.** Notwithstanding anything to the contrary contained in this Declaration, neither the Board of Directors, the Association, any Unit Owner, nor the Declarant shall be considered a bailee of any personal property stored in the Common Areas, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence or otherwise.

## **ARTICLE V: EASEMENTS**

**Section 5.01. Utilities, Pipes and Conduits.** Each Unit Owner shall have an easement in common with all other Unit Owners to use, in accordance with present use and present available facilities, all pipes, wires, ducts, cables, conduits, public utility lines and other Common Areas located in any of the other Units and serving the Unit or Units of such Unit Owner. Each Unit shall be subject to an easement in favor of all other Unit Owners to use in accordance with present use and present available facilities, the pipes, ducts, cables, wires, conduits, public utility lines and other Common Areas serving such other Units and located in such Unit.

**Section 5.02. Access of Board of Directors.** The Board of Directors shall have a right of access to each Unit:

- (a) to inspect the same;
- (b) to remove violations therefrom;
- (c) for the maintenance, repair, replacement or improvement of any portion of the Common Areas (or any portion of the Unit which is the responsibility of the Board of Directors)

including any pipes, wires, ducts, cables, conduits and public utility lines located in or adjacent to any Unit;

- (d) to prevent damage to the Common Areas or any other Unit;
- (e) to abate any violation of law, order, rules or regulations of any governmental authority having jurisdiction thereof.

The cost of such repairs shall be a Common Expense. The Board of Directors shall have a right of access to all Common Areas to remove violations and for inspection, maintenance, repair or improvement.

**Section 5.03. Declarant's Easement for Marketing Purposes.** The Declarant reserves the right with respect to its marketing of Units, to use the Common Areas for the ingress and egress of itself and for prospective purchasers of Units. Any damages to the Common Areas resulting from this easement shall be repaired by the Declarant within a reasonable time after the completion of its sale of the Units or termination of such use of the Common Areas, whichever shall first occur. The Declarant agrees to hold the Associations and Board of Directors harmless from all liabilities resulting from the use of the Common Areas in conjunction with the marketing of Units. This section shall not be amended without the consent of the Declarant.

**Section 5.04. Declarant's Easement for Completion of Units.** The Declarant reserves the right for the purpose of completing the Units, Common Areas and to have access to the Units and Common Areas for the ingress and egress of itself and its subcontractors. The Declarant agrees to hold the Associations, Board of Directors, Unit Owners, and occupants of any Units entered, harmless from all liabilities resulting from such use of the Building, Units, or Common Areas, as the case may be, in conjunction with the completion of the Units and Common Areas. This Section shall not be amended without the consent of the Declarant.

**Section 5.05. Easements for Encroachments.** An easement shall exist for any portion of a Unit or Common Areas which encroaches upon any other Unit or Common Areas as a result of (i) the original construction or settling or shifting of the Building or (ii) any repair or restoration undertaken by the Board of Directors, or (iii) any construction after a partial or total destruction as a result of a fire or other casualty or as a result of condemnation or eminent domain proceedings. Such easements as provided in this Section shall exist so long as the Building in which the encroachment exists shall stand.

**Section 5.06. Notice; Confidentiality.** For purposes of this Article V, the Declarant or the Board of Directors, as the case may be, shall give the Unit Owner reasonable notice of the requirement for access to the Unit Owner's Unit and the Declarant or Board of Directors agrees that it shall take reasonable steps to ensure that information about the Unit Owner and the contents of such Unit are kept confidential. During the time that the Declarant or Board of Directors is in any Unit, the Unit Owner, or its representative, may be present.

## **ARTICLE VI: ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

**Section 6.01. Association of Owners.** Subject to the rights of and obligations of the Unit Owners, the maintenance, repair, upkeep, replacement, administration, management and operation of the Common Areas shall be the obligation of the Association. Each Unit Owner shall, automatically upon becoming an owner of a Unit, be and become a Member of the Association and shall remain a Member until such time as his ownership of a Unit ceases, but membership shall terminate when such person ceases to be a Unit 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 Bylaws, which shall be appointed by Declarant) in accordance with and as prescribed by the Bylaws. Each Owner shall be entitled to cast his vote based on his Percentage Interest for the election of the Board of Directors, except for such Initial Board who shall serve for the period provided in the Bylaws. Each person serving on the Initial Board, whether as an original member or as a replacement member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Association and a Unit Owner solely for the purpose 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 a Unit Owner for any other purpose (unless he is actually a Unit Owner and thereby a member of the Association).

## **ARTICLE VII: BOARD OF DIRECTORS**

**Section 7.01. Board of Directors.** The affairs of the Building shall be governed and controlled by a Board of Directors who shall be elected to serve and shall have the duties and powers provided in the Bylaws, a copy of which is attached as Schedule D. The Board of Directors shall have the responsibility for the maintenance, repair, replacement, management, operation and use of the Common Areas and shall have the right to delegate its duties to a manager or agent or to other persons, firms or corporations.

**Section 7.02. Regulation to be Distributed to Unit Owners.** All rules and regulations promulgated by the Board of Directors concerning the use of the Property shall be distributed to each Unit Owner, prior to the time the rules and regulations become effective.

**Section 7.03. Declarant's Written Consent Necessary for Certain Actions by Board of Directors.** During the three (3) year period from the date of recording this Declaration and so long as the Declarant or its designee shall continue to own Units representing twenty percent (20%) or more in Percentage Interest, the Board of Directors may not, without the Declarant's written consent:

- (a) make any addition, alteration or improvement to the Common Areas; or
- (b) hire any employee in addition to the employees, if any, provided for in the initial budget;  
or

- (c) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the first closing of title to a Unit; or
- (d) borrow money on behalf of any Building; or
- (e) reduce the quantity or quality of services or maintenance of the Property.

This Section may not be amended without the consent of the Declarant.

### **ARTICLE VIII: INSURANCE AND CASUALTY LOSSES**

**Section 8.01. Insurance Coverage.** The Board of Directors shall obtain and maintain on behalf of the Association in full force and effect, at all times, the following insurance coverages:

- (a) Insurance covering all of the insurable improvements on the Property (with the exception of improvements and betterments made by the respective Unit Owners or occupants) and all personal property as may be owned by the Association, against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and such other risk as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the Units, including, but not limited to, vandalism and malicious mischief in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations), as determined annually by the Board of Directors;
- (b) Comprehensive public liability insurance covering all of the Common Areas and insuring against all damage or liability caused by the acts of the Board of Directors, its officers, directors, agents and employees, all Unit Owners and other persons entitled to occupy any Unit or any other portion of the Building, with liability limits in amounts authorized from time to time by the Board of Directors, but in no event less than the amounts required in the Act;
- (c) Such other types and amounts of insurance as may from time to time be deemed necessary, desirable and proper, and be authorized by the Board of Directors or in the Bylaws of the Association.
- (d) Such other types and amounts of insurance as may from time to time be deemed necessary, desirable or proper, and be authorized by the Board of Directors or in the Bylaws of the Association.

**Section 8.02. Payment of Insurance Premiums.** Premiums for all insurance carried by the Board of Directors shall be a Common Expense.

**Section 8.03. Policy Standards.**

- (a) All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for, and for the use and benefit of, each of the Unit Owners and their mortgagees as their interest may appear, and their respective Percentage Interest in and to the Common Areas. Each such insurance policy shall be issued by an insurer authorized under the laws of the State of Indiana to do business in Indiana and to issue the coverage provided by the policy, and shall provide for the issuance of a certificate of insurance to each Unit Owner and its Mortgagee, if any, which shall specify the proportionate amount of such insurance attributable to the particular Unit's Percentage Interest.
- (b) The Board of Directors shall use its best efforts to cause all of such insurance policies to contain: (i) a waiver of subrogation by the insurer as to any claims against the Board of Directors, any officer, director, agent or employee of the Board of Directors, the Unit Owners and their employees, agents, tenants and invitees, and a waiver of any defenses based on co-insurance or on invalidity arising from the acts of the insured; (ii) a waiver by the insurer of its right to repair and reconstruct instead of paying cash; (iii) a provision that the policy cannot be cancelled, invalidated or suspended on account of the conduct of any unit owner or any employee, agent, tenant or invitee of any Unit Owner, or any officer, director, agent or employee of the Board of Directors, without a prior demand in writing and delivered to the Board of Directors to cure the defect and the allowance of reasonable time thereafter within which the defect may be cured by the Board of Directors, any Unit Owner or any Mortgagee; (iv) a provision that any "other insurance" clause in the policy shall exclude from its scope any policies of the individual unit owners; (v) a provision that the coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days written notice to any and all of the insured thereunder, including mortgagees; and (vi) a provision that the coverage will not be prejudice by any act or neglect of the owners of the units when said act or neglect is not within the control of the Board of Directors, or any failure of the Board of Directors to comply with any warranty or condition regarding any portion of the property over which the Board of Directors has no control.

**Section 8.04. Adjustment of Losses.** Exclusive authority to adjust losses under insurance policies obtained by the Board of Directors shall vest in the Board of Directors; provided, however, that no Mortgagee shall be prohibited from participating in the settlement negotiations, if any, related thereto.

**Section 8.05. Individual Insurance by Unit Owners.** It shall be the individual responsibility of each Unit Owner, at its sole cost and expense, to provide, as it sees fit, any insurance coverage not required to be maintained by the Board of Directors.

**Section 8.06. Handling of Casualty Insurance Proceeds.** All insurance policies purchased by and in the name of the Board of Directors shall provide that proceeds covered in casualty loss shall be paid to the Board of Directors. The Board of Directors shall receive such proceeds as are

paid and delivered to it and hold the same in trust for the benefit of the Unit Owners and their Mortgagees as follows:

- (a) Proceeds on account of damage to the Common Areas not involving a Unit shall be held to the extent of the Percentage Interest of each Unit Owner.
- (b) Proceeds on account of damage to Units (or on account of damage to Common Areas involving a Unit) shall be held for the Unit Owners of the damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Board of Directors.
- (c) In the event a Mortgagee endorsement has been issued as to any Unit under the policy under which such proceeds are paid, the share of that Unit Owner shall be held in trust for the Unit Owner and the Mortgagee, as their interest may appear. Unless a determination is made not to repair or reconstruct pursuant to Section 8.07(b) hereof, then such proceeds, or such portion thereof as may be required for such purpose, shall be disbursed by the Board of Directors as payment of the cost and any expenses of repair or reconstruction, as hereinafter provided. Any proceeds remaining after payment of all Common Expenses of repair or reconstruction shall be common profits.

**Section 8.07. Damage and Destruction.**

- (a) Immediately after any damage or destruction by fire or other casualty to all or any portion of the Property covered by insurance written in the name of the Board of Directors, the Board of Directors shall proceed with the filing and adjustment of all claims and losses arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damage or destroyed Property. Repair or reconstruction, as used in this paragraph, shall mean repairing or restoring the Property to substantially the same condition that existed prior to the fire or other casualty with each unit and the Common Areas having the same vertical and horizontal boundaries as before the casualty.
- (b) Any damage or destruction shall be repaired or reconstructed unless: (i) the Property is no longer subject to the Act, subject to and in accordance with the provisions of the Act and this Declaration; (ii) the damaged or destroyed portion of the Property is withdrawn from the Building pursuant to, subject to and in accordance with the provisions of the Act; or (iii) the Unit Owners of the damaged or destroyed Units, if any, and their Mortgagees, together with the Unit Owners of other Units to which two-thirds of the votes in the Board of Directors appertain and the Mortgagees, exclusive of the votes appertaining to any damaged or destroyed Units, agree not to repair or reconstruct such damage or destruction, pursuant to, subject to and in accordance with the provisions of the Act. Any such determination shall be conclusively made, if at all, not more than ninety (90) days after the date of the casualty. Should a determination be made to withdraw the Property from subjection to the Act, as herein provided, then the insurance proceeds paid to the Board of Directors and held by it on account of such casualty shall be common profits, to be held and disbursed pursuant to, subject to and in accordance with Section 8.06 hereof.

Should a determination be made to withdraw the Property from subjection to the Act, the damaged portion of the Property or not to repair or reconstruct the damage or destruction, as herein provided, then the insurance proceeds paid to the Board of Directors and held by it on account of such casualty shall be disbursed by the Board of Directors in accordance with the manner in which such proceeds are held by the Board of Directors, pursuant to Section 9.06 hereof. Any remittances with respect to Units as to which Mortgagee endorsements have been issued on the policies under which the proceeds were paid shall be payable to the Unit Owner and its Mortgagee jointly, as their interests may appear.

- (c) If the damage or destruction for which the insurance proceeds are paid is to be repaired and such proceeds are not sufficient to defray the cost thereof, the Board of Directors may levy an additional assessment against all Unit Owners in sufficient amounts to provide funds to pay such excess cost of repair or reconstruction. Further, additional assessments may be made in a like manner and any time during or following the completion of any repair or reconstruction. The proceeds from insurance and assessments, if any, received by the Board of Directors hereunder when the damage or destruction is to be repaired or reconstructed shall be disbursed as provided for in Section 8.06 hereof.

**Section 8.08. Non-Liability and Indemnity of Officers and Directors of the Board of Directors and Declarant.** The officers, directors and members of the Board of Directors and Declarant shall not be personally liable to any Unit Owner for any mistake of judgment or for any other act or omission of any nature whatsoever in administering the Board of Directors, except for acts or omission which constitute gross negligence or willful misconduct. The Association shall indemnify and hold harmless each of the officers, directors and members of the Board of Directors and Declarant and their respective legal representatives, successors and assigns, from any liability, cost or expense arising out of any act or omission in administering the Board of Directors which is not deemed to be gross negligence or willful misconduct.

## **ARTICLE IX: COMMON EXPENSES**

**Section 9.01. Common Expenses in Accordance with Percentage Interest.** Except as otherwise permitted in this Section, the Common Expenses shall be charged by the Board of Directors to the Unit Owners, according to their respective Percentage Interest. The common profits of the Property, after offsetting the Common Expenses and making due allowance for the retention of a reserve to cover future Common Expenses, shall be distributed among the Unit Owners in the same manner. Assessments against the Unit Owners shall be made and approved by the Board of Directors and shall be paid by the Unit Owners pursuant to the Bylaws. Notwithstanding the above, the Board of Directors may elect to specially allocate and apportion expenses including but not limited to waste removal, sewage, water, and other utility charges, based on the special or exclusive availability or use thereof by particular Unit Owners.

The Declarant, as owner of any unoccupied Unit(s) offered for the first time for sale, shall not be obligated to contribute toward Common Expenses for those Units for a period commencing on

the date that this Declaration is recorded in the Carroll County Recorder's Office and expiring on the first day of the twenty-fourth (24<sup>th</sup>) calendar month following the month in which the closing of the sale of the first Unit occurs. Provided that, if, during that twenty-four month period, the Assessments to the other Unit Owners are not sufficient to pay for the Common Expenses, then Declarant shall pay the deficiency.

**Section 9.02. Unpaid Common Expense-Personal Obligation of Unit Owner and Lien on Unit.** All sums assessed as Common Expenses by the Board of Directors, but unpaid, together with late charges as may be established by the Bylaws and interest thereon at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law, shall be the personal obligation of the Unit Owner and shall constitute a lien upon the Unit prior to all other liens except: (a) tax or assessment liens on the Unit by the taxing subdivision of any governmental authority, including but not limited to State, County, Town and School District taxing agencies and (b) all sums unpaid on any first mortgage of record encumbering any Unit.

**Section 9.03. Foreclosure of Lien for Common Expenses.** The lien for past due common charges may be foreclosed by the Association in accordance with the laws of the State of Indiana, in like manner as a mortgage on real property, and the Association shall also have the right to recover all costs incurred, including reasonable attorney fees. In the event the proceeds of the foreclosure sale are not sufficient to pay such unpaid common charges, the unpaid balance shall be charged to all Unit Owners as a Common Expense. However, where the holder of an institutional mortgage of record, or other purchaser of a Unit at a foreclosure sale of an institutional mortgage, obtains title to the Unit as a result of foreclosure or the institutional mortgage holder obtains title by conveyance in lieu of foreclosure, such acquirer of title, his successors or assigns, shall not be liable and the Unit shall not be subject to a lien for the payment of Common Expenses chargeable to such Unit which were assessed and became due prior to the acquisition of title to such Unit by such acquirer. In such event, the unpaid balance of Common Expenses shall be charged to all other Unit Owners.

**Section 9.04. No Exemption or Waiver of Common Expenses.** Each Unit Owner shall pay the Common Expenses as assessed against him when due and no Unit Owner may exempt himself from liability for the payment of the Common Expenses assessed against him by waiver of the use or the enjoyment of any of the Common Areas, by the abandonment of his Unit or by claiming the quantity or quality of services are not worthy of such payment or are not as contemplated by such Unit Owner at the time of purchase. However, no Unit Owner shall be liable for the payment of any Common Expenses accruing subsequent to a sale, transfer, or other conveyance by him of such Unit made in accordance with the Act or in accordance with the provisions of this Declaration and the Bylaws.

**Section 9.05. Unit Services and Utilities Through Common Expenses.**

- (a) Each Unit Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expense.

- (b) Refuse removal and electricity used to heat and light the Common Areas shall be a Common Expense.

#### **ARTICLE X: LIABILITY FOR COMMON EXPENSES**

**Section 10.01. Grantee to be Liable with Grantor for Unpaid Common Expenses.** In any conveyance of a Unit either by voluntary instrument, operation of law or judicial proceeding in accordance with this Declaration or the Bylaws, the grantee of the Unit shall be jointly and severally liable with the former Unit Owner for any unpaid Common Expenses against the latter assessed and due up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the former Unit Owner the amounts paid by the grantee therefor. "Grantee" as used herein shall not include either the holder of an institutional mortgage of record or a purchaser of a Unit at a foreclosure sale of an institutional mortgage.

#### **ARTICLE XI: OBLIGATIONS, RESPONSIBILITIES AND LIABILITIES OF UNIT OWNERS**

**Section 11.01. All Owners and Tenants Subject to Condominium Documents Which Run with the Land.** The acceptance of a deed of conveyance or the entering into of a lease, or the occupancy of any Unit shall signify that the provisions of this Declaration and the Bylaws, any rules and regulations of the Associations and the decisions of the Board of Directors are accepted and ratified by such Unit Owner, tenant or occupant, and all of such provisions shall be deemed to be covenants running with the land and shall bind any person having at any time interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

**Section 11.02. Remedies for Non-Compliance.** In the event any Unit Owner, tenant or occupant of any Unit fails to comply with the terms and provisions of the Declaration, Bylaws, any rules and regulations or decisions of the Board of Directors, the Board of Directors or other Unit Owners shall be entitled to bring an action to recover sums due, for damages or injunctive relief or both which action shall be maintainable by the Board of Directors on behalf of the Unit Owners, or in a proper case, by an aggrieved Unit Owner. In any case of flagrant or repeated violation by a Unit Owner, such Unit Owner may be required by the Board of Directors to give sufficient surety or sureties for future compliance with such Bylaws, rules and regulations and decisions.

**Section 11.03. Recovery of Legal Fees and Costs.** In any proceeding arising because of an alleged default by a Unit Owner the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be determined by the Court.

**Section 11.04. Unit Owner Liable for Negligence.** Each Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, to the extent that such expense is not met by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in insurance rates occasioned by

use, misuse, occupancy or abandonment of a Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

**Section 11.05. Rights are Cumulative.** All rights, remedies and privileges granted to the Board of Directors, its designated agent, or a Unit Owner, pursuant to any terms, provisions, covenants or conditions of this Declaration, the Bylaws, and rules and regulations of the Association shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party from exercising such other and additional rights, remedies or privileges as may be granted to such party hereunder or under the Bylaws or any rules and regulations adopted pursuant thereto, or at law or in equity.

## **ARTICLE XII: ADDITIONAL COVENANTS AND RESTRICTIONS**

**Section 12.01. Units to be Properly Maintained.** Unit Owners shall maintain their Units and any Limited Common Areas which may be restricted in use to a Unit Owner or Owners in good repair and overall appearance.

**Section 12.02. No Nuisances.** No nuisances shall be allowed upon the Property nor any use or practice be allowed which is a source of annoyance to Unit Owners or occupants or which interferes with the peaceful possession and proper use of the Property by any Unit Owner or occupant.

**Section 12.03. No Immoral or Unlawful Use.** No immoral, improper, offensive or unlawful use shall be made of the Property or any party thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

## **ARTICLE XIII: AMENDMENTS**

### **Section 13.01. Amendments to Declaration.**

- (a) Alteration of the relative Percentage Interests of the Unit Owners in the Common Areas shall not be made except with the consent of all Unit Owners and Mortgagees.
- (b) A Unit Owner or Unit Owners may divide or combine Units as provided in Section 3.03.
- (c) All other provisions of this Declaration may be modified, altered amended or added to at any duly called meeting of Unit Owners provided that:
  - (1) a notice of the meeting containing a full statement of the proposed modification, alteration, amendment or addition has been sent to all Unit Owners as listed on the books and records of the Association and to all mortgagees of Units who have requested same; and

- (2) 66 2/3 % or more in Percentage Interest of all Unit Owners approve the change; and
  - (3) an instrument evidencing the change is duly recorded in the office of the Carroll County Recorder. Such instrument need not contain the written consent of Unit Owners having the required percentage of Percentage Interest, but shall contain a certification by the Board of Directors of the subject Building that the consents required by this Section for such change have been received and filed with the Board of Directors.
- (d) Notwithstanding anything to the contrary contained herein, there shall be no amendment of these Declarations, or any change in exterior design of the Buildings without prior approval of the Area Plan Commission of Carroll County and the Monticello City Council through the planned development process, which includes the possibility of consideration as a minor modification by the administrative officer.

#### **ARTICLE XIV: GENERAL**

**Section 14.01. Service of Process.** Service of Process on the Association in any action with relation to the Common Areas of the Association shall be made upon the Association's registered agent on file with the Indiana Secretary of State from time to time.

**Section 14.02. Invalidity.** The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

**Section 14.03. Waiver.** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**Section 14.04. Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

**Section 14.05. Gender.** The use of the masculine gender in this Declaration shall be deemed to refer to the feminine or neuter gender whenever the context so requires.

**Section 14.06. Prior Declarations and Amendments.** This Second Amended and Restated Declaration of Condominiums replaces and supersedes any and all prior Declarations and amendments regarding The Bridgeview Condominiums.

IN WITNESS WHEREOF, the Declarant has caused this Second Amended and Restated Declaration of Condominiums for The Bridgeview Condominiums to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

DECLARANT:

TWIN LAKES INVESTMENT LLC,  
an Indiana limited liability company

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: Member

STATE OF INDIANA            )  
  )SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for the said County and State, personally appeared \_\_\_\_\_, as Member of Twin Lakes Investment LLC, an Indiana limited liability company, who acknowledged the execution of the above and foregoing Second Amended and Restated Declaration of Condominiums for The Bridgeview Condominiums for and on behalf of said limited liability company.

Witness my hand and Notary Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public  
Printed: \_\_\_\_\_  
Resident of \_\_\_\_\_ County

My Commission Expires:

\_\_\_\_\_

This instrument was prepared by **Stuart R. Gutwein** of the firm BENNETT BOEHRING & CLARY LLP, Attorneys at Law, 415 Columbia Street, Suite 1000, P.O. Box 469, Lafayette, Indiana 47902-0469; Telephone: (765) 742-9066.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. By: Stuart R. Gutwein, Preparer

(S:\Everyone\T\Twin Lakes Investment, LLC, 12725.1\Bridgview Condominiums\2nd A&R Covenants\2nd A&R Declaration (2011-final).doc)

**CERTIFICATION BY THE BOARD OF DIRECTORS**  
**OF**  
**THE BRIDGEVIEW CONDOMINIUM ASSOCIATION, INC.**

The undersigned, being the duly elected members of the Board of Directors of The Bridgeview Condominium Association, Inc., hereby certify, under penalties for perjury, that the affirmative consent of 66 2/3% or more in Percentage Interest of all Unit Owners, as required by Article XIII of the Amended and Restated Declaration of Condominiums for The Bridgeview Condominiums, have been received and filed with the Board of Directors.

Dated: \_\_\_\_\_, 2011

**THE BRIDGEVIEW CONDOMINIUM  
OWNERS ASSOCIATION, INC.**

By its Board of Directors:

\_\_\_\_\_  
R. Kevin Sims

\_\_\_\_\_  
Mary P. Rowe

\_\_\_\_\_  
Ryan Long

\_\_\_\_\_  
Dean Zentz

**SCHEDULE A**  
**LEGAL DESCRIPTION OF THE PROJECT REAL ESTATE**

That part of the West Half of Section 3, Township 26 North, Range 3 West in Jefferson Township, Carroll County, Indiana, described by:

Commencing at the Southwest corner of said Section 3 (calculated point); thence North 00 degrees 23 minutes 00 seconds West along the section line 1258.32 feet to a ½ inch iron pipe on the North right-of-way of US421; thence South 60 degrees 17 minutes 00 seconds East along said line 406.83 feet; thence North 29 degrees 42 minutes 04 seconds East along the West line of CR1275W a distance of 1219.48 feet to a capped iron pipe and the point of beginning; thence North 29 degrees 42 minutes 04 seconds East 200.00 feet to a ½ inch iron pipe; thence North 58 degrees 14 minutes 48 seconds West 824.10 feet to a capped ½ inch iron pipe; thence North 33 degrees 02 minutes 24 seconds East 67.00 feet to a capped ½ inch iron pipe; thence North 58 degrees 14 minutes 48 seconds West 65.95 feet to the SFLECC line; thence along said line South 33 degrees 02 minutes 24 Seconds West 193.36 feet and South 31 degrees 24 minutes 24 seconds West 73.55 feet; thence South 58 degrees 14 minutes 48 seconds East 899.62 feet to the point of beginning, containing 4.211 Acres.

This conveyance is subject to all easements and restrictions of record, all applicable ordinances, set back requirements and other building restrictions.

ALSO:

That part of the West Half of Section 3, Township 26 North, Range 3 West in Jefferson Township, Carroll County, Indiana, described by:

Commencing at the Southwest corner of said Section 3 (calculated point); thence North 00 degrees 23 minutes 00 seconds West along the section line 1258.32 feet to a ½ inch iron pipe on the north right-of-way line of US421; thence South 60 degrees 17 minutes 00 seconds East along said line 406.83 feet; thence North 29 degrees 42 minutes 04 seconds East along the west line of CR1200W a distance of 396.00 feet to the point of beginning; Thence North 60 degrees 17 minutes 56 seconds West 300.00 feet; thence North 29 degrees 49 minutes 34 seconds East 295.69 feet to a corner post; thence North 60 degrees 17 minutes 00 seconds West 216.79 feet to a ½ inch iron pipe; thence North 76 degrees 07 minutes 00 seconds West 81.51 feet to a 1/2 inch iron pipe; thence North 29 degrees 42 minutes 04 seconds East 170.88 feet to a ½ inch iron pipe; thence North 58 degrees 14 minutes 48 seconds West 292.98 feet to the SFLECC line; thence North 34 degrees 54 minutes 24 seconds East 42.60 feet to NIPSCO Monument 154; thence along the SFLECC line North 14 degrees 01 minutes 25 seconds East 73.45 feet, North 29 degrees 42 minutes 24 seconds East 143.10 feet and North 31 degrees 24 minutes 24 seconds East 144.62 feet; thence South 58 degrees 14 minutes 48 seconds East 899.62 feet to a capped ½ inch iron pipe on the west line of CR 1200 W; thence South 29 degrees 42 minutes 04 seconds West along said line 823.48 feet to the point of beginning, containing 12.200 acres.

The foregoing legal description has been modernized as follows:

The tracts conveyed to Twin Lakes Investment, LLC, recorded in Instrument Number 200500003085 and 200500003086 in the Office of the Carroll County Recorder and being part of the West Half of Section 3, Township 26 North, Range 3 West, Jefferson Township, Carroll County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of Section 3; Thence North 00°23'00" West, along the West line of Section 3, a distance of 1258.32 feet to an iron pipe on the North right-of-way line of US421; Thence South 60°17'00" East, along said right-of-way, a distance of 406.83 feet to the West right-of-way of County Road 1200 West; Thence North 29°42'04" East, along said right-of-way, a distance of 396.00 feet to the Point of Beginning of this description, being marked by a 5/8 inch diameter rebar with a plastic cap stamped "RWG 880043" and hereafter referred to as a standard monument; Thence North 60°17'56" West, a distance of 300.00 feet to a standard monument; Thence North 29°49'43" East, a distance of 295.69 feet to a standard monument; Thence North 60°17'06" West, a distance of 216.75 feet to an iron pipe; Thence North 76°09'25" West, a distance of 81.97 feet to an iron pipe; Thence North 29°49'04" East, a distance of 171.10 feet to an iron pipe; Thence North 58°14'48" West, a distance of 292.98 feet to the SFLECC (former NIPSCO) line; Thence the Next five (5) courses along the SFLECC line, (1) North 34°54'24" East, a distance of 42.60 feet; (2) North 14°01'25" East, a distance of 73.45 feet; (3) North 29°42'24" East, a distance of 143.10 feet; (4) North 31°24'24" East, a distance of 218.17 feet (5) North 33°02'24" East, a distance of 193.36 feet; Thence South 58°08'45" East, a distance of 66.19 feet to an iron pipe; Thence South 33°02'24" West, a distance of 67.00 feet to a standard monument; Thence South 58°14'42" East, a distance of 823.83 feet to an iron pipe on the West right-of-way line of County Road 1200 West; Thence South 29°40'56" West, along said right-of-way, a distance of 200.05 feet to an iron pipe; Thence South 29°42'04" West, along said right-of-way, a distance of 823.48 feet to the Point of Beginning, containing 16.409 Acres, more or less.

Subject to all easements, restrictions and rights of way of record.

Bearings based on the bearings in Deed record 200500003086 conveyed to Twin Lakes Investment, LLC.

**SCHEDULE B**  
**LEGAL DESCRIPTION OF THE PROPERTY**

A portion the property described as follows:

Lots 37, 38 and 39 of the Bridgeview Subdivision, the Plat of which was recorded on June 5, 2006, under Instrument Number 2006-2128, Plat Cabinet D, Slide 187-188, in the records of the Office of the Recorder of Carroll County, Indiana.

**SCHEDULE C**  
**UNIT DESIGNATIONS AND PERCENTAGE INTERESTS**

| <u>Lot #</u> | <u>Unit #</u> | <u>Approximate<br/>Percentage Interest<br/>of Common Areas</u> |
|--------------|---------------|--|
| 37           | 1             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 37           | 2             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 37           | 3             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 37           | 4             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 37           | 5             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 37           | 6             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 38           | 1             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 38           | 2             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 38           | 3             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 38           | 4             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 38           | 5             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 38           | 6             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 39           | 1             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 39           | 2             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 39           | 3             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 39           | 4             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 39           | 5             | 1/18 <sup>th</sup> or ~5.55%                                   |
| 39           | 6             | 1/18 <sup>th</sup> or ~5.55%                                   |

**SCHEDULE D**  
**BYLAWS**  
**OF**  
**THE BRIDGEVIEW CONDOMINIUM OWNERS ASSOCIATION, INC.**  
**GENERAL**

Section 1. The name of the corporation is THE BRIDGEVIEW CONDOMINIUM OWNERS ASSOCIATION, INC., an Indiana nonprofit corporation (the “Association”).

Section 2. The principal office address of the Association shall be **614 Beechwood Dr. E., Monticello, Indiana 47960-2300**, until and unless changed in accordance with law by the Board of Directors.

Section 3. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**ARTICLE II**

**DEFINITIONS**

Section 1. All capitalized terms used herein but not defined shall have the definition set forth in the Articles of Incorporation of The Bridgeview Condominium Owners Association, Inc. or The Declaration of Condominiums for The Bridgeview Condominiums.

**ARTICLE III**

**MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership, Transfer, Voting Rights. Reference is hereby made to Article VI of the Declaration and Article V of the Articles which set forth terms, provisions and conditions governing and relating to membership in the Association, transfer of membership and voting rights, all of which terms, provisions and conditions are incorporated herein by reference.

Section 2. Quorum. The presence at the meeting of twenty percent (20%) of members entitled to vote, or of proxies entitled to vote, shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the meeting shall re-adjourn within seven (7) days thereof, without notice other than announcement at the meeting. The presence at the re-adjourned meeting of fifteen percent (15%) of the members entitled to vote, or of proxies entitled to vote, shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws.

Section 3. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting of the Members of the Association. Cumulative voting shall not be permitted.

Section 4. Majority Required. A majority of the votes of Members present (in person or by proxy) at a meeting at which a quorum is present shall be sufficient for the transaction of all business of the Association except on matters where a greater vote is required by the Declaration, the Articles, the Bylaws or by statute.

Section 5. Meetings. Meetings of the Members of the Association shall be in accordance with the following provisions:

A. Place. Meetings of the Members shall be held at such place in Indiana, as may be designed by the Board of Directors of the Association.

B. Annual Meetings. The first annual meeting of the Members shall be held within six (6) months after the close of the first fiscal year of the Association, the exact date to be decided by the Board of Directors. At such first annual meeting of the Members, the Members may designate a regular day or date for successive annual meetings, which date shall be not more than six (6) months after the close of each fiscal year of the Association. If the Members fail to designate such a regular day or date, the Board of Directors may continue to designate the day or date of the next annual meeting until such a designation is made by the Members. If any designated day or date falls upon a legal holiday, the actual date of the meeting shall be the next business day succeeding such designated day or date.

C. Special Meetings. Special meetings of the Members shall be called by the president of the Association, by resolution of the Board of Directors of the Association or upon a written petition signed by Members of the Association who are entitled to vote thirty percent (30%) of all votes of the membership. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

D. Notice of Meetings. Written notice of any meeting called for the purpose of taking any action authorized hereinabove shall be sent to all members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to vote thirty percent (30%) of all votes of membership shall constitute a quorum. If the required quorum is not present, another meeting shall re-adjourn within seven (7) days thereof, without notice other than announcement at the meeting. The presence at the re-adjourned meeting of members or of proxies entitled to vote fifteen percent (15%) of all the votes of membership shall constitute a quorum.

E. Order of Business. The order of business at all meetings of the members shall, to the extent applicable, be as follows:

1. Roll call.
2. Proof of notice of meeting or waiver of notice.
3. Reading of minutes of preceding meeting.
4. Reports of officers.
5. Reports of committees.
6. Election of directors.
7. Unfinished business.
8. New business.

F. Suspension of Voting Rights. No member shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due to the Association shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors.

## **ARTICLE IV**

### **NOMINATION AND ELECTION OF DIRECTORS**

Section 1. Nomination. After the Applicable Date, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of the Members of the Association. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors at each annual meeting of the Members and shall serve until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made only from among Members of the Association, or persons deemed to be Members eligible to serve as directors thereof or otherwise eligible to serve on the Board of Directors in accordance with the Declaration and the Articles of the Association.

Section 2. Election. After the Applicable Date, election to the Board of Directors shall be by secret written ballot at the annual meeting of the Members of the Association. At such election the Members or their proxies may vote, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **ARTICLE V**

### **BOARD OF DIRECTORS**

Section 1. Number and Qualification. Until the Applicable Date, the affairs of the Association shall be governed by the Initial Board of Directors and shall consist of not fewer than three (3) members or more than five (5) members. After the Applicable Date, the affairs of the Association shall be governed by a Board of Directors composed of five (5) persons.

Section 2. Additional Qualifications. Where a Unit Owner consists of more than one person, or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Unit Owner or partner, officer or trustee, as the case may be, of the partnership, corporation, trust or other entity, shall be eligible to serve on the Board of Directors of the Association, except that no Unit may be represented on the Board of Directors by more than one person at a time.

Section 3. Initial Board of Directors. The Initial Board shall maintain, manage and administer the affairs and the property of the Association until the Applicable Date.

Section 4. Term of Office Generally. At such first annual meeting of the Members of the Association after the Applicable Date, the Members required by the Declaration, other provisions of these Bylaws, the Articles, or statute shall elect the Board of Directors for a term of one year; and at each annual meeting thereafter the Members shall elect Board of Director members for a term of one year. Each Board of Director member shall hold office until the next annual meeting of Members and until their successors is elected and qualified.

Section 5. Duties. The Board of Directors shall have the following duties:

- A. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is required in writing by members holding twenty-five percent (25%) of the total votes of all classes of membership entitled to vote;
- B. To supervise all officers, agents and employees of the Association;
- C. To establish the annual assessment period and fix the amount of the annual assessment against each member for each Unit owned, all in accordance with the terms of the Declaration and the Bylaws;
- D. To fix the amount of any special assessment against each member for each Unit owned, all in accordance with the terms of the Declaration and these Bylaws;
- E. To send written notice of each assessment to each Unit Owner in accordance with the Declaration;
- F. To foreclose the Association's lien for assessments against any property for which assessments are not paid within thirty (30) days after the due date thereof or to bring an action at law against the Unit Owner or other person personally obligated to pay the same;
- G. To issue, or to cause an appropriate officer to issue, upon demand by any person or entity, a certificate setting forth whether or not any assessment has been paid;

H. To procure and maintain the insurance coverages required by the Declaration and such other insurance coverages as the Board of Directors, in its sole discretion, deems necessary or advisable;

I. To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, and at least as may be required by the Declaration; and,

J. To cause all of the Common Areas to be maintained to the extent to the Association's responsibilities therefor as provided in the Declaration.

K. To employ a managing agent to assist the Board of Directors in performing its duties, including keeping a record and minutes of all meetings; provided, however, that any management agreement shall be terminable by the Association for cause upon thirty (30) days written notice and any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods.

L. To promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Property, including, without limitation, the Common Areas (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Members, and further provided that such rules and regulations are not in conflict with any terms and provisions of the Declaration.

Section 6. Vacancies. Until the Applicable Date any vacancy in the Board of Directors shall be filled by the Declarant. Thereafter, any vacancy in the Board of Directors shall be filled by vote of the majority of remaining Directors, even though they may constitute less than a quorum. Each person so elected shall be a director for the unexpired term of his predecessor, or until his successor is elected.

Section 7. Compensation. No Director shall receive compensation for any service he may render to the Association as such director. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties, and any Director may be paid and compensated for services to the Association in a capacity other than as a director.

Section 8. Removal of Directors. After the Applicable Date, any Director may be removed with or without cause by a majority vote of the members of the Association. Prior to the Applicable Date, any Director may be removed, with or without cause by the Declarant.

Section 9. Regular Meetings. Regular meetings of the Board of Directors shall be held at such regular intervals, without notice, at such place and hour as may be determined from time to time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days notice to each Director, given personally, by mail, telephone or other electronic means, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two-thirds (2/3) of the directors.

Section 11. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent of the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be deemed a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which quorum is present shall be the acts of the Board of Directors except as otherwise provided in or required by the Declaration, Articles, these Bylaws or the Act. If, at any meeting of the Board of Directors, there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors.

Section 14. Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00) in any twelve (12) consecutive calendar month period without the approval of a majority of the Percentage Vote present at a meeting at which a quorum is present.

Section 15. Bond. The Board of Directors shall require any property manager, Treasurer, employees, officers and agents handling or responsible for funds of or administered on behalf of the Association to have surety bonds indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, willful misapplication and other acts of fraud or dishonesty in a total amount not less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the property manager, as the case may be, at any given time, but in no event less than a sum equal to three (3) months aggregate assessments on all Units, plus reserve funds. Such bonds shall also specifically include protection for any insurance proceeds received for any reason by the Board.

The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of employees or similar terms or expressions. The expense of any such bonds, except those maintained by the property manager, shall be a Common Expense (as defined in the Declaration). The bonds shall

provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association.

## ARTICLE VI

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be members of the Board of Directors, and such other officers as the Board of Directors may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members of the Association.

Section 3. Term. The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year or until his successor is elected and qualified unless he shall sooner resign, be removed or is otherwise disqualified to serve.

Section 4. Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or Secretary. Such resignation shall take effect on the date of receipt of such notice or at any time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

A. President. The President shall preside at all meetings of the Board of Directors. He shall see that orders and resolutions of the Board are carried out. He shall have the power to appoint committees from among the members of the Association from time to time as he may in his discretion deem appropriate to assist in conducting the affairs of the Association. The President shall have and discharge all the general powers and duties

usually vested in the office of the president or chief executive officer of an association or a stock corporation organized under the laws of the State of Indiana.

B. Vice-President. The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him by the Board of Directors or an are delegated to him by the President.

C. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members; keep the corporate seal of the Association (if any is adopted) and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the members; keep appropriate current records showing the members of the Association, together with their addresses, and shall perform such other duties as required by the Board of Directors.

D. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## **ARTICLES VII**

### **COMMITTEES**

The Board of Directors shall appoint the committees provided for in the Declaration and the Nominating Committee referred to in Article IV of these Bylaws. In addition, the Board of Directors or the President may appoint various other committees to carry out the purposes of the Association. Except as otherwise expressly provided in Article IV of these Bylaws with respect to the Nominating Committee, members of such committees may, but need not, be members of the Board of Directors.

## **ARTICLE VIII**

### **BOOKS OF ACCOUNT AND FISCAL YEAR**

Section 1. Books of Account. The Association shall keep detailed books of account showing all expenditures and receipt of administration which shall specify the maintenance and repair expenses of the Common Areas and any other expenses incurred by or on behalf of the Association and the Members. Such accounts, books, records, financial statements, and other papers of the Association shall be open for inspection by the members and other persons having an interest in any Unit, including any Unit Owner, any lender and any holder, insurer or guarantor of the first mortgage on any Unit during reasonable business hours or under other reasonable circumstances and shall be reviewed annually by qualified auditors. The cost of such review shall be a common area expense. Any holder, insurer or guarantor of a first mortgage on

a Unit shall be entitled upon written request to receive an unaudited financial statement for the immediately preceding fiscal year free of charge of the requesting party and within a reasonable time of such request. Current copies of the Declaration, the Articles, and the Bylaws of the Association, and other rules concerning the Property, shall be available for inspection by any Owner and lender, and to holders, insurers or guarantors of any first mortgage at the principal office of the Association during normal business hours or under other reasonable circumstances, where copies of the same and of audits may be purchased at reasonable costs.

Section 2. Fiscal Year. The fiscal year of the Association shall end December 31 each year.

## **ARTICLE IX**

### **CONTRACTS, LOANS AND CHECKS**

Section 1. Authorization. The Board of Directors may authorize any officer or agent of the Association to enter into any contract or execute any instrument on its behalf. Such authorization may be general or confined to specific instances. Except as provided in these Bylaws, no officer, agent or employee shall have any power to bind the Association or to render it liable for any purpose or amount unless so authorized by the Board of Directors.

Section 2. Checks. All checks, drafts, or other orders for payment of money by the Association shall be signed by the President, Secretary, Treasurer or such other person as the Board of Directors may from time to time designate by resolution.

## **ARTICLE X**

### **ASSESSMENTS**

Section 1. Annual Accounting. Annually, after the close of each fiscal year of the Association, the Board shall cause to be prepared and furnished to each Unit Owner a financial statement which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 2. Proposed Annual Budget. Annually, on or before the end of each fiscal year, the Board of Directors shall adopt an annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year. Such budget may not increase by more than twenty percent (20%) of the previous annual budget without the approval of a majority of the Percentage Vote present at a meeting at which a quorum is present. A copy of such budget shall be furnished to each Unit Owner at or prior to December 15 of each year. The annual budget as presented to the Unit Owners at the annual meeting of the Association shall be the basis for the Regular Assessment (hereinafter defined) during such fiscal year. The annual budget, the Regular Assessment and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessment shall, in addition, be established to include the establishment and maintenance of an adequate replacement reserve fund for capital expenditures and replacement

and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Tippecanoe County, Indiana, selected from time to time by the Board. The failure or delay of the Board of Directors to prepare an annual budget and to furnish a copy thereof to the Unit Owners shall not constitute a waiver or release in any manner of the obligations of the Unit Owners to pay the Common Expenses as herein provided, whenever determined.

Section 3. Regular Assessments. The annual budget as adopted by the Board shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain an assessment against each Unit and the Percentage Interest appurtenant thereto. Immediately following the adoption of the annual budget, each Unit Owner shall be given written notice of the assessment against his respective Unit and the Percentage Interest appurtenant thereto (herein called the "Regular Assessment"). The aggregate amount of the Regular Assessment shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Unit and the Percentage Interest appurtenant thereto shall be paid in advance in twelve (12) equal monthly installments, commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of each fiscal year. In the event that the Board has not adopted an annual budget and provided the Unit Owners with notice of the current Regular Assessment prior to the first day of the first month of any fiscal year, then the current Regular Assessment shall be the amount of the Regular Assessment for the prior fiscal year until such time as the Board approves the annual budget for the current fiscal year and provides the Unit Owners with notice of the current Regular Assessment. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the managing agent, as directed by the Board of Directors; provided, however, Unit Owners may elect to pay monthly assessments quarterly, semi-annually or annually, in advance. The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Unit and the Percentage Interest appurtenant thereto as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that a Unit Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a previous budget and thereafter, before the annual budget and Regular Assessment for the current fiscal year are finally determined and approved, sells, conveys or transfers his Unit and Percentage Interest appurtenant thereto or any interest therein, shall not relieve or release such Unit Owner or his successor as owner of such Unit and the Percentage Interest appurtenant thereto from payment of the Regular Assessment for such Unit and the Percentage Interest appurtenant thereto as finally determined, and such Unit Owner and his successor as owner of such Unit and Percentage Interest appurtenant thereto shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to these Bylaws prior to the final determination and adoption of the annual budget and Regular Assessment for the fiscal year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such fiscal year, and all parties to whom any such

statement may be delivered or who may rely thereon shall be bound by such final determinations. Monthly installments of Regular Assessments shall be due automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Unit Owners for the same.

Section 4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated or budgeted for may arise. At such time and without the approval of the Unit Owners, unless otherwise provided in these Bylaws, the Declaration or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Unit and the Percentage Interest appurtenant thereto, prorated in accordance with the Percentage Interest of each Unit (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures, or to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in the Declaration.

Section 5. Failure of Unit Owner to Pay Assessments.

(a) No Unit Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and, in the proper case, of the Limited Areas, of the Building, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Unit belonging to him. Each Unit Owner shall be personally liable for the payment of all Regular Assessments and Special Assessments which become due and payable during the period in which such Unit Owner holds title to a Unit. Where the Unit Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Unit Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such Assessment on the Unit Owner's Unit may be filed and foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of a Unit Owner to make payments of any Regular Assessment and/or Special Assessment, within ten (10) days after any such Regular Assessment and/or Special Assessment (as applicable) is due (with such due dates being set forth in accordance with these Bylaws), the Board, in its discretion, may (1) impose a late fee as provided in the Declaration, (2) accelerate the entire balance of the budgeted and unpaid Regular Assessments and/or Special Assessments, and any and all fines, charges and late fees, applicable to the current full calendar year and all previous calendar years and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary, and (3) eliminate such Unit Owner's right to vote. In any action to foreclose the lien for any Assessments, the Unit Owner and any occupant of the Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Unit, and the Board shall be entitled

to the appointment of a receiver for the purpose of preserving the Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorneys' fees, from the Unit Owner of the respective Unit.

(b) Notwithstanding anything contained in this Section or elsewhere in the Declaration and these Bylaws, the lien for any Regular Assessment or Special Assessment shall be subordinate to the lien of any mortgage if and to the extent the mortgage was recorded prior to the due date of any Regular Assessment or Special Assessment, and any sale or transfer of a Unit to a Mortgagee pursuant to a foreclosure on its Mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installments which became due after the recordation of such mortgage; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Unit, or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Unit Owners (including the party acquiring the subject Unit from which it arose), as provided in the Act.

## **ARTICLE XI**

### **MISCELLANEOUS**

Section 1. Amendment to Bylaws. The Board of Directors of the Association shall have the power, without the assent of the Members, to make, alter, amend or repeal these Bylaws.

Section 2. Construction. In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

(S:\Everyone\B\The) Bridgeview Condominium Owners Association Inc. 12748.1\By-Laws\BYLAWS (9-27-06).doc)